

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















