

02-26-2003



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Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) Tab settings

U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Broadcort Capital Corp. 1-29-03

- Individual(s) Association General Partnership Limited Partnership Corporation-State Other

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date:

2. Name and address of receiving party(ies)

Name: Merrill Lynch, Pierca, Fenner & Smith, Inc

Internal Address: North Tower

Street Address: 4 World Financial Center

City: New York State: NY Zip: 10080

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

NONE

B. Trademark Registration No.(s)

1750087

Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Patrick Romain

Internal Address: c/o Merrill Lynch & Co., Inc.

222 Broadway, 17th Floor

New York, NY 10038

Street Address: c/o Merrill Lynch & Co., Inc.

22 Broadway, 17th Floor

City: New York State: NY Zip: 10038

6. Total number of applications and registrations involved:

1

7. Total fee (37 CFR 3.41).....\$ 40.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

50-1096

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Desiree Wells Name of Person Signing

Desiree Wells Signature

1/27/03 Date

Total number of pages including cover sheet, attachments, and document: 8

02/25/2003 TDIAZ1 00000007 501096 1750087 01 FC:0521 40.00 CH

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of June 28, 2002, is entered into between **MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED**, a Delaware corporation ("MLPF&S"), and **BROADCORT CAPITAL CORP.**, a Delaware corporation ("BCC"). MLPF&S and BCC are sometimes collectively referred to in this Agreement as the "Constituent Corporations."

RECITALS

A. MLPF&S and BCC are corporations duly organized and validly existing under the laws of the State of Delaware, governed by the provisions of the General Corporation Law of the State of Delaware (the "DGCL") and of their respective certificates of incorporation and by-laws.

B. On the date of this Agreement, MLPF&S has an authorized capital stock of 2,200 shares, of which 1,200 shares are authorized as common stock, par value \$1,000 per share ("MLPF&S Common Stock"), and of which 1,000 shares are authorized as preferred stock, \$25 per share.

C. On the date of this Agreement, BCC has an authorized capital stock of 50,000 shares of common stock, par value \$1.00 per share ("BCC Common Stock").

D. On the date of this Agreement, 1,000 shares of MLPF&S Common Stock are issued and outstanding, all of which are owned by Merrill Lynch & Co., Inc., and no shares of MLPF&S's preferred stock are issued and outstanding.

E. On the date of this Agreement, 1,000 shares of BCC Common Stock are issued and outstanding, all of which are owned by MLPF&S

F. The respective Boards of Directors of MLPF&S and BCC have, by resolutions duly adopted, authorized and approved this Agreement, including the Merger (as defined below).

G. MLPF&S, as the sole stockholder of BCC, has, by resolutions duly adopted, authorized and approved this Agreement, including the Merger.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, MLPF&S and BCC hereby agree as follows:

1. Merger. BCC shall be merged with and into MLPF&S (the "Merger") pursuant to DGCL §253, the separate existence of the BCC shall cease and MLPF&S shall be the surviving

corporation (at times referred to in this Agreement as the "Surviving Corporation"). The Merger shall become effective upon the date and at the time of filing of a certificate of merger with the Secretary of State of the State of Delaware (the "Effective Time").

2. Governing Documents. The Restated Certificate of Incorporation of MLPF&S, as in effect immediately prior to the Effective Time, shall be the Restated Certificate of Incorporation of the Surviving Corporation without change or amendment until thereafter amended in accordance with the provisions of such certificate of incorporation and applicable laws, and the By-laws of MLPF&S, as in effect immediately prior to the Effective Time, shall be the By-laws of the Surviving Corporation without change or amendment until thereafter amended in accordance with the provisions of such by-laws, of the Restated Certificate of Incorporation of the Surviving Corporation and applicable laws.

3. Succession. At the Effective Time, the effect of the Merger shall be as provided in the applicable provisions of Delaware law. Without limiting the generality of the foregoing and subject thereto, at the Effective Time, all the property rights, privileges, powers and franchises of the Constituent Corporations shall vest in the Surviving Corporation, and all debts, liabilities and duties of the Constituent Corporations shall become the debts, liabilities and duties of the Surviving Corporation.

4. Directors and Officers. At the Effective Time, the members of the Board of Directors of MLPF&S shall thereafter be the members of the Board of Directors of the Surviving Corporation until removed or replaced in accordance with the provisions of the Surviving Corporation's By-laws, Restated Certificate of Incorporation and applicable laws. At the Effective Time, the elected and appointed officers of MLPF&S shall thereafter be the elected and appointed officers of the Surviving Corporation until removed or replaced in accordance with the provisions of the Surviving Corporation's By-laws, Restated Certificate of Incorporation and applicable laws.

5. Further Assurances. From time to time, as and when required by the Surviving Corporation or by its successors or assigns, there shall be executed and delivered on behalf of BCC such deeds and other instruments, and there shall be taken or caused to be taken by it all such further and other action, as shall be appropriate, advisable or necessary in order to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation the title to and possession of all property, interests, assets, rights, privileges, immunities, powers, franchises and authority of BCC, and otherwise to carry out the purposes of this Agreement, and the officers and directors of the Surviving Corporation are fully authorized in the name and on behalf of BCC or otherwise, to take any and all such action and to execute and deliver any and all such deeds and other instruments.

6. Conversion of Shares. At the Effective Time, by virtue of the Merger and without any action on the part of MLPF&S, BCC or any holder of the securities thereof:

(a) each share of MLPF&S Common Stock issued and outstanding immediately prior to the Effective Time, shall continue to be an issued and outstanding share of capital stock of the Surviving Corporation, with the same rights and privileges

attached to such share immediately prior to the Effective Time, but shall not be entitled to any payment, consideration or other distribution by reason of the Merger; and

(b) each share of BCC Common Stock, issued and outstanding immediately prior to the Effective Time, shall be cancelled and extinguished and no consideration shall be paid therefor.

7. Amendment. Subject to applicable law, this Agreement may be amended, modified or supplemented by written agreement of the parties hereto at any time prior to the Effective Time with respect to any of the terms contained herein.

8. Abandonment. At any time prior to the Effective Time, this Agreement may be terminated, and the Merger may be abandoned by the Board of Directors of MLPF&S and BCC, if, in the opinion of the Board of Directors of MLPF&S and BCC, circumstances arise which make the Merger for any reason inadvisable.

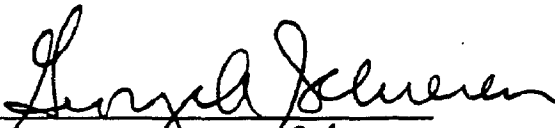
9. Counterparts. In order to facilitate the filing and recording of this Agreement, the same may be executed in two counterparts, both of which shall constitute one and the same agreement.

10. Interpretation. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

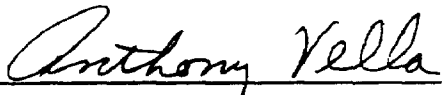
11. Miscellaneous. This Agreement (i) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between the parties, with respect to the subject matter hereof, (ii) is not intended to confer upon any other person any rights or remedies hereunder, (iii) shall not be assigned by operation of law or otherwise and (iv) shall be governed by the laws of the State of Delaware, without regard to principles of conflicts of law.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective duly authorized officers as of the date first above written.

**MERRILL LYNCH, PIERCE, FENNER &
SMITH INCORPORATED**

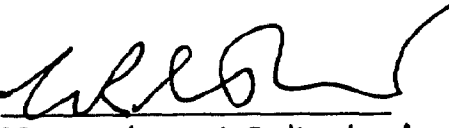
By: 
Name: George A. Schieren
Title: SVP and General Counsel

BROADCAST CAPITAL CORP.


By: 
Name: Anthony Vella
Title: Senior Vice President

DGCL §253(a) Certification. The undersigned Secretary or Assistant Secretary of each of Merrill Lynch, Pierce, Fenner & Smith Incorporated and Broadcast Capital Corp. certifies that the Board of Directors of MLPF&S, as successor and as sole stockholder of BCC, has voted for the adoption of this Agreement.

Certification for Purposes of DGCL §253

By: 
Name: Howard Sutherland
Title: Assistant Secretary of
Merrill Lynch, Pierce, Fenner
& Smith Incorporated

Certification for Purposes of DGCL §253

By: 
Name: Daisy Rosado
Title: Assistant Secretary of
Broadcast Capital Corp.

Delaware

PAGE 1

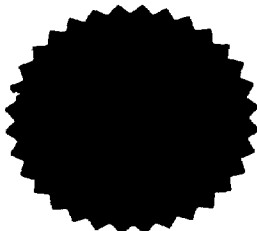
The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF OWNERSHIP, WHICH MERGES:

"BROADCORT CAPITAL CORP.", A DELAWARE CORPORATION,
WITH AND INTO "MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED" UNDER THE NAME OF "MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE TWENTY-EIGHTH DAY OF JUNE, A.D. 2002, AT 1 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF OWNERSHIP IS THE TWENTY-EIGHTH DAY OF JUNE, A.D. 2002, AT 11:59 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

0529619 8100M

AUTHENTICATION: 1860159

020422353

DATE: 06-28-02

TRADEMARK
REEL: 002678 FRAME: 0188

CERTIFICATE OF OWNERSHIP AND MERGER

MERGING

BROADCORT CAPITAL CORP.

INTO

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

Merrill Lynch, Pierce, Fenner & Smith Incorporated, a corporation organized and existing under the laws of Delaware,

DOES HEREBY CERTIFY:

FIRST: That this corporation was incorporated on the 10th day of November, 1958, pursuant to the General Corporation Law of the State of Delaware.

SECOND: That this corporation owns all of the outstanding shares of the stock of Broadcort Clearing Corp., a corporation incorporated on the 10th day of December, 1982, pursuant to the General Corporation Law of the State of Delaware.

THIRD: That this corporation, by the following resolutions of its Board of Directors, duly adopted by the unanimous written consent of its members, filed with the minutes of the Board, as of the 31st day of May, 2002, determined to and did merge into itself said Broadcort Clearing Corp.:

RESOLVED, that Merrill Lynch, Pierce, Fenner & Smith Incorporated merge, and it hereby does merge into itself Broadcort Clearing Corp. and assumes all of its obligations;

and

FURTHER RESOLVED, that the merger shall be effective at 11:59 p.m. on the date of filing with the Secretary of State of Delaware;

and

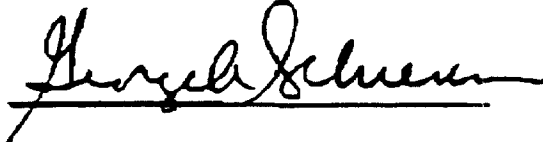
FURTHER RESOLVED, that the proper officer of this corporation be and he is hereby directed to make and execute a Certificate of Ownership and Merger setting forth a copy of the resolutions to merge said Broadcort Clearing Corp. and assume its liabilities and obligations, and the date of adoption thereof, and to cause the same to be filed with the Secretary of State and to do all acts and things whatsoever, whether within or without the State of Delaware, which may be in any manner necessary or proper to effect said merger;

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 01:00 PM 06/28/2002
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and

FOURTH: Anything herein or elsewhere to the contrary notwithstanding, this merger may be amended or terminated and abandoned by the Board of Directors of Merrill Lynch, Lynch, Pierce, Fenner & Smith Incorporated at any time prior to the time that this merger filed with the Secretary of State becomes effective.

IN WITNESS WHEREOF, said Merrill Lynch, Pierce, Fenner & Smith Incorporated has caused this Certificate to be signed by George A. Schieren, its Senior Vice President and General Counsel, this 28th day of June, 2002.

A handwritten signature in cursive script, reading "George A. Schieren", is written over a solid horizontal line.

By: George A. Schieren
Senior Vice President and General
Counsel

TOTAL P.03