

BEFORE THE SECURITIES COMMISSIONER
OF THE STATE OF DELAWARE

IN THE MATTER OF

MERRILL LYNCH, PIERCE, FENNER &
SMITH, INC.

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SETTLEMENT AGREEMENT

THE DIVISION OF SECURITIES TO:

Merrill Lynch, Pierce, Fenner & Smith, Inc.

WHEREAS, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") is a broker-dealer registered in the State of Delaware; and

WHEREAS, the Division of Securities of the State of Delaware, (the "Agency") has undertaken an investigation (the "Investigation") into the activities of Merrill Lynch relating to certain research practices at Merrill Lynch; and

WHEREAS, 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; and

WHEREAS, 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, containing assertions regarding the research practices of Merrill Lynch (the "Dinallo Affidavit"), which is on file in the New York Proceeding; and

WHEREAS, the New York AG and Merrill Lynch have entered into an agreement, dated

May 21, 2002 (the "May 21 Agreement"), a copy of which has been provided to the Division of Securities, 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; and

WHEREAS, 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; and

WHEREAS, Merrill Lynch and the Division of Securities 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; and

WHEREAS, Merrill Lynch admits the jurisdiction of the Division of Securities;

IT IS HEREBY AGREED:

1. This Agreement concludes the Investigation by the Division of Securities and any civil or administrative action that the Division of Securities could commence under the Delaware Securities Act (6 Del. C. Ch. 73) on behalf of the State of Delaware as it relates to Merrill Lynch, its affiliates, current or former employees, officers and directors of Merrill Lynch relating to research practices at Merrill Lynch.
2. This Agreement is entered into solely for the purpose of resolving the Division of Securities' Investigation, and is not intended to be used for any other purpose.
3. **Merrill Lynch further agrees that:**
 - (a) Merrill Lynch will comply with the Delaware Securities Act (6 Del. C. Chap. 73).

- (b) As of the date hereof, 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 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 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. 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 of this Agreement.

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 compensation; 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

12. 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 Agreement, 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 Agreement, 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 Agreement.
- (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 Agreement: (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, 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 this Agreement.

18. 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.

19. For any person or entity not a party to this Agreement, this Agreement, 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 Division of Securities and Merrill Lynch in accordance with this Agreement.

21. The Division of Securities is a subdivision of the Office of the Attorney General of the State of Delaware.

22. The State of Delaware, like four other states where the Division of Securities is a subdivision or unit of the Attorney General's office, is legally situated differently from those states where the Division of Securities is not located in the Attorney General's office of that State.

23. The Attorney General's office has certain statutory and common law duties and responsibilities beyond the investigation of violations of the State Securities Act.

24. The intent of the Agreement is to bring to a conclusion investigations into possible violations of the Delaware Securities Act by Merrill Lynch, Pierce, Fenner & Smith of the type of conduct and practices set forth in the affidavit of Eric Dinallo, submitted in support of the April 8, 2002 Order of the Honorable Martin Schoenfeld entered in the Supreme Court of the State of New York, County of New York, under Index No. 02/401522.

25. The parties to the Agreement do not intend the scope of the terms, conditions, or waivers to be greater or different as to the State of Delaware than those terms, conditions, or waivers entered into by other states who are settling their actions with Merrill Lynch.

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

27. This Agreement 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 Agreement is not intended to form the basis for any disqualification.

28. Merrill Lynch shall pay the sum of \$500,000.00 to the State of Delaware by delivering a check in that amount to the Division of Securities made payable to the "State of Delaware."

29. 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 action that each such respective Agency, the District of Columbia, and Puerto Rico could commence with respect to research practices at Merrill Lynch. Merrill Lynch agrees and acknowledges that as to the Division of Securities, State of Delaware, this Agreement 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 Agreement.

30. If payment required pursuant to paragraph 28 is not made by Merrill Lynch for failure of any contingency set forth in paragraph 29, the Division of Securities may vacate this Agreement at its sole discretion, upon 10 days notice to Merrill Lynch.

General Provisions

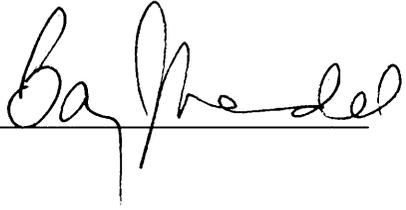
31. This Agreement and any dispute related thereto shall be construed and enforced in accordance with, and governed by, the laws of the State of Delaware.

32. The parties represent, warrant and agree that they have received independent legal advice

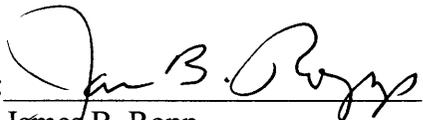
from their attorneys with respect to the advisability of executing this Agreement.

WHEREFORE, the following signatures are affixed hereto this 26th day of November,
2002.

Merrill Lynch, Pierce, Fenner & Smith, Inc.

By:  11/26/02

Delaware Division of Securities

By: 
James B. Ropp
Securities Commissioner