

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

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

This Document Relates To:
Securities Action, 07cv9633 (JSR)(DFE)

STIPULATION AND AGREEMENT OF SETTLEMENT

This stipulation and agreement of settlement dated as of February 17, 2009 (the "Settlement Stipulation") is submitted pursuant to Rule 23 of the Federal Rules of Civil Procedure. Subject to the approval of the District Court, this Settlement Stipulation is entered into by State Teachers' Retirement System of Ohio ("Lead Plaintiff"), individually and on behalf of the proposed Settlement Class (defined below), by and through its counsel, and certain Defendants (defined below), by and through their respective counsel.

This Settlement Stipulation is intended by the parties hereto to fully and finally compromise, resolve, discharge and settle the Released Claims, as defined herein, subject to the terms and conditions set forth below and final approval of the District Court:

WHEREAS:

A. Beginning in October 2007, a number of putative class action complaints alleging violations of federal securities laws were filed, variously naming as defendants Merrill Lynch & Co., Inc. ("Merrill"), Merrill Lynch, Pierce, Fenner & Smith Incorporated, Merrill Lynch Capital Trust I, Merrill Lynch Capital Trust II, Merrill Lynch Capital Trust III, E. Stanley O'Neal, Ahmass L. Fakahany, Gregory J. Fleming, Jeffrey N. Edwards, Lawrence A. Tosi, Armando M. Codina, Virgis W. Colbert, Alberto Cribiore, John D. Finnegan, Judith Mayhew Jonas, Aulana L.

Peters, Joseph W. Prueher, Ann N. Reese, Charles O. Rosotti, Citigroup Global Markets, Morgan Stanley & Co., UBS Securities, Wachovia Capital Services and Deloitte & Touche LLP (collectively, "Defendants").

B. On December 31, 2007, certain plaintiffs moved to consolidate the securities cases and for appointment as lead plaintiff pursuant to the Private Securities Litigation Reform Act ("PSLRA"). On January 2, 2008, the State Teachers Retirement System of Ohio moved for appointment as lead plaintiff in the Securities Action (defined below).

C. On March 12, 2008, the District Court consolidated certain actions brought on behalf of investors in Merrill securities and appointed State Teachers Retirement System of Ohio as sole Lead Plaintiff in the Securities Action and approved Lead Plaintiff's selection of Kaplan Fox & Kilsheimer LLP, Berger & Montague, P.C. and Barrack Rodos & Bacine ("Co-Lead Counsel") as counsel in the Securities Action.

D. On May 21, 2008, Lead Plaintiff, together with additional plaintiff Gary Kosseff, (together, on behalf of themselves and all others similarly situated, "Plaintiffs") filed a Consolidated Amended Class Action Complaint (the "Amended Complaint") in the Securities Action which asserts claims under Sections 10(b), 14(a), and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Sections 11, 12(a)(2), and 15 of the Securities Act of 1933 ("Securities Act"), on behalf of purchasers or acquirers of Merrill common stock and certain Preferred Securities (defined below) issued by Merrill or its affiliates during the period October 17, 2006 through January 16, 2008.

E. The Amended Complaint alleges that Defendants accumulated financial exposure to U.S. subprime residential mortgage-related assets and asset backed securities ("ABS"), collateralized debt obligations ("CDOs"), and related exposures and financial instruments

(hereinafter referred to “U.S. subprime ABS CDOs” or “U.S. subprime ABS CDO exposures”) which reached \$40 billion by the end of June 2007. The Amended Complaint alleges that Defendants did not properly disclose Merrill’s exposure to these assets until beginning October 5, 2007, when Merrill began to disclose its exposures and began to initiate write-downs. By January 17, 2008, Merrill had written down over \$24 billion in U.S. subprime ABS CDO exposures. Lead Plaintiff also alleges: (a) that Defendants sought to minimize and/or obscure Merrill’s exposure by falsely representing that Merrill’s risk controls and hedging techniques were effectively mitigating and minimizing any impact that subprime assets would have on Merrill; (b) that Defendants falsely led investors to believe that the impact of subprime assets would be minimal on Merrill; and (c) that by at least February 2007, Merrill’s U.S. subprime ABS CDO exposures had become substantially impaired and should have been materially written down by Merrill.

F. On or about July 28, 2008, Lead Plaintiff entered into a tolling agreement with the Underwriter Defendants (defined below) in which, among other things, Lead Plaintiff agreed to voluntarily dismiss these defendants from the Securities Action in accordance with the tolling agreement and Rule 41(a) of the Federal Rules of Civil Procedure. On August 5, 2008, the District Court so ordered the voluntary dismissal of the Underwriter Defendants.

G. On July 21, 2008, certain Defendants moved, pursuant to Federal Rules of Civil Procedure 9(b) and 12(b)(6) and pursuant to the PSLRA, to dismiss the Amended Complaint and to strike certain allegations of the Amended Complaint. With respect to Plaintiffs’ claims under the Exchange Act, Defendants moved to dismiss on the basis that, *inter alia*, Plaintiffs had failed to plead that Defendants acted with scienter, had failed to plead loss causation and had failed to allege any actionable misstatement or omission. With respect to Plaintiffs’ claims under the

Securities Act, Defendants moved to dismiss on the basis that, inter alia, Plaintiffs had failed to meet the pleading requirements of Fed. R. Civ. P. (9)(b), had failed to allege any untrue statement or actionable omission, and lacked standing to bring their claims under Sections 11 and 12(a) of the Securities Act.

H. On September 19, 2008, Plaintiffs filed a consolidated opposition to Defendants' motions to dismiss. Plaintiffs also filed a Motion to Strike Extrinsic Documents and Certain Arguments Made by the Merrill Defendants and Defendants Edwards, O'Neal, Fakahany and Fleming in Their Motions to Dismiss the Consolidated Amended Class Action Complaint.

I. On November 14, 2008, Defendants filed reply memoranda in further support of their motions to dismiss, and in opposition to Plaintiffs' motion to strike. Plaintiffs filed a reply memorandum in further support of their motion to strike on November 14, 2008.

J. On November 25, 2008 the District Court issued an order setting oral argument on the pending motions to dismiss in the Securities Action for January 15, 2009.

K. On January 7, 2009, with the motions to dismiss the Securities Action still pending, the parties in the Securities Action agreed in principle to settle the Securities Action.

Benefits of the Settlement to the Class

A. Co-Lead Counsel believe that the Settlement provides an excellent monetary recovery for the Settlement Class (defined below) based on the claims asserted, the procedural posture of the litigation, the evidence developed and the damages that might be proven by the Settlement Class.

B. Co-Lead Counsel, on behalf of Lead Plaintiff, further recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Securities Action

through trial and appeal. They have also considered the uncertain outcome and the risk of any litigation, including the risk that Plaintiffs might recover nothing, especially in complex litigation such as this case, as well as the difficulties and delays inherent in any such litigation. Co-Lead Counsel are also mindful of the inherent problems of proof and possible defenses to the federal securities law violations asserted against Defendants, and therefore believe that it is desirable that the Released Claims (defined below) be fully and finally compromised, settled and resolved as set forth herein. Based upon their evaluation, Co-Lead Counsel, on behalf of Lead Plaintiff and the Settlement Class, have determined that the Settlement (defined below) set forth in this Settlement Stipulation is fair, reasonable and adequate and in the best interests of Lead Plaintiff and the Settlement Class.

NOW THEREFORE, without any admission or concession on the part of Lead Plaintiff or Co-Lead Counsel of any lack of merit in the claims asserted, and without any admission or concession of any liability or wrongdoing or lack of merit in the defenses whatsoever by Defendants, it is hereby

STIPULATED AND AGREED, by and among the parties to this Settlement Stipulation, through their respective attorneys, subject to approval of the District Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the PSLRA and other conditions set forth herein, in consideration of the benefits flowing to the parties hereto, that the Securities Action and all Released Claims as against the Released Parties (defined below) shall be finally and fully compromised, settled, released and dismissed, on the merits and with prejudice, in the manner and upon and subject to the terms and conditions set forth herein.

Certain Definitions

1. The following capitalized terms used in this Settlement Stipulation shall have the meanings specified below:

- (a) "Amended Complaint" means the Consolidated Amended Class Action Complaint filed on May 21, 2008.
- (b) "Authorized Claimant" means any Settlement Class Member whose claim for recovery has been allowed pursuant to the terms of this Settlement Stipulation and the Plan of Allocation.
- (c) "Claim" means the submission to be made by Settlement Class Members, on the Proof of Claim form attached hereto as Exhibit A-2, or as may be required by the District Court.
- (d) "Claims Administrator" means the entity appointed by the District Court to administer the settlement and disseminate notice to the Settlement Class.
- (e) "Co-Lead Counsel" means Frederic S. Fox of Kaplan Fox & Kilsheimer LLP, Lawrence J. Lederer of Berger & Montague, P.C., and M. Richard Komins of Barrack, Rodos & Bacine.
- (f) "Defendants" means Merrill; Merrill Lynch, Pierce, Fenner & Smith Incorporated, Merrill Lynch Capital Trust I, Merrill Lynch Capital Trust II, Merrill Lynch Capital Trust III, E. Stanley O'Neal, Ahmass L. Fakahany, Gregory J. Fleming, Jeffrey N. Edwards, Lawrence A. Tosi, Armando M. Codina, Virgis W. Colbert, Carol T. Christ, Alberto Cribiore, John D. Finnegan, Judith Mayhew Jonas, Aulana L. Peters, Joseph W. Prucher, Ann

N. Reese, Charles O. Rosotti, Citigroup Global Markets, Morgan Stanley & Co., UBS Securities, Wachovia Capital Services and Deloitte & Touche LLP.

(g) “District Court” means the United States District Court for the Southern District of New York (Rakoff, J.).

(h) “Effective Date” means the first day following the date on which the settlement contemplated by this Settlement Stipulation shall become effective as set forth in ¶30 below.

(i) “Escrow Account” means the interest-bearing accounts established pursuant to ¶¶ 4 & 5 herein.

(j) “Escrow Agent” shall mean Kaplan Fox & Kilsheimer LLP, Berger & Montague, P.C. and Barrack Rodos & Bacine. The Escrow Agent shall perform the duties set forth in this Settlement Stipulation.

(k) “Final Approval” means the date of the entry of the Order and Final Judgment by the District Court in this Securities Action approving (i) the Settlement and (ii) the release of the Released Claims as to the Released Parties as fair, adequate and reasonable; and dismissing the claims of the Plaintiffs and the Settlement Class against each of the Defendants, with prejudice and the expiration of any time for appeal or review of the Order and Final Judgment, or, if any appeal is filed and not dismissed, after the Order and Final Judgment is upheld on appeal in all material respects and is no longer subject to review upon appeal or review by certiorari or otherwise, and the time for any petition for reargument, appeal or review, by certiorari or otherwise, has expired; or, in the event that the District Court enters an order and final judgment in a form other than that provided above (“Alternative Judgment”) and none

of the parties hereto elect to terminate this Settlement, the date that such Alternative Judgment becomes final and no longer subject to appeal or review by certiorari or otherwise, and the time for any petition for reargument, appeal or review, by certiorari or otherwise, has expired *provided, however*, that any disputes or appeals relating to amount, payment or allocation of attorney's fees and expenses shall have no effect on finality for purposes of determining the date of Final Approval.

(l) "Lead Plaintiff" means State Teachers' Retirement System of Ohio appointed by Order of the District Court as Lead Plaintiff in this Securities Action.

(m) "Net Settlement Fund" shall have the meaning set forth in ¶ 8 herein.

(n) "Order and Final Judgment" means the order(s) and final judgment(s) to be entered in this Securities Action pursuant to ¶27 of this Settlement Stipulation and substantially in the form of Exhibit B hereto.

(o) "Payor Defendant" means the entity that funds the Settlement.

(p) "Person" and "Persons" means any individual, corporation, partnership, association, affiliate, joint stock company, estate, trust, unincorporated association, entity, government and any political subdivision thereof, or any other type of business or legal entity.

(q) "Plaintiffs" means Lead Plaintiff, the Ohio State Teachers' Retirement System and additional plaintiff Gary Kosseff, on behalf of themselves and the proposed Settlement Class, defined below.

(r) "Plan of Allocation" means the plan for allocating the Net Settlement Fund (as set forth in the Notice of Pendency and Proposed Settlement of Class Action) to Authorized Claimants after payment of expenses of notice and administration of the Settlement,

Taxes and Tax Expenses and such attorneys' fees, costs and expenses as may be awarded by the District Court.

(s) "Preferred Securities" means:

- (a) Merrill Lynch Preferred Capital Trust III – 7% Cumulative Trust Originated Preferred Securities ("TOPRS");
- (b) Merrill Lynch Preferred Capital Trust IV – 7.12% Cumulative TOPRS;
- (c) Merrill Lynch Preferred Capital Trust V – 7.28% Cumulative TOPRS;
- (d) Merrill Lynch Series 1 Preferred;
- (e) Merrill Lynch Series 2 Preferred;
- (f) Merrill Lynch Series 3 Preferred;
- (g) Merrill Lynch Series 4 Preferred;
- (h) Merrill Lynch Series 5 Preferred;
- (i) Merrill Lynch Series 6 Preferred;
- (j) Merrill Lynch Series 7 Preferred;
- (k) Merrill Lynch Capital Trust I Preferred 6.45% Securities;
- (l) Merrill Lynch Capital Trust II Preferred 6.45% Securities; and
- (m) Merrill Lynch Capital Trust III Preferred 7.375% Securities

(t) "Preliminary Order" means the Preliminary Order in Connection With Settlement Proceedings that the Co-Lead Counsel and counsel for Defendants will seek from the District Court, substantially in the form attached as Exhibit A and as described in ¶ 26 below.

(u) "Publication Notice" means the summary notice of pendency and proposed settlement for publication substantially in the form attached as Exhibit A-3.

(v) "Released Claims" means any and all claims, actions, debts, demands, set-offs (both legal and equitable), causes of action, rights or liabilities whatsoever (including, but not limited to, any claims for damages, equitable relief, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state or local statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity,

matured or un-matured, whether direct, representative, class, individual or in any other form, including both known claims and Unknown Claims (defined below), that have been asserted in the Securities Action by the Settlement Class Members or any of them against any of the Released Parties, or which otherwise were or could have been at issue in the Securities Action, or that have been or could have been asserted in any forum by the Settlement Class Members or any of them against any of the Released Parties which arise out of or relate to or are based in whole or in part upon any of the allegations, transactions, facts, matters or occurrences, representations, disclosures, statements or omissions alleged, involved, set forth, or referred to in the Amended Complaint, in connection with such Settlement Class Members' purchase or acquisition of Merrill common stock or the Preferred Securities during the Settlement Class Period. Released Claims includes only the claims that were or could have been asserted on behalf of purchasers or acquirers during the Settlement Class Period of only Merrill common stock and the Preferred Securities. Released Claims specifically excludes the claims asserted in (1) all derivative actions consolidated into the docket number 07cv9696 by order dated March 12, 2008, the derivative action captioned *Lambrecht v. O'Neal*, 08cv6582, and all derivative actions involving substantially similar facts; (2) the ERISA actions consolidated into the docket number 07cv10268 by order dated March 12, 2008; and (3) the claims relating to the following securities asserted in the action captioned *Louisiana Sheriffs' Pension and Relief Fund, et al. v. Merrill Lynch & Co., Inc., et al.*, 08cv09063: 8.625% Non-Cumulative Preferred Securities, Series 8 (CUSIP: 59023V373); Medium-Term Notes, Series C (CUSIP: 59018YYR6); Medium-Term Notes, Series C (CUSIP: 59018YYW5); 6.11% Subordinated Notes due January 29, 2037 (CUSIP: 59022CAJ2); 5.70% Subordinated Notes due May 2, 2017 (CUSIP: 59022CCS0); Medium-Term Notes, Series C (CUSIP: 59018YE72); 6.05% Medium-Term

Notes, Series C (CUSIP: 59018YJ36); 6.40% Medium-Term Notes, Series C (CUSIP: 59018YJ69); Accelerated Return Notes (CUSIP: 59022W356); 5.45% Medium-Term Notes, Series C (CUSIP: 59018YM40); 6.15% Medium-Term Notes, Series C (CUSIP: 59018YN56); 6.875% Medium-Term Notes, Series C (CUSIP: 59018YN64); 7.75% Subordinated Notes (CUSIP: 59023VAA8). Released Claims also specifically excludes the claims asserted in the securities actions captioned, *Sklar v. Bank of America Corp., et al.*, 09-cv-580 (S.D.N.Y. filed Jan. 21, 2009) *Boorn v. Bank of America Corp., et al.*, 09-cv-0159 (N.D. Ga. filed Jan. 21, 2009), and *Zitner v. Bank of America Corp., et al.*, 09-cv-00881 (S.D.N.Y. filed Jan. 30, 2009), as well as any actions involving substantially similar facts.. It is expressly understood that no release is given to any Released Party in connection with any purchase, acquisition, or retention of Bank of America Corp. (“BAC”) securities by any purchaser, acquirer, or holder of BAC securities.

(w) “Released Parties” means Defendants and their respective heirs, executors, personal representatives, estate and administrators; their respective past, present and future parent entities, affiliates, related parties, subsidiaries, predecessors and successors; and each of their respective past, present and future assigns, insurers, partners, officers, directors, controlling persons, representatives, employees, agents, attorneys, counsel, underwriters, and financial or investment advisors.

(x) “Securities Action” means the putative securities class actions consolidated by the District Court into docket number 07cv9633 pursuant to the order dated March 12, 2008.

(y) “Settlement” means the settlement as set forth in this Settlement Stipulation.

