

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, :
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 :
 : **Plaintiff,** : **Civil Action No.**
 :
 : **-against-** : **03 Civ. 2941 (WHP)**
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 : **MERRILL LYNCH, PIERCE, FENNER**
 : **& SMITH INCORPORATED,** :
 :
 :
 : **Defendant.** :
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FINAL JUDGMENT AS TO DEFENDANT
MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

Plaintiff Securities and Exchange Commission (“Commission”) having filed a Complaint in this action (“Complaint”) and Defendant Merrill, Lynch, Pierce, Fenner & Smith Incorporated (“Defendant”) having (a) entered a general appearance, (b) consented to the Court’s jurisdiction over Defendant and the subject matter of this action, (c) consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction), (d) waived findings of fact and conclusions of law, and (e) waived any right to appeal from this Final Judgment; and the Commission having agreed that, on the basis of this Final Judgment, it will not institute a proceeding against Defendant pursuant to Sections 15(b), 15B, 15C, or 19(h) of the Securities Exchange Act of 1934 (the “Exchange Act”):

I.

Injunctive Relief

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

A. Defendant, Defendant's officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 15(c) of the Exchange Act and Rule 15c1-2 promulgated thereunder [15 U.S.C. § 78o(c) and 17 C.F.R. § 240.15c1-2] by making use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security by means of any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

B. Defendant, Defendant's officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Rule 2110 of the Conduct Rules of NASD Inc. ("NASD") and Rules 401 and 476 of the New York Stock Exchange, Inc. ("NYSE"), by (1) engaging in acts or practices that create or maintain inappropriate influence by investment banking over research analysts and therefore impose conflicts of interest on research analysts, and by failing to manage these conflicts in an adequate or appropriate manner; and (2) publishing research reports that are contrary to the beliefs of its research analysts and fail to disclose that fact, do not provide a sound basis for evaluating facts, are not properly balanced, and/or contain exaggerated or unwarranted claims and/or opinions for which there is no reasonable basis.

C. Defendant, Defendant's officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating NASD Rule 2210 and NYSE Rule 472 by issuing communications to the public that

are contrary to the beliefs of its research analysts and fail to disclose that fact, do not provide a sound basis for evaluating facts, are not properly balanced, and/or contain exaggerated or unwarranted claims and/or opinions for which there is no reasonable basis.

D. Defendant, Defendant's officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating NASD Rule 3010 and NYSE Rule 342 by failing to maintain appropriate supervisory procedures regarding or controls over the following that are reasonably designed to ensure compliance with securities laws and regulations: (1) influence by investment banking over research analysts; (2) compensation and evaluation of research analysts; (3) use of research or research analysts in connection with the solicitation or marketing of investment banking business; and (4) publication of research regarding a securities issuer with which Defendant has, has solicited, or is soliciting an investment banking relationship.

II.

Monetary Sanctions

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that:

A. As a result of the violations alleged in the Complaint, Defendant shall pay a total amount of \$200,000,000. This amount includes:

1. \$100,000,000, as a penalty;
2. \$75,000,000, to be used for the procurement of Independent Research, as described in Section III below and the undertakings set forth in Addendum A hereto; and

3. \$25,000,000, to be used for investor education, as described in Section IV below.

No portion of the payments for Independent Research or investor education shall be considered disgorgement or restitution, and/or used for compensatory purposes.

B. The payment of the penalty of \$100,000,000 is deemed satisfied by Defendant's prior payment of \$100,000,000 pursuant to its agreements with state securities regulators (which, for these purposes, shall include the District of Columbia and Puerto Rico).

III.

Financial Obligation Regarding Independent Research

A. As referenced in Section II.A.2 above, Defendant shall pay a total of \$75,000,000 for its Independent Consultant to procure Independent Research from the Independent Research Providers over the five-year period set forth in Section III.1 of Addendum A hereto. As used herein, the terms "Independent Consultant," "Independent Research," and "Independent Research Providers" shall have the meanings set forth in Addendum A hereto. Defendant will not be required to spend more than the amount set forth in this Section VIII.A in order to procure Independent Research and will have no obligation to procure additional Independent Research if the Independent Consultant has spent the entire amount of Defendant's financial obligation with regard to Independent Research. Any money that is not spent after the five-year period set forth in Section III.1 of Addendum A hereto will not revert to Defendant and will be paid one-half to NASD and one-half to NYSE for use in their regulation and enforcement programs.

B. Defendant shall also escrow \$1,250,000 within thirty (30) days after entry of this Final Judgment to cover the fees and costs of the Independent Consultant. In the event that such escrowed amount exceeds the fees and costs of the Independent Consultant, the excess will be

returned to Defendant at the conclusion of the five-year period set forth in Section III.1 of Addendum A hereto.

IV.

Investor Education

A. Payments to the Investor Education Fund.

1. As referenced in Section II.A.3 above, Defendant shall pay a total amount of \$25,000,000 to be used for investor education. Defendant shall pay this amount in five equal installments on an annual basis.

2. Defendant shall make the first such installment payment on the ninetieth (90th) day after the entry of this Final Judgment by the Court. This payment shall be made by wire transfer into an interest bearing account with the Federal Reserve Bank of New York ("FRB-NY"), to be designated the "Merrill, Lynch, Pierce, Fenner & Smith Incorporated Investor Education Fund Account" in accordance with instructions to be provided to Defendant by the FRB-NY and authorized or ordered by the Court. Defendant shall simultaneously transmit proof of its payment to the Court, the Clerk of the Court, and the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendant. Any interest and income earned on funds in such Investor Education Fund Account shall be added to and become part of such Account. The Investor Education Fund Account shall be held by the FRB-NY until further order of the Court. At any time after the entry of this Judgment, the Court may order that any and all funds in the Merrill, Lynch, Pierce, Fenner & Smith Incorporated Investor Education Fund Account be transferred from the FRB-NY to such depository account, to be known as the "Investor Education Fund," as the Court may direct. Pending further order of the Court, a fee not

more than ten (10) percent of the income earned on the Investor Education Fund Account shall be deducted from such Account as the court registry fee pursuant to 28 U.S.C. § 1914. Such fee shall not exceed that authorized by the Judicial Conference of the United States. The Investor Education Fund Account shall be administered in accordance with the terms of the Investor Education Plan to be approved by this Court as provided for in this Final Judgment and any further applicable orders of the Court.

3. Defendant shall make subsequent installment payments annually on or before the month and day of the entry of this Final Judgment. Such payments shall be made to such account by such means as are specified in a further order of this Court.

B. Purpose and Use of the Investor Education Fund Account.

1. The Merrill, Lynch, Pierce, Fenner & Smith Incorporated Investor Education Fund Account and the Investor Education Fund (including all installment payments) shall be used to support programs designed to equip investors with the knowledge and skills necessary to make informed investment decisions, according to the terms of this Final Judgment, the Investor Education Plan referred to below, and any further applicable orders of the Court.

2. The Merrill, Lynch, Pierce, Fenner & Smith Incorporated Investor Education Fund Account and the Investor Education Fund shall be used to help establish a tax-exempt, non-profit grant administration organization (the "Investor Education Entity") to fund worthy and cost-efficient programs designed to equip investors with the knowledge and skills necessary to make informed investment decisions. Subject to the Court's approval, there shall be a single Investor Education Entity and a single Investor Education Fund with respect to this action and the Related Actions. Pending further order of the Court, the Investor Education Fund Account in

this action shall be separate from the Investor Education Fund Accounts established in the Related Actions.

C. Stay of Proceedings. For the purposes of implementing and effectuating this Final Judgment, and upon a finding hereby made that a stay of any proceedings against the Merrill, Lynch, Pierce, Fenner & Smith Incorporated Investor Education Fund Account, the Investor Education Fund, and the Investor Education Entity during the pendency or the existence of such Fund Account, Fund, and Entity is necessary to effectuate this Final Judgment, all creditors or claimants of Defendant, and other persons acting on behalf of such creditors, claimants, or other persons, including sheriffs, marshals, other officers, deputies, servants, agents, employees, and attorneys, be and the same hereby are restrained and enjoined during the pendency or the existence of the Merrill, Lynch, Pierce, Fenner & Smith Incorporated Investor Education Fund Account, the Investor Education Fund, and the Investor Education Entity from: (1) commencing, prosecuting, continuing, or enforcing any suit or proceeding against such Account, Fund, or Entity; (2) using self-help or executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any monies or property, wheresoever situated, owned by or in the possession of or to be transferred to such Account, Fund, or Entity pursuant to this Final Judgment; and/or (3) doing any act or thing whatsoever to interfere in any manner with the exclusive jurisdiction of this Court over the Merrill, Lynch, Pierce, Fenner & Smith Incorporated Investor Education Fund Account, the Investor Education Fund, or the Investor Education Entity.

D. Further Order of the Court. Specific provisions concerning restrictions and limitations on use of the Merrill, Lynch, Pierce, Fenner & Smith Incorporated Investor Education

Fund Account and the Investor Education Fund, payment of taxes on interest earned by such Account and Fund, the structure and operations of the Investor Education Entity, an Investor Education Plan, and other matters relating to this Section of this Judgment will be set forth in a further order of the Court.

V.

Standing

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, notwithstanding any rule or provision of law, nothing herein, including in the Addenda hereto, shall be deemed to confer standing or right of intervention upon any persons other than the Commission and Defendant.

VI.

Record Retention and Non-Destruction Requirement

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, for a period of five years from the effective date of this Final Judgment or such shorter or longer period as the Court may order, Defendant, its officers, directors, agents, affiliates, servants, employees, attorneys, and those persons in active concert or participation with them, and each of them, are hereby enjoined from destroying, mutilating, concealing, altering, or disposing of (a) any research distributed by Defendant during the relevant period identified in the Complaint; (b) documents sufficient to identify all customers who bought or sold equity securities of the issuers as to which Defendant issued research during the relevant period identified in the Complaint (the "Transactions"), including but not limited to documents sufficient to identify the dates, amounts, and prices of the Transactions; (c) documents sufficient to identify which customers received which research distributed by Defendant during the relevant period identified in the Complaint;

(d) order entry information sufficient to identify whether the Transactions were solicited by Defendant; (e) documents sufficient to identify the publicly-traded companies for which Defendant sought to provide, was engaged to provide, or did provide investment banking services during the relevant period identified in the Complaint; and (f) any and all written (including electronic) communication, including communications to and from customers and intra-firm communications, relating to Defendant's investment banking and equity research operations during the relevant period identified in the Complaint; *provided, however*, that Defendant need not retain duplicate identical copies of public documents filed with the Commission or any other regulatory authority.

VII.

Defendant's Consent Incorporated by Reference

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and Defendant shall comply with all of the undertakings and agreements set forth therein.

VIII.

Attached Undertakings Incorporated by Reference

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall comply with the undertakings set forth in Addendum A hereto. Such undertakings and Addendum A are incorporated herein with the same force and effect as if fully set forth herein.

IX.

Definition of Defendant

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that with respect to all injunctive relief and all future obligations, responsibilities, undertakings, commitments,

limitations, restrictions, events, and conditions, the terms "Defendant" and "Defendant's" as used herein shall include Defendant's successors and assigns (which, for these purposes, shall include a successor or assign to Defendant's investment banking and research operations, and in the case of an affiliate of Defendant, a successor or assign to Defendant's investment banking or research operations).

X.

Court to Retain Jurisdiction


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

XI.

Entry of Judgment Forthwith

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, there being no just cause for delay, the Clerk of the Court shall enter this Judgment forthwith and without further notice.

Dated: New York, New York
Oct 31, 2003


WILLIAM H. PAULEY III
UNITED STATES DISTRICT JUDGE