

**BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE
OF THE STATE OF TENNESSEE AT NASHVILLE**

TENNESSEE SECURITIES DIVISION)	
)	
Petitioner,)	
)	File No.: 02-005
vs.)	
)	
MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.)	
)	
Respondent.)	

CONSENT ORDER

The Tennessee Securities Division [the "Division"], and Merrill Lynch, Pierce, Fenner & Smith, Inc. ["Merrill"] agree to the entry of this Agreed Order in accordance with T.C.A. 48-2-116 of the Tennessee Securities Act of 1980, as amended, T.C.A. 48-2-101, et seq. [The "Act"], which states that the Commissioner of Commerce and Insurance from time to time may make such orders as are necessary to carry out the provisions of the Act.

WHEREAS, Respondent, Merrill, hereby stipulates and agrees, subject to the approval of the Commissioner of Commerce and Insurance [hereinafter referred to as the "Commissioner"] as follows:

I.

GENERAL STIPULATIONS

1. It is expressly understood that this Consent Order is subject to the Commissioner's acceptance and has no force and effect until such acceptance is evidenced by the entry of the Commissioner.

2. This Consent Order is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Consent Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Consent Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

3. Respondent fully understands that this Consent Order will in no way preclude other proceedings by the Commissioner against the Respondent for acts or omissions not specifically addressed in this Consent Order or for acts and/or omissions that do not arise from the facts or transactions herein addressed.

4. Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of this Consent Order, the stipulations and imposition of discipline contained herein, and the consideration and entry of said Consent Order by the Commissioner of Commerce and Insurance.

5. Respondent neither admits nor denies the Findings of Fact and Conclusions of Law stated herein.

II.

FINDINGS OF FACT

1. The Tennessee Securities Act of 1980, as amended, T.C.A. 48-2-101, et seq. [the “Act”], places the responsibility for the administration of the Act on the Commissioner of Commerce and Insurance [“Commissioner”]. The Division is the lawful agent through which the Commissioner discharges this responsibility. T.C.A. 48-2-115.

2. Merrill Lynch, Pierce, Fenner & Smith, Inc. [“Merrill Lynch”] [CRD# 7691] is a broker-dealer registered with the Division pursuant to the Act.

3. The Attorney General of the State of New York ["New York AG"] conducted an investigation [the "New York Investigation"] into research practices at Merrill Lynch.

4. The New York AG commenced a proceeding on April 8, 2002, pursuant to Section 354 of the General Business Law of the State of New York (Index No. 02/401522) [the "New York Proceeding"], including submission of the Affidavit of Eric R. Dinallo, Chief of Investment Protection Bureau, New York State Department of Law. The Dinallo affidavit contains assertions regarding Merrill Lynch's research practices and the manner in which those practices are allegedly connected to the company's investment banking activities.

5. On July 22, 2002, an Order of Investigation was entered by Assistant Commissioner Daphne D. Smith pursuant to Tennessee Code Annotated Section 48-2-118. The order authorized the Division to undertake an investigation [the "Investigation"] into the activities of Merrill Lynch that were revealed during the course of the New York Investigation.

6. The New York AG and Merrill Lynch have entered into an agreement, dated May 21, 2002 [the "May 21 Agreement"] [a true and exact copy of which is attached hereto and incorporated herein by reference], which resolved all issues involved in the New York Investigation and the New York Proceeding, prior to the Court making any findings of fact or conclusions of law pursuant to a contested proceeding.

7. Pursuant to the May 21 Agreement, Merrill Lynch has agreed to implement certain changes with respect to its Global Equity Research analysts and equity securities covered by such analysts and make certain payments.

8. Merrill Lynch and the Division are desirous of avoiding multiple investigations in light of the above-referenced changes that are being implemented at Merrill Lynch and Merrill Lynch's agreement to make certain payments.

III.

CONCLUSIONS OF LAW

1. Pursuant to Tennessee Code Annotated Section 48-2-115(a), the responsibility for the administration of the Act is upon the Commissioner. The Division is the lawful agent through which the Commissioner discharges this responsibility.

2. T.C.A 48-2-112(a)(2)(B) states, in pertinent part, that the Commissioner by order may deny, suspend, or revoke any registration under this part if he finds that the order is in the public interest, necessary for the protection of investors, and if he finds that the registrant, or in the case of a broker-dealer or investment adviser, any officer, director, or any person occupying a similar status or performing similar functions has willfully violated or willfully failed to comply with any provision of this part or a predecessor chapter or any rule or order under this part or predecessor chapter, including, without limitation, any net capital requirements.

3. Tennessee Code Annotated Section 48-2-121 provides, in pertinent part, that (a) it is unlawful for any person, in connection with the offer, sale or purchase of any security in the state, directly or indirectly, to: (1) employ any device, scheme, or artifice to defraud; (2) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or (3) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

4. The grounds upon which the Investigation was initiated by the Division and the averments in the Dinallo Affidavit, allege practices by Merrill Lynch which would, if proven, provide grounds under Tennessee Code Annotated Section 48-2-112(a)(2)(B) for the entry of an order of sanctions against Merrill Lynch.

IV.
ORDER

NOW, THEREFORE, on the basis of the foregoing, and Merrill Lynch, Pierce, Fenner & Smith, Inc.'s waiver of its right to a hearing and appeal under the Tennessee Securities Act and Tennessee's Uniform Administrative Procedures Act, Tennessee Code Annotated Sections 4-5-101 *et seq.*, and Merrill Lynch, Pierce, Fenner & Smith, Inc.'s admission of jurisdiction of the Commissioner of Commerce and Insurance, the Commissioner finds that Merrill Lynch, Pierce, Fenner & Smith, Inc., for the purpose of settling this matter, has agreed to the entry of this Order and that the following Order is appropriate, in the public interest and necessary for the protection of investors.

IT IS HEREBY ORDERED, pursuant to Tennessee Code Annotated Section 48-2-116(a) of the Tennessee Securities Act that:

1. This Order concludes the Investigation by the Tennessee Securities Division and any action that the Division could commence against Merrill Lynch, its affiliates, current or former employees, officers and directors of Merrill Lynch relating to research practices at Merrill Lynch prior to the date of this Order.

2. This Order is entered into solely for the purpose of resolving the investigation initiated by the Tennessee Securities Division, and is not intended to be used for any other purpose.

3. **It is further Ordered that:**

(a) Merrill Lynch will comply with the Tennessee Securities Act of 1980, as amended, and the rules promulgated thereunder.

(b) As of the date of entry of this Order, Merrill Lynch will state on each Merrill Lynch Global Equity research report whether Merrill Lynch received or is entitled to receive compensation over the past 12 months, or whether Merrill

Lynch is entitled to receive compensation from any publicly announced equity underwriting or merger and acquisition transaction for each company covered by the research report (the "Covered Company"). Notwithstanding the foregoing, as of July 8, 2002, the disclosures regarding investment banking compensation referred to in this Paragraph 3(b) shall be replaced with the disclosures required by NYSE Rule 472(k)(1)(ii) and NASD Rule 2711 (h)(2)(A)(ii).

- (c) As of the date hereof, Merrill Lynch will include a prominent legend on the first page of each Merrill Lynch Global Equity research report that investors should assume that Merrill Lynch is seeking or will seek investment banking or other business from the Covered Company.
- (d) As of the date hereof, Merrill Lynch will include on each Merrill Lynch Global Equity research report specific disclosure on a percentage basis, the aggregate distribution, calculated quarterly, of the intermediate-term rating category used by Merrill Lynch, for:
 - (i) all stocks in the sector or industry group applicable to the Covered Company;
 - (ii) all stocks in the sector or industry group applicable to the Covered Company for which, over the prior 12 months, Merrill Lynch performed services in publicly announced equity underwritings and merger and acquisition transactions for which compensation was received or to which Merrill Lynch is entitled, until the effective date of any applicable rules promulgated by any self-regulatory organization to which Merrill Lynch is subject;
 - (iii) all stocks covered by Merrill Lynch Global Equity research; and
 - (iv) all stocks covered by Merrill Lynch Global Equity research for which, over the prior 12 months, Merrill Lynch performed services in publicly announced equity underwriting or merger and acquisition transactions for

which compensation was received or to which Merrill Lynch is entitled, until the effective date of any applicable rules promulgated by any self-regulatory organization to which Merrill Lynch is subject.

Research Changes

4. Merrill Lynch agrees to adopt and enforce policies implementing the practices and procedures set forth in Paragraphs 5-15 below with respect to its U.S.-based equity research analysts and equity securities covered by such analysts by no later than July 1, 2002, unless otherwise set forth below.

Analyst Compensation

5. Merrill Lynch will separate completely the evaluation and determination of compensation for U.S.-based equity research analysts from Merrill Lynch's investment banking business by complying with Paragraphs 6-9 below. Going forward, Merrill Lynch will consider the implementation of such additional procedures as it deems appropriate to further effectuate the provisions of Paragraphs 6-9 below. All research analyst employment contracts entered into starting as of the date hereof will make specific reference to the Merrill Lynch policies implemented to effectuate the prohibitions set forth in Paragraph 7 below of this Order.

6. Merrill Lynch agrees that research analysts will be compensated for only those activities and services intended to benefit Merrill Lynch investor clients. The activities and services that research analysts are expected to perform for the benefit of Merrill Lynch investor clients include:

- (a) formulation of research recommendations and preparation of research reports;
- (b) communication of investment information to investor clients;
- (c) cooperation, accessibility and responsiveness consistent with serving investor clients; and

- (d) participation in the identification and evaluation of potential investment opportunities, including providing input into whether a potential investment opportunity is appropriate for Merrill Lynch investor clients.

7. With respect to analyst compensation, Merrill Lynch will prohibit:

- (a) anyone responsible for determining research analysts' compensation from soliciting from any analyst, or considering in determining any analyst's compensation, either (i) the amount of investment banking revenue received from clients covered by such analyst, or (ii) the analyst's participation in investment banking transactions, except to the extent such activities and services are intended to benefit investors, as specifically contemplated by Paragraph 6 above;
- (b) research analysts from being evaluated by investment bankers for any work such analysts may do to generate investment banking business, including participation in investment banking client solicitations;
- (c) investment bankers from communicating with research analysts or with anyone responsible for determining analysts' compensation for the purpose of calculating or influencing an individual analyst's compensations; and
- (d) consideration of any such input from investment bankers by anyone responsible for determining research analysts' compensation.

8. Merrill Lynch agrees that managers in Merrill Lynch's Research Department ("Research Management") and those executive officers more senior to Research Management, subject to review at its discretion by the Board of Directors, will have exclusive responsibility for determining research analyst compensation and will evaluate analysts for compensation purposes based primarily upon:

- (a) quality of analysts' research and performance of their investment recommendations;
- (b) competitive compensation factors;

- (c) surveys and input from investor clients; and
- (d) surveys and input from Merrill Lynch's institutional sales, equity trading, and private client divisions, but not from the investment banking division.

9. Executive management may discuss with Research Management overall costs, budgets, resource allocation and the retention and recruitment of research analysts.

Research Recommendations Committee

10. On or before September 1, 2002, Merrill Lynch will establish a Research Recommendations Committee (the "RRC"). The RRC will monitor performance of and supervise equity research recommendations for objectivity, integrity, and a rigorous analytical framework in the development of all recommendations.

- (a) The RRC will be composed of representatives of Merrill Lynch's institutional and private client sales management, Research Management and research strategists. It will be chaired by an individual who will be compensated in a fixed amount plus a bonus based primarily on how research recommendations (i.e., currently defined as strong buy, buy, neutral, reduce/sell), perform for investors. Performance will be measured over relevant periods of time by, among other things, absolute price performance against the recommendation definitions included in the research reports and price performance relative to industry and market benchmarks.
- (b) Initiation of, or change to, any equity research recommendation will require approval by the RRC. Changes to research recommendations may be approved by a member of the RRC and ratified by the RRC.
- (c) Upon presenting a research recommendation at a meeting of the RRC, the relevant research analyst shall disclose to the RRC any participation by the analyst with investment bankers in an investment banking transaction for the subject company within the last 12 months.

- (d) A member of the RRC or a member of Research Management, or a compliance manager in the Research Department shall be present at any meeting of Merrill Lynch's Equity Commitment Committee or any other group authorized to commit Merrill Lynch to a public equity underwriting.
- (e) The RRC Chairperson will report to the Director of Global Research.

11. As soon as practicable, but no later than December 31, 2002, Merrill Lynch will implement a system to monitor electronic communications between investment bankers and equity research analysts.

Solicitation of Investment Banking Business

1. Merrill Lynch agrees that:
 - (a) Research analyst participation with investment bankers in solicitations for any potential investment banking transaction must be approved in advance by Research Management.
 - (b) Effective September 1, 2002, before any research analyst participates in a solicitation with investment bankers for any potential investment banking transaction, such analyst must disclose such intended participation to a member of the RRC.
 - (c) Effective September 15, 2002, each equity research report covering a particular company will disclose whether, since July 1, 2002, any research analyst covering such company has participated in a solicitation with or at the request of investment bankers for an investment banking transaction underwritten by Merrill Lynch. Commencing on July 1, 2003, such disclosure will be made for the immediately preceding 12 month period.
 - (d) Upon execution of this Order, Merrill Lynch will prohibit analysts, investment bankers, or any other employees of Merrill Lynch from promising, implying, offering, or communicating in any way that a specific recommendation or change of an existing recommendation will be made in

exchange for the awarding of an investment banking transaction to Merrill Lynch.

- (e) Upon execution of this Order, Merrill Lynch will prohibit analysts from changing any research recommendation because of the subject company's decision not to retain Merrill Lynch for investment banking services.

Disclosure During Solicitation of Public Equity Underwriting

13. On or before September 1, 2002, Merrill Lynch will establish a policy requiring that the materials used in connection with any solicitation for a public equity underwriting will include a written disclosure that:

- (a) Merrill Lynch prohibits employees from, directly or indirectly, offering a favorable research rating or specific price target, or offering to change a rating or price target to a subject company as consideration or inducement for the receipt of business or for compensation; and
- (b) Merrill Lynch prohibits research analysts from being compensated for involvement in investment banking transactions except to the extent that such participation is intended to benefit investor clients.

Termination of Coverage

14. Whenever Merrill Lynch terminates coverage of any issuer, Merrill Lynch will publish a report disclosing:

- (a) Merrill Lynch's termination of coverage;
- (b) the rationale for the decision to terminate coverage; and
- (c) that, effective upon the termination of coverage, the last recommendation issued for the particular stock should not be relied upon going forward.

Compliance Monitor

15. **Merrill Lynch agrees that:**

- (a) Starting on or before September 1, 2002 and continuing for a period of one year, Merrill Lynch will designate an employee (the "Compliance

Monitor") whose assignment will be to ensure compliance with the policies required by this Order.

- (b) The Compliance Monitor will be appointed by Merrill Lynch subject to the acquiescence of the New York AG, which acquiescence will not be unreasonably withheld.
- (c) The Compliance Monitor will be available to research analysts to address issues of actual or perceived undue influence or pressure from investment banking or any other source.
- (d) The Compliance Monitor will report directly to the General Counsel for Litigation, Compliance, Regulatory and Governmental Affairs.

16. Nothing herein shall be construed to require that Merrill Lynch or any of its affiliates, agents, or employees, act in any manner inconsistent with any laws, rules, or regulations, including those imposed by their governing self-regulatory organizations.

No Disqualifications

17. Neither this settlement, nor any acts performed and documents executed in furtherance of this Order:

- (a) may be deemed or used as an admission of, or evidence of, the validity of any wrongdoing or liability including, but not limited to the assertions in the Dinallo Affidavit, or anything contained in the New York State Supreme Court Order, dated April 8, 2002; or
- (b) may be deemed or used as an admission of, or evidence of, any such alleged fault or omission by Merrill Lynch & Co., Henry Blodget, Justin Baldauf, Kirsten Campbell, Virginia Syer Genereux, Sofia Ghachem, Thomas Mazzucco, Edward McCabe and Deepak Raj, or any of them; nor shall this Order confer any rights upon any persons or entities who were not a party to this Order.

18. This Order is not intended to indicate that Merrill Lynch or any of its affiliates or current or former employees should be subject to any disqualifications contained in the federal securities law, the rules and regulations thereunder, the rules and regulations of self regulatory organizations or various states' securities laws including any disqualifications from relying upon the registration exemptions or safe harbor provisions, and this Order is not intended to form the basis of any such disqualification.

19. For any person or entity not a party to this Order, this Order, including, but not limited to Paragraph 17 above, does not limit or create any private rights or remedies against Merrill Lynch including, without limitation, the use of the Dinallo Affidavit, any e-mails or other documents of Merrill Lynch or of others for research practices, limit or create liability of Merrill Lynch, or limit or create defenses of Merrill Lynch to any claims.

20. Nothing herein is intended to or shall be construed to have created, compromised, settled or adjudicated any claims, causes of action, or rights of any person whomsoever, other than as between the Tennessee Securities Division and Merrill Lynch in accordance with this Order.

21. Any violation of the May 21 Agreement shall be deemed violation of this Order. Should Merrill Lynch fail to abide by the terms and conditions of this Order or the May 21 Agreement, nothing contained herein shall be construed to prevent the Tennessee Securities Division from exercising the authority to impose any remedy under the Tennessee Securities Act of 1980, as amended, against Merrill Lynch.

22. This Order shall not disqualify Merrill Lynch or any of its affiliates or current or former employees from any business that they otherwise are qualified or licensed to perform under applicable state law and this Order is not intended to form the basis for any disqualification.

23. Merrill Lynch shall convey to the Investor Education Fund of the Tennessee Securities Division a contribution in the amount of Nine Hundred Forty-Seven Thousand Eight Hundred dollars (\$ 947,800.00). Said contribution shall be made by a check made payable to the Tennessee Department of Commerce and Insurance and mailed to the attention of:

**Broker-Dealer Registration Section
Tennessee Securities Division
500 James Robertson Parkway
Nashville, Tennessee 37243**

24. This payment is contingent upon written agreement, by the appropriate securities Agency of all 50 states, the District of Columbia, and Puerto Rico, that the respective payment (referenced in Paragraph 24 of the May 21 Agreement) is made to each such Agency in consideration of the conclusion of any investigation by each such respective Agency, the District of Columbia, and Puerto Rico and any civil or administrative action that each such respective Agency, the District of Columbia, and Puerto Rico could commence with respect to issues arising from either the Tennessee Investigation or the New York Investigation. Merrill Lynch agrees and acknowledges that as to the Securities Division of the State of Tennessee, Department of Commerce and Insurance, this Order fully satisfies and complies with such contingency and with the contingency set forth in the third sentence of paragraph 24 of the May 21 Agreement, which is fully incorporated into this Order.

25. If payment required pursuant to paragraph 23 is not made by Merrill Lynch for failure of any contingency set forth in paragraph 24, the Commissioner of Commerce and Insurance may vacate this Order at her sole discretion, upon 10 days notice to Merrill Lynch and without opportunity for administrative hearing or judicial review pursuant to the Tennessee Administrative Procedures Act.

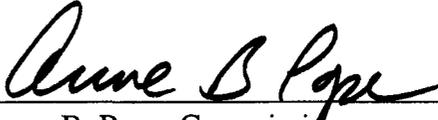
General Provisions

26. This Order and any dispute related thereto shall be construed and enforced in accordance with, and governed by, the laws of the State of Tennessee.

IT IS ORDERED that this Order represents the complete and final resolution of, and discharge with respect to all administrative and civil, claims, demands, actions and causes of action by the Commissioner of Commerce and Insurance against Merrill Lynch, Pierce, Fenner & Smith, Inc. for the research practices prior to the date of this Order which may be deemed violations of the Act.

This Consent Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By the signatures affixed below, Merrill Lynch, Pierce, Fenner & Smith affirmatively states that it neither admits nor denies the findings of fact and the conclusions of law contained herein, that it has freely agreed to the entry of this Consent Order, that it waives its right to a hearing on the matters underlying this Consent Order and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made by the Commissioner, the Division, or any agent or representative thereof. The parties, by signing this Consent Order, affirmatively state their agreement to be bound by the terms of this Consent Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in this Consent Order, are binding upon them.

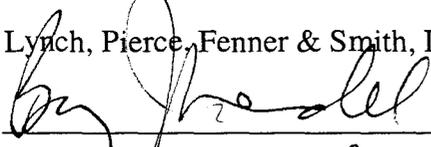
ENTERED this 9TH day of OCTOBER, 2002.



Anne B. Pope, Commissioner
Department of Commerce and Insurance

Approved for Entry:

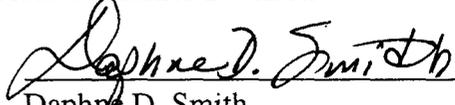
Merrill Lynch, Pierce, Fenner & Smith, Inc.

By: 

Name: Barry Mandel

Title: Senior Vice President

Tennessee Securities Division

By: 

Daphne D. Smith
Assistant Commissioner for
Securities



Maliaka Bass EssamelDin (#015362)
Counsel for the Tennessee Securities
Division
Department of Commerce and
Insurance
William R. Snodgrass Tower, 25th fl.
312 8th Avenue, North
Nashville, Tennessee 37243
(615) 741-2199

**Agreement Between the Attorney General of the State of New York and
Merrill Lynch, Pierce, Fenner & Smith, Inc., dated May 21, 2002**

Whereas, the Attorney General of the State of New York (the “Attorney General”) has been conducting an investigation (the “Investigation”) into research practices at Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”); and

Whereas, the Attorney General commenced a proceeding on April 8, 2002, pursuant to Section 354 of the General Business Law of the State of New York (Index No. 02/401522) (the “Proceeding”) ; and

Whereas, Merrill Lynch & Co., Inc., Henry Blodget, Justin Baldauf, Kirsten Campbell, Virginia Syer Genereux, Sofia Ghachem, Thomas Mazzucco, Edward McCabe, and Deepak Raj (the “Respondents”) were named as respondents in the Proceeding; and

Whereas, on April 8, 2002, the Honorable Martin Schoenfeld signed an Order (the “April 8 Order”) which, among other things, imposed certain preliminary injunctive relief which was thereafter stayed; and

Whereas, by agreement between the Attorney General and Merrill Lynch & Co., Inc. dated April 17, 2002 (the “April 17 Agreement”), Merrill Lynch & Co., Inc. agreed to implement certain disclosures relating to its Global Equity Research reports; and

Whereas, in light of the April 17 Agreement, on April 18, 2002, the Honorable Martin Schoenfeld signed an order on consent vacating the injunctive provisions of the April 8 Order with respect to Merrill Lynch & Co., Inc., Justin Baldauf, Virginia Syer Genereux, Thomas Mazzucco, and Deepak Raj and indefinitely staying the injunctive provisions of the April 8 Order with respect to Henry Blodget, Kirsten Campbell, Sofia Ghachem, and Edward McCabe; and

Whereas, the Attorney General of the State of New York and Merrill Lynch wish to enter into this Agreement (the "Agreement") to resolve all issues involved in the Investigation and the Proceeding; and

Whereas this Agreement is entered into prior to the Court making any findings of fact or conclusions of law pursuant to a contested proceeding;

IT IS HEREBY AGREED that,

The Investigation and Proceeding

1. This Agreement concludes the Investigation and the Proceeding and any other action the Attorney General could commence under applicable law on behalf of New York as it relates to Merrill Lynch, its affiliates, the other respondents, current or former employees, directors and officers of Merrill Lynch and relating to the Investigation, the Proceeding and the types of conduct described in the affidavit of Eric Dinallo submitted in support of the April 8 Order.
2. This Agreement is entered into solely for the purpose of resolving the Investigation and the Proceeding and is not intended to be used for any other purpose.
3. Neither this settlement, nor any acts performed and documents executed in furtherance of this Agreement: (a) may be deemed or used as an admission of, or evidence of, the validity of any alleged wrongdoing or liability including, but not limited to, the assertions contained in the Affidavit of Eric Dinallo submitted in support of the April 8 Order or anything contained in that Order; or (b) may be deemed or used as an admission of, or evidence of, any such alleged fault or omission of the Respondents, or any of them, in any civil, criminal, or administrative proceeding in any court, administrative agency, or other

tribunal; nor shall this Agreement confer any rights upon any persons or entities who were not a party to the Proceeding.

4. In consideration of the mutual understandings herein, as set forth in Paragraphs 5-19 below, the Attorney General and Merrill Lynch will stipulate to the entry of an Order (in the form annexed hereto as Exhibit A) dismissing the Proceeding without prejudice as to all Respondents and vacating all remaining injunctive provisions of the April 8 Order.

Obligations Pursuant to April 17 Agreement

5. Pursuant to the April 17 Agreement, Merrill Lynch has agreed as follows:
 - (a) Merrill Lynch will comply with the Martin Act.
 - (b) By June 3, 2002, Merrill Lynch will state on each Merrill Lynch Global Equity research report whether Merrill Lynch received or is entitled to receive compensation over the past 12 months, or whether Merrill Lynch is entitled to receive compensation from any publicly announced equity underwriting or merger and acquisition transaction for each company covered by the research report (the "Covered Company"). Notwithstanding the foregoing, as of July 8, 2002, the disclosures regarding investment banking compensation referred to in Paragraph 5(b) shall be replaced with the disclosures required by NYSE Rule 472(k)(1)(ii) and NASD Rule 2711(h)(2)(A)(ii).
 - (c) By June 3, 2002, Merrill Lynch will include a legend on the first page of each Merrill Lynch Global Equity research report that investors should assume that Merrill Lynch is seeking or will seek investment banking or other business from the Covered Company.

- (d) By June 3, 2002, Merrill Lynch will include on each Merrill Lynch Global Equity research report specific disclosure on a percentage basis, the aggregate distribution, calculated quarterly, of the intermediate-term rating category used by Merrill Lynch, for
- (i) all stocks in the sector or industry group applicable to the Covered Company;
 - (ii) all stocks in the sector or industry group applicable to the Covered Company for which, over the prior 12 months, Merrill Lynch performed services in publicly announced equity underwritings and merger and acquisition transactions for which compensation was received or to which Merrill Lynch is entitled, until the effective date of any applicable rules promulgated by any self-regulatory organization to which Merrill Lynch is subject;
 - (iii) all stocks covered by Merrill Lynch Global Equity research; and
 - (iv) all stocks covered by Merrill Lynch Global Equity research for which, over the prior 12 months, Merrill Lynch performed services in publicly announced equity underwriting or merger and acquisition transactions for which compensation was received or to which Merrill Lynch is entitled, until the effective date of any applicable rules promulgated by any self-regulatory organization to which Merrill Lynch is subject.

Research Changes

6. Merrill Lynch agrees to adopt and enforce policies implementing the practices and procedures set forth in Paragraphs 7-17 with respect to its U.S.-based equity research analysts and equity securities covered by such analysts by no later than July 1, 2002, unless otherwise set forth below.

Analyst Compensation

7. Merrill Lynch will separate completely the evaluation and determination of compensation for U.S.-based equity research analysts from Merrill Lynch's investment banking business by complying with Paragraphs 8-11 below. Going forward, Merrill Lynch will consider the implementation of such additional procedures as it deems appropriate to further effectuate the provisions of Paragraphs 8-11. All research analyst employment contracts entered into starting on June 5, 2002 will make specific reference to the Merrill Lynch policies implemented to effectuate the prohibitions set forth in Paragraph 9 of this Agreement.
8. Research analysts will be compensated for only those activities and services intended to benefit Merrill Lynch investor clients. The activities and services that research analysts are expected to perform for the benefit of Merrill Lynch investor clients include:
 - (a) formulation of research recommendations and preparation of research reports;
 - (b) communication of investment information to investor clients;
 - (c) cooperation, accessibility and responsiveness consistent with serving investor clients; and

- (d) participation in the identification and evaluation of potential investment opportunities, including providing input into whether a potential investment opportunity is appropriate for Merrill Lynch investor clients.
9. With respect to analyst compensation, Merrill Lynch will prohibit:
- (a) anyone responsible for determining research analysts' compensation from soliciting from any analyst, or considering in determining any analyst's compensation, either (i) the amount of investment banking revenue received from clients covered by such analyst, or (ii) the analyst's participation in investment banking transactions, except to the extent such activities and services are intended to benefit investors, as specifically contemplated by Paragraph 8 above;
 - (b) research analysts from being evaluated by investment bankers for any work such analysts may do to generate investment banking business, including participation in investment banking client solicitations;
 - (c) investment bankers from communicating with research analysts or with anyone responsible for determining analysts' compensation for the purpose of calculating or influencing an individual analyst's compensation; and
 - (d) consideration of any such input from investment bankers by anyone responsible for determining research analysts' compensation.
10. Managers in Merrill Lynch's Research Department ("Research Management") and those executive officers more senior to Research Management, subject to review at its discretion by the Board of Directors, will have exclusive responsibility for determining

research analyst compensation and will evaluate analysts for compensation purposes based primarily upon:

- (a) quality of analysts' research and performance of their investment recommendations;
 - (b) competitive compensation factors;
 - (c) surveys and input from investor clients; and
 - (d) surveys and input from Merrill Lynch's institutional sales, equity trading, and private client divisions, but not from the investment banking division.
11. Executive management may discuss with Research Management overall costs, budgets, resource allocation and the retention and recruitment of research analysts.

Research Recommendations Committee

12. On or before September 1, 2002, Merrill Lynch will establish a Research Recommendations Committee (the "RRC"). The RRC will monitor performance of and supervise equity research recommendations for objectivity, integrity, and a rigorous analytical framework in the development of all recommendations.
- (a) The RRC will be composed of representatives of Merrill Lynch's institutional and private client sales management, Research Management and research strategists. It will be chaired by an individual who will be compensated in a fixed amount plus a bonus based primarily on how research recommendations (i.e., currently defined as strong buy, buy, neutral, reduce/sell), perform for investors. Performance will be measured over relevant periods of time by, among other things, absolute price performance against the recommendation definitions

included in the research reports and price performance relative to industry and market benchmarks.

- (b) Initiation of, or change to, any equity research recommendation will require approval by the RRC. Changes to research recommendations may be approved by a member of the RRC and ratified by the RRC.
 - (c) Upon presenting a research recommendation at a meeting of the RRC, the relevant research analyst shall disclose to the RRC any participation by the analyst with investment bankers in an investment banking transaction for the subject company within the last 12 months.
 - (d) A member of the RRC or a member of Research Management, or a compliance manager in the Research Department shall be present at any meeting of Merrill Lynch's Equity Commitment Committee or any other group authorized to commit the Firm to a public equity underwriting.
 - (e) The RRC Chairperson will report to the Director of Global Research.
13. As soon as practicable, Merrill Lynch will implement a system to monitor electronic communications between investment bankers and equity research analysts.

Solicitation of Investment Banking Business

- 14. (a) Research analyst participation with investment bankers in solicitations for any potential investment banking transaction must be approved in advance by Research Management.
- (b) Effective September 1, 2002, before any research analyst participates in a solicitation with investment bankers for any potential investment banking

transaction, such analyst must disclose such intended participation to a member of the RRC.

- (c) Effective September 15, 2002, each equity research report covering a particular company will disclose whether, within the prior 12 months, any research analyst covering such company has participated in a solicitation with or at the request of investment bankers for an investment banking transaction underwritten by Merrill Lynch.
- (d) Effective within 10 business days, Merrill Lynch will prohibit analysts, investment bankers, or any other employees of Merrill Lynch from promising, implying, offering, or communicating in any way that a specific recommendation or change of an existing recommendation will be made in exchange for the awarding of an investment banking transaction to Merrill Lynch.
- (e) Effective within 10 business days, Merrill Lynch will prohibit analysts from changing any research recommendation because of the subject company's decision not to retain Merrill Lynch for investment banking services.

Disclosure During Solicitation of Public Equity Underwriting

- 15. On or before September 1, 2002, Merrill Lynch will establish a policy requiring that the materials used in connection with any solicitation for a public equity underwriting will include a written disclosure that:
 - (a) Merrill Lynch prohibits employees from, directly or indirectly, offering a favorable research rating or specific price target, or offering to change a rating or

price target to a subject company as consideration or inducement for the receipt of business or for compensation; and

- (b) Merrill Lynch prohibits research analysts from being compensated for involvement in investment banking transactions except to the extent that such participation is intended to benefit investor clients.

Termination of Coverage

16. Whenever Merrill Lynch terminates coverage of any issuer, Merrill Lynch will publish a report disclosing:

- (a) the Firm's termination of coverage;
- (b) the rationale for the decision to terminate coverage; and
- (c) that, effective upon the termination of coverage, the last recommendation issued for the particular stock should not be relied upon going forward.

Compliance Monitor

17. (a) Starting on or before September 1, 2002 and continuing for a period of one year, Merrill Lynch will designate an employee (the "Compliance Monitor") whose assignment will be to ensure compliance with the policies required by this Agreement.

- (b) The Compliance Monitor will be appointed by Merrill Lynch subject to the acquiescence of the Attorney General, which acquiescence will not be unreasonably withheld.

- (c) The Compliance Monitor will be available to research analysts to address issues of actual or perceived undue influence or pressure from investment banking or any other source.
- (d) The Compliance Monitor will report directly to the General Counsel for Litigation, Compliance, Regulatory and Governmental Affairs.

18. Nothing herein shall be construed to require that Merrill Lynch or any of its affiliates, agents, or employees, act in any manner inconsistent with any laws, rules, or regulations, including those imposed by their governing self-regulatory organizations.

Statement by Merrill Lynch

19. At a mutually agreed upon time promptly after the execution of this Agreement, Merrill Lynch will issue the statement as set forth in Exhibit B.

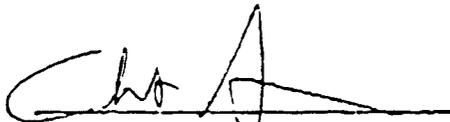
No Disqualifications

- 20. This Agreement is not intended to indicate that Merrill Lynch or any of its affiliates or current or former employees should be subject to any disqualifications contained in the federal securities law, the rules and regulations thereunder, the rules and regulations of self regulatory organizations or various states' securities laws including any disqualifications from relying upon the registration exemptions or safe harbor provisions, and this Agreement is not intended to form the basis of any such disqualification.
- 21. This Agreement shall not disqualify Merrill Lynch or any of its affiliates or current or former employees from conducting any business that they otherwise are qualified or licensed to perform under New York law and this Agreement is not intended to form the basis for any disqualification.

22. This Agreement and any dispute related thereto shall be governed by the laws of the State of New York without regard to its internal choice of law principles.
23. The Attorney General shall, to the extent not inconsistent with the New York Freedom of Information Law or his duties and responsibilities, maintain the confidentiality of all documents submitted by the Respondents in the Investigation and of any transcripts reflecting testimony by such individuals. The Attorney General shall provide notice to Merrill Lynch of any intention to disclose to any non-governmental or non-self regulatory organization such documents or transcripts and Merrill Lynch shall have 10 days from such notice to object to disclosure of the materials.
24. Merrill Lynch will pay the total amount of one hundred million dollars (\$100,000,000.00) within 10 days of the execution of this Agreement, subject to the terms of this Paragraph. Forty-eight million dollars (\$48,000,000.00) of this amount shall be paid to the New York State Department of Law in civil settlement of all claims by New York State arising under New York law; Fifty million dollars (\$50,000,000.00) of this amount shall be paid to the remaining 49 States, the District of Columbia and Puerto Rico, in resolution of all claims of those States arising under the applicable laws of those States; and two million dollars (\$2,000,000.00) shall be paid to the North American Securities Administrators Association. These payments are contingent upon written agreement by all 50 States, the District of Columbia and Puerto Rico, that such payments are made in consideration of the conclusion of any investigation by each State, the District of Columbia and Puerto Rico into, and any action that each State, the District of Columbia and Puerto Rico could commence with respect to, research practices at Merrill Lynch.

25. WHEREFORE, the following signatures are affixed hereto this 21st of May, 2002.

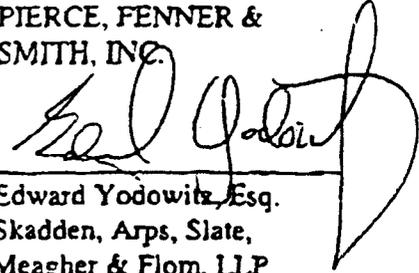
ELIOT L. SPITZER, ESQ.



Attorney General
State of New York
120 Broadway, 25th Floor
New York, New York 10271
(212) 416-8000

MERRILL LYNCH,
PIERCE, FENNER &
SMITH, INC.

By:



Edward Yodowitz, Esq.
Skadden, Arps, Slate,
Meagher & Flom, LLP
Attorneys for Merrill Lynch
Four Times Square
New York, New York 10036
(212) 735-3000

Exhibit A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

IN THE MATTER OF :

an Inquiry by ELIOT SPITZER, :
Attorney General of the State of New York, :

Index No. 02/401522

Petitioner, :

Pursuant to Article 23-A of the General Business :
Law of the State of New York with regard to the :
acts and practices of :

**STIPULATION AND ORDER
OF DISCONTINUANCE**

Merrill Lynch & Co., Inc., Henry Blodget, :
Justin Baldauf, Kirsten Campbell, Virginia :
Syer Genereux, Sofia Ghachem, Thomas Mazzucco, :
Edward McCabe and Deepak Raj, :

Respondents, :

In the offer, sale, issuance, promotion, advertisement, :
exchange, marketing, distribution and transfer of, or :
investment advice for, securities in and from the State :
of New York :

-----X

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned,
that the above-captioned matter be hereby discontinued as to all respondents without prejudice
and without costs to any party. It is further understood and agreed, by and between the
undersigned, that the injunctive provisions of the Decision and Order of Justice Martin
Schoenfeld dated April 8, 2002 are hereby vacated as to all respondents.

This stipulation may be hereby filed with the Clerk of the Court with no further notice to the parties.

Dated: New York, New York
May __, 2002

ELIOT L. SPITZER

MERRILL LYNCH,
PIERCE, FENNER &
SMITH, INC.

Attorney General
State of New York
120 Broadway, 25th Floor
New York, New York 10271
(212) 416-8000

By: _____
Edward Yodowitz
Skadden, Arps, Slate,
Meagher & Flom, LLP
Attorneys for Merrill Lynch
Four Times Square
New York, New York 10036
(212) 735-3000

SO ORDERED

ENTER

The Honorable Martin Schoenfeld
Justice of the Supreme Court

EXHIBIT B

Merrill Lynch would like to take this opportunity, as part of the Agreement reached with New York State Attorney General Eliot Spitzer and other states, to publicly apologize to our clients, shareholders and employees for the inappropriate communications brought to light by the New York State Attorney General's investigation. We sincerely regret that there were instances in which certain of our Internet sector research analysts expressed views which at certain points may have appeared inconsistent with Merrill Lynch's published recommendations.

We view this situation as a very serious matter and have informed our Research Department personnel that such communications, some of which violated internal policies, failed to meet the high standards that are our tradition and will not be tolerated.

As a result, we have taken steps to guard against such instances in the future. In addition, we are taking steps to reinforce the fire walls that separate our Research Department from Investment Banking. The agreement we have reached with New York State Attorney General Eliot Spitzer is designed to accomplish these objectives.

Through the adoption of new policies, intensified oversight, and strengthened enforcement of existing ones, we pledge to provide investors with research that sets a new industry standard for independence and objectivity.