

Funds underwritten by Lehman.<sup>5</sup> While LBAM's and Lincoln Capital's portfolio managers may have had access to research reports issued by the Research Department, there is no indication that the portfolio managers relied on these research reports more than any other data that would have been considered by the portfolio managers in making investment decisions for the Funds.<sup>6</sup> Although some of the Funds held securities in their portfolios at the time that Lehman issued research reports concerning the issuers of such securities, Applicants state that LBAM began serving as investment adviser to a Fund and Lincoln Capital was acquired by Lehman Brothers Holdings Inc. after the time period covering the conduct that forms the basis for the Injunctions. As far as Lehman is aware, none of the current or former officers, employees, portfolio managers, or any other investment personnel employed by Lehman, who is or was involved in providing principal underwriting services to the Funds, acted in their capacity as such based on any non-public information relating to the conduct underlying the Injunctions. In addition, each of the Applicants that serve or may serve as an investment adviser or sub-adviser to Funds has adopted policies regarding information barriers designed to protect the Funds from any conflict of interest that may arise between portfolio managers and other employees of Lehman.

5. Each of LBAM and Lincoln Capital has distributed or will distribute written materials, including an offer to meet in person to discuss the materials, to the board of directors or trustees of each Fund that it advises or subadvises (each, a "Board"), including the directors or trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Fund, and their independent legal counsel, if any, regarding the Federal Injunction, any impact on the Funds, and this application.<sup>7</sup> The Applicants will

<sup>5</sup> The Complaint also refers to general practices regarding the relationship between the Investment Banking and Research Departments. It is possible that one or more current or former officers or employees of the Applicants, who is or was involved in providing advisory, sub-advisory or underwriting services to the Funds, was at some time an officer or employee of the Investment Banking or Research Departments.

<sup>6</sup> Lehman states that it acts as principal underwriter to certain UITs whose portfolio securities were selected by an unaffiliated third party depositor based on information published by the Research Department.

<sup>7</sup> LBAM and Lincoln Capital also will advise the Boards of any State Injunctions that are issued. With respect to the UITs discussed in footnote 6, Lehman states that it has provided or will provide written notification to the trustees for each of these

provide the Boards with all information concerning the Injunctions and this application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants state that the inability to continue providing advisory services to the Funds and the inability to continue serving as principal underwriter to the Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants also assert that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. The Applicants state that they have committed substantial resources to establish an expertise in advising and distributing Funds. Lehman and certain affiliated persons of Lehman previously have received exemptions under section 9(c) as the result of conduct that triggered section 9(a) as described in greater detail in the Application.

#### Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

#### Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

*It Is Hereby Ordered*, pursuant to section 9(c) of the Act, that the Applicants are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Injunctions, subject to the condition in the application, until the date the Commission takes final action on their application for a permanent order or, if earlier, October 31, 2005.

UITs and their independent depositor concerning the Injunctions, any impact on the UITs, and this Application, and will provide any other related information that may be requested by the trustees or independent depositors.

By the Commission.

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-26244; 812-12961]

### Merrill Lynch Investment Managers, L.P., et al.; Notice of Application and Temporary Order

October 31, 2003.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

**SUMMARY OF APPLICATION:** Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S") on October 31, 2003, by the U.S. District Court for the Southern District of New York (the "Injunction"), until the Commission takes action on an application for a permanent order. Applicants have requested a permanent order.

**APPLICANTS:** Merrill Lynch Investment Managers, L.P. ("MLIM"), Fund Asset Management, L.P. ("FAM"), Merrill Lynch Investment Managers International Limited ("MLMIL"), Merrill Lynch Asset Management U.K. Limited ("MLAM UK"), Roszel Advisors, LLC ("Roszel," and with MLIM, FAM, MLMIL and MLAM UK, the "Advisers"), MLPF&S and FAM Distributors, Inc. ("FAMD," and with MLPF&S, the "Underwriters"), KECALP Inc. ("KECALP"), ML Taurus, Inc. ("Taurus") and Merrill Lynch Ventures, LLC ("Ventures") (together, the "Applicants").<sup>1</sup>

**FILING DATES:** The application was filed on April 28, 2003.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission

<sup>1</sup> Applicants request that any relief granted pursuant to the application also apply to any other company of which MLPF&S is or hereafter becomes an affiliated person (included in the term Applicants).

by 5:30 p.m. on November 25, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, c/o Jerry Weiss, Esq., Merrill Lynch Investment Managers, L.P., 800 Scudders Mill Road, Princeton, NJ 08536.

**FOR FURTHER INFORMATION CONTACT:** Marc R. Ponchione, Senior Counsel, or Todd F. Kuehl, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a temporary order and a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (telephone: 202-942-8090).

#### Applicants' Representations

1. MLPF&S, a Delaware corporation, is a leading global investment banking firm. Certain Applicants serve as investment adviser or sub-adviser for one or more registered investment companies ("Funds"). Certain Applicants act as the depositor or principal underwriter for Funds.<sup>2</sup>

2. On October 31, 2003, the U.S. District Court for the Southern District of New York entered the Injunction against MLPF&S in a matter brought by the Commission.<sup>3</sup> The Commission alleged in the complaint ("Complaint") that MLPF&S violated certain Conduct Rules of the National Association of Securities Dealers ("NASD") and Rules of the New York Stock Exchange ("NYSE") (the NASD Conduct Rules and NYSE Rules together, the "Exchange Rules") by engaging in acts and practices that created or maintained inappropriate influence by MLPF&S' investment banking business (the "Investment Banking Department") over the research analysts in MLPF&S' research department (the "Research

Department"). The Injunction enjoined MLPF&S directly or through its officers, directors, agents and employees, from violating the specific rules cited in the Complaint. Without admitting or denying the allegations in the Complaint, MLPF&S consented to the entry of the Injunction as well as the payment of disgorgement and penalties and other equitable relief.

#### Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered UIT or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that MLPF&S is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3) of the Act. Applicants further state that the entry of the Injunction would result in Applicants being subject to the disqualification provisions of section 9(a) of the Act.

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that the Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting them from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standard for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the conduct giving rise to the Injunction did not involve activities of any of the Applicants acting in the capacity of investment adviser, depositor, or principal underwriter for a Fund. Applicants state that none of their current or former officers or employees who are engaged in the provision of investment advisory or principal underwriting services was involved in the conduct that forms the basis of the Injunction. Applicants state that, while the Advisers had access to research reports issued by the Research Department, the fact that the source of a particular research report might be MLPF&S causes it to receive no more weight than research received from other sources in their analysis of a particular investment.<sup>4</sup> Although some of the Funds held securities in their portfolios at the time that MLPF&S issued research reports concerning the issuers of such securities, as far as Applicants are aware, none of the officers, portfolio managers, or any other investment personnel employed by the Advisers has any knowledge of any non-public information relating to, or had any involvement in, the conduct underlying the Injunction. In addition, each of the Advisers has adopted policies regarding information barriers (the "Policies") designed to protect the Advisers' clients, including Fund shareholders, from any conflict of interest that may arise between the Advisers' portfolio managers and other employees of Merrill Lynch & Co., Inc. ("ML&Co.").<sup>5</sup> The Policies, which were in effect at the time of the conduct described in the Complaint, restrict communications between portfolio managers and certain other employees of ML&Co.

5. The Applicants have distributed written materials, including an offer to meet in person to discuss the materials, to the board of directors or trustees of each Fund (each, a "Board"), including the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Fund, and their independent legal counsel, if any, regarding the Injunction, any impact on the Funds, and this application.<sup>6</sup> The

<sup>4</sup> Applicants state that they formerly acted as principal underwriter or depositor to one UIT whose portfolio selection process placed special emphasis on equity research issued by the Research Department.

<sup>5</sup> ML&Co. is a holding company that, through its subsidiaries and affiliates, provides investment, financing, advisory, insurance, banking and related products and services on a global basis. Each of the Applicants is a direct or indirect wholly owned subsidiary of ML&Co.

<sup>6</sup> With respect to the UIT discussed in footnote 4, Applicants state that they will provide written

<sup>2</sup> Any registered unit investment trust ("UIT") or registered face amount certificate company for which Applicants may serve as principal underwriter or depositor are also included in the defined term Funds.

<sup>3</sup> *Securities and Exchange Commission v. Merrill Lynch, Pierce, Fenner & Smith Incorporated*, 03 Civ. 2941 (WHP) (S.D.N.Y., filed April 28, 2003) (the "Action").

Applicants will provide the Boards with all information concerning the Injunction and this application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants state that the inability to continue providing advisory services to the Funds and the inability to continue serving as principal underwriter to the Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants also assert that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. The Applicants state that they have committed substantial resources to establish an expertise in advising and distributing Funds. Certain affiliated persons of MLPF&S previously have received exemptions under section 9(c) as the result of conduct that triggered section 9(a) as described in greater detail in the application.

#### Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

#### Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

*It is hereby ordered*, pursuant to section 9(c) of the Act, that the Applicants are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Injunction, subject to the condition in the application, until the date the Commission takes final action on their application for a permanent order.

By the Commission.

**Jill M. Peterson,**

*Assistant Secretary.*

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notification to the trustee of the UIT concerning the Injunction, any impact on the UIT, and this application, and will provide any other related information that may be requested by the trustee.

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-26236; 812-12964]

### Morgan Stanley Investment Advisors Inc., et al.; Notice of Application and Temporary Order

October 31, 2003.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

*Summary of Application:* Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against Morgan Stanley & Co. Incorporated ("MS&Co.") on October 31, 2003 by the U.S. District Court for the Southern District of New York (the "Federal Injunction"), until the earlier of the date the Commission takes action on an application for a permanent order, or two years from the date of the Federal Injunction. Applicants have requested a permanent order.

*Applicants:* Morgan Stanley Investment Advisors Inc., Van Kampen Asset Management Inc., Morgan Stanley Investment Management Inc., Morgan Stanley Investments LP, Van Kampen Investment Advisory Corp., Van Kampen Advisors Inc., Morgan Stanley Alternative Investment Partners LP, Morgan Stanley AIP GP LP, Morgan Stanley Capital Partners III, Inc., MSDW Capital Partners IV, Inc., Morgan Stanley Global Emerging Markets, Inc., Morgan Stanley Venture Capital II, Inc., Morgan Stanley Venture Capital III, Inc., MSDW Venture Partners IV, Inc., MSVP 2002, Inc., MSREF II, Inc., MSREF III, Inc., MSREF IV, L.L.C., MSDW Real Estate Special Situations II Manager, L.L.C., Van Kampen Funds Inc., Morgan Stanley Distributors Inc., MS&Co., Morgan Stanley Distribution, Inc., Morgan Stanley DW Inc., Morgan Stanley Investment Management Limited; MSDW OIP Investors, Inc.; Morgan Stanley Investment Management Company; and Morgan Stanley Asset & Investment Trust Management Co., Limited (together, the "Applicants").<sup>1</sup>

*Filing Dates:* The application was filed on April 28, 2003. Applicants have agreed to file an amendment during the notice period, the substance of which is

reflected in this notice. Applicants also have agreed to file amendments to the application reflecting the issuance of each State Injunction (as defined below).

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 25, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, c/o A. Thomas Smith, Esq., Morgan Stanley, 1585 Broadway, New York, NY 10036.

**FOR FURTHER INFORMATION CONTACT:** Annette M. Capretta, Branch Chief, at 202-942-0687 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a temporary order and a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (telephone 202-942-8090).

#### Applicants' Representations

1. Each Applicant is a direct or indirect subsidiary of Morgan Stanley, a Delaware corporation. Morgan Stanley is a publicly held global financial services company that provides investment, financing, advisory, insurance, banking and related products and services. Certain Applicants serve as investment adviser or subadviser for one or more registered investment companies ("Funds"). Certain Applicants act as the depositor or principal underwriter for Funds.<sup>2</sup>

2. On October 31, 2003, the U.S. District Court for the Southern District of New York entered the Federal Injunction against MS&Co. in a matter

<sup>1</sup> Applicants request that any relief granted pursuant to the application also apply to any other company of which MS&Co. is or hereafter becomes an affiliated person (included in the term Applicants).

<sup>2</sup> Any registered unit investment trusts ("UIT") or registered face amount certificate company for which Applicants may serve as principal underwriter or depositor are also included in the defined term Funds.