UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

March 13, 2006

Dixie L. Johnson, Esq.
Fried, Frank, Harris, Shriver & Jacobson LLP
1001 Pennsylvania Avenue, NW, Suite 800
Washington, DC 20004-2505

Re: Merrill Lynch, Pierce, Fenner & Smith Incorporated – Waiver Request under Regulation A and Rule 505 of Regulation D

Dear Ms. Johnson:

This is in response to your letter dated today, written on behalf of Merrill Lynch, Pierce, Fenner & Smith, Incorporated ("Merrill Lynch") and constituting an application for relief under Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D under the Securities Act of 1933 ("Securities Act"). You requested relief from disqualifications from exemptions available under Regulation A and Rule 505 of Regulation D that may have arisen by virtue of the order dated today entered in File No. 3-12236 against Merrill Lynch as respondent by the Securities and Exchange Commission (the "Order") (Exchange Act Rel. No. 53473). The Order instituted administrative proceedings pursuant to Sections 15(b)(4) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), ordered Merrill Lynch to cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rules 17a-4(b)(4) and 17a-4(j) thereunder, censured Merrill Lynch, ordered Merrill Lynch to comply with its undertakings set forth in the Order, and ordered Merrill Lynch to pay a civil money penalty in the amount of $2,500,000.

For purposes of this letter, we have assumed as facts the representations set forth in your letter and the findings supporting entry of the Order. We have also assumed that Merrill Lynch has complied and will continue to comply with the Order.

On the basis of your letter, I have determined that Merrill Lynch has made a showing of good cause under Rule 262 and Rule 505(b)(2)(iii)(C) that it is not necessary under the circumstances to deny the exemptions available under Regulation A and Rule 505 of Regulation D by reason of entry of the Order. Accordingly, pursuant to delegated authority, and without necessarily agreeing that any such disqualifications arose by virtue of entry of the Order against Merrill Lynch, Merrill Lynch is granted relief from any disqualifications from exemptions otherwise available under Regulation A and Rule 505 of Regulation D that may have arisen as a result of entry of the Order.

Very truly yours,

Gerald J. Laporte

Gerald J. Laporte
Chief, Office of Small Business Policy

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FRIED FRANK

March 13, 2006

By Courier

Gerald J. Laporte, Esq.
Chief, Office of Small Business Policy
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: *In the Matter of Merrill Lynch, Pierce, Fenner & Smith Incorporated, File No. 3-12236*

Dear Mr. Laporte:

On behalf of our client, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S"),[1] we hereby respectfully request, pursuant to Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D of the Securities Act of 1933 (the "Securities Act"), a waiver of any disqualification that may have arisen pursuant to Rule 262 or Rule 505 as a result of the entry of an order dated as of this date in administrative and cease-and-desist proceedings brought by the Securities and Exchange Commission (the "Commission") against MLPF&S in the above-referenced matter (the "Order"). We respectfully request that this waiver be granted effective upon the entry of the Order. It is our understanding that the Division of Enforcement

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1 MLPF&S is a registered broker-dealer engaged in a full-service securities business, including retail and institutional sales, investment banking services, trading and research.

does not object to the grant of the requested waiver by the Division of Corporation Finance.

BACKGROUND

MLPF&S has consented, as part of settlement with the Commission in the above-captioned matter, to the entry of the Order pursuant to Section 15(b)(4) and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") requiring MLPF&S to cease and desist from committing or causing violations of Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) and Rule 17a-4(j) thereunder, censuring MLPF&S, imposing a civil money penalty in the amount of $2.5 million, and ordering MLPF&S to comply with certain undertakings. The Order includes findings, which MLPF&S neither admitted nor denied, that MLPF&S violated Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) and Rule 17a-4(j) thereunder by failing to retain and promptly furnish emails to the Commission's Staff.

DISCUSSION

We understand that the Order may result in the disqualification of MLPF&S, its affiliated entities, and issuers identified in Rule 262(b) from relying on certain exemptions under Regulation A and Rule 505 of Regulation D insofar as the Order may be deemed to cause MLPF&S to be disqualified pursuant to 17 C.F.R. § 230.262(b)(3). *See also* 17 C.F.R. § 230.505(b). The Commission may waive these exemption disqualifications upon a showing of good cause that it is not necessary under the circumstances that the exemptions be denied.[2] *See* 17 C.F.R. §§ 230.262, 230.505(b). Accordingly, MLPF&S hereby requests a waiver of any disqualifications that may have arisen under Regulation A and Rule 505 of Regulation D, effective upon the entry of the Order. For the reasons discussed below, we believe that it is not necessary under the circumstances that the exemption be denied.

The conduct alleged in the Order does not relate to any offerings pursuant to Regulation A or D. Rather, it is confined to the retention and prompt production of email to the Commission's Staff. Further, none of the undertakings or requirements of

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2 *See, e.g., Adams Harkness, Inc.*, SEC No-Action Letter (pub. avail Aug. 25, 2004); *Morgan Keegan & Co., Inc.*, SEC No-Action Letter (pub. avail Aug. 25, 2004); *Needham & Company, Inc.*, SEC No-Action Letter (pub. avail Aug. 25, 2004); *SG Cowen & Co., Inc.*, SEC No-Action Letter (pub. avail Aug. 25, 2004); *Credit Suisse First Boston*, SEC No-Action Letter (pub. avail. Jan. 29, 2002); *Stephens, Inc.*, SEC No-Action Letter (pub. avail. Dec. 27, 2001); *Dain Rauscher, Inc.*, SEC No-Action Letter (pub. avail. Sept. 27, 2001); *Legg Mason Wood Walker, Inc.*, SEC No-Action Letter (June 11, 2001); *Prudential Securities, Inc.*, SEC No-Action Letter (pub. avail. Jan. 29, 2001); *Tucker Anthony, Inc.*, SEC No-Action Letter (pub. avail. Dec. 21, 2000).

the settlement would directly apply to offerings under Regulation A or D or to any activities that MLPF&S might conduct in connection with such offerings.

The disqualification of MLPF&S from the exemptions under Regulations A and D would be unduly and disproportionately severe, given that the violations alleged in the Order are not related to MLPF&S's activities in connection with any Regulation A or Regulation D offerings, as noted above, and given the extent to which the disqualification could adversely affect the business operations of MLPF&S. Such a disqualification would unfairly affect any MLPF&S affiliate who might seek to rely on the exemptions insofar as the alleged misconduct is unrelated to Regulation A or D or to any conduct or activities on the part of such affiliate. Such a disqualification would, we believe, have an adverse impact on third parties that may retain MLPF&S and its affiliates in connection with transactions that rely on these exemptions.

MLPF&S has agreed to establish systems, policies, and procedures that are reasonably designed to achieve compliance with the federal securities laws and rules concerning the prompt production of emails to the Commission. In addition, MLPF&S has agreed to retain a qualified independent consultant to review the Firm's systems, policies, and procedures as they relate to compliance with the federal securities laws and rules concerning the retention and prompt production of emails to the Commission. MLPF&S further agreed to cooperate fully with the independent consultant and, except where a recommendation is determined to be unduly burdensome or impractical, to adopt and implement the independent consultant's recommendations. Furthermore, MLPF&S voluntarily cooperated with the inquiry into this matter by the Division of Enforcement.

In light of the grounds for relief discussed above, we believe that disqualification is not necessary, in the public interest or for the protection of investors, and that MLPF&S has shown good cause that relief should be granted. Accordingly, we respectfully urge the Commission, and the Division of Corporation Finance pursuant to its delegated authority, to waive, pursuant to Rule 262 and Rule 505(b)(2)(iii)(C), the disqualification provisions in Regulation A and Rule 505 of Regulation D to the extent that they may be applicable, as a result of the entry of the Order.

Sincerely,

Dixie L. Johnson 3/31/06

Dixie L. Johnson

cc: Corey A. Jennings, Esq.
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