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## **FOR IMMEDIATE RELEASE**

### **MERRILL GETS HIT FOR CLOSE TO \$2 MILLION BY NASD PANEL**

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New York, New York (Tuesday, July 25, 2006): On Friday, July 21st, 2006, an NASD panel sitting in San Francisco, California, awarded claimant Shari Nolan, a former Merrill Lynch customer, damages in the amount of \$1.25 million plus interest at the California statutory rate commencing October 20, 2000 in a securities arbitration against Merrill Lynch. In its award, the panel took the novel step of completely dismissing -- and even expunging -- the claims against the broker and awarding the entire amount against the firm. The Panel further awarded all forum fees be assessed against the firm.

Ms. Nolan had sued the firm and the broker in 2002 for claims of suitability, unauthorized trading and failure to hedge her position in Dell shares. The NASD panel rendered the award after a two week hearing in San Francisco during the month of June 2006. Chief among the claims was an allegation that Merrill failed to hedge the Dell shares when it could have done so. Merrill took the position that it was "impossible" to hedge them. Ms. Nolan, through her attorney Richard A. Roth, Esq., presented evidence that Merrill could have and should have implemented one of many hedging strategies to fulfill Ms. Nolan's investment objective to monetize the Dell position. According to Mr. Roth, "pre-paid forwards, costless collars, protective puts and hedging baskets are very complicated areas of securities practice. While we do not know the basis of the Award, we believe that Merrill fell flat on its face on the hedging issue." He added: "the

Panel may have found that Merrill was ill-equipped in 1999 to handle these derivative transactions.”

Mr. Roth claimed it was also very unusual for an NASD panel to hold the firm liable and completely exonerate the broker, a primary participant. “This Panel sent a strong signal to Merrill that a firm, in certain instances, and not the broker, has primary responsibility to a customer. Here, we contended that the firm failed miserably in those duties.” Mr. Roth went on to state: “it is difficult to determine from the award, as is almost always the case, the basis of the damages amount. What is obvious, however, is that the Panel was bothered by what Ms. Nolan contended to be either Merrill’s failure to supervise its broker or the ‘Keystone Cop-ishness’ on how it handled this customer. It is equally obvious that the Panel had pity for a broker who was working in that environment and under that supervision.” According to Mr. Roth, “Merrill should consider itself lucky this Panel did not assess greater damages for its conduct.”

For additional information, contact Richard Roth at [rich@rrothlaw.com](mailto:rich@rrothlaw.com).

**The Roth Law Firm, PLLC, specializes in the litigation of securities, commercial and entertainment matters.**

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