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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, Chairman
JIM IRVIN
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON

Arizona Corporation Commission
DOCKETED

JAN 23 2003

In the matter of
MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.
222 Broadway, 14th Floor
New York NY 10038,
Respondent.

DOCKET NO. S-03497A-02-0000

DECISION NO. 65545

ADMINISTRATIVE CONSENT ORDER

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") elects to permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 et seq. (the "Securities Act") with respect to this Administrative Consent Order (the "Order").

I.

FINDINGS OF FACT

- 1. Merrill Lynch is a securities dealer registered in the State of Arizona.
2. The Arizona Corporation Commission (the "Commission") has undertaken an investigation (the "Investigation") into the activities of Merrill Lynch relating to certain research practices at Merrill Lynch.
3. The Attorney General of the State of New York (the "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

1 Protection Bureau, New York State Department of Law, containing assertions regarding the
2 research practices of Merrill Lynch (the "Dinallo Affidavit"), which is on file in the New York
3 Proceeding.

4 5. The New York AG and Merrill Lynch have entered into an agreement, dated May 21, 2002
5 (the "May 21 Agreement"), a copy of which has been provided to the Commission, which resolved all
6 issues involved in the New York Investigation and the New York Proceeding, prior to the Court
7 making any findings of fact or conclusions of law pursuant to a contested proceeding.

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

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

14 8. Merrill Lynch admits the jurisdiction of the Commission, and neither admits nor denies the
15 Findings of Fact and Conclusions of Law, and consents to the entry of this Order by the
16 Commission.

17 **II.**

18 **CONCLUSIONS OF LAW**

19 1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona
20 Constitution and the Securities Act.

21 2. The Commission finds the following relief appropriate and in the public interest.

22 **III.**

23 **ORDER**

24 **IT IS HEREBY ORDERED:**

25 1. This Order concludes the Investigation by the Commission and any other action that the
26 Commission could commence under applicable state law on behalf of Arizona as it relates to Merrill

1 Lynch, its affiliates, current or former employees, officers and directors of Merrill Lynch relating to
2 research practices at Merrill Lynch.

3 2. This Order is entered into solely for the purpose of resolving the Commission's Investigation,
4 and is not intended to be used for any other purpose.

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

6 (a) Merrill Lynch will comply with the Securities Act.

7 (b) As of the date hereof, Merrill Lynch will state on each Merrill Lynch Global Equity
8 research report whether Merrill Lynch received or is entitled to receive compensation over
9 the past 12 months, or whether Merrill Lynch is entitled to receive compensation from any
10 publicly announced equity underwriting or merger and acquisition transaction for each
11 company covered by the research report (the "Covered Company"). Notwithstanding the
12 foregoing, as of July 8, 2002, the disclosures regarding investment banking compensation
13 referred to in Paragraph 3(b) shall be replaced with the disclosures required by NYSE Rule
14 472(k)(1)(ii) and NASD Rule 2711 (h)(2)(A)(ii).

15 (c) As of the date hereof, Merrill Lynch will include a prominent legend on the first page of
16 each Merrill Lynch Global Equity research report that investors should assume that Merrill
17 Lynch is seeking or will seek investment banking or other business from the Covered
18 Company.

19 (d) As of the date hereof, Merrill Lynch will include on each Merrill Lynch Global Equity
20 research report specific disclosure on a percentage basis, the aggregate distribution,
21 calculated quarterly, of the intermediate-term rating category used by Merrill Lynch, for

22 (i) all stocks in the sector or industry group applicable to the Covered
23 Company;

24 (ii) all stocks in the sector or industry group applicable to the Covered
25 Company for which, over the prior 12 months, Merrill Lynch
26 performed services in publicly announced equity underwritings and
merger and acquisition transactions for which compensation was

1 received or to which Merrill Lynch is entitled, until the effective date of
2 any applicable rules promulgated by any self-regulatory organization to
3 which Merrill Lynch is subject;

4 (iii) all stocks covered by Merrill Lynch Global Equity research; and

5 (iv) all stocks covered by Merrill Lynch Global Equity research for which,
6 over the prior 12 months, Merrill Lynch performed services in publicly
7 announced equity underwriting or merger and acquisition transactions
8 for which compensation was received or to which Merrill Lynch is
9 entitled, until the effective date of any applicable rules promulgated by
10 any self-regulatory organization to which Merrill Lynch is subject.

11 **Research Changes**

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

15 **Analyst Compensation**

16
17 5. Merrill Lynch will separate completely the evaluation and determination of compensation for
18 U.S.-based equity research analysts from Merrill Lynch's investment banking business by complying
19 with Paragraphs 6-9 below. Going forward, Merrill Lynch will consider the implementation of such
20 additional procedures as it deems appropriate to further effectuate the provisions of Paragraphs 6-9.
21 All research analyst employment contracts entered into starting as of the date hereof will make
22 specific reference to the Merrill Lynch policies implemented to effectuate the prohibitions set forth in
23 Paragraph 7 of this Order.

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

(a) formulation of research recommendations and preparation of research reports;

- 1 (b) communication of investment information to investor clients;
- 2 (c) cooperation, accessibility and responsiveness consistent with serving investor clients; and
- 3 (d) participation in the identification and evaluation of potential investment opportunities,
- 4 including providing input into whether a potential investment opportunity is appropriate
- 5 for Merrill Lynch investor clients.

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

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

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

- 24 (a) quality of analysts' research and performance of their investment recommendations;
- 25 (b) competitive compensation factors;
- 26 (c) surveys and input from investor clients; and

1 (d) surveys and input from Merrill Lynch's institutional sales, equity trading, and private client
2 divisions, but not from the investment banking division.

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

5 **Research Recommendations Committee**

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

10 (a) The RRC will be composed of representatives of Merrill Lynch's institutional and private
11 client sales management, Research Management and research strategists. It will be chaired
12 by an individual who will be compensated in a fixed amount plus a bonus based primarily
13 on how research recommendations (i.e., currently defined as strong buy, buy, neutral,
14 reduce/sell) perform for investors. Performance will be measured over relevant periods of
15 time by, among other things, absolute price performance against the recommendation
16 definitions included in the research reports and price performance relative to industry and
17 market benchmarks.

18 (b) Initiation of, or change to, any equity research recommendation will require approval by
19 the RRC. Changes to research recommendations may be approved by a member of the
20 RRC and ratified by the RRC.

21 (c) Upon presenting a research recommendation at a meeting of the RRC, the relevant
22 research analyst shall disclose to the RRC any participation by the analyst with
23 investment bankers in an investment banking transaction for the subject company
24 within the last 12 months.

25 (d) A member of the RRC or a member of Research Management, or a compliance
26 manager in the Research Department shall be present at any meeting of Merrill Lynch's

1 Equity Commitment Committee or any other group authorized to commit Merrill Lynch
2 to a public equity underwriting.

3 (e) The RRC Chairperson will report to the Director of Global Research.

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

7 **Solicitation of Investment Banking Business**

8 12. Merrill Lynch agrees that:

9 (a) Research analyst participation with investment bankers in solicitations for any potential
10 investment banking transaction must be approved in advance by Research Management.

11 (b) Effective September 1, 2002, before any research analyst participates in a solicitation
12 with investment bankers for any potential investment banking transaction, such analyst
13 must disclose such intended participation to a member of the RRC.

14 (c) Effective September 15, 2002, each equity research report covering a particular
15 company will disclose whether, since July 1, 2002, any research analyst covering such
16 company has participated in a solicitation with or at the request of investment bankers
17 for an investment banking transaction underwritten by Merrill Lynch. Commencing on
18 July 1, 2003, such disclosure will be made for the immediately preceding 12 month
19 period.

20 (d) Upon execution of this Order, Merrill Lynch will prohibit analysts, investment bankers,
21 or any other employees of Merrill Lynch from promising, implying, offering, or
22 communicating in any way that a specific recommendation or change of an existing
23 recommendation will be made in exchange for the awarding of an investment banking
24 transaction to Merrill Lynch.

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

4 **Disclosure During Solicitation of Public Equity Underwriting**

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

8 (a) Merrill Lynch prohibits employees from, directly or indirectly, offering a favorable
9 research rating or specific price target, or offering to change a rating or price target to a
10 subject company as consideration or inducement for the receipt of business or for
11 compensation; and

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

15 **Termination of Coverage**

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

18 (a) Merrill Lynch's termination of coverage;

19 (b) the rationale for the decision to terminate coverage; and

20 (c) that, effective upon the termination of coverage, the last recommendation issued for the
21 particular stock should not be relied upon going forward.

22 **Compliance Monitor**

23 15. **Merrill Lynch agrees that:**

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

1 (b) The Compliance Monitor will be appointed by Merrill Lynch subject to the
2 acquiescence of the New York AG, which acquiescence will not be unreasonably
3 withheld.

4 (c) The Compliance Monitor will be available to research analysts to address issues of
5 actual or perceived undue influence or pressure from investment banking or any other
6 source.

7 (d) The Compliance Monitor will report directly to the General Counsel for Litigation,
8 Compliance, Regulatory and Governmental Affairs.

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

12 **No Disqualifications**

13 17. Neither this settlement, nor any acts performed and documents executed in furtherance of
14 this Order: (a) may be deemed or used as an admission of, or evidence of, the validity of any
15 wrongdoing or liability including, but not limited to the assertions in the Dinallo Affidavit, or
16 anything contained in the New York State Supreme Court Order, dated April 8, 2002; or (b) may
17 be deemed or used as an admission of, or evidence of, any such alleged fault or omission by Merrill
18 Lynch & Co., Henry Blodget, Justin Baldauf, Kirsten Campbell, Virginia Syer Genereux, Sofia
19 Ghachem, Thomas Mazzucco, Edward McCabe and Deepak Raj, or any of them, in any civil,
20 criminal, or administrative proceeding in any court, administrative agency, or other tribunal; nor
21 shall this Order confer any rights upon any persons or entities who were not a party to this Order.

22 18. This Order is not intended to indicate that Merrill Lynch or any of its affiliates or current or
23 former employees should be subject to any disqualifications contained in the federal securities law,
24 the rules and regulations thereunder, the rules and regulations of self regulatory organizations or
25 various states' securities laws including any disqualifications from relying upon the registration
26

1 exemptions or safe harbor provisions, and this Order is not intended to form the basis of any such
2 disqualification.

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

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

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

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

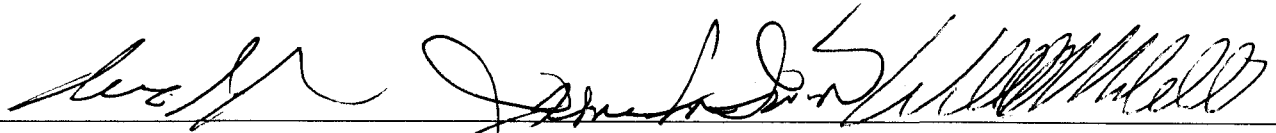
18 23. Merrill Lynch shall pay the sum of \$854,732.00, to the State of Arizona.

19 24. This payment is contingent upon written agreement by the appropriate securities Agency of
20 50 states, the District of Columbia, and Puerto Rico, that the respective payment (referenced in
21 Paragraph 24 of the May 21 Agreement) is made to each such Agency in consideration of the
22 conclusion of any investigation by each such respective Agency, the District of Columbia, and
23 Puerto Rico and any action that each such respective Agency, the District of Columbia, and Puerto
24 Rico could commence with respect to research practices at Merrill Lynch. Merrill Lynch agrees
25 and acknowledges that as to the Commission, State of Arizona, this Order fully satisfies and complies
26

1 with such contingency and with the contingency set forth in the third sentence of Paragraph 24 of the
2 May 21 Agreement, which is fully incorporated into this Order.

3 25. If payment required pursuant to Paragraph 23 is not made by Merrill Lynch for failure of
4 any contingency set forth in Paragraph 24, the Commission may vacate this Order at its sole
5 discretion, upon 10 days notice to Merrill Lynch and without opportunity for administrative
6 hearing.

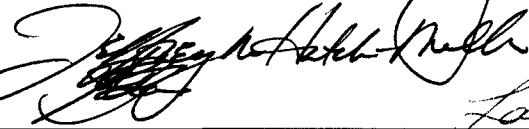
7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

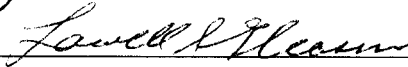
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9 CHAIRMAN

10 COMMISSIONER

COMMISSIONER

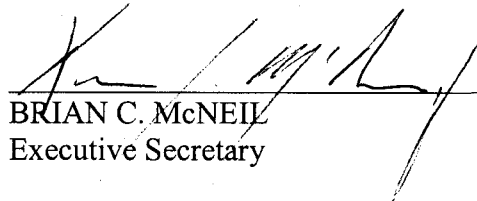
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13 COMMISSIONER

COMMISSIONER

14 IN WITNESS WHEREOF, I BRIAN C. McNEIL, Executive
15 Secretary of the Arizona Corporation Commission, have
16 hereunto, set my hand and caused the official seal of this
17 Commission to be affixed at the Capitol, in the City of
18 Phoenix, this 23rd day of
19 January, 2003.

20 
21 BRIAN C. McNEIL
22 Executive Secretary

23 DISSENT: _____

24 DISSENT: _____

25 (mjn)
26

CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY MERRILL LYNCH

Merrill Lynch hereby acknowledges that it has been served with a copy of this Administrative Order, has read the foregoing Order, is aware of its right to a hearing and appeal in this matter, and has waived the same.

Merrill Lynch admits the jurisdiction of the Commission, neither admits nor denies the Findings of Fact and Conclusions of Law contained in the Order; and consents to entry of this Order by the Commission as settlement of the issues contained in this Order.

Merrill Lynch states that no promise of any kind or nature whatsoever was made to it to induce it to enter into this Order and that it has entered into this Order voluntarily.

Barry Mandel represents that he ~~she~~ is Senior Vice President Merrill Lynch and that, as such, has been authorized by Merrill Lynch to enter into this Order for and on behalf of Merrill Lynch.

Dated this _____ day of _____, 2002.

Merrill Lynch, Pierce, Fenner & Smith, Inc

By: [Signature]
Title: Senior Vice President

SUBSCRIBED AND SWORN TO before me this 27th day of September, 2002.

[Signature]
Notary Public

My Commission expires:

October 12, 2003

GLORIA R. GRECO
Notary Public, State of New York
No. 02GR6032008
Qualified in Kings County
Commission Expires October 12, 2003

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