



DIVISION OF  
CORPORATION FINANCE

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

August 20, 2003

Stephanie Avakian, Esq.  
Wilmer, Cutler & Pickering  
399 Park Avenue  
New York, New York 10022-4697

**Re: UBS PaineWebber, Inc.—Waiver Request under Regulation A and  
Rule 505 of Regulation D**

Dear Ms. Avakian:

This is in response to your letter dated August 20, 2003, written on behalf of UBS PaineWebber, Inc. (the "Firm"), 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. You requested relief from disqualifications from exemptions available under Regulation A and Rule 505 of Regulation D that arise by virtue of the entry today of the injunction included in the Final Judgment in *Securities and Exchange Commission v. UBS PaineWebber, Inc.* (S.D.N.Y.) (the "Final Judgment").

For purposes of this letter, we have assumed as facts the representations set forth in your letter. We also have assumed that the Firm will comply with the Final Judgment.

On the basis of your letter, the Commission, pursuant to delegated authority, has determined that you have 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 the entry of the Final Judgment. Accordingly, the relief described above from the disqualifying provisions of Regulation A and Rule 505 of Regulation D is hereby granted.

Sincerely,

Handwritten signature of Gerald J. Laporte in black ink.  
Gerald J. Laporte  
Chief, Office of Small Business Policy

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**BY FEDERAL EXPRESS**

Gerald J. Laporte, Esq.  
Chief, Office of Small Business Policy  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
450 Fifth Street, N.W., Room 3501  
Washington, D.C. 20549-0310

**Re: UBS PaineWebber, Inc.**

Dear Mr. Laporte:

This letter is on behalf of UBS PaineWebber Incorporated ("PaineWebber"). PaineWebber hereby requests, pursuant to Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D of the Securities and Exchange Commission (the "Commission") promulgated under the Securities Act of 1933 (the "Securities Act"), a waiver of any disqualification from exemptions under Regulations A and D that may be applicable to PaineWebber and any of its affiliates as a result of the entry of the Commission order described below. PaineWebber requests that these waivers be granted effective upon entry of the order of the Commission accepting the settlement described herein. It is our understanding that the Division of Enforcement does not object to the grant of the requested waivers by the Division of Corporation Finance.

**BACKGROUND**

The staff of the Division of Enforcement engaged in settlement discussions with PaineWebber in connection with a nonpublic formal inquiry (SEC File No. SF-1918-A). As a result of these discussions, PaineWebber will submit an offer of settlement. In the offer of settlement, solely for the purpose of proceedings brought by or on behalf of the Commission or to which the Commission is a party, PaineWebber will consent to the entry of an order instituting proceedings pursuant to Sections 15(b) and 21B of the Securities Exchange Act of 1934 ("Exchange Act"), making findings, censuring PaineWebber, and imposing remedial sanctions (the "Order"), without admitting or denying the matters set forth therein (other than those relating to the jurisdiction of the Commission).

Under the Order, the Commission will make findings, without admission or denial by PaineWebber, that PaineWebber, in connection with unauthorized trading activity by one of its registered representatives, Enrique E. Perusquia, failed reasonably to supervise Perusquia, who committed violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. In particular, the Commission will make findings that Perusquia carried out an extended fraud that caused his clients significant losses. The Commission will also make findings that PaineWebber failed reasonably to supervise Perusquia with a view toward preventing his fraudulent conduct.

Based on these findings, the Order will censure PaineWebber and require that PaineWebber pay a civil penalty of \$500,000.

### DISCUSSION

PaineWebber understands that the entry of the Order may disqualify it and its affiliated entities from certain exemptions under Regulation A and Rule 505 under Regulation D promulgated under the Securities Act insofar as the Order will be deemed to cause PaineWebber to be subject to an order of the Commission pursuant to Section 15(b) of the Exchange Act. The Commission has the authority to waive these disqualifications upon a showing of good cause that such disqualifications are not necessary under the circumstances. *See* 17 C.F.R. §§ 230.262 and 230.505(b)(2)(iii)(C).

PaineWebber seeks a waiver of the exemption disqualifications under Regulation A and Rule 505 of Regulation D on the following grounds:

1. PaineWebber's conduct to be addressed in the Order does not pertain to offerings under Regulation A. Nor does it pertain to offerings under Regulation D undertaken with PaineWebber's knowledge, involvement or approval. The conduct is confined to supervisory issues related to the unauthorized trading and misappropriation of funds by a registered representative covering retail accounts. Additionally, the registered representative acted as a finder in a refinancing deal by referring a company to a Swiss bank after PaineWebber had already declined to enter into an investment banking relationship with the company; PaineWebber did not participate in, nor did it endorse, any transaction related to this referral.

2. PaineWebber has improved and enhanced its compliance and surveillance policies and procedures relating to the subject matter of the Order, which should help to prevent recurrence of the conduct at issue. In particular, PaineWebber has taken the following actions:

- a. Conducted a review of existing non-resident alien ("NRA") accounts and required registered representatives to obtain identifying information regarding the beneficial owners of non-natural NRA accounts opened at PaineWebber. PaineWebber closed all other omnibus accounts with Swiss banks.
- b. With respect to new accounts, put in place procedures requiring identifying and contact information for accounts opened in the name of non-natural NRAs (such as personal holding companies, offshore trusts,

foundations and offshore operating entities), including a copy of the passport of all beneficial owners and of all persons authorized to trade, W-8 tax forms, a corporate resolution and articles of incorporation. Registered representatives are required to have a client's legal address on file and are prohibited from directing or holding the mail of NRA clients at PaineWebber or its affiliates.

3. The disqualifications of PaineWebber under Regulation A and Rule 505 of Regulation D would be unduly and disproportionately severe given the nature of the violations to be found in the Order and the extent to which disqualification would affect PaineWebber's business operations, particularly in the area of underwriting and private placement agent activity. In addition, the disqualification of PaineWebber under these exemptions may place PaineWebber at a competitive disadvantage with respect to third parties that might seek to retain PaineWebber in connection with transactions that rely on the regulatory exemptions.

4. The disqualifications of PaineWebber under Regulation A and Rule 505 under Regulation D would be unduly and disproportionately severe, given that (a) the Order relates to activity that occurred more than four years ago; and (b) PaineWebber will be required to pay a civil penalty on the basis of the conduct that is the subject of the Order.

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 PaineWebber has shown good cause that relief should be granted. Accordingly, we respectfully urge the Commission, and the Division of Corporation Finance pursuant to delegated authority, to waive the disqualification provisions in Regulation A and Rule 505 of Regulation D to the extent they may be applicable to PaineWebber and any of its affiliates as a result of the entry of the Order.<sup>1</sup>

Please do not hesitate to contact the undersigned at (212) 230-8845 regarding this request.

Sincerely,



Stephanie Avakian

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<sup>1</sup> We note in support of this request that the Commission has in other instances granted relief under Rule 262 of Regulation A and Rule 505(b)(2)(ii)(C) of Regulation D for similar reasons. *See, e.g.*, Credit Suisse First Boston Corp., SEC No-Action Letter (pub. avail. Jan. 29, 2002); Dain Rauscher, Incorporated, SEC No-Action Letter, (pub. avail. Sept. 27, 2001); Legg Mason Wood Walker, Incorporated, SEC No-Action Letter (pub. avail. June 11, 2001); Tucker Anthony, Inc., SEC No-Action Letter (pub. avail. Dec. 21, 2000); In the Matter of Certain Municipal Bond Refundings, SEC No-Action Letter (pub. avail. Apr. 6, 2000); In the Matter of Certain Market-Making Activities on Nasdaq, SEC No-Action Letter (pub. avail. Jan. 11, 1999).