

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

BOARD OF TRUSTEES OF THE CITY OF )  
LAKE WORTH EMPLOYEES' )  
RETIREMENT SYSTEM; BOARD OF )  
TRUSTEES OF THE CITY OF LAKE )  
WORTH POLICE OFFICERS' )  
RETIREMENT SYSTEM; BOARD OF )  
TRUSTEES OF THE CITY OF LAKE )  
WORTH FIREFIGHTERS' PENSION )  
TRUST FUND; on behalf of themselves and )  
all others similarly situated, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
MERRILL LYNCH, PIERCE, FENNER & )  
SMITH INCORPORATED, a Delaware )  
corporation, )  
 )  
Defendant. )

Case No.: 3:10-cv-845-TJC-MCR

**STIPULATION AND AGREEMENT OF SETTLEMENT**

This Stipulation and Agreement of Settlement (the “Stipulation”) is entered into by and among Plaintiffs, the respective Boards of Trustees of the City of Lake Worth Employees’ Retirement System (“Lake Worth General Employees”), the City of Lake Worth Police Officers’ Retirement System (“Lake Worth Police”), and the City of Lake Worth Firefighters’ Pension Trust Fund (“Lake Worth Firefighters”) (collectively, the “Plaintiff Plans”), on behalf of the Plaintiff Plans and the Class (as hereinafter defined), and Defendant Merrill Lynch Pierce Fenner & Smith Inc. (“Defendant” or “Merrill Lynch,” and together with Plaintiffs, the “Parties”), by and through their respective counsel, is submitted pursuant to Rule 23 of the Federal Rules of Civil Procedure, and is subject to approval of the Court.<sup>1</sup> Subject to the terms and conditions set

---

<sup>1</sup> All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in paragraph 1 herein.

forth herein and approval by the Court, the Settlement is intended to settle all claims that were asserted in the Action against Defendant.

WHEREAS:

A. On or about July 15, 2010, Plaintiffs filed a putative class action against Merrill Lynch, captioned *Board of Trustees of the City of Lake Worth Employees Retirement System, et al., v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, No. 16-2010-CA-008965, in the Circuit Court of the Fourth Circuit in and for Duval County, Florida (the “Florida State Court Action”).

B. The class action complaint (the “Complaint”) filed by Plaintiffs alleged that Merrill Lynch breached its fiduciary duties to the Plaintiff Plans and to all other Florida public employee retirement benefit plans for which Merrill Lynch and Merrill Lynch Financial Advisor Michael Callaway or any other member of the Callaway Team provided Consulting Services during the Class Period (collectively, with the Plaintiff Plans, the “Plans”) by, among other things, (a) entering into fee arrangements with the Plans – and with certain third parties (such as mutual fund companies) who provided services to the Plans – that placed Merrill Lynch’s financial interests ahead of the Plans’ interests and compromised Merrill Lynch’s role as an “independent” advisor to the Plans, and (b) failing to utilize the full panoply of Merrill Lynch’s manager selection and retention resources (including the full panoply of manager research and analysis services available through Merrill Lynch’s offices in New Jersey) for the benefit of the Plans. Plaintiffs alleged that the Plans suffered losses as a result of Merrill Lynch’s breaches of its fiduciary duties, and demanded that Merrill Lynch disgorge all benefits, compensation, or other value it received in connection with the provision of Consulting Services to the Plans or the investment of the Plans’ assets during the Class Period.

C. On September 15, 2010, Defendant Merrill Lynch filed a Notice of Removal of Civil Action, removing the Florida State Court Action to this Court (the “Court”), which is now pending under the caption *Board of Trustees of the City of Lake Worth Employees Retirement System, et al., v. Merrill Lynch, Pierce, Fenner & Smith Incorporated*, Case No.: 3:10-cv-845-TJC-MCR (M.D. Fla.) (the “Action”).<sup>2</sup>

D. On September 22, 2010, Defendant filed its Motion to Dismiss the Complaint and to Transfer Venue to the Southern District of Florida. On October 25, 2010, Plaintiffs filed their Opposition to the Motion to Dismiss, and Defendant (pursuant to a stipulation between the parties) formally withdrew its Motion to Transfer Venue. On November 9, 2010, Defendant filed its Reply in support of its Motion to Dismiss. Thereafter, following the completion of briefing on the motion, the Court heard oral argument on the Motion to Dismiss.

E. On May 31, 2011, the Court entered its Order and Opinion denying Defendant’s Motion to Dismiss.

F. On June 17, 2011, Plaintiffs filed their First Set of Requests for Production of Documents on Merrill Lynch. Thereafter, Merrill Lynch produced over two million pages of documents to Plaintiffs’ Counsel.

G. On June 22, 2011, the Court entered a Case Management and Scheduling Order setting forth a schedule for class certification, discovery, and trial, and also referring the case to mediation before Judge Herbert Stettin (ret.).

---

<sup>2</sup> In addition to Plaintiffs, the Board of Trustees of the City of Pompano Beach General Employees Retirement System (“Pompano”) was also included as a named plaintiff in the Complaint when it was removed. On March 25, 2011, the Court granted Pompano’s unopposed motion to voluntarily dismiss its claims, without prejudice to any of its rights to participate in any future recovery against Defendant as an absent class member.

H. On June 24, 2011, Defendant filed its Answer to the Complaint, wherein Defendant denied that it breached any fiduciary duties or caused losses to Plaintiffs, Plaintiff Plans, or the Plans, and asserted defenses based upon, among other things, the statute of limitations, the economic loss rule, and the Plans' consent to the practices the Plaintiffs now contend violated Merrill Lynch's fiduciary duties.

I. In October 2011, both sides commenced formal deposition discovery. For example, during October and November 2011, Plaintiffs took depositions pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure of three Merrill Lynch representatives (Matthew Pisanelli, Susan Brown-Vlacich and Terri Lockwood) in New York, and Defendant Merrill Lynch took the depositions of a trustee representative of each of the three Plaintiff Plans (Robert Lepa on behalf of Lake Worth General Employees, Kenneth White on behalf of Lake Worth Police, and Richard Seaman on behalf of Lake Worth Firefighters) in Florida.

J. On November 28, 2011, Plaintiffs served their Motion for Class Certification on Merrill Lynch, together with their memorandum of law and multiple declarations and exhibits in support thereof (collectively, the "Class Certification Motion Papers").<sup>3</sup>

K. The Parties continued to vigorously litigate the Action. However, pursuant to the Court's June 22, 2011 directive, the Parties agreed that after each side had had a reasonable opportunity to conduct substantial document discovery and to begin targeted deposition discovery, they would participate in mediation before Judge Stettin (ret.). The Parties entered into a mediation schedule with Judge Stettin (hereafter, the "Mediator"), under which each side agreed to submit written confidential mediation statements in advance of the mediation itself,

---

<sup>3</sup> Because of the Parties' need to meet and confer over whether certain confidential materials included in Plaintiffs' Class Certification Motion Papers needed to be filed under seal – a procedure required under the Stipulated Confidentiality Agreement dated June 27, 2011 – the papers were filed with the Court a week later, on December 7, 2011.

which the Parties agreed should be held promptly after Plaintiffs had served their Class Certification Motion Papers.

L. On December 6, 2011, the Parties each submitted their respective Mediation Statements to the Mediator. On December 8, 2011, the Parties participated in a mediation conference under the auspices of the Mediator at the offices of Greenberg Traurig, P.A., in Miami. At the mediation, in addition to being represented by their respective outside counsel, Merrill Lynch was represented in person by two of its employees with authority to negotiate on Merrill Lynch's behalf, and each Plaintiff Plan was represented in person by one of its trustees. After a full day of negotiations, the Parties reached an agreement in principle to settle the Action. However, a number of issues required further negotiation, with the result that the Parties' counsel continued negotiations over the following week in an effort to conclude a binding agreement.

M. With the assistance of the Mediator, and as a result of further arm's-length negotiations, the Parties entered into a binding Memorandum of Understanding (the "MOU") executed on December 14, 2011. In accordance with the terms of the MOU, the Parties have prepared this "long form" Stipulation, including the attached forms of Notice, in anticipation of submitting it to the Court for approval following issuance of notice to the Class Members in accordance with Rule 23 of the Federal Rules of Civil Procedure.

N. As set forth above, Plaintiffs' Counsel have conducted an investigation and pursued significant discovery into the claims and the underlying events and transactions alleged in the Complaint. Plaintiffs' Counsel have analyzed the evidence adduced during their investigation and through discovery, which included (*inter alia*) the review of over two million pages of documents and the taking or defending of a half-dozen depositions, and have also thoroughly researched the applicable law with respect to the claims asserted against the

Defendant and the potential defenses thereto. Plaintiffs' Counsel have also vigorously litigated this Action through their successful opposition to Defendant's Motion to Dismiss, and had prepared and served their comprehensive motion papers in support of class certification before the Mediation.

O. Based upon their investigation and prosecution of the Action, Plaintiffs and Plaintiffs' Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable and adequate to Plaintiffs, the Plaintiff Plans and the other members of the Class, and in their best interests. Based on Plaintiffs' direct oversight of the prosecution of this matter, and in consultation with Plaintiffs' Counsel, Plaintiffs have agreed to settle the claims raised in the Action pursuant to the terms and provisions of this Stipulation, after considering (a) the substantial benefits that Plaintiffs, the Plaintiff Plans, and the other members of the Class will receive from the resolution of the Action, (b) the attendant risks of litigation, and (c) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation. This Stipulation shall not be construed or deemed to be a concession by Plaintiffs or the Plaintiff Plans of any infirmity in the claims asserted in the Action.

P. Defendant denies any and all allegations of fault, liability, wrongdoing, or damages whatsoever, and this Stipulation shall in no event be construed as or deemed to be evidence of or an admission or concession on the part of Defendant with respect to any claim or of any fault or liability or wrongdoing or damages whatsoever, or any infirmity in the defenses that Defendant has, or could have, asserted.

Q. The Parties recognize, however, that the litigation has been filed and prosecuted by Plaintiffs in good faith and defended by Defendant in good faith, that the litigation is being

voluntarily settled with both sides having had the benefit of the advice of their respective counsel, and that the terms of the Settlement are fair, adequate, and reasonable.

NOW THEREFORE, without any admission or concession on the part of Plaintiffs or the Plaintiff Plans of any lack of merit of the Action whatsoever, and without any admission or concession of any liability or wrongdoing or lack of merit in the defenses whatsoever by Defendant, it is hereby STIPULATED AND AGREED, by and among Plaintiffs and Defendant, through their respective counsel, subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in consideration of the benefits flowing to the Parties from the Settlement, that all Released Plaintiff Claims as against the Released Defendant Parties and all Released Defendant Claims against the Released Plaintiff Parties shall be released, waived, discharged, and dismissed, upon and subject to the following terms and conditions:

#### **DEFINITIONS**

1. As used in this Stipulation, the following terms shall have the following meanings:

(a) “Action” means the action captioned *Board of Trustees of the City of Lake Worth Employees Retirement System, et al., v. Merrill Lynch, Pierce, Fenner & Smith Incorporated*, Case No.: 3:10-cv-845-TJC-MCR (M.D. Fla.) pending in this Court.

(b) “Administration Costs” means the costs, fees and expenses that are incurred by the Claims Administrator and/or Plaintiffs’ Counsel in connection with administration of the Settlement, as well as the costs, fees, and expenses incurred in connection with the Escrow Account.

(c) “Alternative Judgment” means a form of final judgment that may be entered by the Court herein but in a form other than the form of Judgment provided for in this Stipulation.

(d) “Authorized Claimant” means a Class Member who submits (or on whose behalf is submitted) a properly executed Claim Form to the Claims Administrator, in accordance with the requirements established by the Court, that is approved for payment from the Net Settlement Fund.

(e) “Callaway Team” refers to Michael Callaway, Melissa Callaway and all other Merrill Lynch employees who, before or during the Class Period, worked under Michael or Melissa Callaway’s direct or indirect supervision at the Merrill Lynch branch office in Florida where Michael and Melissa Callaway were based.

(f) “Claim” means a Claim Form submitted to the Claims Administrator.

(g) “Claimant” means a Class Member who submits (or on whose behalf is submitted) a Claim Form to the Claims Administrator seeking to share in the proceeds of the Settlement Fund.

(h) “Claim Form” means the Claim Form and Release, substantially in the form annexed hereto as Exhibit 2 to Exhibit A, that a Class Member (or one of its fiduciaries on its behalf) must complete, execute and submit to the Claims Administrator in order for that Class Member to be eligible to share in a distribution of the Net Settlement Fund.

(i) “Claims Administrator” means the claims administration firm retained by Plaintiffs and Plaintiffs’ Counsel, subject to approval of the Court, to provide all notices approved by the Court to Class Members and to administer the Settlement.

(j) “Class” means all Plans for which Merrill Lynch and Merrill Lynch Financial Advisor Michael Callaway or any other member of the Callaway Team provided Consulting Services during the Class Period, or any portion thereof, but excluding all such Plans that had brought separate arbitration or litigation proceedings against Merrill Lynch or any member of the Callaway Team on or before December 14, 2011, as listed on Schedule 1 hereto. Also excluded from the Class are any Plans that exclude themselves by filing a valid request for exclusion in accordance with the requirements set forth in the Notice. The Parties hereby stipulate and agree that the universe of Plans included in the Class (subject to any Class Members’ right to file a valid request for exclusion as set forth herein) is set forth on Schedule 2 hereto.

(k) “Class Distribution Order” means an order entered by the Court authorizing and directing that the Net Settlement Fund be distributed, in whole or in part, to Authorized Claimants.

(l) “Class Member” means each Plan that is a member of the Class and does not validly exclude itself by filing a request for exclusion in accordance with the requirements set forth in the Notice.

(m) “Class Period” means the period from July 1, 2000, through and including June 30, 2008.

(n) “Complaint” means Plaintiffs’ class action complaint filed on or about July 15, 2010.

(o) “Consulting Services” means all consulting and investment advisory services provided by Merrill Lynch, Michael Callaway and/or any other member of the Callaway Team to any Class Member, which services are the subject of and described in the disclosure

statements entitled “Merrill Lynch Consulting Services Disclosure Statement” that Merrill Lynch filed with the U.S. Securities and Exchange Commission during the Class Period.

(p) “Court” means the United States District Court for the Middle District of Florida.

(q) “Defendant’s Counsel” means the law firm of Greenberg Traurig, P.A.

(r) “Effective Date” means the first date by which all of the events and conditions specified in paragraph 29 of this Stipulation have been met and have occurred.

(s) “Escrow Account” means an account maintained at Valley National Bank, Wayne, New Jersey Branch, to hold the Settlement Consideration, which account, subject to the Court’s supervisory authority, shall be under the control of Plaintiffs’ Counsel.

(t) “Escrow Agent” means Valley National Bank.

(u) “Escrow Agreement” means the agreement between Plaintiffs’ Counsel and the Escrow Agent setting forth the terms under which the Escrow Agent shall maintain the Escrow Account.

(v) “Final,” with respect to any order or judgment, including the Judgment or, if applicable, the Alternative Judgment means: (a) if no appeal is filed, the expiration date of the time provided for filing or noticing of any appeal under the Federal Rules of Civil Procedure, *i.e.*, thirty (30) days after entry of the order or judgment; or (b) if there is an appeal from the order or judgment, the date of (i) final dismissal of all such appeals, or the final dismissal of any proceeding on certiorari or otherwise to review the order or judgment, or (ii) the date the order or judgment is finally affirmed on an appeal, the expiration of the time to file a petition for a writ of certiorari or other form of review, or the denial of a writ of certiorari or other form of review of the order or judgment, and, if certiorari or other form of review is granted, the date of final

affirmance of the order or judgment following review pursuant to that grant. However, any appeal or proceeding seeking subsequent judicial review pertaining solely to an order issued with respect to (i) attorneys' fees, costs, or expenses, or (ii) the plan of allocation, shall not in any way delay or preclude the Judgment or, if applicable, the Alternative Judgment from becoming Final.

(w) "Judgment" means the final judgment, substantially in the form annexed hereto as Exhibit B, to be entered by the Court approving the Settlement.

(x) "Litigation Expenses" means costs and expenses incurred in connection with commencing and prosecuting the Action for which Plaintiffs' Counsel intend to apply to the Court for reimbursement from the Settlement Fund.

(y) "Merrill Lynch" or "Defendant" means Merrill Lynch Pierce Fenner & Smith Inc.

(z) "MOU" means the Memorandum of Understanding executed on behalf of the Parties by their respective counsel on December 14, 2011.

(aa) "Net Settlement Fund" means the Settlement Fund less: (i) any Taxes; (ii) any Notice Costs in excess of \$1,000; (iii) any Administration Costs; (iv) any Litigation Expenses awarded by the Court; and (v) any attorneys' fees awarded by the Court.

(bb) "Notice" means the Notice of (I) Pendency of Class Action and Proposed Settlement, (II) Settlement Fairness Hearing, and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses, substantially in the form annexed hereto as Exhibit 1 to Exhibit A, which is to be sent to members of the Class.

(cc) "Notice Costs" means the costs, fees, and expenses that are incurred by the Claims Administrator and/or Plaintiffs' Counsel in connection with providing notice of the Settlement to the Class, including, without limitation, the costs of copying the Notice and Claim

Form and mailing these documents to Class Members by certified U.S. Mail, and of disseminating the Summary Notice via the internet through the *PR Newswire*.

(dd) “Notice Payment” means the sum of One Thousand Dollars (\$1,000) in cash to be deposited by or on behalf of Defendant into the Escrow Account to be applied to the payment of Notice Costs.

(ee) “Parties” refers collectively to Defendant and the Plaintiffs (in their representative capacity on behalf of the Plaintiff Plans).

(ff) “Plaintiff Plans” means the City of Lake Worth Employees’ Retirement System, the City of Lake Worth Police Officers’ Retirement System, and the City of Lake Worth Firefighters’ Pension Trust Fund.

(gg) “Plaintiffs” means the respective Boards of Trustees of the City of Lake Worth Employees’ Retirement System, the City of Lake Worth Police Officers’ Retirement System, and the City of Lake Worth Firefighters’ Pension Trust Fund.

(hh) “Plaintiffs’ Counsel” means the law firms of Bernstein Litowitz Berger & Grossmann LLP, Klausner, Kaufman, Jensen & Levinson, P.A., and Sugarman & Susskind, P.A.

(ii) “Plan of Allocation” means the proposed plan of allocation of the Net Settlement Fund set forth in the Notice.

(jj) “Plans” means the Plaintiff Plans and any and all other Florida public employee retirement benefit plans which fall within the definition of the Class.

(kk) “Preliminary Approval Order” means the order, substantially in the form annexed hereto as Exhibit A, to be entered by the Court preliminarily approving the Settlement and directing notice be provided to the Class.

(ll) “Released Defendant Claims” means any and all claims and causes of action of every nature and description, including Unknown Claims, whether arising under federal, state, common or foreign law, that Merrill Lynch or any other Released Defendant Party could have asserted in the Action or any other forum (whether in court or in arbitration) that arise out of or relate to the Consulting Services relationship between any Class Member and Merrill Lynch through December 14, 2011, Merrill Lynch’s Consulting Services business through December 14, 2011, or Consulting Services provided by the Callaway Team through December 14, 2011, as well as all claims relating to the institution, prosecution and/or settlement of the claims asserted against Merrill Lynch in the Action, except for claims relating to the enforcement of the Settlement.

(mm) “Released Defendant Parties” means Merrill Lynch, its past and present trustees, officers, directors, employees (including without limitation Michael Callaway, Melissa Callaway and Jeffrey Swanson and all other former employees of the Callaway Team), principals, attorneys, predecessors, successors, assigns, parents, subsidiaries, and divisions.

(nn) “Released Plaintiff Claims” means any and all claims and causes of action of every nature and description, including Unknown Claims, whether arising under federal, state, common or foreign law, that Plaintiffs, the Plaintiff Plans or any other member of the Class (including their respective named fiduciaries in their capacities as such) (a) asserted or could have asserted in the Action that arise out of or relate to the Consulting Services relationship between any Class Member and Merrill Lynch through December 14, 2011, Merrill Lynch’s Consulting Services business through December 14, 2011, or Consulting Services provided by the Callaway Team through December 14, 2011, or (b) could have asserted in any forum (whether in court or arbitration) that arise out of or relate to the Consulting Services relationship

between any Class Member and Merrill Lynch through December 14, 2011, Merrill Lynch's Consulting Services business through December 14, 2011, or Consulting Services provided by the Callaway Team through December 14, 2011, except for claims relating to the enforcement of the Settlement.

(oo) "Released Plaintiff Parties" means Plaintiffs, the Plaintiff Plans and the other members of the Class (who do not opt out), their past or present trustees, named fiduciaries, directors, officers, employees, principals, attorneys, predecessors, successors, assigns, parents, subsidiaries, and divisions.

(pp) "Settlement" means the proposed settlement as set forth in this Stipulation.

(qq) "Settlement Amount" means the sum of Eight Million Five Hundred Thousand Dollars (\$8,500,000) in cash.

(rr) "Settlement Consideration" means the sum of Eight Million Five Hundred One Thousand Dollars (\$8,501,000) in cash, consisting of the Settlement Amount and the Notice Payment.

(ss) "Settlement Fund" means the Settlement Amount plus any and all interest earned thereon.

(tt) "Settlement Hearing" means the hearing to be set by the Court under Rule 23(e)(2) of the Federal Rules of Civil Procedure to consider final approval of the Settlement.

(uu) "Summary Notice" means the Summary Notice of (I) Pendency of Class Action and Proposed Settlement, (II) Settlement Fairness Hearing, and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses, substantially in the form annexed

hereto as Exhibit 3 to Exhibit A, which is to be disseminated via the internet through the *PR Newswire*.

(vv) “Taxes” means: (i) all federal, state and/or local taxes of any kind on any income earned by the Settlement Consideration; and (ii) the expenses and costs incurred by Plaintiffs’ Counsel in connection with determining the amount of, and paying, any taxes owed by the Settlement Consideration (including, without limitation, expenses of tax attorneys and accountants).

(ww) “Unknown Claims” means any and all Released Plaintiff Claims that Plaintiffs, the Plaintiff Plans, or any of the other Class Members or their respective named fiduciaries in their capacities as such do not know or suspect to exist in his, her, or its favor at the time of the release of such claims, and any Released Defendant Claims that Defendant or any of the other Released Defendant Parties do not know or suspect to exist in his, her, or its favor at the time of the release of such claims, which, if known by him, her, or it, might have affected his, her or its decision(s) with respect to the Settlement. With respect to any and all Released Plaintiff Claims and Released Defendant Claims, the Parties stipulate and agree that upon the Effective Date, Plaintiffs and Defendant shall expressly waive, and each Plaintiff Plan and each other Class Member and its named fiduciaries in their capacities as such, and each other Released Defendant Party, shall be deemed to have waived, all provisions, rights and benefits conferred by any law of any state of the United States, or principle of common law or otherwise, which is similar, comparable or equivalent to California Civil Code §1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Parties acknowledge, and each Plaintiff Plan and each other Class Member and its named fiduciaries in their capacities as such, and each other Released Defendant Party, by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Plaintiff Claims and Released Defendant Claims was separately bargained for and was a key element of the Settlement.

### **CLASS CERTIFICATION**

2. Solely for purposes of the Settlement and for no other purpose, the Parties stipulate and agree to: (a) certification of the Action as a class action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of the Class; (b) certification of Plaintiffs and/or the Plaintiff Plans as Class Representatives; and (c) appointment of Plaintiffs’ Counsel as Class Counsel pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

### **PRELIMINARY APPROVAL OF SETTLEMENT**

3. Plaintiffs will move for preliminary approval of the Settlement and, solely for settlement purposes, certification of the Class, which motion shall be unopposed by Defendant solely for settlement purposes. In connection with the motion for preliminary approval, Plaintiffs shall apply to the Court for, and Defendant shall agree to, entry of the Preliminary Approval Order, substantially in the form annexed hereto as Exhibit A.

### **RELEASE OF CLAIMS**

4. The obligations incurred pursuant to this Stipulation shall be in full and final disposition of the Action as against Defendant, and shall fully and finally release (i) any and all Released Plaintiff Claims as against all Released Defendant Parties and (ii) any and all Released Defendant Claims as against all Released Plaintiff Parties.

5. Pursuant to the Judgment, upon the Effective Date, Plaintiffs, the Plaintiff Plans, and each of the other members of the Class and their respective named fiduciaries in their capacities as such, on behalf of themselves, their respective heirs, executors, administrators, predecessors, successors, and assigns, shall be deemed by operation of law to have released, waived, discharged, and dismissed each and every Released Plaintiff Claim, and shall forever be enjoined from prosecuting any or all of the Released Plaintiff Claims, against any Released Defendant Party.

6. Pursuant to the Judgment, upon the Effective Date, Defendant and each of the other Released Defendant Parties, on behalf of themselves, their respective heirs, executors, administrators, predecessors, successors, and assigns, shall be deemed by operation of law to have released, waived, discharged, and dismissed each and every Released Defendant Claim, and shall forever be enjoined from prosecuting any or all of the Released Defendant Claims, against any Released Plaintiff Party.

#### **THE SETTLEMENT CONSIDERATION**

7. In consideration of the Settlement of the Released Plaintiff Claims against Defendant and the other Released Defendant Parties, Defendant shall pay or cause to be paid Eight Million Five Hundred One Thousand Dollars (\$8,501,000) in cash (the “Settlement Consideration”), such amount to be deposited into the Escrow Account within ten (10) business days of entry of the Preliminary Approval Order. The Settlement Consideration to be deposited into the Escrow Account shall consist of (i) the \$8,500,000 Settlement Amount, which shall be

distributed to Authorized Claimants in accordance with the terms of this Stipulation; and (ii) the \$1,000 Notice Payment, which shall be used towards the payment of Notice Costs.<sup>4</sup>

### **USE OF SETTLEMENT FUND**

8. The Settlement Fund shall be used to pay: (a) any Taxes; (b) any Notice Costs in excess of \$1,000; (c) any Administration Costs; (d) any Litigation Expenses awarded by the Court; and (e) any attorneys' fees awarded by the Court. The balance remaining in the Settlement Fund, after making the deductions for the items referred to in clauses (a) through (e) of this paragraph, shall be the "Net Settlement Fund." The Net Settlement Fund shall be distributed to Authorized Claimants as provided below.

9. Except as provided herein or pursuant to orders of the Court, the Net Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds held by the Escrow Agent shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned pursuant to the terms of this Stipulation and/or further order of the Court. The Escrow Agent shall invest any funds in the Escrow Account in United States Treasury Bills (or a mutual fund invested solely in such instruments) and shall collect and reinvest all interest accrued thereon, except that any residual cash balances of less than \$250,000 may be invested in an account that is fully insured by the United States Government or any agency thereof, including the FDIC. In the event that the yield on United States Treasury Bills is negative, in lieu of purchasing such Treasury Bills, all or any portion of the funds held by the Escrow Agent may be deposited in a non-interest bearing account that is fully insured by the United States Government or any agency thereof, including the FDIC.

---

<sup>4</sup> As set forth in paragraph 24 below, in the event that Notice Costs are less than \$1,000, Plaintiffs shall return to Defendant the unused portion of the Notice Payment.

10. The Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and that Plaintiffs' Counsel, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing or causing to be filed all informational and other tax returns as may be necessary or appropriate (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the Settlement Fund. Such returns shall be consistent with this paragraph and in all events shall reflect that all taxes on the income earned on the Settlement Fund shall be paid out of the Settlement Fund as provided below. Plaintiffs' Counsel shall also be responsible for causing payment to be made from the Settlement Fund of any Taxes owed with respect to the Settlement Fund. Upon written request, Defendant will provide promptly to Plaintiffs' Counsel the statement described in Treasury Regulation § 1.468B-3(e). Plaintiffs' Counsel, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or advisable to carry out this paragraph, including, as necessary, making a "relation back election," as described in Treasury Regulation § 1.468B-1(j), to cause the Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

11. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid by the Escrow Agent pursuant to the disbursement instructions to be set forth in the Escrow Agreement, and without prior Order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with the previous paragraph and in all events shall reflect that all Taxes (including any interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

12. This is not a claims-made settlement. Upon the occurrence of the Effective Date, neither Defendant, its insurance carriers, nor any other person or entity who or that paid any portion of the Settlement Consideration on Defendant's behalf, shall have any right to the return of the Settlement Consideration or any portion thereof (except to the extent that any portion of the Notice Payment is required to be returned to Defendant pursuant to paragraph 24 below) irrespective of the number of Claims filed, the collective damages of Authorized Claimants, the percentage of recovery of damages, or the amounts paid to Authorized Claimants from the Net Settlement Fund.

**NOTICE AND ADMINISTRATION OF SETTLEMENT; PLAN OF ALLOCATION**

13. The Claims Administrator shall provide notice of the Settlement to the Class and administer the Settlement (including receiving and reviewing Claims and distributing the Net Settlement Fund to Authorized Claimants) under Plaintiffs' Counsel's supervision and subject to the jurisdiction of the Court. Except as otherwise provided herein, the Released Defendant Parties shall have no responsibility for, or liability whatsoever to, any person, including, but not limited to, Plaintiffs, the Plaintiff Plans, or any of the other Class Members, in connection with the noticing or the administration of the Settlement. Defendant's Counsel shall, however, cooperate in the noticing and the administration of the Settlement to the extent reasonably necessary to effectuate its terms.

14. Pursuant to paragraph 3 above, Plaintiffs shall apply to the Court for entry of the Preliminary Approval Order (substantially in the form of Exhibit A), which shall, among other things, require that the Notice (substantially in the form annexed hereto as Exhibit 1 to Exhibit A) and the Claim Form (substantially in the form annexed hereto as Exhibit 2 to Exhibit A) be disseminated to the Class Members and/or one or more of their named fiduciaries by certified

U.S. Mail and through publication on a website maintained by the Claims Administrator or Plaintiffs' Counsel, and the Summary Notice (substantially in the form annexed hereto as Exhibit 3 to Exhibit A) be disseminated via the internet through the *PR Newswire*.

15. In order to be eligible to share in the distribution of the Net Settlement Fund, each Class Member shall be required to submit a properly executed Claim Form. As a condition to being eligible to receive a share of the Net Settlement Fund, a Class Member must acknowledge in its signed Claim Form that, in the event that it (or its named fiduciaries on its behalf) sues any a person or entity, other than a Released Defendant Party, that provided investment-related or professional or other services to that Class Member before or during the Class Period (including but not limited to money managers) (a "Third Party") based upon any allegations in connection with the claims or allegations that were asserted in this Action or that arise out of the Consulting Services relationship between that Class Member and Merrill Lynch before or during the Class Period, such Class Member must return any distribution it received from the Net Settlement Fund to Merrill Lynch if the assertion of such claim(s) against a Third Party results in a claim being made against Merrill Lynch by such Third Party for contribution or indemnity with respect to such claim(s). This provision does not apply, however, to any counterclaims asserted by any Class Member (or its named fiduciaries in their capacities as such) in connection with any lawsuit initiated by any Third Party. The enforcement of this provision shall be subject to the continuing jurisdiction of the Court.

16. After the Effective Date occurs, the Net Settlement Fund shall be distributed to Authorized Claimants in accordance with the plan of allocation approved by the Court. Plaintiffs' proposed Plan of Allocation of the Net Settlement Fund is set forth in the Notice. The Plan of Allocation or any other plan of allocation in this Action shall be the sole responsibility of

Plaintiffs and Plaintiffs' Counsel, and neither Defendant nor any other Released Defendant Party shall have any involvement in or responsibility for the formulation of any plan of allocation, the allocation of the Net Settlement Fund, or the distribution of the Net Settlement Fund to Authorized Claimants. The Plan of Allocation proposed in the Notice is not a necessary term of this Stipulation and it is not a condition of this Stipulation that any particular plan of allocation be approved by the Court. Neither Defendant nor Plaintiffs may cancel or terminate this Stipulation or the Settlement based on this Court's or any appellate court's rulings with respect to the Plan of Allocation or any other plan of allocation in this Action.

17. Subject to the approval of the Court, under the proposed Plan of Allocation set forth in the Notice, each Authorized Claimant's distribution amount from the Net Settlement Fund shall be based upon each Authorized Claimant's "*Pro Rata* Share" of the Net Settlement Fund as calculated under the Plan of Allocation. Attached as an Exhibit to the Notice is a "Claim Amount Table" setting forth each Plan's *Pro Rata* Share, as well as each Plan's calculated "Unadjusted Claim Amount," "12b-1 Refund Amount" (if any), and "Adjusted Claim Amount" used to determine each Plan's *Pro Rata* Share. The Claim Amount Table identifies each Plan only by a unique identifying number, but a separate cover letter accompanying the Notice to be provided to each Plan shall advise the recipient Plan which identification number on the Claim Amount Table corresponds to the Plan to which the cover letter is directed. Any Plan that does not request exclusion from the Class may challenge its calculated Adjusted Claim Amount set forth on the Claim Amount Table by submitting evidence (such as account statements provided to it by Merrill Lynch) in support of its assertion that its Adjusted Claim Amount was incorrectly calculated ("Claim Amount Challenge").

18. The Claims Administrator shall administer the process of receiving, reviewing and approving or denying Claims under Plaintiffs' Counsel's supervision and subject to the jurisdiction of the Court. Plaintiffs' Counsel shall have the right, but not the obligation, to waive what they deem to be formal or technical defects in any Claim Forms submitted in the interests of achieving substantial justice.

19. For purposes of determining whether a Class Member shall be entitled to be treated as an Authorized Claimant, the following conditions shall apply:

(a) Each Class Member shall be required to submit a Claim Form, substantially in the form annexed hereto as Exhibit 2 to Exhibit A, to the Claims Administrator by the date set by the Court in the Preliminary Approval Order and specified in the Notice, unless such deadline is extended by further Order of the Court. Any Class Member who fails to submit a Claim Form by such date shall be forever barred from receiving any distribution from the Net Settlement Fund or payment pursuant to this Stipulation (unless, by Order of the Court, late-filed Claims are accepted), but shall in all other respects be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment or, if applicable, the Alternative Judgment and the releases provided for herein, and will be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against any Released Defendant Party concerning any Released Plaintiff Claim. Provided that it is received before the motion for the Class Distribution Order is filed, a Claim shall be deemed to be submitted when postmarked, if received with a postmark indicated on the envelope and if mailed by first-class mail and addressed in accordance with the instructions thereon. In all other cases, the Claims shall be deemed to have been submitted when actually received by the Claims Administrator;

(b) Each Claim Form shall be submitted to and reviewed by the Claims Administrator, under the supervision of Plaintiffs' Counsel, who shall determine in accordance with this Stipulation whether the Claim Form has been validly submitted, subject to review by the Court;

(c) Claim Forms that do not meet the submission requirements may be rejected. Prior to rejecting a Claim, the Claims Administrator shall communicate with the Claimant in writing, to give the Claimant the chance to remedy the deficiencies in the Claim Form submitted; and

(d) Claims Forms that are timely submitted and properly completed and executed, and that do not contain a Claim Amount Challenge, shall be deemed presumptively valid.

20. Any Claim Amount Challenge and supporting documentation must be included with the Claim Form when submitted to the Claims Administrator. In the event that the Claims Administrator, Plaintiffs' Counsel and the Plan submitting the Claim Amount Challenge fail to agree on whether (or to what extent) the Claim Amount Challenge should be accepted, the matter shall be submitted to the Mediator (or a substitute arbitrator appointed by the Court) for binding determination as further detailed in the Notice.

21. No Defendant nor any other Released Defendant Party shall be permitted to review, contest, or object to any Claim or Claim Amount Challenge or any decision of the Claims Administrator, Plaintiffs' Counsel or the Mediator (or any substitute arbitrator appointed by the Court) with respect to any Claims or Claim Amount Challenges submitted in this matter.

22. After the Claims processing is completed, and after the Mediator (or a substitute arbitrator appointed by the Court) has resolved any disputes concerning Claim Amount

Challenges, the administrative determinations of the Claims Administrator concerning the distribution of the Net Settlement Fund pursuant to the Plan of Allocation shall be presented to the Court, on notice to Defendants' Counsel, in the motion for the Class Distribution Order which shall, among other things, ask the Court to (a) approve the Claims Administrator's administrative determinations concerning the distribution of the Net Settlement Fund; (b) approve payment of any administration fees and expenses associated with the administration of the Settlement from the Escrow Account, and (c) if the Effective Date has occurred, direct payment of the Net Settlement Fund to Authorized Claimants from the Escrow Account.

23. Payment pursuant to the Class Distribution Order shall be final and conclusive against all Class Members.

#### **COSTS OF NOTICE AND ADMINISTRATION**

24. Plaintiffs' Counsel may pay from the Notice Payment, without further approval from Defendant or further order of the Court, all Notice Costs actually incurred. In the event that Notice Costs are less than \$1,000, Plaintiffs shall return to Defendant (or to such other persons or entities as Defendant may direct) the unused portion of the Notice Payment. In the event that Notice Costs exceed \$1,000, Plaintiffs' Counsel may pay such Notice Costs from the Settlement Fund without further approval from Defendant or further order of the Court. Plaintiffs' Counsel may also pay from the Settlement Fund, without further approval from Defendant or further order of the Court, all Administration Costs actually incurred. In the event that the Settlement is terminated pursuant to the terms of this Stipulation, all Notice Costs and Administration Costs paid or incurred, including any related fees, shall not be returned or repaid to Defendant or to any other person or entity who or which paid any portion of the Settlement Consideration on its behalf.

**ATTORNEYS' FEES AND LITIGATION EXPENSES**

25. Plaintiffs' Counsel will apply to the Court for an award of attorneys' fees to be paid out of the Settlement Fund. Plaintiffs' Counsel also will apply to the Court for reimbursement of Litigation Expenses to be paid out of the Settlement Fund. Neither Defendant nor any other Released Defendant Party shall take any position with respect to Plaintiffs' Counsel's application for an award of attorneys' fees and/or Litigation Expenses. Plaintiffs' Counsel's application for an award of attorneys' fees and/or Litigation Expenses is not the subject of any agreement between Defendant and Plaintiffs beyond what is set forth in this Stipulation.

26. Any attorneys' fees and Litigation Expenses that are awarded by the Court shall be paid to Plaintiffs' Counsel immediately upon award, notwithstanding the existence of any timely filed objections thereto, or the potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to Plaintiffs' Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund, plus accrued interest at the same net rate as is earned by the Settlement Fund, if the Settlement is terminated pursuant to the terms of this Stipulation or if, as a result of any appeal or further proceedings on remand, or successful collateral attack, the award of attorneys' fees and/or Litigation Expenses is reduced or reversed. Plaintiffs' Counsel shall make the appropriate refund or repayment in full no later than fifteen (15) days after receiving from Defendant's Counsel or from a court of appropriate jurisdiction notice of the termination of the Settlement or notice of any reduction of the award of attorneys' fees and/or Litigation Expenses. An award of attorneys' fees and/or Litigation Expenses is not a necessary term of this Stipulation and is not a condition of this Stipulation. Neither Plaintiffs nor

Plaintiffs' Counsel may cancel or terminate the Stipulation or the Settlement based on this Court's or any appellate court's ruling with respect to attorneys' fees and/or Litigation Expenses.

27. Plaintiffs' Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs' Counsel in a manner that they, in good faith, believe reflects the contributions of such counsel to the prosecution and settlement of the Action.

### **TERMS OF THE JUDGMENT**

28. If the Settlement contemplated by this Stipulation is approved by the Court, Plaintiffs' Counsel and Defendant's Counsel shall request that the Court enter a Judgment, substantially in the form annexed hereto as Exhibit B.

### **CONDITIONS OF SETTLEMENT AND EFFECT OF TERMINATION**

29. The Effective Date of the Stipulation shall be conditioned on the occurrence or waiver of all of the following events:

(a) the Court has entered the Preliminary Approval Order, substantially in the form set forth in Exhibit A annexed hereto;

(b) the Settlement Consideration has been deposited in the Escrow Account in accordance with the provisions of paragraph 7 above;

(c) Defendant has not exercised its right to terminate the Settlement pursuant to paragraphs 30 or 31 below;

(d) Plaintiffs have not exercised their right to terminate the Settlement pursuant to paragraph 30 below; and

(e) the Court has entered a Judgment, substantially in the form set forth in Exhibit B annexed hereto, and the Judgment has become Final, or the Court has entered an

Alternative Judgment, and none of the Parties has elected to terminate the Settlement and the Alternative Judgment has become Final.

30. Defendant and Plaintiffs shall have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so (“Termination Notice”) to the other Parties to this Stipulation within thirty (30) days of: (a) the Court’s declining to enter the Preliminary Approval Order in any material respect; (b) the Court’s refusal to approve this Stipulation or any part of it that materially affects any Party’s rights or obligations hereunder; (c) the Court’s declining to enter the Judgment in any material respect; (d) the date upon which the Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court; or (e) the date upon which an Alternative Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court. However, any decision with respect to an application for attorneys’ fees or Litigation Expenses, or with respect to any plan of allocation, shall not be considered material to the Settlement, shall not affect the finality of the Judgment or Alternative Judgment, and shall not be grounds for termination.

31. In addition to the grounds set forth in paragraph 30 above, Defendant shall have the option to terminate the Settlement and this Stipulation in the event that Class Members validly requesting exclusion from the Class meet the conditions set forth in a confidential supplemental agreement between the Parties that is being executed concurrently with this Stipulation (the “Supplemental Agreement”). The Supplemental Agreement shall not be filed with the Court and its terms shall not be disclosed in any other manner (other than the statements herein and in the Notice) unless and until the Court requires the Parties to file the Supplemental Agreement or to otherwise disclose its terms, or a dispute arises between Plaintiffs and Defendant concerning its interpretation or application. If submission of the Supplemental

Agreement is required for resolution of a dispute or is otherwise ordered by the Court, the Parties will undertake to have the Supplemental Agreement submitted to the Court *in camera*.

32. Except as otherwise provided herein, in the event that the Settlement is terminated, the Settlement and this Stipulation shall be null and void, none of their terms shall be effective or enforceable, neither the fact of the Settlement nor the contents of the Stipulation shall be admissible in any trial of this Action, and the Parties shall be deemed to have reverted to their respective statuses in this Action immediately prior to December 14, 2011, and, except as otherwise expressly provided herein, the Parties shall proceed in all respects as if this Stipulation and any related orders had not been entered, and any portion of the Settlement Consideration previously paid or caused to be paid by Defendant (together with any interest earned thereon, but less any Taxes paid or due with respect to such interest income, and less any Notice Costs and Administration Costs actually incurred and paid or payable) shall be returned to Defendant (or to such other persons or entities as Defendant may direct) within fifteen (15) business days after joint written notification of such event by Defendant's Counsel and Plaintiffs' Counsel to the Escrow Agent.

#### **NO ADMISSION OF WRONGDOING**

33. This Stipulation, whether or not consummated, and any proceedings taken pursuant to it:

a. shall not be offered or received against any of the Released Defendant Parties as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Released Defendant Parties with respect to the appropriateness of class certification, or the truth of any fact alleged by Plaintiffs or the validity of any claim that was or could have been asserted against any of the Released Defendant Parties

in this Action or in any litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Released Defendant Parties;

b. shall not be offered or received against any of the Released Defendant Parties as evidence of a presumption, concession, or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any of the Released Defendant Parties, or against any of the Released Plaintiff Parties, as evidence of any infirmity in the claims of Plaintiffs, the Plaintiff Plans or the other Class Members (or their named fiduciaries);

c. shall not be offered or received against any of the Released Defendant Parties, or against any of the Released Plaintiff Parties, as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Released Defendant Parties, or against any of the Released Plaintiff Parties, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; provided, however, that if this Stipulation is approved by the Court, Defendant, any other Released Defendant Parties, Plaintiffs, and/or any other Released Plaintiff Parties may refer to it to effectuate the protections from liability granted hereunder or otherwise to enforce the terms of the Settlement;

d. shall not be construed against any of the Released Defendant Parties or any of the Released Plaintiff Parties as an admission, concession, or presumption that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; and

e. shall not be construed against Plaintiffs, the Plaintiff Plans, or any other Class Members (or their named fiduciaries) as an admission, concession, or presumption that any of their claims are without merit or that damages recoverable under the Complaint would not have exceeded the Settlement Amount.

### **MISCELLANEOUS PROVISIONS**

34. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.

35. The Parties shall return or destroy documents produced in the Action in compliance with the terms of the Stipulated Confidentiality Agreement entered into in this Action except that the Parties hereto agree that notwithstanding the time period specified in paragraph 20 of that agreement, they shall return to each other or destroy the relevant documents within thirty (30) calendar days after the Effective Date.

36. As to the payment(s) made or to be made by Defendant or on its behalf under the Settlement, Defendant warrants as of the date of entering into this Stipulation that (and further agrees that it shall be deemed to have warranted as of the date of the actual making of such payment(s) that) it is not insolvent and that any payment made or required to be made by or on its behalf has not and/or will not render it insolvent within the meaning of and/or for the purposes of the United States Bankruptcy Code, including §§ 101 and 547 thereof. This representation is made by Defendant and not by its counsel.

37. If a case is commenced in respect of Defendant or any other person or entity contributing to the payment of the Settlement Consideration to the Escrow Account on behalf of Defendant under Title 11 of the United States Code (Bankruptcy), or if a trustee, receiver, conservator or other fiduciary is appointed under any similar law, and in the event of the entry of

a final order of a court of competent jurisdiction determining the payment of the Settlement Consideration to the Escrow Account or any portion thereof by or on behalf of Defendant to be a preference, voidable transfer, fraudulent transfer, or similar transaction, and any portion thereof is required to be returned, and such amount is not promptly deposited to the Escrow Account by others, then, at the election of Plaintiffs, the Parties shall jointly move the Court to vacate and set aside the releases given and the Judgment or, if applicable, the Alternative Judgment, entered in favor of Defendant and the other Released Defendant Parties pursuant to this Stipulation, which releases and Judgment, or Alternative Judgment, shall be null and void, and the parties shall be restored to their respective positions in the Action immediately prior to December 14, 2011, and any cash amounts in the Settlement Fund shall be returned as provided in paragraph 32 above.

38. The Parties intend this Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by Plaintiffs, the Plaintiff Plans or any other Class Member against all Released Defendant Parties with respect to all Released Plaintiff Claims. Accordingly, Plaintiffs and Defendant agree not to assert in any forum that this Action was brought by Plaintiffs or defended by Defendant in bad faith or without a reasonable basis. No Party shall assert any claims of any violation of Rule 11 of the Federal Rules of Civil Procedure relating to the institution, prosecution, defense, or settlement of this Action. The Parties agree that the amount to be paid by Defendant and the other terms of this Settlement were negotiated at arm's-length in good faith by the Parties pursuant to a mediation process conducted under the auspices of the Hon. Herbert Stettin, and reflect a settlement that was reached voluntarily with the benefit of the advice of experienced legal counsel on both sides.

39. While retaining their right to deny that the claims asserted in the Action were meritorious, Defendant and its counsel, in any statement made to any media representative

(whether or not for attribution), will not assert that the Action was commenced or prosecuted in bad faith nor will they deny that the Action was commenced and prosecuted in good faith or that it is being settled voluntarily after consultation with experienced and competent legal counsel. Likewise, Plaintiffs and their counsel, in any statement made to any media representative (whether or not for attribution), will not assert that the Action was defended in bad faith nor will they deny that it was defended in good faith or that it is being settled voluntarily after consultation with experienced and competent counsel. In all events, Plaintiffs and their counsel and Defendant and its counsel shall not make any accusations of wrongful or actionable conduct by either side concerning the prosecution, defense and resolution of the Action, and shall not otherwise suggest that the Settlement constitutes an admission of any claim or defense alleged.

40. This Stipulation may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all signatories hereto or their successors-in-interest.

41. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

42. The administration and consummation of this Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and Litigation Expenses to Plaintiffs' Counsel and enforcing the terms of this Stipulation.

43. The waiver by one Party of any breach of this Stipulation by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

44. This Stipulation, its exhibits and the Supplemental Agreement constitute the entire agreement among the Parties concerning this Settlement, and no representations, warranties, or inducements have been made by any Party hereto concerning this Stipulation, its

exhibits, or the Supplemental Agreement, other than those contained and memorialized in such documents.

45. This Stipulation may be executed in one or more counterparts, including by signature transmitted via facsimile or by a .pdf or .tif image of the signature transmitted via electronic mail. Signatures exchanged via facsimile or electronic mail shall have the same force and effect as originally signed signature pages.

46. This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties.

47. The construction, interpretation, operation, effect and validity of this Stipulation, and all documents necessary to effectuate it, shall be governed by the internal laws of the State of Florida without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

48. This Stipulation shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that the Stipulation is the result of arm's-length negotiations between the Parties and all Parties have contributed substantially and materially to the preparation of this Stipulation.

49. All counsel and any other person executing this Stipulation and any of the exhibits hereto, or any related Settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

50. If any Party is required to give notice to another Party under this Stipulation, such notice shall be in writing and shall be deemed to have been duly given upon receipt of hand

delivery or facsimile or email transmission, with confirmation of receipt. Notice shall be provided as follows:

If to Plaintiffs  
or Plaintiffs' Counsel: Bernstein Litowitz Berger & Grossmann LLP  
1285 Avenue of the Americas  
New York, New York 10019  
Telephone: (212) 554-1400  
Facsimile: (212) 554-1444  
Email: wfredericks@blbglaw.com  
Attn: William C. Fredericks, Esq.

-and-

Klausner, Kaufman, Jensen & Levinson, P.A.  
10059 N.W. 1st Court  
Plantation, Florida 33324  
Telephone: (954) 916-1202  
Facsimile: (954) 916-1232  
Email: Bob@robertdklausner.com  
Attn: Robert Klausner, Esq.

If to Merrill Lynch: Greenberg Traurig, P.A.  
Suite 4400  
333 SE 2nd Ave  
Miami, FL 33131  
Telephone: (305) 579-0500  
Facsimile: (305) 579-0717  
Email: CoulsonD@gtlaw.com, EvansP@gtlaw.com  
Attn: David A. Coulson, Esq., D. Porpoise Evans, Esq.

51. Plaintiffs and their Counsel, and Defendant and its Counsel, agree to cooperate fully with one another in seeking entry of the Preliminary Approval Order and the Judgment, and to use best efforts to take such other steps as may be reasonably required to consummate the Settlement in accordance with the terms of this Stipulation.

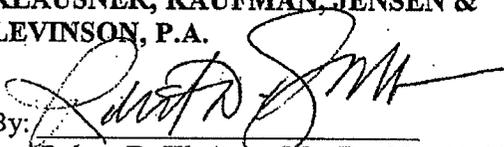
DATED: March 23 2012

**BERNSTEIN LITOWITZ BERGER &  
GROSSMANN LLP**

By: 

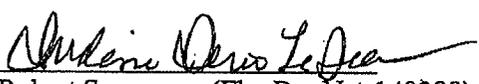
William C. Fredericks  
(admitted *pro hac vice*)  
1285 Avenue of the Americas  
New York, New York 10019  
Telephone: (212) 554-1400  
Facsimile: (212) 554-1444  
[wfredericks@blbglaw.com](mailto:wfredericks@blbglaw.com)

**KLAUSNER, KAUFMAN, JENSEN &  
LEVINSON, P.A.**

By: 

Robert D. Klausner (Fla. Bar No. 244082)  
Adam P. Levinson (Fla. Bar No. 055344)  
10059 N.W. 1st Court  
Plantation, Florida 33324  
Telephone: (954) 916-1202  
Facsimile: (954) 916-1232  
[Bob@robertdklausner.com](mailto:Bob@robertdklausner.com)  
[Adam@robertklausner.com](mailto:Adam@robertklausner.com)

**SUGARMAN & SUSSKIND, P.A.**

By: 

Robert Sugarman (Fla. Bar No. 149388)  
Ivelisse Berio LeBeau (Fla. Bar No. 907693)  
100 Miracle Mile, Suite 300  
Coral Gables, Florida 33134  
Telephone: (305) 592-2801  
Facsimile: (305) 447-8115  
[Sugarman@sugarmansusskind.com](mailto:Sugarman@sugarmansusskind.com)  
[Ivelisse@sugarmansusskind.com](mailto:Ivelisse@sugarmansusskind.com)

*Co-Counsel for Plaintiffs*

**GREENBERG TRAUIG, LLP**

By: 

David A. Coulson (Fla. Bar No. 176222)  
D. Porpoise Evans (Fla. Bar No. 576883)  
Suite 4400  
333 SE 2nd Ave  
Miami, FL 33131  
Telephone: (305) 579-0500  
Facsimile: (305) 579-0717  
[CoulsonD@gtlaw.com](mailto:CoulsonD@gtlaw.com)  
[EvansP@gtlaw.com](mailto:EvansP@gtlaw.com)

Terry R. Weiss, Esq. (Fla. Bar No. 057906)  
3290 Northside Parkway NW, Suite 400  
Atlanta, Georgia 30327  
Telephone: (678) 553-7328  
Facsimile: (678) 553-7329  
[WeissTR@gtlaw.com](mailto:WeissTR@gtlaw.com)

***Counsel for Defendant Merrill Lynch Pierce  
Fenner & Smith Inc.***

# 610825.8

## **Schedule 1**

### **(Plan Names As Identified by Merrill Lynch)**

1. City of Bradenton Firefighters' Retirement System
2. City of Cape Coral General Employees' Retirement System
3. City of Cape Coral Municipal Firefighters' Retirement System
4. City of Cape Coral Municipal Police Officers' Retirement System
5. City of Cocoa Beach Firefighters' Retirement System
6. City of Cocoa Beach Police Officers' Retirement System
7. City of Cocoa General Employees' Retirement Plan
8. City of Fort Myers Police Officers' Retirement System
9. City of Ft. Walton Beach Municipal Firefighters' Pension Trust Fund
10. City of Kissimmee General Employees' Retirement Plan
11. City of Kissimmee Municipal Police Officers' Retirement Plan
12. City of Kissimmee Utility Authority Retirement Plan
13. City of Lake Mary Police Officers' Retirement System
14. City of Largo Police Officers' and Firefighters' Retirement Plan
15. City of Melbourne Police Officers' Retirement System
16. City of Palm Bay Police & Firefighters Pension Fund
17. City of Pensacola Firefighters' Relief and Pension Fund
18. City of Pensacola General Pension and Retirement Fund
19. City of South Miami Pension Plan
20. City of St. Augustine Municipal Firefighters' Pension Trust Fund
21. City of St. Cloud General Employees' Pension Fund
22. City of St. Cloud Police Officers' and Firefighters' Pension Fund
23. City of St. Petersburg Firefighters' Pension Plan
24. City of St. Petersburg Police Officers' Pension Fund
25. City of Titusville Police Officers' and Firefighters' Pension Fund

## Schedule 2

### **(Plan Names As Identified by Merrill Lynch)**

1. Amalgamated Transit Union (Local 1596 Pension Fund)
2. City of Atlantic Beach General Employees' Pension Fund
3. City of Atlantic Beach Police Employees' Pension Fund
4. City of Auburndale General Pension Fund
5. City of Auburndale Municipal Firefighters' Pension Trust Fund
6. City of Auburndale Municipal Police Pension Trust Fund
7. City of Boynton Beach General Employees' Pension Fund
8. City of Clearwater Firefighters' Supplemental Pension Fund
9. City of Coral Gables Retirement System
10. City of Coral Springs Firefighters' Retirement System
11. City of Coral Springs General Employees' Retirement System
12. City of Dania Beach Police Officers' and Firefighters' Pension Fund
13. City of Deerfield Beach Police Officers' Pension Fund
14. City of Deland Police Officers' Pension Fund
15. City of Ft. Walton Beach General Employees' Pension Fund
16. City of Ft. Walton Beach Police Officers' Pension Fund
17. City of Haines City Municipal Firefighters' Retirement Trust Fund
18. City of Haines City Municipal Police Officers' Retirement Trust Fund
19. City of Hallandale Municipal Police Officers' & Firemen's Retirement Plan
20. City of Jacksonville Beach Employees' Retirement System
21. City of Jacksonville General Employees' Pension Fund
22. City of Jacksonville Police & Fire Pension Fund
23. City of Jupiter Police Officers' Retirement Plan
24. City of Key Biscayne Police Officers' and Firefighters' Retirement Plan
25. City of Key West General Employees' Retirement Plan
26. City of Key West Police & Fire Pension Fund
27. City of Lake Worth Employees' Retirement System
28. City of Lake Worth Firefighters' Pension Trust Fund
29. City of Lake Worth Police Officers' Retirement System
30. City of Lake Worth Police Relief and Pension Fund Division II
31. City of Lakeland Municipal Police Officers' Retirement Fund
32. City of Lantana Firefighters' Pension Fund
33. City of Lauderdale Confidential & Managerial Employee Defined Benefit Plan
34. City of Lauderdale General Employees' Retirement System
35. City of Lauderdale Police Officers' Retirement System
36. City of Marianna Fire Pension Fund
37. City of Marianna Police Pension Fund
38. City of Miami Shores Village Employees' Retirement Plan
39. City of Miami Shores Village Police Officers' Retirement Plan
40. City of Miramar Firefighters' Retirement Fund
41. City of Miramar Police Officers' Retirement Fund
42. City of North Miami Beach General Employees' Pension Fund
43. City of North Miami Police & Fire Pension Fund

44. City of North Port Firefighters' Pension – Local Option Trust Fund
45. City of North Port Police Officers' Pension – Local Option Trust Fund
46. City of Ocala General Pension Fund
47. City of Ocala Police & Fire Pension Fund
48. City of Ocala Treasury Investment Fund
49. City of Ocoee General Employees' Retirement Trust Fund
50. City of Ocoee Police Officers' and Firefighters' Retirement Trust Fund
51. City of Orange Park Police Officers' Pension Fund
52. City of Orlando Utilities Commission Defined Benefit Plan
53. City of Orlando Utilities Commission Defined Contribution Plan
54. City of Ormond Beach General Pension Fund
55. City of Parkland Police Pension Plan
56. City of Pinellas Park Firefighters' Pension Fund
57. City of Pinellas Park General Employees' Pension Fund
58. City of Pinellas Park Police Officers' Pension Fund
59. City of Plantation General Employees' Retirement System
60. City of Plantation Volunteer Firemen's Retirement System
61. City of Pompano Beach General Employees' Retirement System
62. City of Port St. Lucie Municipal Police Officers' Retirement Trust Fund
63. City of Punta Gorda Firefighters' Pension Fund
64. City of Punta Gorda General Employees' Pension Fund
65. City of Riviera Beach Municipal Firefighters' Pension Trust Fund
66. City of Riviera Beach Police Pension Fund
67. City of Sarasota Firefighters' Pension Fund
68. City of Sarasota Police Officers' Pension Fund
69. City of Sunrise General Employees' Pension Fund
70. City of Sunrise Police Pension Fund
71. City of Titusville General Employees' Pension Plan
72. City of Vero Beach Municipal Firefighters' Pension Fund
73. City of Vero Beach Municipal Police Officers' Retirement Trust Fund
74. City of West Palm Beach Defined Contribution Retirement System
75. City of West Palm Beach Firefighters' Pension Fund
76. Florida Transit Management (Palm Tran – ATU Local 1577 Pension Plan)