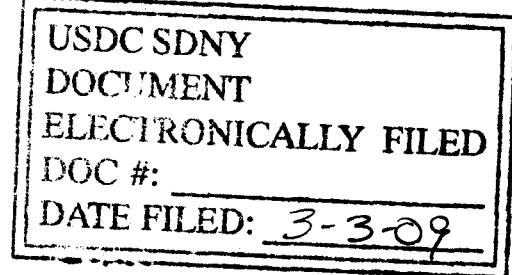


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE MERRILL LYNCH & CO., INC.
SECURITIES, DERIVATIVE AND ERISA
LITIGATION

This Document Relates To:
Securities Action, 07-cv-9633 (JSR)(DFE)

Master File No. 07-cv-9633 (JSR)(DFE)



 **[PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT AND PROVIDING FOR NOTICE**

WHEREAS, effective February 17, 2009, Co-Lead Counsel on behalf of Lead Plaintiff, the State Teachers' Retirement System of Ohio, and the Settlement Class, and Defendants, by and through their respective counsel, have entered into a settlement of the claims asserted in the Securities Action, the terms of which are set forth in a Stipulation and Agreement of Settlement, dated as of February 17, 2009 (the "Settlement Stipulation"), which is subject to review under Rule 23 of the Federal Rules of Civil Procedure and which, together with the exhibits thereto, sets forth the terms and conditions for the proposed settlement of the claims alleged in the Securities Action on the merits and with prejudice, upon the terms and conditions set forth in the Settlement Stipulation; and the Court having read and considered the Settlement Stipulation, the proposed Notice of Pendency and Proposed Settlement of Securities Class Action, the proposed Summary Notice of Pendency and Proposed Settlement of Securities Class Action, the proposed Plan of Allocation of Net Settlement Fund among Settlement Class Members, the proposed form of the Proof of Claim and Release, the proposed form of Order and Final Judgment relating to the Settlement and submissions made relating thereto, and finding that substantial and sufficient grounds exist for entering this Order; and capitalized terms used but not otherwise defined herein

having the meanings defined in the Settlement Stipulation;

NOW, THEREFORE, IT IS HEREBY ORDERED, this 2nd day of March, 2009, that:

1. Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and for the purposes of the Settlement only, the Securities Action which is part of this consolidated litigation is hereby preliminarily certified as a class action on behalf of all persons who purchased or acquired the common stock or certain preferred securities (the "Preferred Securities," of Merrill Lynch & Co., Inc. ("Merrill") (which Preferred Securities are listed in the Settlement Stipulation at ¶1(s)) from October 17, 2006 through and including December 31, 2008. Excluded from the Settlement Class are the Defendants and their affiliates, and Temasek Capital (Private) Limited, Davis Selected Advisors L.P. and their affiliates. Also excluded are present and former employees of Merrill and its subsidiaries who acquired Merrill securities through exercise of warrants and/or as compensation. Also excluded from the Settlement Class are any Settlement Class Members who exclude themselves by filing a timely, valid request for exclusion.

2. The Court finds, preliminarily and for purposes of this Settlement only, that the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of Settlement Class members is so numerous that joinder of all members of the Settlement Class is impracticable; (b) there are questions of law and fact common to each member of the Settlement Class; (c) the claims of the Lead Plaintiff are typical of the claims of the Settlement Class it seeks to represent; (d) the Lead Plaintiff will fairly and adequately represent the interests of the Settlement Class; (e) the questions of law and fact common to the members of the Settlement Class predominate over any

questions affecting only individual members of the Settlement Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, preliminarily and for the purposes of Settlement only, Lead Plaintiff is certified as the class representative on behalf of the Settlement Class and the Co-Lead Counsel previously selected by Lead Plaintiff and appointed by the Court are hereby appointed as Co-Lead Counsel for the Settlement Class.

4. A hearing (the "Settlement Fairness Hearing") pursuant to Federal Rule of Civil Procedure 23(e) is hereby scheduled to be held before the Court on July 27, 2009 at 4:00 p.m. for the following purposes:

(a) to finally determine whether the Securities Action satisfies the applicable prerequisites for class action treatment under Federal Rules of Civil Procedure 23(a) and (b);

(b) to determine whether the Settlement is fair, reasonable, and adequate, and should be approved by the Court;

(c) to determine whether the Order and Final Judgment as provided under the Settlement Stipulation should be entered, dismissing the Securities Action, on the merits and with prejudice, and to determine whether the release by the Settlement Class of the Released Parties, as set forth in the Settlement Stipulation, should be ordered;

(d) to determine whether the proposed Plan of Allocation for the net proceeds of the Settlement is fair and reasonable and should be approved by the Court;

(e) to consider the application of Co-Lead Counsel for an award of attorneys' fees and expenses; and

(f) to rule upon such other matters as the Court may deem appropriate.

5. The Court reserves the right to approve the Settlement with or without

modification and with or without further notice of any kind. The Court further reserves the right to enter its Order and Final Judgment approving the Settlement Stipulation and dismissing the Securities Action, on the merits and with prejudice, regardless of whether it has approved the Plan of Allocation or awarded attorneys' fees and expenses.

6. The Court approves the form, substance and requirements of (a) the Notice of Pendency and Proposed Settlement of Securities Class Action (the "Notice"), and (b) the Proof of Claim and Release form (the "Proof of Claim"), both of which are annexed hereto as Exhibits 1 and 2 respectively.

7. Co-Lead Counsel have the authority to enter into the Settlement Stipulation on behalf of the Settlement Class and are authorized to act on behalf of the Members of the Settlement Class with respect to all acts or consents required by or that may be given pursuant to the Settlement Stipulation or such other acts that are reasonably necessary to consummate the Settlement.

8. Rust Consulting, Inc. is retained as Claims Administrator. The Claims Administrator shall cause the Notice and the Proof of Claim, substantially in the forms annexed hereto, to be mailed, by first class mail, postage prepaid, within 30 calendar days of the entry of this Order, to all Settlement Class Members who can be identified with reasonable effort. The Claims Administrator shall take appropriate steps to provide notice to the Settlement Class and administer all Proofs of Claim as set forth in the parties' Settlement Stipulation.

9. Co-Lead Counsel are authorized to establish a Notice and Administration Fund (as defined in the Settlement Stipulation) in the initial amount of \$ 2,000,000 to be used for reasonable out-of-pocket costs in connection with providing notice of the Settlement to the Settlement Class and for other reasonable out-of-pocket administrative expenses related to the

Notice. Additional amounts may be transferred from the Settlement Fund to the Notice and Administration Fund as required for such purposes but only after express written authorization of the Court.

10. Any and all issuers, securities firms or transfer agents holding transfer records for Merrill common stock and Preferred Securities at issue are hereby ordered to produce such transfer records in a usable electronic format to the Claims Administrator within 14 calendar days of receipt of a copy of this Order.

11. The Claims Administrator shall also make reasonable efforts to give notice to nominee owners such as brokerage firms and other persons or entities who purchased Merrill Lynch common stock or Preferred Securities during the Settlement Class Period. Such nominee purchasers are directed to forward copies of the Notice and Proof of Claim to their beneficial owners or to provide the Claims Administrator with lists of the names and addresses of the beneficial owners, and the Claims Administrator is ordered to send the Notice and Proof of Claim promptly to such beneficial owners. Additional copies of the Notice shall be made available to any record holder requesting same for the purpose of distribution to beneficial owners, and such record holders shall be reimbursed from the Settlement Fund, upon receipt by the Claims Administrator of proper documentation, for the reasonable expense of sending the Notices and Proofs of Claim to beneficial owners. Co-Lead Counsel shall, at or before the Settlement Fairness Hearing, serve upon Defendants' Counsel, and file with the Court, proof of mailing of the Notice and Proof of Claim.

12. The Court approves the form of the Summary Notice of Pendency and Proposed Settlement of Securities Class Action (the "Publication Notice") in substantially the form and content annexed hereto as Exhibit 3. The Claims Administrator shall cause the Publication

Notice to be published in *The Wall Street Journal* and published electronically within 14 calendar days of the mailing of the Notice. Co-Lead Counsel shall, at or before the Settlement Fairness Hearing, serve upon Defendants' Counsel and file with the Court proof of publication of the Publication Notice.

13. The form and method set forth herein of notifying the Settlement Class of the Settlement and its terms and conditions meet the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Exchange Act, 15 U.S.C. §78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995 constitutes the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled thereto. Under no circumstances shall any Settlement Class Member be relieved from the terms of the Settlement, including the releases provided for therein, based upon the contention or proof that such Settlement Class Member failed to receive actual or adequate notice.

14. In order to be entitled to participate in the Net Settlement Fund, as defined in the Settlement Stipulation, in the event the Settlement is effected in accordance with all of the terms and conditions thereof, each Settlement Class Member shall take the following action and be subject to the following conditions:

(a) A properly executed Proof of Claim (the "Proof of Claim"), substantially in the form attached hereto as Exhibit 2, must be submitted to the Claims Administrator, at the Post Office Box specified in the Notice, postmarked not later than September 9, 2009. This deadline may be further extended by Order of the Court. Each Proof of Claim shall be deemed to have been submitted when postmarked (if properly addressed and mailed by first class mail) provided the Proof of Claim is actually received prior to the filing of a motion for an Order of the

Court approving distribution of the Net Settlement Fund. Any Proof of Claim submitted in any other manner shall be deemed to have been submitted when it was actually received at the address designated in the Notice.

(b) The Proof of Claim submitted by each Settlement Class Member must satisfy the following conditions: (i) it must be properly filled out, signed and submitted in a timely manner in accordance with the provisions of the preceding subparagraph; (ii) it must be accompanied by adequate supporting documentation for the transaction reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation as is deemed adequate by Co-Lead Counsel; (iii) if the person executing the Proof of Claim is acting in a representative capacity, a certification of his current authority to act on behalf of the Settlement Class Member must be included in the Proof of Claim; and (iv) the Proof of Claim must be complete and contain no material deletions or modifications of any of the printed matter contained therein and must be signed under penalty of perjury.

(c) Once the Claims Administrator has considered a timely submitted Proof of Claim, the Claims Administrator shall determine, based upon the Class definition and Plan of Allocation of Net Settlement Fund, whether such claim is valid, deficient or rejected, subject to the supervision of Co-Lead Counsel and the approval of the Court. For each claim determined to be either deficient or rejected, the Claims Administrator shall send a deficiency letter or rejection letter as appropriate, describing the basis on which the claim was so determined.

(d) As part of the Proof of Claim, each Settlement Class Member shall submit to the jurisdiction of the Court with respect to the claim submitted.

15. Settlement Class Members shall be bound by all determinations and judgments in

the Securities Action, whether favorable or unfavorable, unless such persons request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. A Settlement Class Member wishing to make such request shall mail the request in written form, by first class mail, postage prepaid, and postmarked no later than July 6, 2009 to the Post Office Box address listed in the Notice. Such request for exclusion shall clearly state the name and address of the person seeking exclusion, that the sender specifically requests to be excluded from the Settlement Class (as defined in the Settlement Stipulation) and must be signed by such person. Such persons requesting exclusion are also requested to set forth all purchases or acquisitions of the relevant Merrill Lynch common stock and Preferred Securities during the Settlement Class Period, including the number and price of the shares purchased or acquired, the number and price of shares sold during the Settlement Class Period, and the date of each such purchase, acquisition or sale. It is also requested that such persons provide their telephone number or other contact information. The request for exclusion shall not be effective unless the request for exclusion provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Court.

16. Settlement Class Members requesting exclusion from the Settlement Class shall not be entitled to receive any payment out of the Net Settlement Fund as described in the Settlement Stipulation and Notice.

17. The Court will consider comments and/or objections to the Settlement, the Plan of Allocation, or the award of attorneys' fees and reimbursement of expenses, only if such comments or objections and any supporting papers are served on or before July 6, 2009, upon each of the following:

Frederic S. Fox
KAPLAN FOX & KILSHEIMER, LLP
850 Third Avenue, 14th Floor
New York, New York 10022
Telephone: (212) 687-1980
Facsimile: (212) 687-7714

Lawrence J. Lederer
BERGER & MONTAGUE, P.C.
1622 Locust Street
Philadelphia, PA 19103
Telephone: (215) 875-3000
Facsimile: (215) 875-4604

M. Richard Komins
BARRACK, RODOS & BACINE
3300 Two Commerce Square
2001 Market Street
Philadelphia, PA 19103
Telephone: (215) 963-0600
Facsimile: (215) 963-0838

Plaintiffs' Co-Lead Counsel

Jay B. Kasner
SKADDEN, ARPS, SLATE
MEAGHER & FLOM LLP
Four Times Square
New York, New York 10036
Telephone: (212) 735-3000
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*Attorneys for Defendants Merrill Lynch & Co.,
Inc., Merrill Lynch Capital Trust I, Merrill
Lynch Capital Trust II, Merrill Lynch Capital
Trust III and Merrill Lynch, Pierce, Fenner &
Smith Incorporated*

and the objector has filed the objections, papers and briefs, showing due proof of service upon counsel identified above, with the Clerk of the Court, U.S. District Court, Southern District of New York, 500 Pearl Street, New York, NY 10007. Attendance at the hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlement, the

Plan of Allocation, and/or Co-Lead Counsel's request for attorneys' fees are required to state in their written objection their intention to appear at the hearing. Persons who intend to object to the Settlement, the Plan of Allocation, and/or Co-Lead Counsel's application for award of attorneys' fees and expenses and desire to present evidence at the Settlement Fairness Hearing must include in their written objections, evidence of their membership in the Class and the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Settlement Fairness Hearing.

18. Any Settlement Class Member who does not object in the manner prescribed above shall be deemed to have waived all such objections and shall forever be foreclosed from making any objection to the fairness, adequacy or reasonableness of the Settlement, the Order and Final Judgment to be entered approving the Settlement, the Plan of Allocation, or Co-Lead Counsel's application for an award of attorneys' fees and reimbursement of expenses.

19. The Court reserves the right to adjourn the Settlement Fairness Hearing or any adjournment thereof without any further notice other than an announcement at the Settlement Fairness Hearing or any adjournment thereof, and to approve the Settlement without further notice to the Class.

20. All papers in support of the Settlement, the Plan of Allocation and any application for attorneys' fees or expenses shall be filed and served on June 26, 2009.


21. Pending final determination of whether the Settlement should be approved, all Settlement Class Members, and each of them, and anyone who acts or purports to act on their behalf shall not institute, commence or prosecute any action that asserts any Released Claims against any of the Released Parties.

22. In the event that the Settlement is not consummated pursuant to its terms, the

Settlement Stipulation, except as otherwise provided therein, including any amendment(s) thereto, and this Order Preliminarily Approving Settlement and Providing For Notice, shall be null and void, of no further force or effect, and without prejudice to any party, and may not be introduced as evidence or referred to in any action or proceedings by any person or entity, and each party shall be restored to his, her or its respective position as it existed prior to the execution of the Settlement Stipulation.

23. The Court retains exclusive jurisdiction over the action to consider all further matters arising out of, or connected with, the Settlement.

Dated: New York, New York
3/21, 2009


UNITED STATES DISTRICT JUDGE
JED S. RAKOFF