

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION, : No. 03 Civ. 2947 (WHP)  
: **ORDER**  
Plaintiff, :  
:   
-against- :  
:   
HENRY McKELVEY BLODGET, :  
:   
Defendant. :  
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Upon consideration of the joint proposal of plaintiff Securities and Exchange Commission (“Commission”), defendant Henry McKelvey Blodget (“Blodget” or “Defendant”) and Blodget’s former employer, Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”), for the disposition of the Distribution Fund in this action,<sup>1</sup> and good cause appearing, it is hereby **ORDERED** that the joint proposal is accepted. Accordingly, it is hereby **ORDERED**:

**I.**

**Uses of the Distribution Fund**

The Distribution Fund is to be utilized as follows:

A. To pay any taxes on income earned by the Distribution Fund. The Distribution Fund is intended to be a “qualified settlement fund” pursuant to Section 468B(g) of the Internal Revenue Code and regulations thereunder. The Distribution Fund Administrator appointed pursuant to Section II.A below of this Order is designated the administrator of the Distribution Fund as defined in and for the purpose of Treas. Reg. § 1.468B-2(k)(3)(i), and shall satisfy the administrative requirements imposed by Treas. Reg. § 1.468B-2 by, e.g., (1) obtaining a taxpayer

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<sup>1</sup> All defined terms in the Final Judgment in this action (“Final Judgment”) apply to this Order. Under Section II of the Final Judgment, Blodget was ordered to pay \$4 million into the Distribution Fund.

identification number; (2) timely filing applicable federal, state, and local tax returns and paying taxes reported thereon; and (3) satisfying any information reporting or withholding requirements imposed on distributions from the Distribution Fund. Defendant and Merrill Lynch shall provide the Distribution Fund Administrator with information necessary for the Distribution Fund Administrator to fulfill the Distribution Fund's obligations under Treas. Reg. § 1.468B-2.

B. To pay Eligible Distribution Fund Recipients as described in Section III of this Order.

C. Restrictions on Use of the Distribution Fund. The Distribution Fund shall not be used directly or indirectly to pay:

1. Defendant, Merrill Lynch, its predecessors and successors, and its subsidiaries, affiliates, present or former officers, directors, and its employees, agents, assigns, members of their immediate households, and those persons in active concert or participation with them, through subrogation or otherwise.

2. With respect to any investment in its own securities, any issuer of securities as to which the Distribution Fund Administrator determines that an investment in such issuer's securities would otherwise provide a basis for receipt of proceeds from the Distribution Fund and, with respect to such securities, such issuer's (a) predecessors, successors, subsidiaries, and affiliates; (b) present or former officers and directors and their agents, assigns, and members of their immediate households; and (c) those persons in active concert or participation with them, through subrogation or otherwise.

3. Any person who has been convicted of a crime substantially related to any act or practice, or the types of acts or practices, identified in the Complaint in this action ("Complaint").

4. Any person who has been enjoined by a court or sanctioned by the Commission or any other regulatory authority for any act or practice, or the types of acts or practices, identified in the Complaint.

5. Any person named as a defendant in a pending federal criminal or civil enforcement action for any act or practice, or the types of acts or practices, identified in the Complaint.

6. Any judgment or award of punitive or non-compensatory damages.

7. Any administrative fees, costs or expenses related to the Distribution Fund Plan described in this Order, other than the fee equal to four (4) percent of the income earned on the Distribution Fund as described in Section II.B of the Final Judgment.

8. Any amount denominated as attorneys' fees, costs or disbursements.

9. The Distribution Fund Administrator or any member of his immediate family.

## II.

### **Distribution Fund Administrator**

A. The Distribution Fund Administrator for this action shall be the same Distribution Fund Administrator that the Court has appointed for the other actions that the Commission has brought against certain broker-dealer firms relating to, among other things, alleged research analyst conflicts of interest that are identified in Addendum A attached hereto (the "Related Actions"). However, the Distribution Fund in this action shall be separate from the Distribution Funds established in those other actions. The Commission may request that additional actions that it brings against other broker-dealer firms or individuals relating to, among other things, alleged research conflicts of interest be added to the list of Related Actions.

B. Payment of Distribution Fund Administrator. Merrill Lynch shall pay all fees, costs, and expenses incurred by the Distribution Fund Administrator and approved by the Court in connection with and incidental to the performance of his duties under the Final Judgment, this Order, and any further applicable orders of the Court, including the fees, costs, and expenses of any persons engaged to assist him and all administrative fees, costs, and expenses related to the Distribution Fund Plan described below. The Distribution Fund Administrator may consult with Merrill Lynch regarding methods to facilitate and expedite the submission to the Court of the Distribution Fund Plan.

C. Responsibilities, Powers and Rights of the Distribution Fund Administrator. The Distribution Fund Administrator shall:

1. administer the Distribution Fund Plan described below in accordance with and subject to the conditions and limitations imposed by the terms of the Final Judgment, this Order, and any further applicable orders of the Court;

2. distribute monies from the Distribution Fund to Eligible Distribution Fund Recipients, as approved by the Court;

3. file tax returns on behalf of the Distribution Fund;

4. submit written quarterly reports to the Court and the Commission staff commencing three months after his appointment by the Court; in such periodic reports, the Distribution Fund Administrator shall provide detailed information on the progress of the implementation of the Distribution Fund Plan described below, fees and expenses incurred, and other matters relevant to the status of the Distribution Fund;

5. submit on a quarterly basis requests to the Court, with copies to the Commission staff and Merrill Lynch, for payment by Merrill Lynch of his fees and expenses

(including the fees and expenses of others retained by him as authorized by this Order) incurred during the quarterly period; the Commission and Merrill Lynch shall have the opportunity to comment on and/or object to the Distribution Fund Administrator's requests within thirty (30) days after receipt thereof, and the Court shall, after taking into consideration the Commission's and Merrill Lynch's comments and/or objections, order the amount that Merrill Lynch is to pay the Distribution Fund Administrator for the quarterly period and, if appropriate, the disposition of such amount by the Distribution Fund Administrator; Merrill Lynch shall pay such amount within thirty (30) days of the Court's order setting such amount; and

6. have all appropriate powers and authority to perform his duties as set forth in this Order, including the powers:

(a) to retain and engage such personnel as he deems necessary to assist in the preparation or administration of the Distribution Fund Plan; and

(b) to delegate to such persons such duties as he deems appropriate.

D. The Distribution Fund Administrator, his agents, attorneys, and all persons acting on his behalf shall be held harmless against liabilities, claims, and demands, whether civil, administrative, or investigative, arising from or relating to any act or omission to act in the course of performing his duties, except and to the extent that it is found that such person acted criminally, or in bad faith, or with gross negligence, or with reckless disregard of his duties, or in a manner that he knew was contrary to the terms of this Final Judgment, this Order, or any further applicable order of the Court.

E. The Court may remove the Distribution Fund Administrator *sua sponte* or, for good cause shown, upon application of the Commission. If the Distribution Fund Administrator decides to resign, he shall first give sixty (60) days written notice to the Commission and the

Court of his intention. Such resignation shall not become effective until the Court has appointed a successor. If the Distribution Fund Administrator is removed by the Court, becomes incapacitated due to illness or death, is otherwise unable to serve, or resigns, the Court shall appoint a successor recommended by the Commission.

F. The Distribution Fund Administrator is entitled to rely on all rules of law and court orders, and shall not be liable to anyone for his own good faith compliance with any order, rule, law, judgment, or decree. Nor shall he be liable by virtue of his compliance with the orders of this Court. In no event shall he be liable to Defendant or Merrill Lynch for his good faith compliance with his duties and responsibilities under this Order.

G. The Distribution Fund Administrator shall not enter into any employment, consulting, or attorney-client relationship with Defendant, Merrill Lynch, or any of its present or former parents, subsidiaries, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of three years from the completion of his engagement. Any firm with which the Distribution Fund Administrator is affiliated or of which he is a member and any person engaged to assist the Distribution Fund Administrator in the performance of his duties under this Order or any further applicable order of the Court shall not, without the Commission's prior written consent, enter into any employment, consulting, or other professional relationship with Defendant, Merrill Lynch, or any of its present or former directors, officers, employees, or agents in their capacity as such for the period of the engagement and for three years after the completion of the engagement.

### III.

#### **Distribution Fund Plan**

A. The Distribution Fund Administrator shall formulate and administer a Distribution Fund Plan in accordance with Sections III.B – III.F below. The Distribution Fund Plan is intended to provide for the equitable, cost-effective distribution of funds to Eligible Distribution Fund Recipients, as described below. An Eligible Distribution Fund Recipient is not precluded from pursuing, to the extent otherwise available, any other remedy or recourse against Defendant.

B. The Distribution Fund Administrator shall formulate a Distribution Fund Plan that, to the extent practicable, allocates funds to persons who purchased equity securities of GoTo.com. The Distribution Fund Plan need not provide that funds be allocated to *all* purchasers of GoTo.com during the “relevant time period” defined below. The Distribution Fund Administrator shall formulate a Distribution Fund Plan that attempts to ensure an equitable (but not necessarily equal) distribution of funds and that those who are allocated funds receive meaningful payments from the Distribution Fund.

C. In formulating the Distribution Fund Plan, the Distribution Fund Administrator shall apply the following criteria to identify Eligible Distribution Fund Recipients:

1. The person must have purchased GoTo.com’s equity securities through Merrill Lynch between and including January 11, 2001 and June 6, 2001 (“relevant time period”). The identification of GoTo.com and the “relevant time period” made herein is solely for the purpose of facilitating the efficient administration of the Distribution Fund Plan, is not a judicial or Commission finding, and is not intended to have precedential effect in other actions.

2. The person must have suffered a net loss on his purchases of GoTo.com's equity securities.

D. In formulating the Distribution Fund Plan, the Distribution Fund Administrator may also consider the following criteria in identifying Eligible Distribution Fund Recipients:

1. whether the person was a retail or institutional customer; and
2. the proximity in time between the person's purchase of GoTo.com's equity securities and Defendant's or Merrill Lynch's publication of the research in question regarding the company (as a threshold matter, however, the purchase must have been made after the publication or receipt of such research; assuming that threshold has been met, in general, the shorter the time period, the more likely the person suffered a loss as a result of conduct alleged in the Complaint).

E. If monies remain in the Distribution Fund after all distributions pursuant to a Distribution Fund Plan described in Sections III.B-III.D above have been made, then such remaining monies shall be paid in accordance with a plan of residual distribution to be proposed by the Distribution Fund Administrator after consultation with Commission staff and, in his sole discretion, Defendant and Merrill Lynch, and approved by the Court. If a residual plan of distribution is necessary, the criteria that the Distribution Fund Administrator shall apply in formulating such a plan will be set forth in a further order or orders of the Court.

F. As soon as is practicable, and after any consultation with experts that the Distribution Fund Administrator believes is necessary or appropriate, but in no event more than six (6) months after being appointed by the Court, the Distribution Fund Administrator will provide the Commission staff and, in his sole discretion, Defendant and Merrill Lynch for review and comment a Distribution Fund Plan, which shall, among other things, describe a process for

(1) identifying and categorizing Eligible Distribution Fund Recipients in accordance with the considerations described above; (2) determining the amount of the Distribution Fund that each Eligible Distribution Fund Recipient shall receive; and (3) distributing the Distribution Fund to Eligible Distribution Fund Recipients. Sixty (60) days after the Distribution Fund Plan has been submitted to the Commission staff, the Distribution Fund Administrator shall present the Plan, with any revisions that the Distribution Fund Administrator deems appropriate, to the Court for its approval. In accordance with the Court's Order approving the Distribution Fund Plan, the Distribution Fund Administrator shall implement the Plan. Upon the completion of the process of identifying the Eligible Distribution Fund Recipients and determining the amount that each should receive, but in no event later than nine (9) months from the Court's approval of the Distribution Fund Plan, the Distribution Fund Administrator shall submit a Distribution Fund Report to the Commission staff and, in his sole discretion, Defendant and Merrill Lynch. The Distribution Fund Report shall set forth (1) the identities of the Eligible Distribution Fund Recipients; (2) the amount of the Distribution Fund that each Eligible Distribution Fund Recipient shall receive; and (3) procedures for distributing the Distribution Fund to Eligible Distribution Fund Recipients. Seven (7) days after submission of the Distribution Fund Report to the Commission staff, the Distribution Fund Administrator shall present the Report to the Court for its approval. The Distribution Fund Administrator and/or the Commission may apply to the Court for extension of any deadlines set forth above, in the Distribution Fund Plan, or in the Distribution Fund Report, and the Court may grant any such application for good cause shown.

#### IV.

#### **Stay of Proceedings**

For the purposes of implementing and effectuating the Final Judgment and this Order, and upon a finding hereby made that a stay of any proceedings against the Distribution Fund during the pendency or the existence of the Distribution Fund and the Distribution Fund Administrator in his official capacity is necessary to effectuate the Final Judgment and this Order, all creditors and claimants of Defendant and all other persons, and all 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 from: (1) commencing, prosecuting, continuing, or enforcing any suit or proceeding against the Distribution Fund Administrator in his official capacity or the Distribution Fund; (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, deposited or to be transferred into the Distribution Fund or the Distribution Fund Administrator pursuant to the Final Judgment or this Order; and/or (3) doing any act or thing whatsoever to interfere with the taking control, possession, or management by the Distribution Fund Administrator of the monies or property that are or may be transferred to the Distribution Fund, or in any way to interfere with or harass said Distribution Fund Administrator, or to interfere in any manner with the exclusive jurisdiction of this Court over the Distribution Fund.

V.

**Duties and Obligations of Defendant and  
Merrill Lynch to the Distribution Fund Administrator**

In addition to any other duties and obligations described in the Final Judgment and this Order:

A. Defendant and Merrill Lynch shall upon request provide research reports issued by Defendant or Merrill Lynch regarding GoTo.com during the relevant period identified in the Complaint and non-privileged documents, records, and information relating to customers' transactions in GoTo.com equity securities with or through Merrill Lynch, including but not limited to account statements, order tickets, confirmations, and related documents, records and information. Defendant and Merrill Lynch shall also provide the Distribution Fund Administrator with such other documents, records, and information that the Court may order Defendant or Merrill Lynch to provide upon motion by the Distribution Fund Administrator. In addition, Defendant and Merrill Lynch may provide other cooperation and take other actions upon the request of the Distribution Fund Administrator and shall provide such other cooperation and take such other actions that the Court may order upon motion by the Distribution Fund Administrator. In performing his duties pursuant to this Final Judgment and this Order, the Distribution Fund Administrator shall not make any determination whether any conduct by Defendant or Merrill Lynch violated federal or state securities laws or the rules of NASD Inc. or the New York Stock Exchange, Inc. or conduct any inquiry for the purpose of making any such determination.

B. Merrill Lynch shall provide any notices to any of its present or former customers that the Distribution Fund Administrator deems appropriate.

**SO ORDERED.**

Dated: New York, New York  
March 10, 2004

  
WILLIAM H. PAULEY III  
UNITED STATES DISTRICT JUDGE

**Addendum A:**

**List of “Related Actions”**

1. *SEC v. Bear, Stearns & Co. Inc.*, No. 03 Civ. 2937 (WHP)
2. *SEC v. Citigroup Global Markets Inc., f/k/a Salomon Smith Barney Inc.*, No. 03 Civ. 2945 (WHP)
3. *SEC v. Credit Suisse First Boston LLC, f/k/a Credit Suisse First Boston Corporation*, No. 03 Civ. 2946 (WHP)
4. *SEC v. Goldman, Sachs & Co.*, No. 03 Civ. 2944 (WHP)
5. *SEC v. J.P. Morgan Securities Inc.*, No. 03 Civ. 2939 (WHP)
6. *SEC v. Lehman Brothers, Inc.*, No. 03 Civ. 2940 (WHP)
7. *SEC v. Merrill Lynch, Pierce, Fenner & Smith Incorporated*, No. 03 Civ. 2941 (WHP)
8. *SEC v. Morgan Stanley & Co. Incorporated*, No. 03 Civ. 2948 (WHP)
9. *SEC v. UBS Securities LLC, f/k/a UBS Warburg LLC*, No. 03 Civ. 2943 (WHP)
10. *SEC v. U.S. Bancorp Piper Jaffray, Inc.*, No. 03 Civ. 2942 (WHP)
11. *SEC v. Henry McKelvey Blodget*, No. 03 Civ. 2947 (WHP)