



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Merrill Lynch Internet Infrastructure HOLDRS

IN RE INITIAL PUBLIC OFFERING SECURITIES LITIGATION	X : : : : : X	Master File No. 21 MC 92 (SAS)
IN RE INTERNET INFRASTRUCTURE HOLDRS INITIAL PUBLIC OFFERING SECURITIES LITIGATION	X : : : : : : : : : X	01 Civ. 7654 (SAS) CONSOLIDATED AMENDED CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS

Plaintiffs, by their undersigned attorneys, individually and on behalf of the Class described below, upon information and belief, based upon, *inter alia*, the investigation of counsel, which includes a review of public announcements made by Defendants, interviews with individuals with knowledge of the acts and practices described herein, Securities and Exchange Commission ("SEC") filings made by Defendants, press releases, and media reports, except as to Paragraph 11 applicable to the named Plaintiffs which is alleged upon personal knowledge, bring this Consolidated Amended Complaint (the "Complaint") against the Defendants named herein, and allege as follows:

NATURE OF THE ACTION

1. This is a securities class action alleging violations of the federal securities laws in connection with the initial public offering conducted beginning on or about February 24, 2000 and proceeding on a continuous basis thereafter (the "IPO" or the "Offering") of Depository Receipts

issued by Internet Infrastructure HOLDERS Trust, and referred to as Internet Infrastructure HOLDERS depositary receipts ("Internet Infrastructure HOLDERS"), and the trading of Internet Infrastructure HOLDERS in the aftermarket through December 6, 2000, inclusive (the "Class Period").

2. The Internet Infrastructure HOLDERS are "basket securities." Each round lot of 100 Internet Infrastructure HOLDERS represents an undivided beneficial ownership interest in 20 specified "Internet Infrastructure" companies (the "Underlying Securities"). The initial offering price of the Internet Infrastructure HOLDERS was calculated based on the price of the Underlying Securities at the close of trading the day before the IPO, and thereafter the Internet Infrastructure HOLDERS price moved in response to changes in the prices of the Underlying Securities. Merrill, Lynch, Pierce, Fenner & Smith, Incorporated ("Merrill Lynch") created the issuer, Internet Infrastructure HOLDERS Trust. Merrill Lynch and its corporate parent, Merrill Lynch & Co., Inc. ("ML & Co.") also underwrote and distributed Internet Infrastructure HOLDERS, selling 4,900,000 Internet Infrastructure HOLDERS in the initial distribution.

3. The Complaint alleges that the Registration Statement/Prospectus (defined below) was materially false and misleading because it failed to disclose that the aftermarket prices for a material proportion of the stocks making up the Internet Infrastructure HOLDERS' initial portfolio were inflated by manipulation of the type alleged in these coordinated actions.

4. In this regard, Merrill Lynch acted as co-manager of the initial public offerings of two of the Underlying Securities, and a syndicate member of a third. As alleged with respect to these offerings, Merrill Lynch, along with other underwriters named as Defendants in these coordinated actions, created artificial demand for those stocks by conditioning share allocations

upon the requirement that customers agree to purchase shares of those stocks in the aftermarket and, in some instances, to make those purchases at pre-arranged, escalating prices ("Tie-in Agreements").

5. In connection with the IPO, Merrill Lynch filed with the SEC a registration statement ("Registration Statement") and a prospectus ("Prospectus"). The Registration Statement and Prospectus will, at varying times, be collectively referred to hereinafter as the "Registration Statement/Prospectus." The Registration Statement/Prospectus was declared effective by the SEC on or about February 24, 2000.

6. The Registration Statement/Prospectus was materially false and misleading in that it failed to disclose, among other things further described herein, that the market price of Internet Infrastructure HOLDRS was inflated by virtue of the fact that a material proportion of the Underlying Securities had been manipulated.

7. As part and parcel of the scheme alleged herein, Merrill Lynch also improperly utilized its analysts, who were compromised by conflicts of interest, to artificially inflate or maintain the price of certain of the Underlying Securities by issuing favorable recommendations in connection therewith, as set forth in the "Use of Analysts" section of the Master Allegations.

JURISDICTION

8. This Court has jurisdiction over the subject matter of this action pursuant to Section 22 of the Securities Act of 1933 (the "Securities Act") (15 U.S.C. § 77v) and Section 27 of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. § 78aa) and 28 U.S.C. § 1331.

9. Plaintiffs bring this action pursuant to Sections 11 and 15 of the Securities Act (15 U.S.C. § 77k and §77o) and Sections 10(b) and 20(a) of the Exchange Act as amended (15 U.S.C. § 78j(b) and § 78t(a)), and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5). Venue is proper in this District as Merrill Lynch and ML & Co. have offices in the Southern District of New York, conduct business in the Southern District of New York and many of the wrongful acts engaged in by all Defendants and alleged herein took place or originated in the Southern District of New York.

10. In connection with the acts alleged in the Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

PARTIES

PLAINTIFFS

11. Plaintiffs Jack Cobb and David Trost ("Plaintiffs") purchased or otherwise acquired Internet Infrastructure HOLDRS traceable to the IPO, in the open market or otherwise during the Class Period, at prices that were artificially inflated by Defendants' misconduct and were damaged thereby.

DEFENDANTS

12. Defendant ML & Co. is a holding company headquartered in New York that provides, through its subsidiaries and affiliates, investment banking, insurance and related services.

13. Defendant Merrill Lynch is the principal subsidiary of ML & Co., a licensed broker/ dealer in the United States, does business worldwide, and is controlled by ML & Co. through stock ownership, contracts, related officers and directors, and dictated or influenced the activities of Merrill Lynch, its direct and indirect subsidiaries, affiliates and employees. According to the Report on Form 10-K405 filed by ML & Co. with the SEC for the year ended December 31, 2000, Merrill Lynch sometimes does business as "Merrill Lynch & Co."

14. Defendant Ahmass L. Fakahany ("Fakahany") was, all relevant times herein, Chief Financial Officer and Controller of Merrill Lynch. Fakahany signed the Registration Statement.

15. Defendant John L. Steffens ("Steffens") was, at all relevant times herein, Chief Executive Officer and Chairman of the Board of Merrill Lynch. Steffens signed the Registration Statement.

16. Fakahany and Steffens will be, at varying times, collectively referred to herein as the "Individual Defendants."

CLASS ACTION ALLEGATIONS

17. Plaintiffs bring this action as a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of a class consisting of all persons and entities who purchased or otherwise acquired the Internet Infrastructure HOLDRS Depository Receipts during the Class Period and were damaged thereby (the "Class").

18. Members of the Class are so numerous that joinder of all members is impracticable. Specifically:

(a) There were 4,900,000 Internet Infrastructure HOLDRS sold in the initial distribution pursuant to the Registration Statement Prospectus; and

(b) While the exact number of Class members is unknown to the Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs believe that there are hundreds, if not thousands of Class members who purchased or otherwise acquired Internet Infrastructure HOLDERS during the Class Period.

19. Plaintiffs' claims are typical of the claims of the other members of the Class. Plaintiffs and the other members of the Class have sustained damages because of Defendants' unlawful activities alleged herein. Plaintiffs have retained counsel competent and experienced in class and securities litigation and intend to prosecute this action vigorously. The interests of the Class will be fairly and adequately protected by Plaintiffs. Plaintiffs have no interests which are contrary to or in conflict with those of the Class which Plaintiffs seek to represent.

20. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Plaintiffs know of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. Furthermore, since the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation make it economically impracticable for the members of the Class to seek redress individually for the wrongs they have suffered.

21. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) Whether the federal securities laws were violated by Defendants' misconduct as alleged herein;

- (b) Whether the Registration Statement/Prospectus omitted and/or misrepresented material facts;
- (c) Whether Defendants participated in the course of conduct complained of herein;
- (d) Whether, solely with respect to claims brought under the Exchange Act, the Defendants named thereunder acted with scienter; and
- (e) Whether the members of the Class have sustained damages as a result of Defendants' conduct, and the proper measure of such damages.

SUBSTANTIVE ALLEGATIONS

22. Plaintiffs hereby incorporate by reference the "Introductory" and "Underwriter Defendants" sections of the Master Allegations as if set forth herein at length. Plaintiffs also adopt and incorporate herein by reference the allegations set forth in the Master Allegations that specifically relate to Merrill Lynch as if set forth herein at length. Also incorporated by reference herein are the allegations contained in the Consolidated Amended and Amended Complaints filed in these coordinated proceedings regarding the initial public offerings of Vitria Technology, Inc. (01 Civ. 10092), E.piphany, Inc. (01 Civ. 6158), InterNAP Network Services Corporation (01 Civ. 6084), Akamai Technologies Inc. (01 Civ. 6000), Digital Island, Inc. (01 Civ. 6867), Kana Communications, Inc. (01 Civ. 6882), NaviSite, Inc. (01 Civ. 5374), Vignette Corporation (01 Civ. 9514), Portal Software, Inc. (01 Civ. 6160), and USinternetworking, Inc. (01 Civ. 9348).

THE IPO

23. The Internet Infrastructure HOLDRS IPO of 4,900,000 Internet Infrastructure HOLDRS, sold only in round lots of 100 Internet Infrastructure HOLDRS, was priced at \$96.69

per HOLDER on or about February 24, 2000. The sale and distribution of the IPO was effected by Merrill Lynch and/or ML & Co. The Prospectus identifies the underwriter as "Merrill Lynch & Co."

24. Following the IPO, the price of Internet Infrastructure HOLDERS rose slightly, but within days began falling, dropping as the value of the Underlying Securities plummeted. By August, 2001, when the first of these consolidated actions was brought, the HOLDERS were trading at \$7.42 per share.

UNLAWFUL CONDUCT IN CONNECTION WITH UNDERLYING SECURITIES

THE UNDERLYING SECURITIES

25. According to the Prospectus, the Underlying Securities consist of the following:
- (a) Akamai Technologies Inc.
 - (b) Alteon Websystems Inc.
 - (c) BEA Systems, Inc.
 - (d) BroadVision, Inc.
 - (e) Digital Island, Inc.
 - (f) E.piphany, Inc.
 - (g) Exodus Communications, Inc.
 - (h) InfoSpace, Inc.
 - (i) Inktomi Corporation
 - (j) InterNAP Network Services Corporation
 - (k) Kana Communications, Inc.
 - (l) NaviSite, Inc.

- (m) Network Solutions Inc.
- (n) Portal Software, Inc.
- (o) RealNetworks, Inc.
- (p) Software.com Inc.
- (q) USinternetworking, Inc.
- (r) VeriSign, Inc.
- (s) Vignette Corporation
- (t) Vitria Technology

UNLAWFUL CONDUCT IN CONNECTION WITH THE INITIAL PUBLIC OFFERINGS OF THE UNDERLYING SECURITIES

26. Consistent with their conduct in other initial public offerings as set forth in the Master Allegations, Merrill Lynch and other underwriters of certain of the Underlying Securities engaged in manipulative and/or other unlawful practices described more fully herein in connection with the initial public offerings of certain of the Underlying Securities.

27. Customers of Merrill Lynch, as a condition to obtaining an allocation of stock in the initial public offerings of certain of the Underlying Securities, were required or induced to enter into Tie-in Agreements and/or pay Undisclosed Compensation.

VITRIA, INC.

28. Each round lot of 100 Internet Infrastructure HOLDRS included 2 shares of Vitria, Inc. ("Vitria"), having 3.76% of the initial value of the Internet Infrastructure HOLDRS. Vitria held an initial public offering of 3,000,000 shares on or about September 16, 1999, and a follow-on offering of 5,650,000 shares on February 11, 2000. Merrill Lynch was a co-manager of

the Vitria initial public offering, and manipulated Vitria common stock, as set forth in the Vitria Complaint, which had the effect of artificially inflating Vitria's stock price.

29. Vitria's initial public offering was priced at \$16.00, and traded as high as \$53 per share the first day (more than 231% above the initial public offering price). During the Class Period, Vitria's common stock traded as a high as \$310 per share, or more than 1837% above the IPO price, in December, 1999.

E.PIPHANY, INC.

30. Each round lot of 100 Internet Infrastructure HOLDERS included 1 share of E.piphany, Inc. ("E.piphany"), having 1.78% of the initial value of the Internet Infrastructure HOLDERS. E.piphany held an initial public offering of 4,150,000 shares on or about September 21, 1999. Merrill Lynch was a co-manager of the E.piphany initial public offering, and manipulated E.piphany common stock, as set forth in the E.piphany Complaint, which had the effect of artificially inflating E.piphany's stock price.

31. E.piphany initial public offering was priced at \$16.00, and traded as high as \$48.875 per share the first day (more than 205% above the initial public offering price). During the Class Period, E.piphany common stock traded as a high as \$324.875 per share, or more than 1,930% above the IPO price.

INTERNAP NETWORK SERVICES CORPORATION

32. Each round lot of 100 Internet Infrastructure HOLDERS included 5 shares of InterNAP Network Services Corporation ("InterNAP"), having 4.41% of the initial value of the Internet Infrastructure HOLDERS. InterNAP held an initial public offering of 9,500,000 shares on or about September 29, 1999, and a follow-on offering of 7,500,000 shares on April 6, 2000.

Merrill Lynch was a member of the underwriting syndicate of the InterNAP initial public offering, and manipulated InterNAP common stock, as set forth in the InterNAP Complaint, which had the effect of artificially inflating InterNAP's stock price.

33. InterNAP's initial public offering was priced at \$20.00, and traded as high as \$73.00 per share the first day (more than 265% above the initial public offering price). During the Class Period, InterNAP common stock traded as a high as \$222 per share (not adjusting for a 2:1 stock split), or more than 1010% above the IPO price, in February, 2000, just before the follow-on offering.

AKAMAI TECHNOLOGIES, INC.

34. Each round lot of 100 Internet Infrastructure HOLDERS included 3 shares of Akamai, Inc. ("Akamai"), having 8.51% of the initial value of the Internet Infrastructure HOLDERS. Akamai held an initial public offering of 9,000,000 shares on or about October 28, 1999. The sale and distribution of this firm commitment offering was effected by an underwriting syndicate consisting of, among others, Morgan Stanley, DLJ, Salomon, and Weisel.

35. Akamai's initial public offering was priced at \$26.00, and traded as high as \$166.00 per share the first day (more than 534% above the initial public offering price). During the Class Period, Akamai's common stock traded as a high as \$345.50 per share, or more than 1228% above the IPO price.

36. Merrill Lynch was a member of the underwriting syndicate in 13 manipulated offerings in which Morgan Stanley was the bookrunner, 9 in which DLJ was the bookrunner, 7 in which Salomon was the bookrunner, and 1 in which Wiesel was the bookrunner, and knew or was reckless as to the fact that the Akamai initial public offering was manipulated.

DIGITAL ISLAND, INC.

37. Each round lot of 100 Internet Infrastructure HOLDERS included 2 shares of Digital Island, Inc. ("Digital Island"), having 2.42% of the initial value of the Internet Infrastructure HOLDERS. Digital Island held an initial public offering of 6,000,000 shares on or about June 29, 1999, and a follow-on offering of 5,000,000 shares on February 23, 2000. The sale and distribution of the initial public offering was effected by an underwriting syndicate consisting of, among others, Bear Stearns, Lehman Brothers, and Weisel.

38. Digital Island's initial public offering was priced at \$10.00, and traded as high as \$12.00 per share the first day (more than 20% above the initial public offering price). During the Class Period, Digital Island common stock traded as a high as \$156.9375 per share, or more than 1469% above the IPO price, in December, 1999, just before the follow-on offering.

39. Merrill Lynch was a member of the underwriting syndicate in 7 manipulated offerings in which Bear Stearns was the bookrunner, 11 in which Lehman Brothers was the bookrunner, and 1 in which Weisel was the bookrunner, and knew or was reckless as to the fact that the Digital Island initial public offering was manipulated.

KANA COMMUNICATION, INC.

40. Each round lot of 100 Internet Infrastructure HOLDERS included 2 shares of Kana Communications, Inc. ("Kana"), having 3.02% of the initial value of the Internet Infrastructure HOLDERS. Kana held an initial public offering of 3,300,000 shares on or about September 21, 1999. The sale and distribution of the initial public offering was effected by an underwriting syndicate consisting of, among others, Goldman Sachs, H&Q and Wit Soundview.

41. Kana's initial public offering was priced at \$15.00, and traded as high as \$58.50 per share the first day (more than 290% above the initial public offering price). During the Class Period, Kana common stock traded as a high as \$351 per share (not adjusting for stock splits), or more than 2240% above the IPO price.

42. Merrill Lynch was a member of the underwriting syndicate in 23 manipulated offerings in which Goldman Sachs was the bookrunner, and knew or was reckless as to the fact that the Kana initial public offering was manipulated.

NAVISITE, INC.

43. Each round lot of 100 Internet Infrastructure HOLDERS included 1 share of NaviSite, Inc. ("NaviSite"), having 1.63% of the initial value of the Internet Infrastructure HOLDERS. NaviSite held an initial public offering of 5,500,000 shares on or about October 22, 1999. The sale and distribution of the initial public offering was effected by an underwriting syndicate consisting of, among others, Robertson Stephens and H&Q.

44. NaviSite's initial public offering was priced at \$14.00, and traded as high as \$47 per share the first day (more than 235% above the initial public offering price). During the Class Period, NaviSite common stock traded as a high as \$329.88 per share (not adjusting for stock splits), or more than 2256% above the IPO price.

45. Merrill Lynch was a member of the underwriting syndicate in 2 manipulated offerings in which Robertson Stephens was the bookrunner, and knew or was reckless as to the fact that the NaviSite initial public offering was manipulated.

VIGNETTE CORPORATION

46. Each round lot of 100 Internet Infrastructure HOLDERS included 2 shares of Vignette Corporation ("Vignette"), having 5.29% of the initial value of the Internet Infrastructure HOLDERS. Vignette held an initial public offering of 4,000,000 shares on or about February 19, 1999, and a follow-on offering of 2,900,000 shares on December 9, 1999. The sale and distribution of the initial public offering was effected by an underwriting syndicate consisting of, among others, Morgan Stanley, H&Q and Dain Rauscher.

47. Vignette's initial public offering was priced at 19.00, and traded as high as \$52.75 per share the first day (more than 177% above the initial public offering price). During the Class Period, Vignette common stock traded as a high as \$575.375 per share (not adjusting for stock splits), or more than 2928% above the IPO price.

48. Merrill Lynch was a member of the underwriting syndicate in 13 manipulated offerings in which Morgan Stanley was the bookrunner, and knew or was reckless as to the fact that the Vignette initial public offering was manipulated.

PORTAL SOFTWARE, INC.

49. Each round lot of 100 Internet Infrastructure HOLDERS included 6 shares of Portal Software, Inc. ("Portal"), having 5.23% of the initial value of the Internet Infrastructure HOLDERS. Portal held an initial public offering of 4,000,000 shares on or about May 5, 1999, and a follow-on offering of 5,000,000 shares on September 29, 1999. The sale and distribution of the initial public offering was effected by an underwriting syndicate consisting of, among others, Goldman Sachs, CSFB, Robertson Stephens, and H&Q.

50. Portal's initial public offering was priced at \$14.00, and traded as high as \$44 per share the first day (more than 214% above the initial public offering price). During the Class

Period, Portal common stock traded as a high as \$126 per share, or more than 800% above the IPO price, in November, 1999.

51. Merrill Lynch was a member of the underwriting syndicate in 23 manipulated offerings in which Goldman Sachs was the bookrunner, 14 in which CSFB was the bookrunner, and 2 in which Robertson Stephens was the bookrunner, and knew or was reckless as to the fact that the Portal initial public offering was manipulated.

USINTERNETWORKING, INC.

52. Each round lot of 100 Internet Infrastructure HOLDERS included 2 shares of USinternetworking, Inc. ("USinternetworking"), having 1.4% of the initial value of the Internet Infrastructure HOLDERS. USinternetworking held an initial public offering of 6,000,000 shares on or about April 8, 1999, and a follow-on offering of 6,000,000 shares on or about February 17, 2000. The sale and distribution of the initial public offering was effected by an underwriting syndicate consisting of, among others, CSFB, Bear Stearns, and DB Alex. Brown.

53. USinternetworking's initial public offering was priced at \$21.00, and traded as high as \$60 per share the first day (more than 185% above the initial public offering price). During the Class Period, USinternetworking common stock traded as a high as \$103.50 per share (\$155.25 adjusted for a 3:2 stock split), or more than 639% above the IPO price, in March, 2000.

54. Merrill Lynch was a member of the underwriting syndicate in 14 manipulated offerings in which CSFB was the bookrunner, 7 in which Bear Stearns was the bookrunner, and 6 in which DB Alex. Brown was the bookrunner, and knew or was reckless as to the fact that the USinternetworking initial public offering was manipulated.

MERRILL LYNCH USED ITS ANALYSTS TO MANIPULATE THE

**AFTERMARKET TRADING OF CERTAIN OF
THE UNDERLYING SECURITIES**

55. On October 13, 1999, shortly after the expiration of the "quiet period" with respect to the Vitria initial public offering, Merrill Lynch issued a "Near Term Accumulate/Long Term Buy" recommendation for Vitria common stock.

56. On October 18, 1999, just after the expiration of the "quiet period" with respect to the E.piphany initial public offering, Merrill Lynch issued a "Near Term Accumulate/Long Term Buy" recommendation for E.piphany common stock.

**THE REGISTRATION STATEMENT/PROSPECTUS
WAS MATERIALLY FALSE AND MISLEADING**

57. The Registration Statement/Prospectus stated that "the initial public offering price for a round-lot of 100 Internet Infrastructure HOLDERS will equal the sum of the closing market price on the primary trading market on February 24, 2000 for each deposited share multiplied by the share amount specified in this prospectus, plus an underwriting fee." This statement was materially false and misleading in that it failed to disclose that the price at which the Internet Infrastructure HOLDERS were sold to the public was artificially inflated, and was the product of a manipulated market for some of the Underlying Securities. As set forth above, Merrill Lynch had required or induced customers to agree to Tie-in Agreements and/or pay Undisclosed Compensation in connection with the initial public offerings of certain of the Underlying Securities, thereby artificially inflating the price of those securities, and consequently the price of the Internet Infrastructure HOLDERS.

THE END OF THE CLASS PERIOD

58. On December 6, 2000, The Wall Street Journal published an article concerning an investigation of various improper initial public offering practices.

**DEFENDANTS' UNLAWFUL CONDUCT
ARTIFICIALLY INFLATED THE PRICE OF
INTERNET INFRASTRUCTURE HOLDERS**

59. Defendants' conduct alleged herein had the effect of inflating the price of Internet Infrastructure HOLDERS, above the price that would have otherwise prevailed in a fair and open market throughout the Class Period.

VIOLATIONS OF THE SECURITIES ACT

FIRST CLAIM

**(AGAINST ALL DEFENDANTS
FOR VIOLATION OF SECTION 11 RELATING TO THE
REGISTRATION STATEMENT)**

60. Plaintiffs repeat and reallege the allegations set forth above as if set forth fully herein, except to the extent that any such allegation may be deemed to sound in fraud.

61. This Claim is brought pursuant to Section 11 of the Securities Act, 15 U.S.C. § 77k, on behalf of Plaintiffs and other members of the Class who purchased or otherwise acquired Internet Infrastructure HOLDERS traceable to the IPO against Merrill Lynch and the Individual Defendants and were damaged thereby.

62. As set forth above, the Registration Statement, when it became effective, contained untrue statements of material fact and omitted to state material facts required to be stated therein or necessary to make the statements therein not misleading.

63. Merrill Lynch and ML & Co. are each liable as an underwriter in connection with the IPO.

64. Each of the Individual Defendants, either personally or through an attorney-in-fact, signed the Registration Statement.

65. The Defendants named in this Claim are liable to Plaintiffs and other members of the Class who purchased or otherwise acquired Internet Infrastructure HOLDERS traceable to the IPO.

66. By virtue of the foregoing Plaintiffs and other members of the Class purchased or otherwise acquired Internet Infrastructure HOLDERS traceable to the IPO and did not know of the untrue statements or omissions of material facts complained of herein.

67. This Claim was brought within one year after discovery of the untrue statements and omissions in the Registration Statement, or after such discovery should have been made by the exercise of reasonable diligence, and within three years after the Internet Infrastructure HOLDERS were first bona fide offered to the public.

SECOND CLAIM

(AGAINST THE INDIVIDUAL DEFENDANTS FOR VIOLATION OF SECTION 15 RELATING TO THE REGISTRATION STATEMENT)

68. Plaintiffs repeat and reallege the allegations set forth above in the First Claim as if set forth fully herein.

69. This Claim is brought against the Individual Defendants pursuant to Section 15 of the Securities Act, 15 U.S.C. § 77o, on behalf of Plaintiffs and other members of the Class who purchased or otherwise acquired Internet Infrastructure HOLDERS traceable to the IPO.

70. Merrill Lynch is liable under Section 11 of the Securities Act as set forth in the First Claim herein with respect to the IPO.

71. Each of the Individual Defendants was a control person of Merrill Lynch with respect to the IPO by virtue of that individual's position as a senior executive officer and/or director of Merrill Lynch.

72. The Individual Defendants, by virtue of their managerial and/or board positions with Merrill Lynch, controlled Merrill Lynch as well as the contents of the Registration Statement at the time of the IPO. Each of the Individual Defendants was provided with or had unlimited access to copies of the Registration Statement and, had the ability to either prevent its issuance or cause it to be corrected.

73. As a result, the Individual Defendants are liable under Section 15 of the Securities Act for Merrill Lynch's primary violation of Section 11 of the Securities Act.

74. By virtue of the foregoing, Plaintiffs and other members of the Class who purchased or otherwise acquired Internet Infrastructure HOLDERS traceable to the IPO are entitled to damages against the Individual Defendants.

VIOLATIONS OF THE EXCHANGE ACT

APPLICABILITY OF PRESUMPTION OF RELIANCE: FRAUD-ON-THE-MARKET DOCTRINE

75. Plaintiffs will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

(a) Defendants named under Claims brought pursuant to the Exchange Act made public misrepresentations or failed to disclose material facts during the Class Period regarding Internet Infrastructure HOLDERS as alleged herein;

(b) The omissions and misrepresentations were material;

(c) Following the IPO and continuing throughout the Class Period, Internet Infrastructure HOLDRS was traded on a developed national stock exchange, namely the American Stock Exchange, which is an open and efficient market, and the Underlying Securities each traded on the Nasdaq National Market, which is an open and efficient market;

(d) Merrill Lynch filed periodic reports with the SEC regarding Internet Infrastructure HOLDRS;

(e) The Underlying Securities were followed by numerous securities analysts;

(f) The market rapidly assimilated information about the Underlying Securities, which were publicly available and communicated by the foregoing means and that information was promptly reflected in the price of the Issuer's common stock; and

(g) The misrepresentations and omissions and the manipulative conduct alleged herein would tend to induce a reasonable investor to misjudge the value of the Underlying Securities and of the Internet Infrastructure HOLDRS.

THE DEFENDANTS ACTED WITH SCIENTER

76. As alleged herein, the Defendants acted with scienter in that they: (a) knowingly or recklessly engaged in acts and practices and a course of conduct which had the effect of artificially inflating the price of some of the Underlying Securities, and therefore inflated both the initial offering price and the aftermarket price of Internet Infrastructure HOLDRS; (b) knowingly or recklessly disregarded that the Registration Statement/Prospectus as set forth herein was materially false and misleading; and/or (c) knowingly or recklessly misused Merrill Lynch's analysts in connection with the Underlying Securities.

77. As evidenced by the public statements of CSFB published by The Wall Street Journal on or about June 29, 2001, the practices employed by Merrill Lynch and the other underwriters of the initial public offerings of the Underlying Securities, were widespread throughout the financial underwriting community. In this regard, CSFB, which recently settled regulatory claims of misconduct concerning its initial public offering allocation practices, stated during the pendency of the government's investigation, "[w]e continue to believe our [initial public offering] allocation policies are consistent with those employed by others in the industry."

78. Merrill Lynch knew from its direct participation in the manipulation of the Vitria, E.piphany and InterNAP initial public offerings and others, or recklessly disregarded as a result of its experience with other manipulated offerings as set forth in the "Matrix" section of the Master Allegations, that the manipulations alleged herein were taking place with respect to the Underlying Securities and were not disclosed in the Registration Statement or Prospectus, in the registration statements or prospectuses issued in connection with the initial public offerings of the Underlying Securities, or elsewhere during the Class Period.

79. As required by NASD Conduct Rule 3010(c), Merrill Lynch had in place compliance procedures so as to better inform itself whether it was acting in the unlawful manner alleged herein.

80. Senior management of Merrill Lynch, including each of the Individual Defendants, had regular access to, and, in fact, received, written reports that tracked the amount of compensation generated by their respective trading customers. ML & Co., the corporate parent for which Merrill Lynch was the principal subsidiary, similarly received or had access to written reports which tracked the compensation generated by Merrill Lynch's trading customers. By

comparing the amounts of compensation generated by customers who received allocations of the Underlying Securities in those initial public offerings with standard benchmarks employed, each of the Defendants was informed that, or had access to information indicating that, the amount of compensation received by Merrill Lynch from such customers was disproportionate to the dollar volume of transactions undertaken by that customer.

81. Each of the Defendants also had the motive and opportunity to engage in the wrongful conduct described herein because such conduct permitted Merrill Lynch to receive an underwriting fee of 2% of the value of the IPO, or \$9,475,620 million. In November, 2000, Merrill Lynch analyst Henry Blodget wrote in an internal e-mail that deals in which Merrill Lynch technology analysts had participated produced "about \$115 m of revenue (including \$25mm from the issuance of two HOLDRS baskets)."

THIRD CLAIM

(FOR VIOLATIONS OF SECTION 10(b) AND RULE 10b-5 THEREUNDER AGAINST ALL DEFENDANTS BASED UPON MATERIALLY FALSE AND MISLEADING STATEMENTS AND OMISSIONS OF MATERIAL FACTS)

82. Plaintiffs repeat and reallege the allegations set forth above as though fully set forth herein at length except for Claims brought pursuant to the Securities Act.

83. This Claim is brought pursuant to Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, on behalf of Plaintiffs and other members of the Class against all Defendants. This Claim is based upon materially false and misleading statements and omissions of material facts made by these Defendants during the Class Period.

84. The Defendants: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices and a course of business which operated as a fraud and deceit upon the Plaintiffs and other members of the Class in violation of Section 10(b) of the Exchange Act and Rule 10b-5.

85. During the Class Period, the Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (a) deceive the investing public, including Plaintiffs and other Class members, as alleged herein; (b) artificially inflate and maintain the market price of and demand for Internet Infrastructure HOLDERS; and (c) induce Plaintiffs and other members of the Class to purchase or otherwise acquire Internet Infrastructure HOLDERS at artificially inflated prices. In furtherance of this unlawful course of conduct, the Defendants took the actions set forth herein.

86. The Defendants, directly and indirectly, by the use of means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal material information as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the Plaintiffs and other members of the Class.

87. The Defendants prepared and reviewed the Registration Statement/Prospectus. In addition, the Defendants each had access to drafts of the Registration Statement/Prospectus prior to the filing of said document with the SEC and the dissemination to the public.

88. As a result of making affirmative statements in the Registration Statement/Prospectus, or otherwise, or participating in the making of such affirmative statements,

the Defendants Lynch had a duty to speak fully and truthfully regarding such representations and to promptly disseminate any other information necessary to make the statements made, in the light of the circumstances in which they were made, not misleading.

89. The Defendants also had a duty to disclose the material, non-public information complained of herein and in the Complaints incorporated herein by reference for certain of the Underlying Securities, or to abstain from selling Internet Infrastructure HOLDERS in the IPO or trading Internet Infrastructure HOLDERS in the aftermarket while in possession of such information.

90. By reason of the foregoing, the Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

91. As a result of the dissemination of materially false and misleading information described above, Plaintiffs and other members of the Class purchased or otherwise acquired Internet Infrastructure HOLDERS during the Class Period without knowledge of the fraud alleged herein at artificially inflated prices and were damaged thereby.

FOURTH CLAIM

(FOR VIOLATIONS OF SECTION 20(a) AGAINST THE INDIVIDUAL DEFENDANTS BASED UPON MATERIALLY FALSE AND MISLEADING STATEMENTS AND OMISSIONS OF MATERIAL FACTS)

92. Plaintiffs repeat and reallege the allegations set forth above as though fully set forth herein at length except for Claims brought pursuant to the Securities Act.

93. The Individual Defendants acted as controlling persons of Merrill Lynch within the meaning of Section 20(a) of the Exchange Act as alleged herein and culpably participated in the wrongdoing. By virtue of their high-level positions, and their ownership and contractual rights,

participation in and/or awareness of Merrill Lynch's operations and/or intimate knowledge of the underwriting of the IPO, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of Merrill Lynch, including the content and dissemination of the various documents that contain the materially false and misleading statements and/or omissions complained of herein. The Individual Defendants were provided with or had unlimited access to copies of these documents prior to or shortly after they were filed with the SEC and/or disseminated to the public and had the ability to prevent their filing and/or dissemination or cause the documents to be corrected.

94. Each of these Individual Defendants had direct and supervisory involvement in the day-to-day operations of Merrill Lynch and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations herein, and exercise the same.

95. By virtue of their positions as controlling persons of Merrill Lynch, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of this wrongful conduct, Plaintiffs and other members of the Class were damaged thereby.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of the Class, pray for judgment as follows:

A. Declaring this action to be a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and certifying Plaintiffs as representatives of the Class and counsel as class counsel;

B. Awarding damages to Plaintiffs and the Class;

C. Awarding Plaintiffs and the Class, prejudgment and post-judgment interest, as well as their reasonable attorneys' and experts' witness fees and other costs;

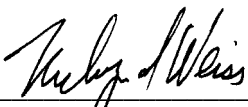
D. Awarding such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury.

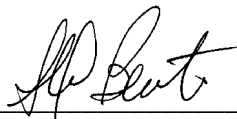
DATED: April 19, 2002

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