

1 proceeding.

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

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

8 8. Merrill Lynch admits the jurisdiction of Director, and neither admits nor denies the Findings
9 of Fact and Conclusions of Law, and consents to the entry of this Order by the Director.

10 **II.**

11 **CONCLUSIONS OF LAW**

- 12 1. The Director has jurisdiction over this matter pursuant to ORS Chapter 59.
13 2. The Director finds the following relief appropriate and in the public interest.

14 **III.**

15 **ORDER**

16 **IT IS HEREBY ORDERED:**

17 1. This Order concludes the Investigation by the **Director** and any other action that the Director could
18 commence under applicable state law on behalf of Oregon as it relates to Merrill Lynch, its affiliates,
19 current or former employees, officers and directors of Merrill Lynch relating to research practices at Merrill
20 Lynch, as of the date of this Order.

21 2. This Order is entered into solely for the purpose of resolving the **Director's** Investigation, and is
22 not intended to be used for any other purpose.

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

24 (a) Merrill Lynch will comply with the **Oregon Securities Law**.

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

27 months, or whether Merrill Lynch is entitled to receive compensation from any publicly announced

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

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

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

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

14 (ii) all stocks in the sector or industry group applicable to the Covered Company
15 for which, over the prior 12 months, Merrill Lynch performed services in
16 publicly announced equity underwritings and merger and acquisition
17 transactions for which compensation was received or to which Merrill
18 Lynch is entitled, until the effective date of any applicable rules promulgated
19 by any self-regulatory organization to which Merrill Lynch is subject;

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

21 (iv) all stocks covered by Merrill Lynch Global Equity research for which, over
22 the prior 12 months, Merrill Lynch performed services in publicly
23 announced equity underwriting or merger and acquisition transactions for
24 which compensation was received or to which Merrill Lynch is entitled,
25 until the effective date of any applicable rules promulgated by any self-
26 regulatory organization to which Merrill Lynch is subject.
27

1 **Research Changes**

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

5 **Analyst Compensation**

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

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

- 15 (a) formulation of research recommendations and preparation of research reports;
- 16 (b) communication of investment information to investor clients;
- 17 (c) cooperation, accessibility and responsiveness consistent with serving investor clients; and
- 18 (d) participation in the identification and evaluation of potential investment opportunities,
19 including providing input into whether a potential investment opportunity is appropriate for
20 Merrill Lynch investor clients.

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

- 22 (a) anyone responsible for determining research analysts' compensation from soliciting from
23 any analyst, or considering in determining any analyst's compensation, either (i) the amount
24 of investment banking revenue received from clients covered by such analyst, or (ii) the
25 analyst's participation in investment banking transactions, except to the extent such
26 activities and services are intended to benefit investors, as specifically contemplated by
27 Paragraph 6 above;

- 1 (b) research analysts from being evaluated by investment bankers for any work such analysts
2 may do to generate investment banking business, including participation in investment
3 banking client solicitations;
- 4 (c) investment bankers from communicating with research analysts or with anyone responsible
5 for determining analysts' compensation for the purpose of calculating or influencing an
6 individual analyst's compensations; and
- 7 (d) consideration of any such input from investment bankers by anyone responsible for
8 determining research analysts' compensation.

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

- 13 (a) quality of analysts' research and performance of their investment recommendations;
- 14 (b) competitive compensation factors;
- 15 (c) surveys and input from investor clients; and
- 16 (d) surveys and input from Merrill Lynch's institutional sales, equity trading, and private client
17 divisions, but not from the investment banking division.

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

20 **Research Recommendations Committee**

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

- 25 (a) The RRC will be composed of representatives of Merrill Lynch's institutional and private
26 client sales management, Research Management and research strategists. It will be chaired
27 by an individual who will be compensated in a fixed amount plus a bonus based primarily

1 on how research recommendations (i.e., currently defined as strong buy, buy, neutral,
2 reduce/sell), perform for investors. Performance will be measured over relevant periods of
3 time by, among other things, absolute price performance against the recommendation
4 definitions included in the research reports and price performance relative to industry and
5 market benchmarks.

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

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

13 (d) A member of the RRC or a member of Research Management, or a compliance manager
14 in the Research Department shall be present at any meeting of Merrill Lynch's Equity
15 Commitment Committee or any other group authorized to commit Merrill Lynch to a
16 public equity underwriting.

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

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

20 **Solicitation of Investment Banking Business**

21 12. Merrill Lynch agrees that:

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

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

27 (c) Effective September 15, 2002, each equity research report covering a particular company

1 will disclose whether, since July 1, 2002, any research analyst covering such company
2 has participated in a solicitation with or at the request of investment bankers for an
3 investment banking transaction underwritten by Merrill Lynch. Commencing on July 1,
4 2003, such disclosure will be made for the immediately preceding 12 month period.

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

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

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

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

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

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

24 **Termination of Coverage**

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

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

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

4 **Compliance Monitor**

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

- 6 (a) Starting on or before September 1, 2002 and continuing for a period of one year, Merrill
7 Lynch will designate an employee (the "Compliance Monitor") whose assignment will be
8 to ensure compliance with the policies required by this Order.
- 9 (b) The Compliance Monitor will be appointed by Merrill Lynch subject to the acquiescence
10 of the New York AG, which acquiescence will not be unreasonably withheld.
- 11 (c) The Compliance Monitor will be available to research analysts to address issues of actual
12 or perceived undue influence or pressure from investment banking or any other source.
- 13 (d) The Compliance Monitor will report directly to the General Counsel for Litigation,
14 Compliance, Regulatory and Governmental Affairs.

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

18 **No Disqualifications**

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

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

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

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

14 21. Any violation of the May 21 Agreement shall be deemed violation of this Order. Should Merrill
15 Lynch fail to abide by the terms and conditions of this Order or the May 21 Agreement, nothing contained
16 herein shall be construed to prevent the **Director** from exercising the authority to impose any remedy under
17 the **Oregon Securities Law** against Merrill Lynch.

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

21 23. Merrill Lynch shall pay the sum of \$569,984 to the State of Oregon as follows: Merrill Lynch
22 shall pay \$150,000 as a contribution to the Oregon Investor Information Program. Merrill Lynch shall
23 pay \$419,984 to the State of Oregon as a Civil Penalty. Payment shall be made in two separate checks
24 to be submitted with the executed Order.

25 24. This payment is contingent upon written agreement, by the appropriate securities Agency of all
26 50 states, the District of Columbia, and Puerto Rico, that the respective payment (referenced in
27 Paragraph 24 of the May 21 Agreement) is made to each such Agency in consideration of the conclusion

1 of any investigation by each such respective Agency, the District of Columbia, and Puerto Rico and any
2 action that each such respective Agency, the District of Columbia, and Puerto Rico could commence
3 with respect to research practices at Merrill Lynch. Merrill Lynch agrees and acknowledges that as to the
4 **Director of the Department of Consumer and Business Services**, State of Oregon, this Order fully
5 satisfies and complies with such contingency and with the contingency set forth in the third sentence of
6 paragraph 24 of the May 21 Agreement, which is fully incorporated into this Order.

7 25. If payment required pursuant to paragraph 23 is not made by Merrill Lynch for failure of any
8 contingency set forth in paragraph 24, the **Director** may vacate this Order at her sole discretion, upon 10
9 days notice to Merrill Lynch and without opportunity for administrative hearing.

10
11 **General Provisions**

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

14 27. The parties represent, warrant and agree that they have received independent legal advice from their
15 attorneys with respect to the advisability of executing this Agreement.

16
17 Dated this 27th day of November, 2002 at Salem, Oregon.

18
19 
20 MARY C. NEIDIG, DIRECTOR
DEPARTMENT OF CONSUMER & BUSINESS SERVICES

21 **CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY MERRILL LYNCH**

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

25
26 Merrill Lynch admits the jurisdiction of the Director of the Oregon Department of Consumer and
27 Business Services ("Director"), neither admits nor denies the Findings of Fact and Conclusions of Law

1 contained in the Order; and consents to entry of this Order by the Director as settlement of the issues
2 contained in this Order.

3
4 Merrill Lynch states that no promise of any kind or nature whatsoever was made to it to induce it to
5 enter into this Order and that it has entered into this Order voluntarily.

6 Barry Mandel represents that he ~~she~~ is Senior Vice President of Merrill Lynch and
7 (name) (title)
8 that, as such, has been authorized by Merrill Lynch to enter into this Order for and on behalf of Merrill
9 Lynch.

10 Dated this 4th day of November, 2002

11
12 By: [Signature]
13 Merrill Lynch, Pierce, Fenner & Smith, Inc.
14
15 (office held)
16 Senior Vice President

17 **CORPORATE ACKNOWLEDGEMENT**

18 There appeared before me this 4 day of November, 2002 Barry Mandel, who was first
19 (name of affiant)
20 duly sworn on oath, and stated that he was the _____ of Merrill Lynch and that s/he is
21 (title)
22 authorized and empowered to sign this Consent to Entry of Order on behalf of Merrill Lynch and to bind
23 Merrill Lynch to the terms hereof.

24 [Signature]
25 GLORIA R. GRECO
26 Notary Public, State of New York
27 No. 02GR6032008
Qualified in Kings County
Commission Expires October 12, 2003
Printed Name of Notary Public

28 Notary Public for the State of: NY

29 My commission expires: 2003