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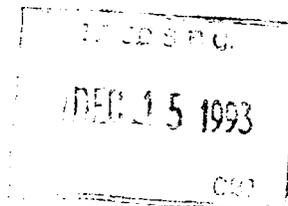
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PETER J. ROMEO

PARTNER

DIRECT DIAL (202) 637-5805

December 15, 1993



BY HAND DELIVERY

Office of the Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: Merrill Lynch, Pierce, Fenner & Smith, Inc.

Ladies and Gentlemen:

We are writing on behalf of Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") to request your concurrence in our view that Rule 16b-2 under the Securities Exchange Act of 1934 ("Exchange Act") exempts the acquisition of securities acquired pursuant to automatic dividend reinvestment services offered by Merrill Lynch to its customers pursuant to Merrill Lynch's automatic investment of dividends service (the "AID service"). The AID service provides for the reinvestment of dividends in the same manner as would a dividend reinvestment plan ("DRIP") sponsored by the issuer of the security on which the dividend is paid. Accordingly, we are of the view that Merrill Lynch's automatic dividend reinvestment services qualify for the Rule 16b-2 exemption from Section 16(b) of the Exchange Act.

BACKGROUND

Merrill Lynch, like several other major brokerage firms, provides automatic dividend reinvestment services to its customers. These services enable customers to have the cash dividends that are paid on securities listed on the New York Stock Exchange, the American Stock Exchange, and the NASDAQ Stock Market that are held in their accounts automatically reinvested in additional shares of the same securities. The AID service is available to Merrill Lynch customers regardless of whether the issuer of the securities on which the dividends are paid offers a similar DRIP service to holders of securities of the same class. Merrill Lynch has previously provided to the Securities and Exchange Commission ("SEC") a detailed

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description of the nature and operation of the AID service. See attached letter from Rosemary Berkery, Assistant Vice President and Counsel of Merrill Lynch, to Mary E. Chamberlain, Chief Counsel, Division of Market Regulation, SEC (November 27, 1984). Accordingly, for the purposes of this letter, we will describe only the automatic dividend reinvestment features of the AID service.

Merrill Lynch offers automatic dividend reinvestment services to its customers pursuant to the AID service, which is available to customers who have cash, margin, CMA, or individual IRA/Keough accounts. A customer may enroll in the AID service at any time by notifying his Merrill Lynch Financial Consultant of his desire to have the dividends on all eligible securities in his account, or merely certain eligible securities, automatically reinvested in additional shares of such securities. Automatic dividend reinvestment under the AID service commences with the first dividend having a record date which is at least two business days after the Financial Consultant has been so notified. A customer may withdraw from the AID service, or selectively discontinue automatic dividend reinvestment for particular securities, by notifying his Financial Consultant at least two business days prior to the next dividend record date of the issuers of the securities for which he no longer wants automatic dividend reinvestment.

All full and fractional shares of eligible securities held in a Merrill Lynch account on the dividend record date may participate in dividend reinvestment pursuant to the AID service. Dividend reinvestment pursuant to the AID service operates in the following manner.

On the dividend payment date for a particular security, Merrill Lynch credits each account holding such security in an amount equal to the aggregate cash dividends paid on the securities held in such account. Then, two business days following the dividend payment date, Merrill Lynch credits each customer's account with that number of shares of the dividend-paying security, including fractional shares computed to four decimal places, equal to the amount of dividends reinvested (after deduction of the applicable commission, if any), divided by the purchase price per share. In all cases, the customer has no discretion regarding the timing or price of the purchases effected with reinvested dividends.

DISCUSSION

Rule 16b-2 provides:

Any acquisition of securities resulting from the reinvestment of dividends or interest on securities of the same issuer shall be exempt from Section 16(b) of the Act if made pursuant to a plan, available on the same terms to all holders of that class of securities, providing for the regular reinvestment of dividends or interest.

For the following reasons, we are of the view that Merrill Lynch's automatic dividend reinvestment services pursuant to the AID service qualify for the exemption from Section 16(b) by virtue of Rule 16b-2. The exemption is available if four criteria are satisfied: (1) the acquisitions are effected pursuant to the reinvestment of dividends or interest; (2) the dividends or interest is reinvested in securities of the same issuer as the issuer of the securities on which the dividends or interest was paid; (3) the reinvestments occur pursuant to a plan providing for the regular reinvestment of dividends or interest; and, (4) the plan is available on the same terms to all holders of that class of securities. As set forth below, Merrill Lynch's automatic dividend reinvestment services satisfy each of the four criteria set forth in the Rule.

1. Acquisitions are Effected Only with Reinvested Dividends or Interest

The AID service provides customers of Merrill Lynch with the opportunity to acquire additional equity of an issuer in which they previously chose to invest, solely by reinvesting dividends. Participants in Merrill Lynch's AID service are prohibited from making additional voluntary cash contributions pursuant to these programs. Customers may, of course, elect to purchase additional securities in their customer accounts, in the same manner that all brokerage customers may place purchase orders with their brokers, but such acquisitions are not effected pursuant to Merrill Lynch's AID service and are not within the scope of this request.

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2. Dividends Are Reinvested Solely in Securities of the Same Class on Which the Dividends are Paid

In all cases, Merrill Lynch's AID service provides for reinvestment of dividends solely in securities of the class on which the dividends are paid. Under no circumstances may funds subject to Merrill Lynch's AID service be utilized to purchase securities of a different issuer.

3. Reinvestments Occur Pursuant to a "Plan" Providing for the Regular Reinvestment of Dividends

Merrill Lynch's AID service is an established "plan" which is offered on specific terms that do not vary from customer to customer. The availability and terms of the service are set forth in marketing materials given to all customers who elect to avail themselves of the AID service. Accordingly, we believe that the AID service constitutes a "plan" within the meaning of Rule 16b-2.

The AID service provides for the regular reinvestment of dividends. Once a customer elects to participate in Merrill Lynch's AID service, his or her dividends are reinvested automatically upon payment of each dividend, without further action by or consent of the customer.

4. The Plan is Available on the Same Terms to All Holders of a Particular Class of Securities

The AID service is available to all customers of Merrill Lynch. In addition, any holders of publicly traded securities listed on the New York Stock Exchange, American Stock Exchange or the NASDAQ market may become customers of Merrill Lynch and participate in its AID service. Accordingly, Merrill Lynch's AID service is not offered selectively to insiders of issuers whose dividends are reinvested pursuant to the service or otherwise limited to a select class of security holders. Instead, as with issuer-sponsored DRIPs, Merrill Lynch's AID service is available to all holders of securities of the class on which dividends are paid. The availability of this service is widely advertised and is made known to all Merrill Lynch customers. While some stockholders of dividend-paying issuers choose not to maintain a customer account with Merrill Lynch or, even if they do maintain such an account, elect not to participate in Merrill Lynch's AID service, they have the opportunity to participate on the same terms as all other

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stockholders, and their election not to participate does not distinguish Merrill Lynch's programs from any issuer-sponsored DRIP.

The fact that not all stockholders of a dividend-paying issuer maintain customer accounts with Merrill Lynch should not affect the availability of the Rule 16b-2 exemption. The staff has indicated that reinvestments under employee benefit plans are eligible for the exemption if the issuer has a DRIP meeting the requirements of the Rule, despite the fact that these plans are available only to employees and are not available to all holders of the class of securities on which the dividends are paid. See Simpson Thacher & Bartlett (June 19, 1991) (Q.1, 2). The staff's position appears to be based on the conclusion, which is supported by the policy underlying Rule 16b-2, that dividend reinvestments under a plan which does not include all stockholders present no opportunity for speculative abuse, and therefore are exempt from Section 16(b), so long as all stockholders have the opportunity to reinvest their dividends on equal terms. The fact that some stockholders choose not to maintain an account with Merrill Lynch does not alter the fact that Merrill Lynch's AID service is available to them on the same terms as they are made available to Merrill Lynch's customers.

* * *

In addition to satisfying the literal requirements of Rule 16b-2, Merrill Lynch's AID service satisfies the policies underlying the rule. As the Commission indicated when it first adopted the exemption for acquisitions pursuant to a DRIP, such acquisitions present little if any opportunity for speculative abuse based on inside information because: (i) participants in the plan (including statutory insiders) have no discretion over the timing of their purchases; and, (ii) all holders of the subject class of securities are eligible to participate. See Release No. 34-16806 (1980). Similarly, Merrill Lynch's programs present little if any opportunity for speculative abuse. First, plan participants (including statutory insiders) have no discretion over the timing of their purchases. As described above, customers who elect to participate must be enrolled in the program prior to the record date for dividends that are to be reinvested pursuant to the program. Accordingly, since dividends typically are not paid until several weeks after the record date, participants are "locked into" their DRIP purchases substantially prior to the date on which the timing and price of their purchases is established, and have no discretion over the timing of their purchases. Second, because Merrill Lynch's services are available to all holders of listed equity securities, there is no risk that purchases may be effected solely for statutory insiders or otherwise for the benefit of a select few. All customers of Merrill Lynch are informed of the availability of

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the AID service, and no special effort is made to enroll statutory insiders in the programs.

For the foregoing reasons, we respectfully request that you concur in our conclusion that the AID service provided by Merrill Lynch qualifies for the Rule 16b-2 exemption from Section 16(b). If upon an initial review of this letter the staff is not inclined to agree with our conclusion, we request that you so advise us prior to issuing a written response so that we may have the opportunity to discuss your concerns.

In accordance with Release No. 33-6269, we are enclosing seven copies of this letter with the original. Should you have any questions regarding this request, please contact the undersigned (637-5805) or Alan L. Dye (637-5737).

Very truly yours,


Peter J. Romeo

Attachment

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PETER J. ROMEO
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McLEAN, VA

February 18, 1994

Securities Exchange Act of 1934

Rule 16b-2

BY MESSENGER

Mark Green, Esq.
Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: **Merrill Lynch, Pierce, Fenner & Smith, Inc.**

Dear Mr. Green:

In our telephone conversation on February 17, 1994, you indicated that the staff was not in a position to state that the exemption provided by Rule 16b-2 under the Securities Exchange Act of 1934 would be available to exempt the automatic reinvestment of cash dividends by corporate insiders participating in the automatic investment of dividends service (the "AID Service") of Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") described in our letter of December 15, 1993. You stated that the staff's preliminary view was that the AID Service did not appear on its face to satisfy the requirement of Rule 16b-2 that it be available to all holders of the class of securities on which the dividends are paid.

Although we do not agree with the staff's preliminary view, for the reasons stated in our prior letter, Merrill Lynch has determined to amend its request for staff advice. Specifically, Merrill Lynch requests that the staff consider the availability of Rule 16b-2 only in the situation where a participant in the AID Service is an insider of an issuer which has a dividend reinvestment plan ("DRIP") satisfying the requirements of Rule 16b-2. In such circumstances, the AID Service essentially would mirror the operation of the issuer's DRIP plan, and there could be no doubt that all holders of the class of securities on which the dividends are paid would have the same opportunity as the participants in the AID Service to reinvest their dividends automatically. An interpretation to the effect that Rule 16b-2 is available in such circumstances would be consistent

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Mark Green, Esq.
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with the staff's position in *Simpson Thacher & Bartlett* (June 19, 1991) (Q.1), in which it was held that automatic reinvestments of dividends under an employee benefit plan are eligible for the Rule 16b-2 exemption if the issuer has a DRIP meeting the requirements of the rule.

We are hopeful that the foregoing revision of Merrill Lynch's request will enable the staff to conclude that Rule 16b-2 is available in the limited circumstances described above. In the event you have any questions, please contact the undersigned at (202) 637-5805 or Alan L. Dye at (202) 637-5737.

Sincerely,

A handwritten signature in cursive script that reads "Peter Romeo".

Peter J. Romeo