



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, his 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 publishing research reports that are contrary to his beliefs 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, his 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 his beliefs 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.

## **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 \$4,000,000. This amount includes:

1. \$2,000,000, as a penalty; and
2. \$2,000,000, as disgorgement.

B. Defendant shall pay \$4,000,000 by wire transfer within 30 business days of the entry of this Final Judgment into an interest bearing account with the Federal Reserve Bank of New York (“FRB-NY”), to be designated the “Henry McKelvey Blodget Distribution 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. These funds, together with any interest and income earned thereon (collectively, the “Distribution Fund”), shall be held by the FRB-NY until further order of the Court. In the event that any portion of the penalty described in Section II.A.1 above is remitted for deposit into the Distribution Fund, such penalty amount shall be added to the Distribution Fund and distributed pursuant to the Fair Funds provisions in Section 308 of the Sarbanes-Oxley Act of 2002 and any further order of the Court; provided, however, that the full penalty amount and such portion shall still be considered a penalty for tax and any other purposes. Pending further order of the Court, in accordance with the letter dated August 26, 2003 from the Director of the Administrative Office of the United States Courts to the Commission’s counsel in connection with this action, the court registry fund fee pursuant to 28 U.S.C. § 1914 for the Distribution Fund shall be four (4) percent of the income earned on the Distribution Fund. The Distribution Fund shall be managed in accordance with the terms of, and shall be distributed pursuant to, this Final Judgment and any further

applicable orders of the Court. The plaintiff shall propose to the Court for its approval a plan for the disposition of the monies in the Distribution Fund.

### **III.**

#### **Standing**

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

### **IV.**

#### **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, and his 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 or Merrill Lynch Pierce, Fenner & Smith Incorporated (“Merrill Lynch”) 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 or Merrill Lynch; (e) documents sufficient to identify the publicly-traded companies for which Merrill Lynch 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 Merrill Lynch'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.

**V.**

**Defendant's Consent Incorporated by Reference**

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant's Consent previously filed in this action 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.

**VI.**

**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.

**VII.**

**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  
\_\_\_\_\_, 2003

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WILLIAM H. PAULEY III  
UNITED STATES DISTRICT JUDGE