

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

COUNTY OF YORK EMPLOYEES  
RETIREMENT PLAN, Individually and On  
Behalf of All Others Similarly Situated,

Plaintiff,

v.

C.A. No. 4066-VCN

MERRILL LYNCH & CO., INC., JOHN A.  
THAIN, CAROL T. CHRIST, ARMANDO M.  
CODINA, VIRGIS W. COLBERT, JOHN D.  
FINNEGAN, JUDITH MAYHEW JONAS,  
AULANA L. PETERS, JOSEPH W. PRUEHER,  
ANN N. REESE, CHARLES O. ROSSOTTI, and  
BANK OF AMERICA CORPORATION,

Defendants.

**NOTICE OF PENDENCY OF CLASS ACTION,  
PROPOSED SETTLEMENT OF CLASS ACTION,  
SETTLEMENT HEARING AND RIGHT TO APPEAR**

TO: ALL RECORD OR BENEFICIAL OWNERS OF MERRILL LYNCH & CO., INC. COMMON STOCK DURING THE PERIOD FROM THE CLOSE OF BUSINESS ON SEPTEMBER 12, 2008 THROUGH THE EFFECTIVE TIME OF THE MERGER (JANUARY 1, 2009)

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF THE LITIGATION REFERRED TO IN THE CAPTION, AS WELL AS THE ACTION CAPTIONED *IN RE MERRILL LYNCH & CO., INC. SECURITIES, DERIVATIVE AND ERISA LITIGATION*, DERIVATIVE ACTION, NO. 07-cv-9696 (JSR) (DFE) NOW PENDING IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND CONTAINS IMPORTANT INFORMATION REGARDING YOUR RIGHTS. IF THE COURT APPROVES THE PROPOSED SETTLEMENT, YOU WILL BE FOREVER BARRED FROM CONTESTING THE FAIRNESS, REASONABLENESS OR ADEQUACY OF THE PROPOSED SETTLEMENT, AND FROM PURSUING THE SETTLED CLAIMS.

IF YOU HELD SHARES OF MERRILL LYNCH & CO., INC. COMMON STOCK FOR THE BENEFIT OF OTHERS, PLEASE PROMPTLY TRANSMIT THIS DOCUMENT TO SUCH BENEFICIAL OWNERS.

**THE PURPOSE OF THIS NOTICE**

1. The purpose of this Notice is to inform you of a proposed settlement (the "Settlement") of the above-captioned Action (as defined below) (the "Delaware Action"), as well as the action captioned *In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation*, Derivative Action, No. 07-cv-9696 (JSR) (DFE) (the "Federal Action") now pending in the United States District Court for the Southern District of New York (the "Federal Court"), and of a hearing to be held before the Delaware Court of Chancery (the "Delaware Court"), in the Kent County Courthouse, 38 The Green, Dover, Delaware 19901, on August 31, 2009 at 2:00 p.m. (the "Hearing"). The purpose of the Hearing is to determine: (a) whether the Delaware Court should certify the Delaware Action as a class action, without opt-out rights, on behalf of all persons or entities who owned shares of Merrill Lynch & Co., Inc. ("Merrill") common stock either of record or beneficially, during the period from the close of business on September 12, 2008 through the Effective Time of the Merger (January 1, 2009), and their respective heirs, executors, administrators, representatives, agents, successors, transferees and assigns (other than the Defendants (excluding Merrill and Bank of America Corporation ("BAC"))) and their affiliates, successors-in-interest, predecessors, representatives, trustees, executors, administrators, heirs, assigns, transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under any of them, and each of them) (the "Class"); (b) whether the Delaware Court should approve the proposed Settlement of the Delaware Action; (c) whether the Delaware Court should enter final judgment dismissing the class claims asserted in the Delaware Action on the merits and with prejudice as against the Plaintiffs and the Class; (d) if the Delaware Court approves the Settlement and enters such final judgment, whether the Delaware Court should grant the application of Plaintiffs' counsel for an award of attorneys' fees and expenses to be paid by Merrill, its successor, or their insurer(s); and (e) to consider such other matters as may properly come before the Delaware Court.

2. The Delaware Court may adjourn the Hearing without further notice. The Delaware Court also may approve the Settlement with or without modifications, and to enter its final judgment dismissing the Delaware Action on the merits and with prejudice and to order the payment of attorneys' fees and expenses without further notice.

**THIS NOTICE SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF THE COURT AS TO THE MERITS OF ANY CLAIMS OR DEFENSES BY ANY OF THE PARTIES. IT IS BASED ON STATEMENTS OF THE PARTIES AND IS SENT FOR THE SOLE PURPOSE OF INFORMING YOU OF THE EXISTENCE OF THE DELAWARE ACTION, AND THE NEW YORK FEDERAL ACTION, AND OF A HEARING ON A PROPOSED SETTLEMENT SO THAT YOU MAY MAKE APPROPRIATE DECISIONS AS TO STEPS YOU MAY WISH TO TAKE IN RELATION TO THE DELAWARE ACTION.**

**NOTICE TO PERSONS OR ENTITIES HOLDING OWNERSHIP ON BEHALF OF OTHERS**

Brokerage firms, banks and/or other persons or entities who bought or held shares of Merrill common stock during the period from the close of business on September 12, 2008 through the Effective Time of the Merger (January 1, 2009), for the benefit of others are requested to immediately send this Notice to all of their respective beneficial owners. If additional copies of the Notice are needed for forwarding to such beneficial owners, any requests for such additional copies may be made to County of York Employees v. Merrill Lynch & Co, Inc., c/o The Garden City Group, Inc., PO Box 9395, Dublin OH 43017-4295.

<sup>1</sup> The defendants in these actions are: Merrill Lynch & Co., Inc. ("Merrill"), Bank of America Corporation ("BAC"), John A. Thain, Carol T. Christ, Armando M. Codina, Virgis W. Colbert, John D. Finnegan, Judith Mayhew Jonas, Aulana L. Peters, Joseph W. Prueher, Ann N. Reese, Charles O. Rossotti, and (in the New York Federal Action only) Alberto Cribiore, Ahmass L. Fakahany, Gregory J. Fleming and E. Stanley O'Neal (collectively, the "Defendants"). The "Delaware Plaintiff" is County of York Employees Retirement Plan. The "New York Federal Plaintiffs" are Miriam Loveman, Patricia Arthur, and Operative Plasters & Cement Masons Local 262 and Annuity Fund. The Delaware Plaintiff and the New York Federal Plaintiffs are together the "Plaintiffs," and, with the Defendants, are the "parties."

## **BACKGROUND AND DESCRIPTION OF THE LITIGATION**

3. On September 15, 2008, BAC and Merrill announced that they had executed a definitive merger agreement (the "Merger Agreement") under which Merrill shareholders would receive 0.8595 shares of BAC common stock for each share of Merrill common stock held (the "Merger");

4. On September 23, 2008, the Federal Plaintiffs, who were then pursuing shareholder derivative claims in the Federal Action, filed an amended complaint (the "Federal Amended Complaint") asserting putative class claims naming defendants Merrill and John A. Thain, E. Stanley O'Neal, Ahmass L. Fakahany, Gregory J. Fleming and Jeffrey N. Edwards (collectively, the "Officer Defendants"); Alberto Cribiore, Carol T. Christ, Armando M. Codina, Virgis W. Colbert, John D. Finnegan, Judith Mayhew Jonas, Aulana L. Peters, Joseph W. Prueher, Ann N. Reese and Charles O. Rossotti (collectively, and with John A. Thain, the "Director Defendants") and BAC and adding allegations, among other things, that the Director Defendants breached their fiduciary duties to Merrill's shareholders in connection with the Merger, and that BAC aided and abetted those breaches (the "Merger-Related Claims" (Counts IX-XIII of the Federal Amended Complaint));

5. On September 26, 2008, a putative class action complaint was filed in the Delaware Court, captioned *County of York Employees Retirement Plan v. Merrill Lynch & Co., Inc.*, C.A. No. 4066-VCN, which named the Defendants other than Cribiore, Fakahany, Fleming and O'Neil, and which alleged similar breaches of fiduciary duty and aiding and abetting in connection with the Merger;

6. On October 1, 2008, BAC and Merrill filed a Preliminary Joint Proxy/Prospectus on Form S-4 (the "Preliminary Proxy") with the United States Securities and Exchange Commission ("SEC") in order to solicit approval of the Merger;

7. On October 3, 2008, the Delaware Plaintiff filed a verified Amended Class Action Complaint updating the allegations in its initial complaint and also including additional allegations that the Preliminary Proxy was materially misleading and failed to disclose material information;

8. On October 3, 2008, the Delaware Plaintiff filed a Motion for Preliminary Injunction moving the Delaware Court for an order preliminarily enjoining the Defendants from conducting a shareholder vote on the Merger;

9. On October 3, 2008, the Delaware Plaintiff filed a Motion for Expedited Discovery in the Delaware Court in order to ensure a timely, full and fair adjudication of its claims sufficiently in advance of a shareholder vote in connection with the Merger;

10. On October 7, 2008, the Federal Plaintiffs served document requests upon the defendants in the Federal Action;

11. On October 10, 2008, Defendants filed a motion to stay or dismiss the Delaware Action in favor of the Federal Action;

12. On October 17, 2008, the Delaware Court held a hearing for argument on the motion to expedite and the motion to stay or dismiss the Delaware Action in favor of the Federal Action;

13. On October 22, 2008, BAC and Merrill filed a revised Preliminary Joint Proxy/Prospectus on Form S-4/A with the SEC (the "Amended Preliminary Proxy"), which included additional disclosures addressing certain of the alleged materially misleading statements and omissions previously identified by the Delaware Plaintiff;

14. On October 23, 2008, a conference was held before the Federal Court, and the Federal Plaintiffs informed the Federal Court that they would potentially seek a preliminary injunction relating to the Merger. Defendants also reserved the right to seek a stay of discovery and other proceedings on the transaction claims in the Federal Action if the Delaware Court did not stay expedited proceedings in the Delaware Action, and the Federal Plaintiffs reserved their right to oppose such a stay; however, no such stay motion was ever made. The parties also advised the Federal Court that Defendants agreed to provide the Federal Plaintiffs with certain documents related to the claims challenging the Merger;

15. On October 28, 2008, the Delaware Court issued a letter opinion granting, in part, and denying, in part, the Delaware Plaintiff's motion to expedite discovery and denying defendants' motion to stay or dismiss (the "Letter Opinion"). Pursuant to the Letter Opinion, the Delaware Plaintiff was permitted to proceed with expedited discovery regarding claims relating to the process that led to the Merger, as well as to certain disclosures made in the Amended Preliminary Proxy to the extent those claims were deemed colorable by the Delaware Court;

16. Following the issuance of the Letter Opinion, the Delaware Court scheduled a hearing on the Delaware Plaintiff's Motion for a Preliminary Injunction for December 1, 2008;

17. On October 31, 2008, the defendants in the Federal Action served responses and objections to the Federal Plaintiffs' document requests and began producing documents to the Federal Plaintiffs and the Delaware Plaintiff;

18. On November 3, 2008, BAC and Merrill issued a final revised Joint Proxy/Prospectus on Form DEFM14A (the "Definitive Proxy");

19. On November 7, 2008, Defendants filed a motion to dismiss the Federal Action;

20. The Federal Plaintiffs and the Delaware Plaintiff continue to make allegations regarding disclosures related to the Merger in the Federal Action and the Delaware Action;

21. The Delaware Plaintiff served party and third-party discovery requests, and the parties to the Delaware Action agreed that discovery would be made in accordance with the Stipulation and Order Governing the Production, Exchange and Filing of Confidential Material, which the Delaware Court approved and Ordered;

22. Defendants produced documents responsive to the Delaware Plaintiff's document requests to the Plaintiffs. The Delaware Plaintiff and, by agreement with Defendants, the New York Federal Plaintiffs, thereafter engaged in expedited document discovery including reviewing the foregoing documents. Before the parties reached an agreement to settle the Actions, the Delaware Plaintiff deposed William Rifkin, the Rule 30(b)(6) representative of Merrill Lynch, Pierce, Fenner & Smith Incorporated, and defendant Charles O. Rossotti, a member of Merrill's board of directors and Chairman of the Finance Committee of the Merrill board of directors. The Federal Plaintiffs also participated in those depositions and asked non-duplicative questions of the witnesses. Plaintiffs further obtained and reviewed documents produced by BAC. Prior to the start of the depositions, the Delaware Plaintiff demanded and received additional documents from Merrill and the Director Defendants. These documents were also produced to the Federal Plaintiffs in the Federal Action. The Delaware Plaintiff also received and reviewed documents from BAC's financial advisors;

23. Following substantial discovery, and extensive lengthy arm's-length negotiations, counsel for the parties reached an agreement in principle concerning the Settlement of the claims in the Delaware Action and the Merger-Related Claims in the Federal Action (collectively, the "Claims"). On November 21, 2008, the parties documented their Settlement in a Memorandum of Understanding (the "MOU"), which provided, among other things, that Plaintiffs would take additional confirmatory discovery before presenting the Settlement to the Delaware Court for approval;

24. On November 21, 2008, pursuant to the terms of the Settlement, Defendants disclosed additional information in a Form 8-K filed with the SEC, and contemporaneously placed that Form 8-K on the websites of Merrill and BAC in both the investor relations and newsroom sections of those respective websites;

25. On December 3, 2008, the Plaintiffs took the deposition of Michael Rubinoff, Merrill's Industry Head for Financial Services and Related Industries;

26. On December 5, 2008, shareholders of Merrill and BAC each respectively voted to approve the Merger and shareholders of BAC voted to approve the issuance of BAC stock in the Merger;

27. The Merger closed on January 1, 2009;

28. On April 10, 2009 and April 13, 2009, BAC produced additional documents in response to the Delaware Plaintiffs' informal requests for additional documents.

29. On April 13, 2009, the Plaintiffs completed their discovery by taking the deposition of Gregory Curl, the Vice Chairman, Global Corporate Planning and Strategy, of BAC.

30. Plaintiffs' and Defendants' counsel have negotiated further at arm's-length to reach the formal Stipulation of Settlement (the "Stipulation") and the form and content of the exhibits thereto, including but not limited to this Notice to members of the Class;

### **REASONS FOR THE SETTLEMENT**

31. In evaluating the Settlement, Plaintiffs and their counsel have considered: (i) the substantial benefits to the members of the Class (as defined below) from the Settlement; (ii) the facts developed during discovery; (iii) the attendant risks of continued litigation and the uncertainty of the outcome of the Actions; (iv) the probability of success on the merits and the allegations contained in the Actions, including the uncertainty relating to the proof of those allegations; (v) the desirability of permitting the Settlement to be consummated as provided by the terms of the Stipulation; and (vi) the conclusion of Plaintiffs' counsel that the terms and conditions of the Settlement are fair, reasonable, adequate and in the best interests of Plaintiffs and the Class;

32. Defendants deny all allegations of wrongdoing, fault, liability or damage to Plaintiffs and the Class and otherwise, deny that they engaged in any wrongdoing or committed any violation of law or breach of duty and believe that they acted properly at all times, but wish to settle the litigation on the terms and conditions stated in the Stipulation in order to eliminate the burden and expense of further litigation and to put the Claims to be released hereby to rest finally and forever; and

33. Plaintiffs' entry into the Stipulation is not an admission as to the lack of any merit of any of the claims asserted in the Actions.

### **SUMMARY OF THE SETTLEMENT TERMS**

34. The principal terms of the Settlement are as follows:

(a) Defendants disclosed additional information in a Form 8-K filed with the SEC on November 21, 2008, and contemporaneously placed that Form 8-K on the websites of Merrill and BAC in both the investor relations and newsroom sections of those respective websites. Without admitting any wrongdoing, Defendants acknowledge that the filing and prosecution of the Claims by Plaintiffs and discussions with Plaintiffs' counsel were the sole cause of their disclosure of this additional information, which constitutes information sought in the Plaintiffs' complaints and the proceedings in aid of the motion for preliminary injunction filed by the Delaware Plaintiff. For example:

(i) Supplementing the discussion concerning the pendency of the Actions at pages 71-73 of the Definitive Proxy under the heading "The Merger—Litigation Relating to the Merger," that:

Merrill Lynch, the members of its board of directors, and Bank of America have been named as defendants in certain actions filed on behalf of Merrill Lynch stockholders challenging the proposed merger of Bank of America and Merrill Lynch. As disclosed in the [Definitive Proxy], these actions include purported stockholder class actions in the Delaware Court of Chancery, the U.S. District Court for the Southern District of New York and the Supreme Court of the State of New York.

As also disclosed in the [Definitive Proxy], the Court of Chancery denied defendants' motions to stay that litigation and granted plaintiff's motion for expedited discovery with respect to some, but not all, of plaintiff's allegations. The Court of Chancery later scheduled a hearing on plaintiff's motion to preliminarily enjoin the proposed merger for December 1, 2008. Pursuant to the Court of Chancery's order, the plaintiff obtained document and deposition discovery related to its claims. The plaintiffs in the Southern District of New York action also participated in discovery in the Court of Chancery action. On November 7, 2008, the defendants filed motions to dismiss the federal action. Merrill Lynch has also filed a motion to consolidate and stay the actions pending in the Supreme Court of the State of New York, which is pending decision.

On November 21, 2008, the defendants entered into a memorandum of understanding with the plaintiffs in the Court of Chancery and in the Southern District of New York actions regarding the settlement of the Court of Chancery action and the merger-related claims in the Southern District of New York action. In connection with the settlement contemplated by the memorandum of understanding, Merrill Lynch and Bank of America agreed to make certain additional disclosures related to the proposed merger, which are contained in this Form 8-K. Subject to completion of certain confirmatory discovery by counsel to the plaintiffs in the Court of Chancery and Southern District of New York actions, the memorandum of understanding contemplates that the parties will enter into a stipulation of settlement.

The stipulation of settlement will be subject to customary conditions, including court approval following notice to Merrill Lynch's stockholders. In the event that the parties enter into a stipulation of settlement, a hearing will be

scheduled at which the Court of Chancery will consider the fairness, reasonableness, and adequacy of the settlement. If the settlement is finally approved by the court, it will resolve and release all claims in all actions that were or could have been brought challenging any aspect of the proposed merger, the merger agreement, and any disclosure made in connection therewith, pursuant to terms that will be disclosed to stockholders prior to final approval of the settlement. In addition, in connection with the settlement, the parties contemplate that plaintiffs' counsel in the Court of Chancery and Southern District of New York actions will file petitions for the award of attorneys' fees and expenses to be paid by Merrill Lynch and/or its successor(s) in interest. Merrill Lynch (and/or its successor(s) in interest) shall pay or cause to be paid such award(s) of attorneys' fees and expenses. There can be no assurance that the parties will ultimately enter into a stipulation of settlement or that the Court of Chancery will approve the settlement even if the parties were to enter into such stipulation. In such event, the proposed settlement as contemplated by the memorandum of understanding may be terminated.

- (ii) Supplementing the discussion at page 50 of the Definitive Proxy concerning the informational conference call held by the Merrill Lynch board of directors on September 14, 2008 that:

As part of the update to the board members concerning the meetings held over the weekend between government officials and senior executives at leading financial services companies, Mr. Thain, Merrill Lynch's Chairman and Chief Executive Officer, informed the board that Lehman Brothers Holdings, Inc. was expected to file for bankruptcy.

- (iii) Supplementing the discussion at page 52 of the Definitive Proxy under the heading "Business Condition and Prospects of Merrill Lynch," that:

In connection with its consideration of the risk that Merrill Lynch's credit ratings could be further downgraded and the potential effect such actions could have on Merrill Lynch's businesses and its liquidity position and funding capabilities, Merrill Lynch's board of directors considered the potential that such a downgrade, in the context of then-current market conditions, would increase Merrill Lynch's cost of capital, adversely impact its access to short-term financing, limit the ability or willingness of certain counterparties to extend credit to or trade with Merrill Lynch, increase the levels of collateral required from Merrill Lynch by trading counterparties and financing sources, and adversely affect market and customer perceptions concerning Merrill Lynch's financial condition.

- (iv) Supplementing the discussion at page 50 of the Definitive Proxy under the heading "Background of the Merger," that:

At the time Merrill Lynch decided not to pursue further the exploratory discussions it was having with two other large financial services companies, certain terms of the merger agreement and stock option agreement with Bank of America remained subject to negotiation, Merrill Lynch's financial advisor, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPFS"), had not yet rendered its fairness opinion to Merrill Lynch's board of directors, and the proposed merger agreement with Bank of America was still subject to consideration and approval by both companies' boards of directors.

- (v) Supplementing the discussion at pages 49-50 of the Definitive Proxy under the heading "Background of the Merger" and pages 56-62 of the Definitive Proxy under the heading "Opinion of Merrill Lynch's Financial Advisor," that:

Prior to the approval of the merger agreement by Merrill Lynch's board of directors, Merrill Lynch and MLPFS conducted a due diligence investigation of Bank of America that included, among other things, a review of Bank of America's public regulatory filings, other publicly available data, including consensus analyst estimates from Reuters concerning Bank of America, and meetings on September 13 and 14, 2008 with Bank of America executives and employees, including financial, operational, risk management, and legal personnel concerning Bank of America's anticipated financial performance, assets and liabilities, including its exposure to and risk management and valuations of key classes of assets and liabilities, as well as its capitalization.

- (vi) Supplementing the discussion at page 49 of the Definitive Proxy under the heading "Background of the Merger," that:

[M]anagement and the board of directors of Merrill Lynch regularly review and consider strategic options. Merrill Lynch's board of directors and/or the Finance Committee of the board of directors have received analyses of potential business combinations and strategic alternatives at various points in the past, including an October 2007 presentation to the Finance Committee and a July 2008 presentation to the board of directors. The analyses included a review of the strategic merits of a variety of courses of action, including business combinations with other financial services companies, including Bank of America. MLPFS and Merrill Lynch's management and board of directors had the benefit of these prior analyses when they considered the proposed merger.

- (vii) Supplementing the discussion at page 62 of the Definitive Proxy under the heading "Merrill's Financial Advisors," that:

Officers of Merrill Lynch engaged MLPFS as Merrill Lynch's financial advisor on September 13, 2008, and MLPFS participated and assisted in conducting due diligence of Bank of America. The MLPFS senior personnel that worked on the transaction were selected on the basis of their experience in transactions involving financial services companies and their familiarity with Merrill Lynch's business development strategy. MLPFS selected the members of the committee that approved the fairness opinion from persons not otherwise involved in negotiating the proposed merger with Bank of America. All of the MLPFS personnel who worked on the transaction or acted as members of the fairness committee were employees of MLPFS at the time. MLPFS is a wholly-owned subsidiary of Merrill Lynch, and thus its employees have actual or potential financial interests in the merger, including the prospect of continued employment with the successor entity after the close of the proposed merger.

- (viii) Supplementing the discussion at pages 73-75 of the Definitive Proxy under the heading "Merrill Lynch's Officers and Directors Have Financial Interests in the Merger," that:

Subsequent to the announcement of the proposed merger of Bank of America and Merrill Lynch, it has been determined and announced that certain Merrill Lynch executives will hold certain executive positions in the combined company. These determinations were made subsequent to the approval by Merrill Lynch's board of directors of Merrill Lynch's entry into the proposed transaction and announcement of the transaction, and no Merrill Lynch employee was offered such a position in the combined company prior to such approval and announcement.

- (ix) Supplementing the discussion at pages 71-73 of the Definitive Proxy under the heading "Litigation Relating to the Merger," that:

Current and former directors of Merrill Lynch are defendants in lawsuits brought by plaintiffs asserting derivative claims on behalf of Merrill Lynch. As stated in the proxy statement at page 73, upon consummation of the merger, the plaintiffs who have asserted derivative claims on behalf of Merrill Lynch may lose standing to assert such claims on behalf of Merrill Lynch because they will no longer be Merrill Lynch stockholders.

Between November 2007 and February 2008, Merrill Lynch received four demands that it commence legal proceedings against present and former officers and directors of Merrill Lynch in connection with, among other things, Merrill Lynch's investments in collateralized debt obligations and associated losses and disclosures. Merrill Lynch's board of directors considered and rejected each such demand. In letters rejecting these demands, Merrill Lynch represented that the board of directors had concluded that it was not in the best interests of Merrill Lynch to pursue the claims at this time after considering a significant amount of information, including, among other things, information presented at January 28, April 24, and July 30, 2008 board of directors meetings. In the letters, Merrill Lynch also represented that, in assessing this information, the board of directors took into account, among other things, the claims in the pending and related federal securities and Employee Retirement Investment Security Act ("ERISA") lawsuits and regulatory investigations involving Merrill Lynch's investment in and underwriting of collateralized debt obligations; as well as the likelihood of recovery from the individuals who would be named as defendants in the lawsuits proposed in the demand letters, or their insurers; the potentially adverse effect that pursuing the claims demanded would have on Merrill Lynch's defenses in the pending securities and ERISA lawsuits and regulatory investigations; the significant risk that pursuing the claims could require Merrill Lynch, under applicable Delaware law and its Certificate of Incorporation, to indemnify individuals for the substantial costs and expenses they would incur in defending the claims; the significant remedial actions undertaken by Merrill Lynch related to issues raised in the demands; and the exacting standard that must be met to prove that directors or officers breached fiduciary duties by failing to adequately exercise oversight over employees of Merrill Lynch. The board of directors did not further value or analyze the merits of any stockholder derivative claims specifically in connection with its approval of the merger agreement with Bank of America.

(b) Defendants acknowledge that they made amendments to the Preliminary Proxy since its initial issuance on October 1, 2008, culminating in the Definitive Proxy, and that Defendants added, inter alia, additional disclosures in the Definitive Proxy that substantially addressed issues previously raised in the complaint in the Delaware Action, and that complaint and the litigation of the claims asserted in the Delaware Action were significant and material contributing causal factors in Defendants' decision to make these additional disclosures. For example:

- (i) Pages 58-59: disclosing that the source of the consensus analyst estimates that MLPFS used to perform its analyses was generally available information from Reuters and market prices as of September 12, 2008;
- (ii) Pages 58-61: stating that the estimates, forecasts, and projections relied upon by MLPFS in its analyses came from Reuters, and thus were generally available publicly;
- (iii) Page 62: stating that "Merrill has agreed to pay a fee to MLPFS for financial advisory services rendered through the closing of the merger in the amount of \$25 million, payable upon consummation of the merger[;]"
- (iv) Pages 73-75: discussing the financial interests of Merrill's officers and directors in the proposed merger and adding additional disclosures concerning discussions between BAC and Merrill senior executives concerning their compensation.

(c) The full terms of the Settlement are set forth in the Stipulation (see Scope of This Notice and Further Information, below).

35. Plaintiffs' counsel have completed confirmatory discovery and have confirmed their belief that the Settlement is fair and reasonable and in the best interest of the Class. The MOU provided that, to the extent that the parties to the Merger Agreement negotiate other and further amendments or modifications to the Merger Agreement prior to the effective date of the Merger to facilitate the consummation of the Merger Agreement, Plaintiffs reserved the right to seek additional confirmatory discovery regarding any such amendment(s) or modification(s), but no such amendments or modifications to the Merger Agreement were made.

#### **DISMISSAL AND RELEASE OF CLAIMS**

36. The Stipulation, and accompanying exhibits, provide that upon final Court approval of the Settlement, and in consideration of the benefits provided by the Settlement:

(a) The parties to the Federal Action shall, within 10 days of the date on which the order of the Delaware Court approving the Settlement becomes final and no longer subject to appeal, whether by exhaustion of any possible appeal, lapse of time or otherwise (excluding any appeal solely involving the amount or reasonableness of any application for attorneys' fees and/or expenses by Plaintiffs), seek, subject to the approval of the Federal Court, dismissal with prejudice of the Merger-Related Claims in the Federal Action. In the event the Federal Court declines to dismiss the Merger-Related Claims in the Federal Amended Complaint based upon the procedures set forth herein, the parties to the Federal Action shall present the Stipulation for final approval to the Federal Court pursuant to Fed. R. Civ. P. 23(e), and as otherwise directed by the Federal Court;

(b) For purposes of the Settlement only, the Delaware Action shall be maintained and proceed as a non opt-out class for settlement purposes pursuant to Chancery Court Rules 23(a), 23(b)(1) and (b)(2) on behalf the Class (as previously defined herein);

(c) Any and all claims, demands, actions or causes of action, rights, liabilities, damages, losses, obligations, judgments, suits, matters and issues of any kind or nature whatsoever, whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, that have been or could have been asserted in the Claims or in any court, tribunal or proceeding (including, but not limited to, any claims arising under federal or state law, or any other law or regulation, including claims relating to alleged fraud, breach of any duty, negligence or violation of federal or state securities laws) by or on behalf of Plaintiffs and any and all of the members of the Class (and Plaintiffs' and Class members' present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parents, subsidiaries, associates, affiliates, employers, employees, agents, consultants, insurers, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial, legal and other advisors, investment bankers, underwriters, lenders, and any other representatives of any of these persons and entities), whether individual or class, legal or equitable, against any and all Defendants in the Actions, and/or any of their families, parent entities, associates, affiliates or subsidiaries and each and all of their respective past, present or future officers, directors, shareholders, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, investment bankers, commercial bankers, engineers, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, personal representatives, estates, administrators,

predecessors, successors and assigns (collectively, the "Released Persons") which the Plaintiffs or any member of the Class ever had, now has, or hereafter can, shall or may have by reason of, arising out of, relating to or in connection with the allegations, facts, events, transactions, acts, occurrences, statements, representations, misrepresentations, omissions or any other matter, thing or cause whatsoever, or any series thereof, embraced, involved, set forth or otherwise related to the Claims, the Merger, or the Merger Agreement, including without limitation any disclosures, non-disclosures or public statements made in connection with any of the foregoing (collectively, the "Settled Claims") shall be fully and finally settled, released, discharged, and dismissed with prejudice on the merits; provided, however, that the Settled Claims shall not include (i) claims to enforce the Settlement; (ii) derivative and double derivative claims asserted on behalf of Merrill, including without limitation, the derivative claims asserted on behalf of Merrill in (a) the Federal Action, (b) *Levin v. O'Neal, et al.*, Index No. 07/603662 (Sup. Ct. N.Y. County), *Wzionka v. O'Neal, et al.*, Index No. 07/603663 (Sup. Ct. N.Y. County), or *Diamond v. O'Neal, et al.*, Index No. 08/600009 (Sup. Ct. N.Y. County), or (c) any other derivative action pending in any other court; (iii) federal securities claims, including, without limitation, the federal securities claims currently pending in *In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation*, Securities Action, 07-cv-9633 (JSR)(DFE), to the extent that such federal securities law claims are not based on the Merger, the Merger Agreement or any disclosures, non-disclosures or public statements made in connection with the Merger or Merger Agreement; (iv) claims under the Employee Retirement Income Security Act ("ERISA"), including, without limitation, the claims asserted in *In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation*, ERISA Action, 07-cv-10268 (JSR)(DFE); and (v) claims that members of the Class may have concerning the Merger or the Definitive Proxy based on their purchase, sale or ownership of shares of BAC (excluding the BAC shares that they received in exchange for Merrill shares pursuant to the terms of the Merger Agreement);

(d) The release contemplated by the Stipulation extends to claims that Plaintiffs, for themselves and on behalf of the Class, do not know or suspect to exist at the time of the release, which if known, might have affected the decision to enter into the release or to object or not to object to the Settlement. Plaintiffs and each member of the Class, shall be deemed to waive, and shall waive and relinquish to the fullest extent permitted by law, any and all provisions, rights and benefits conferred by any law of the United States or any state or territory of the United States, or principle of common law, or any other law, which governs or limits a person's release of unknown claims; further that (i) the Plaintiffs, for themselves and on behalf of the Class, shall be deemed to waive, and shall waive and relinquish, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code which provides as follows:

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

(ii) Plaintiffs, for themselves and on behalf of the Class, also shall be deemed to waive any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, or any other law, which is similar, comparable or equivalent to California Civil Code § 1542; and (iii) Plaintiffs, for themselves and on behalf of the Class, acknowledge that members of the Class may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention, as Plaintiffs and on behalf of the Class, to fully, finally and forever settle and release any and all claims released hereby, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery or existence of such additional or different facts;

(e) Each member of the Class will not sue, and are barred from suing, any Defendant or any other Released Person for any Settled Claim;

(f) The Released Persons release Plaintiffs, the members of the Class and Plaintiffs' counsel from all claims arising out of the commencement, prosecution, settlement or resolution of the Claims; provided, however, that the Released Persons shall retain the right to enforce the terms of the Stipulation and the Settlement.

#### **THE APPLICATION FOR ATTORNEY'S FEES AND EXPENSES**

37. If the Delaware Court approves the terms of the Settlement as provided herein, including any modifications thereto made with consent of the parties, Plaintiffs' counsel shall apply either jointly or severally to the Delaware Court for an award of attorneys' fees and reimbursement of expenses not to exceed an aggregate of \$950,000. After lengthy adversarial negotiation, Defendants have agreed to pay that amount, subject to Court approval. Plaintiffs and their counsel will not apply to any other court for an award of attorneys' fee or expenses.

38. Defendants agree to pay to Plaintiffs' counsel the amount of any award(s) of attorneys' fees and/or reimbursement of expenses awarded by the Delaware Court up to an amount not to exceed an aggregate of \$950,000 in accordance with the terms of the Stipulation of Settlement entered into between the parties.

39. Except as provided in the Stipulation, the Defendants shall bear no other expenses, costs, damages or fees alleged or incurred by Plaintiffs, by any member of the Class, or by any of their attorneys, experts, advisors, agents or representatives with respect to the Claims, and Defendants shall have no responsibility for, and no liability with respect to, the fee and/or expense allocation among Plaintiffs' counsel and/or any other person who may assert any claim thereto.

#### **RIGHT TO APPEAR AND OBJECT**

40. Any member of the Class who objects to the class action determination, the Settlement of Plaintiffs' claims in the Delaware Action, the judgment to be entered in the Delaware Action, and/or Plaintiffs' application for fees and expenses, or otherwise wishes to be heard, may appear personally or by counsel at the Hearing and present evidence or argument that may be proper and relevant; provided, however, that no member of the Class may be heard and no papers or briefs submitted by or on behalf any member of the Class shall be received and considered, except by Order of the Court for good cause shown, unless, no later than ten (10) business days prior the Hearing, copies of (a) a written notice of intention to appear, identifying the name, address, and telephone number of the objector and, if represented, their counsel, (b) a written detailed statement of such person's specific objections to any matter before the Court, (c) proof of membership in the Class, (d) the grounds for such objections and any reasons for such person's desiring to appear and be heard, and (e) all documents and writings such person desires the Delaware Court to consider, shall be served electronically or by hand or overnight mail upon the following counsel:

Seth D. Rigrotsky  
RIGRODSKY & LONG, P.A.  
919 North Market Street, Suite 980  
Wilmington, DE 19801

David A.P. Brower  
BROWER PIVEN,  
A Professional Corporation  
488 Madison Avenue Eighth Floor  
New York, New York 10022

Paul J. Lockwood  
SKADDEN, ARPS, SLATE, MEAGHER &  
FLOM LLP  
One Rodney Square  
Wilmington, DE 19801

Donald J. Wolfe, Jr.  
POTTER ANDERSON & CORROON LLP  
1313 North Market Street  
Wilmington, DE 19801

J. Travis Laster  
ABRAMS & LASTER LLP  
20 Montchanin Road, Suite 200  
Wilmington, DE 19807

and then filed with the Register in Chancery, Kent County Courthouse, 38 The Green, Dover, Delaware 19901. Unless the Court otherwise directs, no member of the Class shall be entitled to object to the Settlement or to the judgment to be entered herein, or to the award of attorneys' fees and expenses to Plaintiffs' counsel, or otherwise to be heard, except by serving and filing written objections as described above. Any person who fails to object in the manner provided above shall be deemed to have waived such objection and shall forever be barred from making any such objection in this Action or in any other action or proceeding.

#### **THE ORDER AND FINAL JUDGMENT OF THE COURT**

41. If the Delaware Court approves the Settlement, as provided for in the Stipulation, the parties will ask the Delaware Court to enter an Order and Final Judgment, which shall, among other things:

(a) certify the Class pursuant to Delaware Court of Chancery Rules 23(a), 23(b)(1) and (b)(2) for purposes of the Settlement, approve the Settlement, adjudge the terms of the Settlement to be substantively and procedurally fair, reasonable, adequate, and in the best interests of the Class, and direct consummation of the Settlement in accordance with the terms and conditions of the Stipulation;

(b) determine that the requirements of the Delaware Court of Chancery Rules and due process have been satisfied in connection with notice to the Class; and

(c) dismiss the Delaware Action with prejudice, said dismissal subject only to compliance by the parties with the terms of the Stipulation and any Order of the Delaware Court concerning the Stipulation.

42. In the event that: (i) the Delaware Court declines, in any respect (except for a disallowance or modification of the fees and/or expenses sought by Plaintiffs' counsel), to enter the Order and Final Judgment provided for above and any one of the parties hereto fails to consent to the entry of another form of order in lieu thereof; (ii) the Delaware Court disapproves the Settlement as proposed herein, including any amendments thereto agreed upon by all of the parties; or (iii) the Delaware Court approves the Settlement proposed herein or any amendment thereto approved by all of the parties, but such approval is reversed or substantially modified on appeal (except reversal or modification related only to the issue of Plaintiffs' counsel's application for an award of attorneys' fees and/or the reimbursement of expenses) and such reversal or modification becomes final by a lapse of time or otherwise; then, in any of such events, the Stipulation, the Settlement proposed herein (including any amendments hereof), the qualification of Plaintiffs as the appropriate representatives of the Class, and of Plaintiffs' counsel as class counsel, any actions taken or to be taken with respect to the Settlement proposed herein, and the Order and Final Judgment to be entered shall be of no further force or effect and shall be null and void, and without prejudice to any of the parties hereto, who shall be restored in all respects to their respective positions existing prior to the execution of the Stipulation. For purposes of this provision, a disallowance, reduction or modification by the Delaware Court of the fees and/or expenses sought by Plaintiffs' counsel shall not be deemed an amendment, modification or disapproval of the Settlement or the Order and Final Judgment.

#### **SCOPE OF THIS NOTICE AND FURTHER INFORMATION**

The foregoing description of the Hearing, the Delaware Action, the terms of the proposed Settlement and other matters described herein does not purport to be comprehensive. Accordingly, members of the Class are referred to the documents filed with the Delaware Court in the Delaware Action. You or your attorney may examine the documents filed in the Delaware Action during regular business hours on any business day at the office of the Register in Chancery, Delaware Court of Chancery, Kent County Courthouse, 38 The Green, Dover, Delaware 19901. If you would like further information, you may contact the following counsel for Plaintiffs:

Stewart L. Cohen  
COHEN, PLACITELLA & ROTH, P.C.  
Two Commerce Square, Suite 2900  
2001 Market Street  
Philadelphia, PA 19103

Seth D. Rigrotsky  
RIGRODSKY & LONG, P.A.  
919 North Market Street, Suite 980  
Wilmington, DE 19801

#### **PLEASE DO NOT WRITE OR CALL THE COURT.**

Dated: Wilmington, Delaware  
July 10, 2009

BY ORDER OF THE COURT:  
Register in Chancery

**County of York Employees v. Merrill Lynch & Co, Inc.**  
c/o The Garden City Group, Inc.  
PO Box 9395  
Dublin OH 43017-4295

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