

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**Securities Act of 1933**  
**Release No. 8997 / January 12, 2009**

**Administrative Proceeding**  
**File No. 3-13332**

**In the Matter of**

**Gabelli Funds, LLC,**

**Respondent.**

**ORDER UNDER RULE 602(e) OF THE  
SECURITIES ACT OF 1933 GRANTING A  
WAIVER OF THE RULE 602(c)(3)  
DISQUALIFICATION PROVISION**

**I.**

Gabelli Funds, LLC (“Gabelli”) has submitted two letters, dated July 1, 2008 and September 15, 2008, each requesting a waiver of the Rule 602(c)(3) disqualification from the exemption from registration under Regulation E arising from two separate orders entered by the Commission.

**II.**

On April 24, 2008, pursuant to Gabelli’s Offer of Settlement, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sections and a Cease-and-Desist Order Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Order I”) against Gabelli. The Commission found that Gabelli permitted a United Kingdom hedge fund investment adviser (“U.K. manager”) to market time a mutual fund managed by Gabelli in exchange for the U.K. manager’s investment in a hedge fund advised by a Gabelli affiliate. The Commission concluded that as a result of such conduct Gabelli willfully violated Section 206(2) of the Investment Advisers Act of 1940 (“Advisers Act”), Section 17(d) of the Investment Company Act of 1940 (“Investment Company Act”) and Rule 17d-1 thereunder, and willfully aided and abetted and caused violations of Section 12(d)(1)(B)(i) of the Investment Company Act. The Commission censured Gabelli and required, among other things, Gabelli to pay a total of approximately \$16 million in disgorgement and civil penalties.

On January 12, 2009, pursuant to Gabelli’s Offer of Settlement, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to

Section 203(e) of the Investment Advisers Act of 1940 and Sections 9(b) and 9(f) of the Investment Company Act of 1940, Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order II”) against Gabelli. The Commission found that Gabelli caused and willfully aided and abetted violations of Section 19(a) of the Investment Company Act and Investment Company Act Rule 19a-1 by two closed-end funds managed by Gabelli for failing to provide Rule 19a-1 notices to accompany those funds’ thirty-one distributions during 2002 and 2003 which included shareholder capital and capital gains. The Commission ordered Gabelli to pay a civil money penalty of \$450,000.

### III.

Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for the securities issued by small business investment companies and business development companies. The Regulation E exemption is not available for the securities of an issuer if, among other things, any investment adviser or underwriter for the securities to be offered is subject to an order of the Commission entered pursuant to Section 203(e) of the Advisers 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) under the Securities Act.

### IV.

Based upon the representations set forth in Gabelli’s requests, the Commission has determined that pursuant to Rule 602(e) a showing of good cause has been made such that Gabelli’s requests for waivers of disqualification should be granted.

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

By the Commission.

Elizabeth M. Murphy  
Secretary