

by 5:30 p.m. on November 25, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, c/o Jerry Weiss, Esq., Merrill Lynch Investment Managers, L.P., 800 Scudders Mill Road, Princeton, NJ 08536.

FOR FURTHER INFORMATION CONTACT: Marc R. Ponchione, Senior Counsel, or Todd F. Kuehl, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (telephone: 202-942-8090).

Applicants' Representations

1. MLPF&S, a Delaware corporation, is a leading global investment banking firm. Certain Applicants serve as investment adviser or sub-adviser for one or more registered investment companies ("Funds"). Certain Applicants act as the depositor or principal underwriter for Funds.²

2. On October 31, 2003, the U.S. District Court for the Southern District of New York entered the Injunction against MLPF&S in a matter brought by the Commission.³ The Commission alleged in the complaint ("Complaint") that MLPF&S violated certain Conduct Rules of the National Association of Securities Dealers ("NASD") and Rules of the New York Stock Exchange ("NYSE") (the NASD Conduct Rules and NYSE Rules together, the "Exchange Rules") by engaging in acts and practices that created or maintained inappropriate influence by MLPF&S' investment banking business (the "Investment Banking Department") over the research analysts in MLPF&S' research department (the "Research

Department"). The Injunction enjoined MLPF&S directly or through its officers, directors, agents and employees, from violating the specific rules cited in the Complaint. Without admitting or denying the allegations in the Complaint, MLPF&S consented to the entry of the Injunction as well as the payment of disgorgement and penalties and other equitable relief.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered UIT or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that MLPF&S is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3) of the Act. Applicants further state that the entry of the Injunction would result in Applicants being subject to the disqualification provisions of section 9(a) of the Act.

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that the Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting them from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standard for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the conduct giving rise to the Injunction did not involve activities of any of the Applicants acting in the capacity of investment adviser, depositor, or principal underwriter for a Fund. Applicants state that none of their current or former officers or employees who are engaged in the provision of investment advisory or principal underwriting services was involved in the conduct that forms the basis of the Injunction. Applicants state that, while the Advisers had access to research reports issued by the Research Department, the fact that the source of a particular research report might be MLPF&S causes it to receive no more weight than research received from other sources in their analysis of a particular investment.⁴ Although some of the Funds held securities in their portfolios at the time that MLPF&S issued research reports concerning the issuers of such securities, as far as Applicants are aware, none of the officers, portfolio managers, or any other investment personnel employed by the Advisers has any knowledge of any non-public information relating to, or had any involvement in, the conduct underlying the Injunction. In addition, each of the Advisers has adopted policies regarding information barriers (the "Policies") designed to protect the Advisers' clients, including Fund shareholders, from any conflict of interest that may arise between the Advisers' portfolio managers and other employees of Merrill Lynch & Co., Inc. ("ML&Co.").⁵ The Policies, which were in effect at the time of the conduct described in the Complaint, restrict communications between portfolio managers and certain other employees of ML&Co.

5. The Applicants have distributed written materials, including an offer to meet in person to discuss the materials, to the board of directors or trustees of each Fund (each, a "Board"), including the directors 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 Injunction, any impact on the Funds, and this application.⁶ The

⁴ Applicants state that they formerly acted as principal underwriter or depositor to one UIT whose portfolio selection process placed special emphasis on equity research issued by the Research Department.

⁵ ML&Co. is a holding company that, through its subsidiaries and affiliates, provides investment, financing, advisory, insurance, banking and related products and services on a global basis. Each of the Applicants is a direct or indirect wholly owned subsidiary of ML&Co.

⁶ With respect to the UIT discussed in footnote 4, Applicants state that they will provide written

² Any registered unit investment trust ("UIT") or registered face amount certificate company for which Applicants may serve as principal underwriter or depositor are also included in the defined term Funds.

³ *Securities and Exchange Commission v. Merrill Lynch, Pierce, Fenner & Smith Incorporated*, 03 Civ. 2941 (WHP) (S.D.N.Y., filed April 28, 2003) (the "Action").