

JUDGE CEDARBAUM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Doc #1
02 CV 3835

VICTOR PARKER, as TRUSTEE OF JOSEPH P. PAJEWSKI LIVING TRUST DATED 11/26/97, on behalf of himself and all others similarly situated,

Plaintiff,

-against-

MERRILL LYNCH & CO., INC. and HENRY BLODGET,

Defendants.

Civil Action No.

FEDERAL SECURITIES
CLASS ACTION COMPLAINT

Jury Trial Demanded

U.S. DISTRICT COURT
S.D. OF N.Y.
2001 JAN 20 PM 2:44

Plaintiff, individually and on behalf of all other persons similarly situated, by undersigned attorneys, for his complaint, alleges upon personal knowledge as to himself and his own acts and upon information and belief as to all other matters, based upon the investigation made by and through his attorneys, which investigation included, among other things, a review of analyst reports published and disseminated to the investing public by defendant Merrill Lynch & Co., Inc. ("Merrill Lynch") on GoTo.com, Inc. ("GoTo" or the "Company" and known as Overture Services, Inc. since October 18, 2001), internal communications of Merrill Lynch employees and recent court filings and public statements by the New York State Attorney General attacking the independence and accuracy of Merrill Lynch's research reports, as well as additional publicly available information:

NATURE OF ACTION

1. This is a securities class action on behalf of public investors who purchased the common stock of GoTo during the period from January 11, 2001 through June 6, 2001 (the "Class

Period"). Named as defendants are Merrill Lynch and its former Internet research analyst Henry Blodget ("Blodget"). The defendants are charged with violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated thereunder. Merrill Lynch is also charged with violations of Section 20(a) of the Exchange Act.

2. During the Class Period, defendants issued to the investing public false and misleading research reports, ratings and statements about GoTo, a company that operates an online marketplace that introduces consumers and businesses that search the Internet to advertisers who provide products, services and information.

3. As a result of defendants' false and misleading statements, the market price of GoTo common stock was artificially inflated, maintained or stabilized during the Class Period to the injury of plaintiff and the other Class members who purchased the stock at the time relying on the integrity of the market price of the stock.

4. On April 8, 2001, New York State Attorney General Eliot Spitzer issued a press release announcing that he had obtained a court order requiring Merrill Lynch to make more disclosures to investors about its relationship with investment banking clients and provide additional context for its stock ratings. The court action was the result of a ten-month investigation by the Attorney General that concluded that "the firm's supposedly independent and objective investment advice was tainted and biased by the desire to aid Merrill Lynch's investment banking business."

The press release continues:

Spitzer cites dramatic evidence that the firm's stock ratings were biased and distorted in an attempt to secure and maintain lucrative contracts for investment banking services. As a result, *the firm often disseminated misleading information that helped its corporate clients but harmed individual investors.*

"This was a shocking betrayal of trust by one of Wall Street's most trusted names," Spitzer said. "The case must be a catalyst for reform throughout the entire industry."

Spitzer's office uncovered *a major breakdown in the supposed separation between the banking and research divisions* at Merrill Lynch. In fact, *analysts at Merrill Lynch helped recruit new investment banking clients and were paid to do so.* The public, however, was led to believe that research analysts were independent, and that the firm's rating system would assist them in making critical investment decisions.

As part of a quid pro quo between the firm and its investment banking clients, *Merrill Lynch analysts skewed stock ratings, giving favorable coverage to preferred clients, even when those stocks were dubious investments.*

This problem and other conflicts of interest are revealed by internal e-mail communications obtained during the investigation by the Attorney General's office.

These communications show *analysts privately disparaging companies while publicly recommending their stocks.* For example, one analyst made highly disparaging remarks about the management of an internet company and called the company's stock "a piece of junk," yet gave the company, which was a major investment banking client, the firm's highest stock rating.

The communications show analysts complaining about pressure from Merrill Lynch's investment banking division. For example, a senior analyst writes: *"the whole idea that we are independent of (the) banking (division) is a big lie."*

A senior manager stated: *"We are off bases in how we rate stocks and how much we bend over backwards to accommodate banking."* But nothing was done to remedy this fundamental problem.

The communications show that *the problems at Merrill Lynch went far beyond a single analyst or research unit.* For example, the head of the equity division wrote to analysts: "We are once again surveying your contribution to investment banking ... please provide complete details on your involvement .. paying particular attention to the degree your research played a role in originating<banking business.>"

times in the *Wall Street Journal*, 66 times in *The New York Times*, 53 times in *The Washington Post* and 27 times in *Business Week*. Blodget also appeared numerous times on financial news television programs. According to the April 3, 2000 edition of *Business Week*, Blodget appeared or was mentioned 211 times from January 1, 1999 to March 21, 2000 on ABC News, NBC News, CNBC, CNN, CNNfn, and Nightly Business Report.

7. Blodget's ability to significantly affect the prices of Internet stocks, including GoTo, was widely recognized in the financial press. For example, as the March 18, 2000 issue of the *National Post* reported, "**When Henry Blodget speaks, people listen....**" (Boldface added) The August 19, 1999 issue of *The New York Times* noted that "a recommendation of eight Internet stocks by Merrill Lynch's influential analyst, Henry Blodget, helped keep the Nasdaq average in positive territory...." That same day the *Wall Street Journal* commented that "electronic-commerce stocks got a sudden boost yesterday after Merrill Lynch analyst Henry Blodget told clients in a conference call that he believed sentiment is turning back toward these issues...."

JURISDICTION AND VENUE

8. The claims asserted below arise under §§10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§78j(b) and 78t(a), and Rule 10b-5 promulgated thereunder by the Securities and Exchange Commission ("SEC"), 17 C.F.R. §240.10b-5.

9. Jurisdiction is conferred upon this Court by §27 of the Exchange Act, 15 U.S.C. §78aa and, 28 U.S.C. §§1331 and 1337.

10. Venue is proper in this District pursuant to §27 of the Exchange Act and 28 U.S.C. §1391(b) since Merrill Lynch has its principal place of business in this District, and many of the acts

alleged herein, including the dissemination of the misleading statements to the investing public, occurred in substantial part in this District.

11. In connection with the acts, conduct and other wrongs alleged herein, defendants, directly and indirectly, used the means and instrumentalities of interstate commerce, including the United States mails, interstate telephonic communications and the facilities of the national securities exchanges.

THE PARTIES

Plaintiff

12. Plaintiff Victor Parker, as Trustee of Joseph P. Pajewski Living Trust Dated 11/26/97, purchased shares of GoTo common stock during the Class Period as set forth in the accompanying certification and has been damaged as a result of defendants' misconduct as described herein.

Defendants

13. Defendant Merrill Lynch is the largest securities broker in the United States. It describes itself as one of the world's leading financial management and advisory companies with offices in 38 countries and approximately \$1.5 trillion in client assets. Merrill Lynch also touts itself to be a top global underwriter and market maker of securities and a leading strategic advisor to corporations, institutions and individuals worldwide. Merrill Lynch's corporate headquarters are located in New York City.

14. Defendant Blodget was, until his departure from Merrill Lynch in or about November 2001, a managing director and head of the Internet research group in New York City. As described herein, defendant Blodget was regarded throughout the Class Period as the most influential

Internet analyst in the world. His ability to move stock prices was widely recognized and reported in the media.

CLASS ACTION ALLEGATIONS

15. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of all persons who purchased shares of GoTo common stock during the period from January 11, 2001 through June 6, 2001, both dates inclusive (the "Class"). Excluded from the Class are defendants; members of the individual defendant's immediate family; officers, directors, subsidiaries or affiliates of Merrill Lynch; any entity in which any excluded person has a controlling interest; and legal representatives, heirs, successors or assigns of any of the foregoing.

16. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to plaintiff at this time and can only be ascertained through appropriate discovery, plaintiff believes there are, at a minimum, thousands of members of the Class who purchased GoTo common stock during the Class Period.

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

- whether defendants engaged in acts or conduct in violation of the federal securities laws as alleged herein;
- whether defendants participated in and pursued the common course of conduct complained of herein;
- whether defendants issued false and misleading statements during the Class Period;

- whether the market prices of GoTo common stock during the Class Period was artificially inflated because of the defendants' conduct complained of herein; and
- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

18. Plaintiff's claims are typical of the claims of the members of the Class, as plaintiff and members of the Class sustained damages arising out of defendants' wrongful conduct in violation of federal law as complained of herein.

19. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

20. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all members of the Class is impracticable. Furthermore, because the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for the Class members individually to redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

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

- defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- the omissions and misrepresentations were material;
- the common stock of GoTo traded on the Nasdaq, an efficient market;
- the market reacted to public information disseminated by defendants;

- the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and
- plaintiff and the members of the Class purchased their GoTo stock between the time the defendants failed to disclose or misrepresented material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts.

22. Based upon the foregoing, plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

SUBSTANTIVE ALLEGATIONS

Summary of Egregious Practices

23. Since 1999, Merrill Lynch Internet research analysts have published on a regular basis ratings and issued reports for Internet stocks that were materially misleading. Rather than being independent and accurate assessments, such ratings and reports were biased and improperly influenced by Merrill Lynch's investment banking relationships with the covered companies and by the fact that research analysts' compensation was tied, in part, to investment banking work. Indeed, the research analysts frequently acted as quasi-investment bankers, including pitching the client, marketing the offering and initiating and doing "follow-on" research coverage. Merrill Lynch's Internet research analysts, including the individual defendant herein, were privately disparaging companies on which they were publicly maintaining favorable reports and ratings.

24. That Merrill Lynch's research and ratings were dictated by its investment banking business is illustrated by a Blodget March 21, 1999 memorandum titled "Managing the Banking Calendar for Internet Research," which was distributed to Co-Heads of U.S. Equity Research and other senior Merrill Lynch bankers. Blodget communicated his expectation that a minimum of 50%

of his and his staff's time be committed to investment banking matters and described his work schedule for one week as being divided "85% banking, 15% research."

25. A November 16, 2000 e-mail from analyst Kirsten Campbell to Blodget bluntly stated: "the whole idea that we are independent from banking is a big lie...." In fact, Merrill Lynch research management internally acknowledged that "we are off base on how we rate stocks and how much we bend backwards to accommodate banking, etc." Another Merrill Lynch Internet analyst candidly admitted in a March 21, 2001 e-mail to another colleague that "[w]e'd win brownie points" if Merrill Lynch investment bankers could "deliver[]" coverage to an issuer. Similarly, in an October 4, 2000 email to Blodget, a Merrill Lynch analyst conceded: "part of the reason we didn't highlight [a risk] is [because] we wanted to protect icg's banking business."

26. In an effort to appease clients and Merrill Lynch investment bankers, the Internet research group ignored the bottom two categories ("reduce" and "sell") of Merrill Lynch's five-point rating system and used only the highest three ratings ("buy," "accumulate" and "neutral"), thereby converting a published, purportedly objective five-point rating scale into a biased, undisclosed three-point system. From the spring of 1999 to the fall of 2001, Merrill Lynch never published a single reduce or sell rating on any stock covered by the Internet group.

27. Merrill Lynch was successful in getting Blodget and its Internet analysts to issue biased and favorable ratings and reports, which were contrary to their objective assessments, by linking their compensation, at least in part, to the firm's investment banking business. For example, an October 13, 2000 memorandum from Deepak Raj, then co-head of global equity research at Merrill Lynch, distributed the following requests to all equity analysts:

We are once again surveying your contributions to investment banking during the year... Please provide complete details on your involvement in the transaction, paying particular attention the degree that your research coverage played a role in origination, execution and follow-up. Please note, as well, your involvement in advisory work or merger acquisitions, **especially where your coverage played a role in securing the assignment and your follow-up marketing to clients. Please indicate where your research was pivotal in securing participation in high yield offering.**

(Boldface added)

28. In a November 2, 2000 memorandum titled "IBK Contributions: Internet Team," Blodget and the Internet research group responded, stating that the group participated in over fifty successful or potential investment banking transactions resulting in \$115 million for Merrill Lynch and detailed the investment banking services rendered by the analysts, including initiation and follow-on research coverage. Shortly thereafter, Blodget received a hefty increase in his compensation. His annual compensation went from \$3 million for 1999 to \$12 million for 2001.

29. These egregious practices and policies are detailed in internal Merrill Lynch documents released by the Office of the Attorney General of the State of New York on April 8, 2002. Indeed, the Attorney General, based on the results of a ten-month investigation, obtained an Order from the Supreme Court of the State of New York requiring Merrill Lynch to make additional disclosures about its investment banking relationships with companies covered in its research reports. On May 8, 2002, the *Wall Street Journal* reported that Merrill Lynch and Eliot Spitzer had arrived at a "framework" for a possible deal. That same day *Bloomberg* reported that Spitzer said he may not seek restitution from Merrill Lynch: "It's my view that restitution would be most successfully accomplished through either arbitration or class action lawsuits filed by private attorneys."

30. On April 23, 2002, the board of directors for the North American Securities Administrators Association, which represents the securities regulators of all 50 U.S. states, the District of Columbia and Puerto Rico, issued a press release stating that they had:

[V]oted to form a multi-state task force that will focus on the issues raised by New York Attorney General Eliot Spitzer in investigating underwriting and analysts' research issues and possible securities law violations by Wall Street firms. The task force will be co-chaired by California, New Jersey and New York. The investigation will center on practices that adversely affected thousands of Main Street investors nationwide.

31. That same day the U.S. Justice Department announced that it plans to examine allegations that securities analysts have misled the public. "It's something we need to take a closer look at," Bryan Sierra, a spokesman for the Justice Department's criminal division, said. "Financial reporting, including the work of financial analysts, is on the radar screen."

32. On April 25, 2002, the SEC announced that it has commenced a formal inquiry into the conflicts of interest stemming from the relationship between analyst research and investment banking. The SEC will conduct the inquiry jointly with the New York Stock Exchange, the National Association of Securities Dealers, New York Attorney General Eliot Spitzer, the North American Securities Administrators Association and the states.

Defendants' Motive to Issue Misleading Reports on GoTo

33. Before 1999, Merrill Lynch had been unsuccessful in securing a large share of the highly profitable business of underwriting initial public offerings of hot technology companies. But this changed in 1999 with its hiring of Blodget. As reported in the December 27, 1999 issue of *The New York Times*, "According to Thomson Financial/Securities Data, Merrill ranked fourth in taking new technology companies public in 1999, as measured by the amount of money raised. That is a

far cry from 1997, when it did not even rank among the top 20.” *The New York Times* further observed that “Merrill may now be trying to cultivate a rising star. In February, it hired a 33 year-old CIBC Oppenheimer analyst, Henry Blodget...” Merrill Lynch’s success was in large part due to Blodget’s and other analysts use of research reports as marketing tools, with coverage and rating dictated by Merrill Lynch’s investment banking business.

34. This is tellingly revealed in an April 26, 2000 e-mail by a Merrill Lynch investment banker to an analyst about attracting business away from a competitor: “we should aggressively link coverage with banking –that is what we did with Go2Net (Henry [Blodget] was involved)...[I]f you are very bullish (b/c they will love you), they are not happy with GS [Goldman Sachs] and are going to be active, we can probably get by on a ‘handshake.’”

35. In an attempt to secure lucrative banking business from the GoTo, defendants issued materially misleading reports on the Company throughout the Class Period. Blodget was also motivated to issue such reports because his compensation was linked, in substantial part, to his contributions to Merrill Lynch’s investment banking business.

36. Before the Class Period, Merrill Lynch had sought but failed to obtain investment banking business from GoTo in connection with the Company’s June 1999 initial public offering of 7.5 million shares at \$16.50 per share.

37. By July 2000, Merrill Lynch again sought investment banking business from GoTo in connection with a private placement offering for a European subsidiary of GoTo. Merrill Lynch heavily promoted its research analysts as part of its pitch and committed to GoTo that Blodget would initiate research coverage of the Company.

38. In early September 2000, Merrill Lynch received the assignment from GoTo for the private placement, with the fee mostly contingent on closing the placement. Shortly thereafter, Merrill Lynch internet research analyst Kristen Campbell ("Campbell"), who reported to Blodget, began drafting a research report for initiation of coverage.

Defendants' False and/or Misleading Statements and Omissions

39. On January 11, 2001, defendants issued a research report initiating coverage on GoTo with a Neutral/Buy (3-1) rating and projected profitability in 2002. The report also highlighted GoTo's "pay-for-performance model, which should help it gain share in the current environment," while GoTo's "closest competitor" Looksmart "remains exposed to 'pay for impression' advertising."

40. As noted, defendants' initiation of coverage on GoTo was dictated by Merrill Lynch's interests in obtaining investment banking business from this Company and was entirely biased.

41. At the urging of defendants, Merrill Lynch analyst Campbell sent drafts of the initiating report to GoTo for its approval in September and November 2000 and received comments from GoTo's management.

42. In December 2000, Campbell e-mailed a new financial model to GoTo's management, stating: "I thought you should know we are cutting revenue a lot, and it drastically changes your profitability horizon—pushes it out to 1Q 2003."

43. Russell Benaroya, GoTo's head of corporate development, angrily reacted: "Breakeven in 2003? Based on these numbers, why would [Merrill Lynch] even want to initiate on

us. Todd [Tappin, GoTo CFO] should call back and pose the questions. This is ridiculous and totally frustrating. Merrill will never take my company public."

44. According to the affidavit filed by the New York State Attorney General, "Go To called Campbell and got its way; the final published initiation research report had profitability occurring sometime in 2002 rather than in the first quarter of 2003."

45. Furthermore, defendants issued the 3-1 (short term Neutral and long term Buy) rating to please GoTo and Merrill Lynch's investment bankers, despite internal acknowledgment that only a 3-2 (Neutral/Accumulate) rating was warranted at best.

46. In a November 16, 2000 e-mail to Blodget, Campbell described the pressure she felt to appease GoTo by issuing a 2-2 (Accumulate/Accumulate) rating and acknowledged the tremendous financial loss to investors that would be caused by her false and misleading reports:

who are we trying to please by doing a 2-2? I don't want to be a whore for f--ing [management]. if 2-2 means that we are putting half of merrill retail into this stock because they are out accumulating it then I don't think that's the right thing to do. we are losing people money and I don't like it. john and mary smith are losing their retirement because we don't want todd [Tappin, GoTo CFO] to be mad at us.

47. In the November 16, 2000 e-mail described above, Campbell also noted Merrill Lynch's failure to separate research from investment banking and the consequent improper influence of banking over research:

...the whole idea that we are independent from banking is a big lie - without banking this would be a 3-2....

48. According to the affidavit filed by the New York State Attorney General:

In his sworn testimony, Blodget conceded that the Merrill Lynch investment bankers had veto power over his initiating coverage of GoTo with a 3 rating. Although apparently agreeing to the neutral intermediate rating,

investment banking prevailed in that the rating would be a 3-1 (neutral-buy) and not the 3-2 (neutral-accumulate) that Campbell said would be appropriate but for investment banking's pressure.

49. Defendants made the 3-1 rating palatable to GoTo only by downgrading the rating of its competitor Looksmart, Ltd ("LOOK") to a 3-1 from a 2-1(Accumulate/Buy). According to a November 21, 2000 e-mail by Campbell to Blodget:

goto has gotten back to me and says they are "comfortable" with the discussions we've had with them, and with coming out at a 3-1 etc. given that we would be downgrading LOOK at the time so the ratings are the same etc. talked to justin [Baldauf, the Merrill Lynch analyst covering LOOK] and he doesn't know if it is a good idea to downgrade LOOK - no reason to do now versus before....

50. On December 14, 2000, Blodget informed Baldauf by e-mail of his intention to initiate coverage on GoTo with a 3-1 rating and simultaneously downgrade LOOK to 3-1. He reconfirmed this in a December 19, 2000 e-mail to Baldauf and Campbell:

Here's the GOTO note.

Justin [Baldauf], We're planning to roll on this thing on Thursday at 3-1. I'd like to take the LOOK rating to 3-1 at the same time, just so we can keep them together. Probably easiest if we just cut the numbers a bit again to be conservative. Let me know your thoughts.

51. Before defendants' initiated coverage, GoTo stock dropped below \$10, and thereafter, on January 4, 2001, Campbell e-mailed two Merrill Lynch investment bankers, Thomas Mazzucco and Andrew Siegel, stating that research management wanted to initiate coverage with a 3-2. Campbell was also candid about her own opinion: "personally I din't [sic] think it deserves a 3-1."

52. Siegel made investment banking's views very clear in his immediate e-mail response to Blodget and Campbell:

Please listen to my [voice mail] from this morning. Briefly, in talking to Ray Abbott yesterday, I thought the strategy was to go out with the 3-1 as soon as the stock hit \$10; if it doesn't, I don't think anybody has an interest in seeing initiation at a 3-2.

53. When GoTo stock did not reach \$10 on January 5, 2001, Mazzucco asked another Merrill Lynch analyst if she would arrange for GoTo to promote itself at an upcoming conference for institutional investors, stating: "We have developed an active banking agenda with [GoTo] and needless to say, they are frustrated with the research tie up. If it's convenient, it would be helpful to us."

54. The stock traded intra-day at \$10 on January 10, 2001, and the very next day defendants initiated coverage at 3-1, the very rating that GoTo and Merrill Lynch's investment bankers had demanded. Also, on January 11, 2001, defendants delivered on another promise to GoTo with Blodget and Baldauf downgrading LOOK to 3-1 from 2-1.

55. While initiating coverage with an attractive rating, defendants privately were expressing their true assessments about GoTo. For example, the very day of the initiation, Blodget admitted in an e-mail that there was "nothing" interesting about GoTo except banking fees.

56. Defendants continued to issue misleading research reports and ratings on GoTo through out the Class Period.

57. On January 30, 2001, Blodget issued a report entitled, "Internet Not a Hallucination - Review of our current thinking on the Internet sector and a few of the survivors...." which reiterated GoTo's Neutral/Buy (3-1) rating and stated:

Main message: Internet not a hallucination. Believe online advertising works, e-commerce works - just going through ugly transition period. Believe a few stocks will rise from the wreckage and be good investments for next 3 - 5 years. Believe we have already passed the bottom.

* * *

Believe advertising and e-commerce fundamentals will remain weak for at least two quarters but that at leading companies this is already in the models and the stocks. Believe that the news flow for the balance of the year will be incrementally positive. We would therefore look to build positions now.

58. On February 14, 2001, Blodget and Campbell issued a report reviewing GoTo's 4Q 2001 results and repeating the Neutral/Buy (3-1) rating. The report stated:

GoTo reported a great 4Q, with strong revenue (+59% seq), traffic (+102% seq), and paid introductions (+100% seq). Mgt. provided much more expense detail, which gives us more confidence that the long-term model is intact.

The pay-per-performance model is clearly enabling the company to gain share in a tough environment. Revenue per click was down 20%, but we believe this was the result of strong traffic, not a deteriorating business model.

* * *

2001E revenue goes to \$220mm from \$181mm, and 2002E to \$333mm from \$280mm. 2001E EPS loss goes to d\$0.75 from d\$0.79. Maintain 2002 EPS est. of \$0.17 (tax effected).

* * *

Grade for Quarter: A-

59. On February 15 and 28, 2001, defendant Blodget issued Online Advertising bulletins that highlighted GoTo's pay-for-performance model and reconfirmed the Neutral/Buy (3-1) rating.

60. On March 9, 2001, defendant Blodget issued a bulletin noting GoTo CEO Ted Meisel's presentation at the Merrill Lynch Internet Conference the previous day and holding

steadfast to the Neutral/Buy (3-1) rating. The bulletin also noted that "GoTo's pay-for-performance model seems to be gaining share...."

61. On March 22, 2001, Blodget and Campbell issued a report regarding GoTo's 1Q 2001 guidance and maintained the Neutral/Buy (3-1) rating. The report stated:

GoTo announced today that it would exceed 1Q estimates of \$45mm in revenues and \$16mm of adjusted net loss. However, the company did not indicate to what degree. At this time we are not raising estimates, though we view this positive affirmation of what the company said at our Internet conference two weeks ago.

* * *

...We continue to rate GoTo a Neutral, given the lack of visibility into 2002 (we believe EPS could ultimately be as low as \$0.05 or as high as \$0.40). However, we are warming up to the stock as GoTo is one of the few companies continuing to report positive fundamental trends as it benefits from the secular move to pay-for-performance online advertising.

62. On April 4 and 16, 2001, defendant Blodget issued a Q1 Earnings and Preview Outlook on Internet stocks. The reports highlighted GoTo's pay-for-performance model and left unchanged the Neutral/Buy (3-1) rating.

63. On April 25, 2001, defendant Blodget issued a report reviewing GoTo's 1Q 2001 results and upgrading the Company from Neutral/Buy (3-1) to Accumulate/Buy (2-1). The report stated:

Once again executing extremely well in a tough environment, GoTo reported a very strong 1Q. We're raising our intermediate-term rating from Neutral to Accumulate and setting an \$18-\$19 price objective.

* * *

The pay-per-performance model is clearly enabling the company to gain share in a tough environment. Revenue per click at \$0.16 was down a

penny from 4Q as expected, but trended back up in late 1Q and so far this quarter, which is encouraging.

* * *

Grade for Quarter: A.

64. On May 15, 2001, defendant Blodget issued an Internet Advertising report describing GoTo as one of "two bright spots" in the market and reiterating an Accumulate/Buy (2-1) rating.

65. That same day the Internet/e-Commerce Global team, including defendant Blodget, issued a report entitled "Surfing Times 2001." The report "expanded the comparable universe of the leading Global Internet stocks from twelve to fourteen" to include GoTo following the Company's upgrade and its rise in market value to about \$1 billion. The report also repeated the Accumulate/Buy (2-1) rating.

66. On May 16 and 17, 2001, Blodget and Merrill Lynch investment bankers sponsored an investor road show for GoTo's CEO and CFO, after which GoTo's stock rose 20%.

67. On May 22, 2001, defendant Blodget issued a report entitled "And the Survey Says...Online Advertising To Increase As a Percentage of Advertising Budgets." The report recommended GoTo and reiterated an Accumulate/Buy (2-1) rating.

68. On June 6, 2001, defendant Blodget downgraded the Company from Accumulate/Buy (2-1) to Neutral/Buy (3-1) to punish GoTo when he learned that GoTo had chosen another bank to underwrite an equity offering that defendant had been pursuing for a while. The report claimed, "GoTo has more than doubled in approximately the last month or so. We are downgrading our intermediate term rating from Accumulate to Neutral due to valuation." However,

on June 6, 2001, GoTo opened at \$24.42 a share, close to the opening price of \$23.60 on May 22, 2001, when Blodget robustly recommended GoTo with a 2-1 rating and at which time the 12 to 18 month price target range was \$18 to \$19 per share.

69. The real reason for the downgrade was revealed in an e-mail exchange between Blodget and senior analyst Edward McCabe who reported to Blodget. When defendants learned on May 25, 2001 that GoTo was leaning towards using another bank to lead an equity offering, McCabe drafted a downgrade and e-mailed it to Blodget:

H,
I don't think I've downgraded a stock on valuation since the mid-90s. Anyway, I threw together these bullets in a note on my hard drive so that we are ready to pull the trigger quickly. Do you think we need more than bullets? I didn't think so since this downgrade would be based solely on valuation? Let me know.
Thanks
Ed

70. Blodget's immediate response was:

beautiful
fuk em

71. Defendants, however, held the downgrade in reserve as they continued to lobby to lead the equity offering. On the morning of June 6, 2001, defendants learned that GoTo had chosen CSFB to lead the underwriting. By mid-morning, defendants issued the downgrade to the public in substantially the same form as drafted in May 25, 2001.

72. In sum, defendants' statements, reports and ratings about GoTo were materially false and misleading because of their failure to disclose that defendants' coverage and ratings of GoTo issued during the Class Period were not independent and objective, but instead were biased and a marketing tool in Merrill Lynch's attempt to secure investment banking business from this

company and for Blodget to thereby increase his compensation; it was Merrill Lynch's policy and practice to issue only its highest three ratings (buy, accumulate and neutral) on Internet companies, including GoTo, and not to use its two lowest ratings (reduce and sell), thereby rendering its published five-point rating system a sham; and defendants' true adverse assessments about GoTo.

73. Defendants successfully concealed from the investing public that they had an internal rating system which was completely at odds with their public ratings on Internet companies, including GoTo. On October 10, 2000, Merrill Lynch analyst Eve Glatt e-mailed defendant Blodget a news article about software glitches at another Internet company, 24/7 Real Media Inc., which defendants were then publicly fouting. In her e-mail, Glatt comments that the article "probably confirms what you and Virg[inia Syer] have talked about *for some time.*" Blodget responded, "*that it's a pos? yes.*" (Boldface and italics added) Later in this e-mail exchange, Blodget provides a "cheat sheet" for his abbreviations:

| | | |
|------|---|----------------------|
| lol | = | laughing out loud |
| gt | = | great |
| pos | = | piece of sh[--] |
| nfw | = | |
| pls | = | publeeeeeez |
| imho | = | in my humble opinion |

74. Indeed, before initiating coverage on GoTo, in a December 2000 e-mail, Blodget had internally admitted the need to "just start calling the stocks . . . like we see them, no matter what the ancillary business consequences are." Despite this recognition, defendants failed to call GoTo stock or any other Internet stock as they saw them.

Defendants' False and Misleading Statements Artificially Inflated Maintained or Stabilized the Market Price of GoTo Stock

75. Defendants' materially false and misleading statements artificially inflated, maintained or stabilized the price of GoTo common stock throughout the Class Period and injured plaintiff and the other Class members who purchased the stock at such artificial prices. As already detailed, defendants' ratings and reports on the Company and other Internet stocks had tremendous market impact. When they spoke, the market listened. During the Class Period, GoTo stock traded as high as \$28.28 on June 5, 2001, the day before defendants downgraded GoTo stock. After the June 6, 2001 downgrade, the stock closed at \$23.78 and on June 27, 2001, fell further, closing at \$16.76.

Revelations of Defendants' Misconduct

76. Defendants' misconduct began to be revealed with the April 8, 2002 filing of an affidavit by Eric R. Dinallo, Chief of the Investment Protection Bureau of the New York State Department of Law and of counsel to the New York State Attorney General, in New York Supreme Court in connection with proceedings brought against Merrill Lynch and certain of its officials under Article 23-A of the General Business Law. Based on that affidavit and exhibits, the Supreme Court issued an order preliminarily enjoining Merrill Lynch from issuing any rating or analysts report unless additional disclosures were made therein about its past, current and future investment banking relationships with the rated company and more context was provided for its stock ratings. Implementation of the Order was stayed until April 19, 2002.

77. The New York State Attorney General also announced that he was exploring the possibility of criminal charges against the defendants and restitution.

78. On April 18, 2002, Merrill Lynch and the Attorney General reached a preliminary interim settlement, pursuant to which Merrill Lynch agreed to make certain disclosures in its reports about its existing and future investment banking relationships with issuers covered by its ratings or reports, including compensation received from corporate clients in the past 12 months and a prominently placed acknowledgment that investors should assume that Merrill "is seeking, or will seek investment banking and other business from the covered company."

79. As the Attorney General stated on April 18, "The[] disclosures are necessary to inform consumers and investors of the inherent conflict of interest at Merrill Lynch." He cautioned, however, that "[a]lthough we are still negotiating, serious issues remain to be resolved before we can reach a final agreement." He insisted that any such agreement must remedy "fundamental structural flaws" in Merrill's business and provide "permanent relief for the company's state securities laws violations."

80. The Attorney General has now reportedly reached a "framework" for a broad settlement with Merrill Lynch and, as reported on May 8, 2002 by *Bloomberg*, may no longer be seeking restitution because "restitution would be most successfully accomplished through either arbitration or class action lawsuits filed by private attorneys."

81. The papers filed by the Attorney General's Office demonstrate that the defendants not only recommended the stock of GoTo despite serious private reservations but that such conduct was systemic and affected defendants' coverage of numerous other Internet stocks. For example, defendants rated Internet Capital Group, Inc. stock an Accumulate/Buy while internally labeling it a "disaster"; touted Lifeminders as an Accumulate/Buy, but privately described the company as a "POS" or piece of sh[-]; internally recognized that Aether Systems, Inc. had "horrible" fundamentals

but nevertheless rated the stock a Neutral/Accumulate; and privately called Excite@Home "neutral," "flat," devoid of any "real catalysts" for improvement and "such a piece of crap," while rating the company an Accumulate/Buy.

CLAIMS FOR RELIEF

COUNT I

**(Against All Defendants For Violations
of Section 10(b) and Rule 10b-5)**

82. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

83. Each of the defendants: (a) knew or recklessly disregarded material adverse non-public information about the Company which was not disclosed; and (b) drafted, reviewed and/or approved the misleading statements about GoTo.

84. During the Class Period, defendants, with knowledge of or reckless disregard for the truth, disseminated or approved the false statements specified above, which were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

85. Defendants have violated §10(b) of the Exchange Act and Rule 10b-5 in that they: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material facts or omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices and a

course of business that operated as a fraud or deceit upon the purchasers of GoTo stock during the Class Period.

86. Plaintiff and the Class have suffered damage in that, in reliance on the integrity of the market price, they paid prices for GoTo stock that were artificially inflated, maintained or stabilized as a result of defendants' misleading statements. Plaintiff and the Class would not have purchased the Company stock at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' false and misleading statements.

COUNT II

(Violations of Section 20(a) of The Exchange Act Against Defendant Merrill Lynch)

87. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

88. Defendant Merrill Lynch acted as a controlling person of Blodget within the meaning of Section 20(a) of the Exchange Act.

89. By reason of such wrongful conduct, Defendant Merrill Lynch is liable pursuant to §20(a) of the Exchange Act. As a direct and proximate result of this defendant's wrongful conduct, plaintiff and the other members of the Class suffered damages in connection with their purchases of Company stock during the Class Period, as already detailed.

WHEREFORE, plaintiff prays for relief and judgment, as follows:

(1) Determining that this action is a proper class action, designating plaintiff as Lead Plaintiff and plaintiff's counsel as Lead Counsel, and certifying plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure;

(2) Awarding compensatory damages in favor of plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

(3) Awarding plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

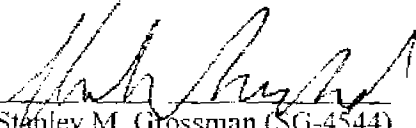
(4) Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

DATED: May 20, 2002

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**CERTIFICATION OF PLAINTIFF
PURSUANT TO FEDERAL SECURITIES LAWS**

I, Victor Parker, Trustee of Joseph P. Pawewski Living Trust dated 11/26/97, make this declaration pursuant to Section 21D(a)(2) of the Securities Exchange Act of 1934:

1. I have reviewed the complaint prepared by Pomerantz Haudek Block Grossman & Gross LLP (the "Complaint") against Merrill Lynch & Co., Inc. and Henry Blodget on behalf of shareholders of GoTo.com, Inc. (now known as Overture Services, Inc.) and authorize a filing of a comparable complaint on my behalf.

2. I did not purchase the security that is the subject of the Complaint at the direction of counsel or in order to participate in any private action arising under Title I of the Securities Exchange Act of 1934.

3. I am willing to serve as a representative party on behalf of a class as set forth in the Complaint, including providing testimony at deposition and trial, if necessary.

4. The following are all my transactions in the security that is the subject of the complaint during the Class Period (as defined in the Complaint):

| <u>Date</u> | <u>Purchase or Sale</u> | <u>Number/Type of Securities</u> | <u>Price of Securities</u> |
|-------------|-------------------------|----------------------------------|----------------------------|
| 6/5/01 | purchase | 1,500 | \$27.05 |
| 5/5/01 | sale | 1,500 | \$28.10 |
| 6/6/01 | purchase | 1,500 | \$25.29 |

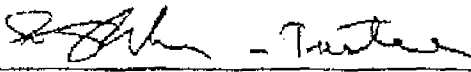
5. During the three year period preceding the date on which this certification is signed, I have not sought to serve, or served, as a representative party on behalf of a class under the federal securities laws.

6. I agree not to accept any payment for serving as a representative party on behalf of the

class as set forth in the Complaint, beyond my pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the class as ordered or approved by the Court.

I declare under penalty of perjury that the foregoing is true and correct.

Executed May 15 2002, at BELLMORE, NY
(City) (State)


(Signature)