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**Stipulated Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of the Claimants

Volterra International Corp.,  
Sergio Foschini  
Elizabeth Decastro

Case Number: 03-03482

Names of the Respondents

Merrill Lynch, Pierce, Fenner and Smith, Inc.  
Soraya Batista-Garcia

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

For Volterra International Corp., Sergio Foschini and Elizabeth Decastro, hereinafter collectively referred to as "Claimants": Robert Bertsch, Esq., Bertsch & Associates, P.C., Port Washington, New York.

For Merrill Lynch, Pierce, Fenner and Smith, Inc. ("MLPFS") and Soraya Batista-Garcia ("Batista-Garcia"), hereinafter collectively referred to as "Respondents": Bennett Falk, Esq., Bressler, Amery & Ross, P.C., Miramar, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: May 13, 2003.

Claimants signed the Uniform Submission Agreements: April 17, 2003.

Statement of Answer filed by Respondents on or about: October 9, 2003.

Respondent MLPFS did not file an executed Uniform Submission Agreement.

Respondent Batista-Garcia did not file an executed Uniform Submission Agreement.

Joint Motion to Reopen File and Enter Stipulated Award filed on or about: August 22, 2005.

Joint Submission in Support of Motion for Entry of Stipulated Award and Request for Expungement filed on or about: October 5, 2005.

**CASE SUMMARY**

Claimants asserted the following causes of action: unsuitability; breach of fiduciary duty; violations of Section 10(b)(5) of the Securities Exchange Act; violations of Section 15 of the Securities Act and Section 20 of the Securities Exchange Act; misrepresentation; churning; negligence; and, unauthorized trading. The causes of action relate to the purchase in Claimants' accounts of ML Premier Growth Fund Class B and ML Internet Strategies Fund Class B.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$250,000.00; margin interest; interest; costs; disbursements; attorneys' fees; and, such other and further relief as may be deemed just and proper.

Respondents requested that the Panel enter an award dismissing Claimants' claims in their entirety and granting such other and further relief as the Panel deemed just and proper.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondents MLPFS and Batista-Garcia did not file with NASD Dispute Resolution ("NASD") properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and having answered the claim and submitted a Motion for Entry of Stipulated Award and Request for Expungement are bound by the determination of the Panel on all issues submitted.

On or about February 7, 2005, Claimants advised NASD that their claims against Respondent Batista-Garcia were withdrawn with prejudice.

On or about February 9, 2005, the parties filed with NASD a notice of settlement.

On or about February 16, 2005, NASD closed its file in connection with this matter.

On or about August 22, 2005, the parties filed with NASD a Joint Motion to Reopen File and Enter Stipulated Award and a proposed Stipulated Award. On or about September 7, 2005, the Panel conducted a telephonic hearing with the parties to consider the motion. During the telephonic hearing, the Panel directed the parties to submit additional evidence in support of the Joint Motion to Enter Stipulated Award. On or about October 5, 2005, the parties filed with NASD a Joint Submission in Support of Motion for Entry of Stipulated Award and Request for Expungement. On or about October 10, 2005, the Panel granted said motion.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the telephonic hearing, and the Joint Submission in Support of Motion for Entry of Stipulated Award and Request for Expungement, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondents MLPFS and Batista-Garcia are dismissed with prejudice.

The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Batista-Garcia's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Batista-Garcia must obtain confirmation from a court of competent jurisdiction before the NASD CRD will execute the expungement directive.

Each party shall bear its own costs and expenses associated with this matter.

Any and all claims for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:  
Initial claim filing fee = \$ 300.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, MLPFS is a member firm and a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred in this matter.

#### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were incurred in this matter.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with the Panel @ \$1,125.00/session = \$1,125.00  
Pre-hearing conference: February 17, 2004 1 session

One (1) Telephonic hearing with the Panel @ \$1,125.00/session = \$1,125.00  
September 7, 2005 1 session

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Total Forum Fees = \$2,250.00

The Panel assessed forum fees in the total amount of \$1,125.00 for the pre-hearing conference held on February 17, 2004, as follows: \$562.50 to Claimants, jointly and severally and \$562.50 to Respondents, jointly and severally.

Pursuant to the parties' agreement, the Panel assessed the total forum fees of \$1,125.00 to Respondents, jointly and severally, for the telephonic hearing held on September 7, 2005.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 562.50
Retained Hearing Session Deposit pursuant to Rule 10332(f) of the Code	= \$ 562.50
Total Fees	= \$1,425.00
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$1,687.50</u>
Total Fees	= \$1,687.50
<u>Less payments</u>	<u>= \$ 562.50</u>
Balance Due NASD Dispute Resolution	= \$1,125.00

Respondent MLPFS is solely liable for:

<u>Member Fees</u>	= \$5,200.00
<u>Total Fees</u>	= \$5,200.00
<u>Less payments</u>	= \$5,200.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Myron E. Levenson	-	Public Arbitrator, Presiding Chairperson
Michael E. Schmidt, CFA	-	Public Arbitrator
Michael S. Hill	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/	10/14/05
_____ Myron E. Levenson Public Arbitrator, Presiding Chairperson	_____ Signature Date
/s/	10/15/05
_____ Michael E. Schmidt, CFA Public Arbitrator	_____ Signature Date
/s/	10/17/05
_____ Michael S. Hill Non-Public Arbitrator	_____ Signature Date

October 19, 2005

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)

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Arbitration No. 03-03482  
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Public Arbitrator, Presiding Chairperson

  
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NASD  
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