

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

	X	
	:	Index No.
STANLEY M. KLEIN, On Behalf of Himself and	:	
All Others Similarly Situated,	:	CLASS ACTION COMPLAINT
	:	FOR VIOLATIONS OF THE FEDERAL
Plaintiff,	:	SECURITIES LAWS
	:	
vs.	:	
	:	
	:	
MERRILL LYNCH, PIERCE, FENNER &	:	
SMITH INCORPORATED, MERRILL LYNCH	:	
& CO., AHMASS L. FAKAHANY, JOHN L.	:	
STEFFENS, E. STANLEY O'NEAL and	:	
GEORGE A. SCHIEREN,	:	
	:	
Defendants.	:	
	:	
	:	
	X	

Plaintiff, by his 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, among other things, a review of public announcements made by defendants, Securities and Exchange Commission ("SEC") filings made by defendants, and press releases, and media reports, except as to the paragraph applicable to the named plaintiff which is alleged upon personal knowledge, brings this Complaint (the "Complaint") against defendants named herein, and alleges as follows:

SUMMARY OF ACTION

1. This is a securities class action alleging that the Registration Statement filed with the SEC on February 10, 2000, and the Prospectus filed with the SEC on February 24, 2000, for the issuance and initial public offering of one million Depository Receipts called B2B Internet Holdrs depository receipts ("B2B Internet Holdrs") contained material misrepresentations and/or omissions. The Registration Statement and Prospectus are referred to herein collectively as the "Prospectus." The initial public offering is referred to herein as the "Offering" or "IPO." The Defendants are Merrill Lynch, Pierce, Fenner & Smith Incorporated, Merrill Lynch & Co. (collectively "Merrill Lynch" or the "Underwriter Defendants") and four of its senior executives who were responsible for the materially false and misleading statements made in the Prospectus.

2. The B2B Internet Holdrs are "basket securities." Each B2B Internet Holdrs represents an undivided beneficial ownership interest in 20 specified business to business, or B2B, internet companies (the "Underlying Securities"). The price of the B2B Internet Holdrs was directly related to, and moved with, the price of the Underlying Securities. The complaint alleges that the Prospectus was materially false and misleading because it failed to disclose that a substantial proportion of the stocks in the B2B Internet Holdrs' initial portfolio traded in a market that had been secretly manipulated through the use of improper practices relating to their initial public offering, and that therefore traded at artificially inflated prices.

JURISDICTION

3. 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).

4. Plaintiff brings this action pursuant to Sections 11 (15 U.S.C. § 77k), 12(a)(2) (15 U.S.C. § 77l) and 15 (15 U.S.C. § 77o) of the Securities Act of 1933. Venue is proper in this District under 28 U.S.C. § 1391(b) and 15 U.S.C. § 77v(a), because defendants are located and conduct business in this District, many of the acts and transactions giving rise to the violations of law complained of occurred herein, and preparation and dissemination to the investing public of this false information occurred in substantial part in this District.

5. In connection with the acts alleged in this 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

6. Plaintiff Stanley M. Klein was at all relevant times a resident of the state of New York. Klein purchased 400 B2B Internet Holdrs issued in connection with and traceable to the Offering on February 23, 2000.

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

8. Merrill Lynch, Pierce, Fenner & Smith, Incorporated is the principal subsidiary of Merrill & Co., a licensed broker/dealer in the United States, does business worldwide, and is controlled by Merrill & Co. through stock ownership, contracts, related officers and directors, and dictated or influenced the activities of Merrill & Co., its direct and indirect subsidiaries, affiliates and employees.

9. Defendant Ahmass L. Fakahany was, at all relevant times herein, Chief Financial Officer and Controller of Merrill Lynch. Fakahany signed the Prospectus.

10. John L. Steffens was, at all relevant times herein, Chief Executive Officer and Chairman of the Board of Merrill Lynch. Steffens signed the Prospectus.

11. E. Stanley O'Neal was a director of Merrill Lynch. O'Neal signed the Prospectus.

12. George A. Schieren was a director of Merrill Lynch. Schieren signed the Prospectus.

13. Fakahany, Steffens, O'Neal, and Schieren are referred to herein as the Individual Defendants.

CLASS ACTION ALLEGATIONS

14. Plaintiff brings 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 acquired the B2B Holdrs Depository Receipts of pursuant or traceable to the false and misleading Prospectus between February 23, 2000 and April 9, 2001 (the "Class").

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

a. There were one million B2B Internet Holdrs issued pursuant to the Prospectus;
and

b. While the exact number of Class members is unknown to the plaintiff at this time and can only be ascertained through appropriate discovery, plaintiff believes that there are thousands of Class members who acquired B2B Internet Holdrs pursuant to the Prospectus.

16. Plaintiff's claims are typical of the claims of the other members of the Class. Plaintiff and the other members of the Class have sustained damages because of defendants' unlawful activities alleged herein. Plaintiff has 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 plaintiff. Plaintiff has no interests which are contrary to or in conflict with those of the Class which plaintiff seeks to represent.

17. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action.

18. 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 of common to the Class are:

- a. whether the federal securities laws were violated by defendants' acts as alleged herein;
- b. whether the Prospectus omitted and/or misrepresented material facts about the Offering; and
- c. whether the members of the Class have sustained damages as a result of defendants' conduct, and the proper measure of such damages.

CONTROL PERSON LIABILITY

19. The Individual Defendants, by reason of their executive positions with Merrill Lynch and, in the case of Steffens, O'Neal and Schieren, their board membership, were controlling persons of

the Company and had the power and influence, and exercised the same, to cause Merrill Lynch to engage in the conduct complained of herein. Thus, the Individual Defendants controlled the public dissemination of the false and misleading information in the Prospectus and were controlling persons of the Company as set forth in Section 15 of the Securities Act.

SUBSTANTIVE ALLEGATIONS

20. On February 23, 2000, the B2B Internet Holdrs Trust made an initial public offering of one million B2B Internet Holdrs, in round lots of 100, pursuant to the Prospectus. The B2B Internet Holdrs are "basket securities," representing an undivided interest in the U.S.-traded common stock of a group of 20 specified Business to Business, or B2B, internet companies whose products and services are developed for and marketed to companies who conduct business over the internet. The B2B Internet Holdrs Trust, was formed under the depositary trust agreement, dated as of February 18, 2000, among the Bank of New York, Merrill Lynch, other depositors and the owners of the B2B Holdrs. Merrill Lynch was the original trust depositor and received an underwriting fee of 2% in connection with the Offering.

The cover of the Prospectus stated as follows:

The initial public offering price for a round-lot 100 B2B Internet HOLDERS will be equal to the sum of the closing market price on the primary trading market on February 23, 2000 for

each deposited share multiplied by the share amount specified in this prospectus plus an underwriting fee.

[. . .]

	Initial Price to Public*	Underwriting Fee
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Per B2B Holder	\$95.09	2%

*Includes underwriting fee

Merrill Lynch & Co.

The date of this prospectus is February 23, 2000
"HOLDRS" and "HOLDing Company Depository ReceiptS" are service marks of Merrill
Lynch & Co., Inc.

21. The Prospectus further stated that "the value of the B2B Internet HOLDRs directly relates to the value of the underlying securities." Specifically, with regard to the relationship between the B2B Internet HOLDRs and the underlying shares, the Prospectus stated:

The specific share amounts for each round-lot of 100 B2B Internet HOLDRS are set forth in the chart below and were determined on February 23, 2000, the pricing date, so that the initial weightings of each underlying security included in the B2B Internet HOLDRS approximates the relative market capitalizations of the specified companies (based on the closing market prices of the underlying securities on the trading day immediately preceding the pricing date), subject to a maximum initial weight of 20%.

22. There followed a chart stating that Internet Capital Group, Inc. ("Internet Capital Group") had an initial weighting of 19.22% and that Ariba, Inc. ("Ariba") had an initial weighting of

18.75%, and showing that Internet Capital Group and Ariba had the two largest weightings of the 20 underlying securities. Merrill Lynch had served as lead underwriter for the Internet Capital Group and Ariba public offerings, and as the lead underwriter, or a member of the underwriting group making the initial public offering, of eight other of the companies whose share were included in the Internet HOLDERS Trust. These companies and their respective weights in the Internet Holdrs Trust were as follows: CareInsite, Inc. (4.77%); Scient Corporation (4.52%); Checkfree Holdings Corporation (3.96%); Agile Software Corporation (3.34%); Sterling Commerce, Inc. (2.99%); Sciquest.com, Inc. (2.34%); Harbinger Corporation (0.94%); and Pegasus Systems, Inc. (0.49%) Together, these stocks, underwritten by Merrill Lynch, comprised approximately 57% of weight of the B2B Internet HOLDERS Trust initial portfolio.

23. Unbeknownst to investors, Merrill Lynch and other underwriters of some of the underlying securities in the B2B Internet HOLDERS Trust Portfolio entered into illegal tie-in arrangements in connection with the initial public offerings of the underlying securities and these tie-in arrangements had the effect of maintaining the price of the underlying securities at artificially inflated levels. Specifically, the underwriters entered into agreements with customers whereby the Underwriter Defendants agreed to allocate shares of the underlying securities to those customers in exchange for which the customers agreed to purchase additional shares of the underlying securities in the aftermarket at pre-determined prices. Such tie-in arrangements were designed to and did maintain, distort and/or inflate the market price for shares of the underlying securities in the aftermarket.

24. Consequently, unbeknownst to investors, the prices of the underlying securities were artificially inflated at the time the Internet Holdrs Depositary Shares were initially offered on February

23, 2000, and materially affected the B2B Internet Holdrs' Offering price and the price of the B2B Internet Holdrs in the aftermarket. As the effect of the illegal tie-in agreements abated, the price of B2B Internet Holdrs fell from a March 14, 2000 high of \$108 per B2B Internet Holdr down to \$4.26 per B2B Internet Holdrs on April 3, 2001. As of the date of the filing of this complaint, April 10, 2001, the shares were trading at \$5.23.

COUNT I
(Against All Defendants
For Violation of Section 11 of the Securities Act of 1933)

25. Plaintiff repeats and realleges 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.

26. Merrill Lynch created the Trust and filed the Trust's Registration Statement with the SEC, signed the Prospectus, and were responsible for its preparation, and therefore are strictly liable to plaintiff and the class. Fakahany, Steffens, O'Neal and Schieren are named in this Count as officers and/or directors of Merrill Lynch on the date the Prospectus became effective and as persons who signed the Prospectus.

27. Defendants were the issuer of and/or underwriter (or controlled the issuer and/or underwriter) of the Trust's securities that were sold to plaintiff and the class.

28. As set forth above, there were untrue statements of material fact, or omissions of material fact, from the Prospectus.

29. This action is brought within one year after discovery of the untrue statements and omissions in and from the Prospectus should have been made through the exercise of reasonable diligence, and within three years of the effective date of the Prospectus.

30. By virtue of the foregoing, plaintiff and the other members of the class are entitled to damages under Section 11 as measured by the provisions of Section 11(e), from the defendants and each of them, jointly and severally.

COUNT II
(Against The Underwriter Defendants
For Violation of Section 12(a)(2) of the Securities Act of 1933)

31. Plaintiff repeats and realleges the allegations set forth above as if set forth fully herein, except to the extent that such allegation may be deemed to sound in fraud.

32. This Count is brought pursuant to Section 12(a)(2) of the Securities Act, 15 U.S.C. § 771(a)(2), on behalf of the Class against the Underwriter Defendants.

33. The statements referred to herein above were each made in a "prospectus" as that term is defined in Section 2(a)(10) of the Securities Act, 15 U.S.C. § 77b(a)(10), contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and concealed and failed to disclose material facts. The Underwriter Defendants acted to B2B Internet Holdrs by way of the Prospectus. The actions included participating in the preparation of the Prospectus and other materials used in the sale of B2B Internet Holdrs shares.

34. Plaintiff and the other members of the Class purchased or acquired the Company's common stock pursuant to a Prospectus. Plaintiff and the other members of the class, did not know, or in the exercise of reasonable diligence could not have known, of the untruths and omissions contained in or made in connection with the Prospectus.

35. By reason of the conduct alleged herein, The Underwriter Defendants violated Section 12(a)(2) of the Securities Act. Accordingly, purchasers who acquired the B2B Internet Holdrs in the

Offering and pursuant to the Prospectus have the right to rescind and recover the consideration paid for the Company's shares and may rescind and tender their shares of the Company to the defendant sued herein. Class members who have sold their B2B Internet Holdrs are entitled to rescissory damages.

36. Less than three years has elapsed from the time that the securities upon which this Count is brought were sold to the public to the time of the filing of this action. Less than one year has elapsed from the time when plaintiff discovered or reasonably could have discovered the facts upon which this Count is based to the time of the filing of this action.

COUNT III
(Against The Individual Defendants)
For Violation of Section 15 of the Securities Act

37. Plaintiff repeats and realleges the allegations set forth above as if set forth fully herein, except to the extent that such allegation may be deemed to sound in fraud.

38. Defendants Fakahany, Steffens, O'Neal, and Schieren, are alleged to be Control Persons with respect to the Offering of B2B Internet Holdrs through stock ownership, agency or otherwise.

39. Because of their positions of control with respect to the Offering and their knowledge of Merrill Lynch's business, they are controlled persons within the meaning of Section 15 of the Securities Act.

40. By virtue of the foregoing, plaintiff and the other members of the Class are entitled to damages against Fakahany, Steffens, O'Neal and Schieren.

WHEREFORE, plaintiff, on behalf of himself and on behalf of the Class, prays 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 plaintiff as class representative of the Class and its counsel as class counsel;
- B. Against defendants, jointly and severally for damages suffered, as a result of defendants' violation of the securities laws;
- C. Awarding plaintiff and other members of the Class, prejudgment and post-judgment interest, as well as their reasonable attorneys' and experts' witness fees and other costs;
- D. Awarding rescission or recessionary damages to members of the class who no longer hold their B2B Internet Holdrs; and
- E. Awarding such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: April __, 2001

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