UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8690 / May 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12310

In the Matter of
BEAR, STEARNS & CO. INC.; CITIGROUP GLOBAL MARKETS, INC.; GOLDMAN, SACHS & CO.; J.P. MORGAN SECURITIES, INC.; LEHMAN BROTHERS INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED; MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY DW INC.; RBC DAIN RAUSCHER INC.; BANC OF AMERICA SECURITIES LLC; A.G. EDWARDS & SONS, INC.; MORGAN KEEGAN & COMPANY, INC.; PIPER JAFFRAY & CO.; SUNTRUST CAPITAL MARKETS INC.; AND WACHOVIA CAPITAL MARKETS, LLC,

Respondents.

ORDER UNDER RULE 602(e) OF THE SECURITIES ACT OF 1933, GRANTING A WAIVER OF THE DISQUALIFICATION PROVISION OF RULE 602(c)(3) AS TO MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

Merrill Lynch, Pierce, Fenner & Smith Incorporated has submitted a letter, dated February 28, 2006, for a waiver of the disqualification from the exemption under Regulation E arising from its settlement of an administrative proceeding commenced by the Commission. On May 31, 2006, pursuant to the offer of settlement by Merrill Lynch, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934 (the “Order”). Under the Order, the Commission found that Merrill Lynch willfully violated Sections 17(a)(2) of the Securities Act of 1933 (the “Securities Act”) by engaging in one or more violative practices in connection with certain auctions for auction rate securities.

The Order censures Merrill Lynch and requires Merrill Lynch (1) to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act; (2) within 10 days of the entry of this Order, to pay a civil money penalty in the amount of $1,500,000 to the United States Treasury; (3) to make certain disclosures regarding its
material auction practices and procedures; and (4) not later than 6 months after the date of this 
Order, unless otherwise extended by the staff of the Commission for good cause shown, have its 
chief executive officer or general counsel certify in writing to the staff of the Commission that 
Merrill Lynch has implemented procedures that are reasonably designed to prevent and detect 
failures by Merrill Lynch to conduct the auction process in accordance with the auction 
procedures disclosed in the disclosure documents and any supplemental disclosures and that 
Merrill Lynch is in compliance with Section IV.E. of the Order.

The Regulation E exemption is not available for the securities of a small business 
investment company or business development company issuer if any of its principal security 
holders or any investment adviser or underwriter of the securities to be offered is subject to a 
Commission order pursuant to Section 15(b) of the Exchange Act. See Rule 602(c)(3) under 
the Securities Act. The Commission may waive the disqualification upon a showing of good 
cause. See Rule 602(e).

Based on the representations set forth in the request made by Merrill Lynch, the 
Commission has determined that a showing of good cause has been made pursuant to Rule 
602(e) and that the request for a waiver of the disqualification should be granted.

Accordingly, IT IS ORDERED, pursuant to Rule 602(e) under the Securities Act, 
that a waiver from the application of the disqualification provision of Rule 602(c)(3) under 
the Securities Act resulting from the entry of the Order is hereby granted.

By the Commission.

Nancy M. Morris
Secretary