



DIVISION OF
CORPORATION FINANCE

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

September 28, 2018

John Potter
Quinn Emanuel Urquhart and Sullivan, LLP
50 California Street, 22nd Floor
San Francisco, California 94111-4788

Re: In the Matter of LendingClub Asset Management, LLC
**LendingClub Corporation – Waiver Request of Ineligible Issuer Status under Rule 405 of
the Securities Act**

Dear Mr. Potter:

This is in response to your letter dated September 5, 2018, written on behalf of LendingClub Corporation (“LendingClub”) and constituting an application for relief from LendingClub being considered an “ineligible issuer” under clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act of 1933 (“Securities Act”). LendingClub requests relief from being considered an ineligible issuer under Rule 405, due to the entry on September 28, 2018 of a Commission Order (“Order”) pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against LendingClub Asset Management, LLC (“LCA”). The Order requires that, among other things, LCA cease and desist from committing or causing any violations and any future violations of Sections 204(a), 206(1), 206(2), 206(4), and 207 of the Advisers Act and Rules 204-1(a), 206(4)-7, and 206(4)-8 thereunder, and also require LCA to comply with certain undertakings.

Based on the facts and representations in your letter, and assuming that LCA complies with the Order, we have determined that LendingClub has made a showing of good cause under clause (2) of the definition of ineligible issuer in Rule 405 and that LendingClub will not be considered an ineligible issuer by reason of the entry of the Order against LCA. Accordingly, the relief described above from LendingClub being an ineligible issuer under Rule 405 of the Securities Act is hereby granted. Any different facts from those represented or failure to comply with the terms of the Order would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Sincerely,

/s/

Tim Henseler
Chief, Office of Enforcement Liaison
Division of Corporation Finance

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September 5, 2018

VIA E-MAIL AND FEDEX

Tim Hensler, Esq.
Chief, Office of Enforcement Liaison
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

In the Matter of LendingClub

Dear Mr. Hensler:

We submit this letter on behalf of our client, LendingClub Corporation (the “Parent Company”), a reporting company registered under Section 12 of the Securities Exchange Act of 1934 (the “Exchange Act”), in connection with the anticipated settlement of an administrative proceeding (the “Proceeding”) brought against the Parent Company’s wholly-owned subsidiary LendingClub Asset Management, LLC, formerly known as LendingClub Advisors, LLC (“LCA”) (the “Settling Firm”) (together the “LendingClub Parties”), an investment adviser registered under the Investment Advisers Act of 1940 (the “Advisers Act”), by the United States Securities and Exchange Commission (the “Commission”). Based on an agreement with the Staff of the Enforcement Division, the Settling Firm is a respondent in the above-captioned civil administrative proceeding concerning compliance with Sections 204(a), 206(1), 206(2), 206(4), and 207 of the Advisers Act and Rules 204-1-(a), 206(4)-7 and 206(4)-8 thereunder.

The Parent Company seeks to maintain its ability to qualify as a “well-known seasoned issuer” pursuant to Rule 405 adopted by the Commission under the Securities Act of 1933 (the “Securities Act”) with respect to offerings that it would seek to undertake from time to time. We hereby respectfully request a determination by the Commission or the Division of Corporation Finance (the “Division”), acting pursuant to authority duly delegated by the Commission, that the Parent Company should not be considered an “ineligible issuer” as a result of the Order, which is described below. Consistent with the framework outlined in the Division’s Revised

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Statement on Well-Known Seasoned Issuer Waivers (“Revised Statement”),¹ the Parent Company respectfully submits that relief from the ineligible issuer provisions is appropriate in the circumstances of this case for the reasons set forth below. The Parent Company requests that this determination be made effective upon the entry of the Order.

BACKGROUND

LCA and the Staff of the Enforcement Division have reached an agreement to resolve the above-captioned matter. Under the terms of the resolution, the Commission is initiating a settled administrative and cease-and-desist proceeding under Sections 203(e), 203(f), and 203(k) of the Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940 (the “Order”) finding that LCA violated Sections 204(a), 206(1), 206(2), 206(4), and 207 of the Advisers Act and Rules 204-1-(a), 206(4)-7 and 206(4)-8 thereunder.

The Order will find that between December 2015 and March 2016, former LCA President Renaud Laplanche caused an LCA-managed fund to purchase interests in 60-month loans that otherwise would have expired unfunded on the Parent Company’s platform. These purchases were made in contravention of loan allocation procedures detailed in LCA’s Form ADV and the private placement memorandum for the fund at issue; in breach of LCA’s fiduciary duties to the fund; and without adequate disclosure of the conflict of interest involved.

During the same period, former LCA President Laplanche and former CFO Carrie Dolan caused LCA to overstate net asset values for LCA-managed funds that were reported to investors and prospective investors in the funds, including a fund in which Laplanche was invested. LCA also failed to adopt written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with the aforementioned conduct.

Without admitting or denying the matters set forth in the Order, except as to the jurisdiction of the Commission, LCA will consent to the entry of the Order, which finds that it violated Sections 204(a), 206(1), 206(2), 206(4), and 207 of the Advisers Act and Rules 204-1-(a), 206(4)-7 and 206(4)-8 thereunder, and will agree to a censure, to cease and desist from committing or causing any violations and any future violations of Sections 204(a), 206(1), 206(2), 206(4), and 207 of the Advisers Act and Rules 204-1-(a), 206(4)-7 and 206(4)-8 thereunder, and to pay a civil monetary penalty of \$4,000,000. LCA must also provide notice of the Order to its advisory clients, and certify its compliance with that undertaking. The Order will also require that Laplanche and Dolan cease and desist from committing or causing any violations and any future violations of various Advisers Act sections and rules, censure Dolan, impose a bar on Laplanche, and require each to pay a civil monetary penalty.

¹ Division of Corporation Finance, Revised Statement on Well-Known Seasoned Issuer Waivers (April 24, 2014), available at <http://www.sec.gov/divisions/corpfm/guidance/wksi-waivers-interp-031214.htm> (the “Division’s Statement”).

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DISCUSSION

Effective on December 1, 2005, the Commission reformed and revised the registration, communications, and offering procedures under the Securities Act.² As part of these reforms, the Commission created a category of issuer defined under Rule 405 as a well-known seasoned issuer (“WKSI”). A WKSI is eligible under the rules, among other things, to register securities for offer and sale under an “automatic shelf registration statement,” as so defined. A WKSI is also eligible for the benefits of a streamlined registration process including the use of free-writing prospectuses (“FWPs”) in registered offerings pursuant to Rules 164 and 433 under the Securities Act. These benefits, however, are unavailable to issuers defined as “ineligible issuers”³ under Rule 405.

An issuer is an “ineligible issuer,” as defined under Rule 405, if, among other things, “[w]ithin the past three years, ... the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws; (B) Requires that the person cease and desist from violating the anti-fraud provisions of the federal securities laws; or (C) Determines that the person violated the anti-fraud provisions of the federal securities laws,” Rule 405(1)(vi). Notwithstanding the foregoing, paragraph (2) of the definition provides that an issuer “shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer.” The Commission has delegated authority to the Division of Corporation Finance to make such a determination pursuant to 17 CFR § 200.30-1(a)(10). The Order would render the Parent Company an ineligible issuer for a period of three years after the Order is entered, precluding the Parent Company from qualifying as a WKSI and having the benefits of automatic shelf registration and other provisions of the Securities Offering Reform for three years.

As set forth above, Rule 405 authorizes the Commission to determine for good cause that an issuer shall not be an ineligible issuer, notwithstanding that the issuer or a subsidiary of the issuer becomes subject to an otherwise disqualifying order. The Parent Company believes that there is good cause for the Commission to make such a determination based on the Division’s Statement on granting such waivers, on the following grounds:

² Securities Offering Reform, Securities Act Release No. 8591, Exchange Act Release No. 52,056, Investment Company Act Release No. 26,993, 70 Fed. Reg. 44,722, 44,790 (Aug. 3, 2005).

³ This request for relief is not intended to be limited solely for the purpose of continuing to qualify as a WKSI, but for all purposes of the definition of “ineligible issuer” under Rule 405.

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1. Nature and Context of Violation.

The Parent Company is not being charged by the Commission. The conduct that will be described in the Order does not relate to the Parent Company's role as an issuer of securities (or any disclosure related thereto) or any of its related filings with the Commission. Rather, the Order will find that LCA violated Sections 204(a), 206(1), 206(2), 206(4), and 207 of the Advisers Act and Rules 204-1-(a), 206(4)-7 and 206(4)-8 thereunder. The Order will also charge Laplanche and Dolan for violations arising out of the same conduct.

None of the conduct as set forth in the Order or any other conduct of LCA has resulted in criminal charges. Additionally, no restatement of the Parent Company financials was required as a result of the alleged violations. The disclosure policies and procedures applicable to LCA are separate and distinct from the disclosure policies and procedures relating to the issuance of securities and filings applicable to the Parent Company. The Order will not (i) question the Parent Company's disclosures in filings with the Commission as an issuer of securities; (ii) state that the Parent Company's disclosure controls and procedures as an issuer of securities were deficient; (iii) describe fraud in connection with securities offerings by the Parent Company; (iv) state that members of the board of directors of the Parent Company knew about the violations; or (v) state that members of the board of directors of the Parent Company ignored any warning signs or "red flags" regarding the violations. Indeed, the Order will describe efforts and actions undertaken by the board of directors of the Parent Company to cooperate in the investigation.

Accordingly, the misconduct set forth in the Order should not cast doubt on the ability of the Parent Company to produce reliable disclosures going forward and result in the Parent Company being disqualified from the safe harbors that may apply to it, or any of its current and future affiliates.

2. Personnel Responsible for the Violation.

As described in the Order, the misconduct at issue was in large part a result of actions taken by LCA's former President and former CFO, who were two of three members of LCA's Investment Policy Committee, and neither of whom are affiliated with LCA or the Parent Company today. The Parent Company's board of directors initiated a review, under the supervision of a sub-committee of the board of directors in May 2016 that uncovered the issues that are the subject of the Order. During this review, the board accepted the resignations of Laplanche and Dolan. As described more fully below, LCA now has an entirely new leadership structure and team.

3. Duration of the Misconduct.

The Order describes misconduct that occurred during a five-month period between December 2015 and April 2016, over two years ago.

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4. Remedial Steps Taken.

LCA and the Parent Company have fully cooperated with the Commission's inquiry into this matter. In addition, LCA has proactively undertaken comprehensive measures to address the conduct alleged in the Order and to prevent future violations of the securities laws. LCA has adopted a number of changes to its corporate structure and its control environment. These changes include:

In May 2016, the Parent Company's board of directors initiated a review, under the supervision of a sub-committee of the board of directors, which uncovered the above-described conduct. The Parent Company voluntarily and promptly disclosed the issues it uncovered to the Commission. Soon after initiating the review and over the next several weeks, the Parent Company's board of directors made changes to the senior management team; the Board accepted Laplanche's resignation, and thereafter accepted Dolan's resignation. Over a nearly two-year span, counsel for the independent sub-committee of the board of directors and the Parent Company provided significant assistance to the Commission in its investigation. This cooperation shortened significantly the amount of time needed to conduct the investigation.

Beginning in May 2016, the Parent Company's board of directors worked with the Parent Company's new management team to remedy the self-identified failures at LCA. The IPC was abolished and LCA began outsourcing its monthly valuation of fund assets to an independent third party.

In June 2016, LCA also established a new governing board comprised of a majority of independent members with respected backgrounds in finance and asset management to supervise LCA's exercise of its fiduciary duties on behalf of its clients. Since 2016 the governing board has met regularly with LCA management in person and regularly makes reports to the Parent Company's board of directors. The independent governing board members are advised by separate counsel.

On June 28, 2016, LCA notified investors in its funds of the management adjustments described above. LCA then recalculated fund returns from the inception of the funds in March 2011 through May 31, 2016, eliminating the impact of the adjustments. LCA then reimbursed investors who were adversely impacted by the adjustments when they entered or exited the funds, or if they paid excessive management fees due to the adjustments. For all of the investors in the \$1.3 billion in managed assets who were impacted, LCA ultimately provided just over \$1,000,000 to these harmed investors.

In early 2017, LCA engaged a third party consultant to provide advice on compliance matters, resulting in a redesign of LCA's compliance processes and procedures, including a new compliance manual, code of ethics and revised Form ADV. The consultant conducts oversight and enhanced training to employees.

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In 2017, LCA hired a new senior management team consisting of industry veterans to strengthen the internal governance. This management team subsequently implemented an internal restructuring to enhance the independent exercise of LCA's fiduciary duties. The new management team engaged a third-party fund administrator in order to enhance controls.

In September 2017, LCA funds began to buy loans almost exclusively through a newly designed loan allocation algorithm designed to randomly assign loans to all buyers, thereby reducing the possibility of adverse selection on behalf of LCA clients.

On October 25, 2017, in order to provide liquidity to investors in the LCA funds, LCA announced the closure of the LCA funds and the sale of fund assets to a third party. On or about that time, LCA launched a new suite of funds and rebranded itself LendingClub Asset Management.

5. Impact if the Waiver Request is Denied.

The Parent Company operates a consumer lending platform ("LC Platform"), which connects borrowers and investors, and facilitates a variety of loan products, including:

- *Personal Loans.* The LC Platform facilitates unsecured personal loans that can be used to make major purchases, refinance credit card balances or for other purposes. Personal loans are offered through both its standard and custom loan programs.
- *Small Business Loans.* Small business loans are offered through the LC Platform in private transactions. These loan products enable small business owners to expand their business, purchase equipment or inventory, or meet other obligations.
- *Education and Patient Finance Loans.* The Parent Company facilitates unsecured education and patient installment loans and true no-interest loans through Springstone, another wholly owned subsidiary of the Parent Company, and its issuing bank partners. Education and Patient Finance Loans are currently offered to private investors only and not made publicly available on the marketplace.

In addition, the Parent Company has launched an auto refinance product, which is now live in 26 states with plans to expand further.

Should the Parent Company be deemed an "ineligible issuer" for the purposes of applying the benefits of its WKSI status, the continued strength of the LC Platform might be jeopardized. The Parent Company issues Member Payment Dependent Notes multiple times each day pursuant to a Form S-3 shelf registration statement filed with the Commission. The shelf registration statement is automatically effective in accordance with the Parent Company's WKSI status. Should the Parent Company be deemed an "ineligible issuer," it would lose the ability to:

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- File Form S-3 shelf registration statements that are automatically effective to register a range of different types of securities in an indeterminate number or amount of securities;
- Offer additional securities of the class covered by the Parent Company’s existing shelf registration statement without filing a new registration statement. The new registration statement would not be automatically effective, thus creating the potential for interruption to a significant component of the Parent Company’s business model;
- Include certain information in prospectus supplements or incorporated Exchange Act reports when the information was omitted at the time of automatic effectiveness from shelf registration statements pursuant to Rule 430B;
- Take advantage of the “pay as you go” filing fee payment process with respect to typical multiple daily issuances;
- Qualify a new indenture under the Trust Indenture Act of 1939, if needed, without filing or having the Commission declare effective a new registration statement; and
- Use FWPs other than FWPs that contain only a description of the terms of the offered securities or the offering itself.

At present, the Parent Company continues to offer its Member Payment Dependent Notes pursuant to the automatically effective shelf registration statement on file with the Commission. These continuous Notes offerings represent a material component of the Parent Company’s business model. In general, the Parent Company seeks to achieve an investor base that is balanced and diversified in order to provide stability to the LC Platform in various market conditions. The Parent Company currently targets facilitating 10-15% of the loans from the LC Platform using the Notes, though the LC Platform is balanced dynamically based on demand in any given period.⁴ From the Notes program inception in 2008 through March 31, 2018, approximately 17% of loans facilitated on the LC Platform were facilitated via the Notes. The Parent Company has used its automatically effective shelf registration statements to conduct continuous Notes offerings during that period, totaling approximately \$6 billion in total offerings.

The LC Platform is the largest of its kind. Because demand for the Member Payment Dependent Notes offerings is used to facilitate a material portion of the loans originated via the LC Platform, the Parent Company’s ability to maintain the LC Platform to meet borrower lending demands could be hindered should the Parent Company be deemed an “ineligible

⁴ For example, in the second quarter of 2016, approximately 17% (\$329 million) of loans facilitated on the LC Platform were facilitated via the Notes. In the first quarter of 2018, approximately 10% (\$223 million) of loans facilitated on the LC Platform were facilitated via the Notes.

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issuer.” If Notes offerings cannot readily be used to facilitate loans from the LC Platform, borrowers might be unable to obtain their requested financing or be forced to seek less desirable forms of financing from other lending sources. The Parent Company’s Notes offering program is also one of just two in the market that permits the participation of retail investors in this asset class. Retail investors could lose substantial access to the asset class if the Parent Company’s Notes offerings are hindered, reduced, or delayed.

Additionally, the Parent Company’s brand and market-facing identity would be harmed if it cannot nimbly adjust by using the automatic effectiveness of its shelf registration statement to ensure its Notes offerings coincide with market conditions. Restricting the Parent Company’s ability to react quickly to changing market conditions or demands of investors seeking access to the asset class might jeopardize the balance and competitiveness of the market for investments in the asset class offered on the LC Platform.

CONCLUSION

In light of the foregoing, subjecting the Parent Company to ineligible issuer status is not necessary under the circumstances, either in the public interest or for the protection of investors, and good cause exists for the grant of the requested relief. Accordingly, we respectfully request that the Commission, or the Division of Corporation Finance, acting pursuant to authority duly delegated by the Commission and pursuant to paragraph (2) of the definition of “ineligible issuer” in Rule 405, determine that under the circumstances the Parent Company, and any of its current and future affiliates, will not be considered an “ineligible issuer” within the meaning of Rule 405 as a result of the Order. We further request that this determination be made effective upon entry of the Order and, with respect to the potential effect of the Order, be applicable for all purposes of the definition of “ineligible issuer.” If you have any questions regarding this request, please contact me at (415) 875-6352 or johnpotter@quinnemanuel.com.

Sincerely yours,

A handwritten signature in blue ink that reads "John M. Potter". The signature is written in a cursive style with a large initial "J" and "P".

John M. Potter