

Funds underwritten by Lehman.⁵ While LBAM's and Lincoln Capital's portfolio managers may have had access to research reports issued by the Research Department, there is no indication that the portfolio managers relied on these research reports more than any other data that would have been considered by the portfolio managers in making investment decisions for the Funds.⁶ Although some of the Funds held securities in their portfolios at the time that Lehman issued research reports concerning the issuers of such securities, Applicants state that LBAM began serving as investment adviser to a Fund and Lincoln Capital was acquired by Lehman Brothers Holdings Inc. after the time period covering the conduct that forms the basis for the Injunctions. As far as Lehman is aware, none of the current or former officers, employees, portfolio managers, or any other investment personnel employed by Lehman, who is or was involved in providing principal underwriting services to the Funds, acted in their capacity as such based on any non-public information relating to the conduct underlying the Injunctions. In addition, each of the Applicants that serve or may serve as an investment adviser or sub-adviser to Funds has adopted policies regarding information barriers designed to protect the Funds from any conflict of interest that may arise between portfolio managers and other employees of Lehman.

5. Each of LBAM and Lincoln Capital has distributed or will distribute written materials, including an offer to meet in person to discuss the materials, to the board of directors or trustees of each Fund that it advises or subadvises (each, a "Board"), including the directors or trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Fund, and their independent legal counsel, if any, regarding the Federal Injunction, any impact on the Funds, and this application.⁷ The Applicants will

⁵ The Complaint also refers to general practices regarding the relationship between the Investment Banking and Research Departments. It is possible that one or more current or former officers or employees of the Applicants, who is or was involved in providing advisory, sub-advisory or underwriting services to the Funds, was at some time an officer or employee of the Investment Banking or Research Departments.

⁶ Lehman states that it acts as principal underwriter to certain UITs whose portfolio securities were selected by an unaffiliated third party depositor based on information published by the Research Department.

⁷ LBAM and Lincoln Capital also will advise the Boards of any State Injunctions that are issued. With respect to the UITs discussed in footnote 6, Lehman states that it has provided or will provide written notification to the trustees for each of these

provide the Boards with all information concerning the Injunctions and this application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants state that the inability to continue providing advisory services to the Funds and the inability to continue serving as principal underwriter to the Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants also assert that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. The Applicants state that they have committed substantial resources to establish an expertise in advising and distributing Funds. Lehman and certain affiliated persons of Lehman previously have received exemptions under section 9(c) as the result of conduct that triggered section 9(a) as described in greater detail in the Application.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It Is Hereby Ordered, pursuant to section 9(c) of the Act, that the Applicants are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Injunctions, subject to the condition in the application, until the date the Commission takes final action on their application for a permanent order or, if earlier, October 31, 2005.

UITs and their independent depositor concerning the Injunctions, any impact on the UITs, and this Application, and will provide any other related information that may be requested by the trustees or independent depositors.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-26244; 812-12961]

Merrill Lynch Investment Managers, L.P., et al.; Notice of Application and Temporary Order

October 31, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

SUMMARY OF APPLICATION: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S") on October 31, 2003, by the U.S. District Court for the Southern District of New York (the "Injunction"), until the Commission takes action on an application for a permanent order. Applicants have requested a permanent order.

APPLICANTS: Merrill Lynch Investment Managers, L.P. ("MLIM"), Fund Asset Management, L.P. ("FAM"), Merrill Lynch Investment Managers International Limited ("MLMIL"), Merrill Lynch Asset Management U.K. Limited ("MLAM UK"), Roszel Advisors, LLC ("Roszel," and with MLIM, FAM, MLMIL and MLAM UK, the "Advisers"), MLPF&S and FAM Distributors, Inc. ("FAMD," and with MLPF&S, the "Underwriters"), KECALP Inc. ("KECALP"), ML Taurus, Inc. ("Taurus") and Merrill Lynch Ventures, LLC ("Ventures") (together, the "Applicants").¹

FILING DATES: The application was filed on April 28, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission

¹ Applicants request that any relief granted pursuant to the application also apply to any other company of which MLPF&S is or hereafter becomes an affiliated person (included in the term Applicants).