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C H A N C E**

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February 17, 2005

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549-0609

Re: Regulation M (File No. S7-41-04)

Dear Mr. Katz:

On behalf of our clients, Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”) and UBS Securities LLC (“UBS”), we appreciate the opportunity to comment on one aspect of the Securities and Exchange Commission’s proposed amendments to Regulation M relating to anti-manipulation rules concerning the offering of securities. Merrill Lynch and UBS frequently act as lead or managing underwriters of initial public offerings of closed-end registered investment companies (“closed-end funds”). Merrill Lynch and UBS lead offerings that raised 59.5% of the approximately \$23.4 billion of assets raised for closed-end funds in 2004. They are particularly concerned that the elimination of penalty bids will be disruptive to these offerings. Without the discipline provided by the penalty bid process, the ability for issuers and underwriters to provide these value-added products to investors would be significantly compromised.

The characteristics of closed-end funds are inapposite to the SEC’s description of market conditions in connection with penalty bids as stated in the Release proposing the amendments (the “Proposing Release”):

“We understand that penalty bids are rarely assessed, and are assessed most often in connection with offerings for which there is relatively low demand to help prevent triggering or exacerbating a market price decline through investor sales of IPO shares.”

Closed-end funds and closed-end fund IPOs have a number of characteristics that distinguish them from operating companies and operating company IPOs. First, unlike most operating company IPOs, the size of a closed-end fund IPO typically is determined based on the scope of the demand for those securities—that is, a newly offered closed-end fund typically will sell as many shares as the demand will reasonably allow. Therefore, closed-end fund offerings may be distinguished from offerings for which there is relatively low demand noted in the Proposing Release. Secondly, immediately following the closing of the closed-end fund IPO and for a period shortly thereafter, the fund’s assets consist of the cash proceeds from the initial public offering and the marketable securities purchased with such proceeds as the fund commences its investment operations. During such period, the fund

Mr. Jonathan G. Katz
February 17, 2005

Page 2

has no operating or investment results to influence trading in its shares. Due to these factors, investors would be unlikely to have a legitimate rationale to buy and sell in quick succession (i.e., flip) on the IPO of a closed-end fund, but, since closed-end fund IPOs normally will have a syndicate covering bid, a broker or dealer could sell shares purchased in the IPO into the syndicate bid on behalf of a client with little or no risk of client capital while still retaining any commissions earned on the IPO.

It should be noted that closed-end fund offerings normally are made exclusively to retail investors, so that there is virtually no opportunity for discriminatory imposition of penalty bids as between retail and institutional customers. In fact, the New York Stock Exchange and NASD recently proposed a change to penalty bid procedures that would permit the use of penalty bids so long as the penalty is imposed on the entire syndicate in connection with sales to all participants in the IPO. We support this proposal as it would address the concern over discriminatory imposition of penalty bids without unduly impacting the ability of investors to participate in new issues of closed-end funds.

While the Proposing Release notes that "penalty bids are rarely assessed," penalty bids have been utilized in virtually every closed-end fund IPO since the late 1980s. Although prospectuses clearly state that an investment in the closed-end funds are intended for long-term investors, evidence has shown significant and undue selling subsequent to a closed-end fund IPO prior to the use of a penalty bid. Consequently, several funds experienced rapid price decline shortly after the IPO at the expense of true long-term investors. For example, a closed-end fund IPO priced in March 1988 was forced to cancel the closing and withdraw the issue because the number of shares shown to be for sale on a "when issued" basis exceeded 30% of the initial offering even before trading began. Syndicates underwriting other closed-end fund IPOs at that time typically had to absorb shares being flipped back into the market, with one syndicate having to purchase back in excess of 20% of the original issue on the first day of trading.

These experiences with closed-end fund offerings in the late 1980s could have led to the significant reduction or elimination of closed-end fund offerings or the imposition by underwriters of greater fees to compensate for the greater risks involved in these underwritings. Instead, underwriters began to impose penalty bids regularly in closed-end fund underwritings, with the result that the offering process has become more efficient. The use of a penalty bid has been highly effective at helping to ensure and establish an efficient and orderly market for newly listed shares. The penalty bid process ensures that a more accurate level of legitimate demand is determined in the offering process, thereby protecting investors from the downward price pressure flipping would otherwise cause. Elimination of penalty bids could lead to the significant reduction or elimination of closed-end fund offerings or the imposition by underwriters of greater fees to compensate for the greater risks involved in these underwritings. We believe that this would not be in the interests of closed-end funds or their shareholders.

Mr. Jonathan G. Katz
February 17, 2005

Page 3

We appreciate the opportunity to comment on the proposed amendments to Regulation M. Any questions regarding our comments may be directed to me at (212) 878-8489.

Very truly yours,

Len Mackey

Leonard B. Mackey, Jr.

cc: Tom Lee, Merrill Lynch
Tina Singh, Merrill Lynch
Todd Reit, UBS
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