

1 “Eligible Investors,” for purposes of this Settlement, shall mean:

2 (i) Natural persons (including their IRA accounts, testamentary trust and estate  
3 accounts, custodian UGMA and UTMA accounts, and guardianship accounts) who purchased  
4 Eligible Auction Rate Securities at Merrill Lynch:

5 (ii) All small business and not for profit clients in Merrill Lynch’s Global Wealth  
6 Management Group who purchased Eligible Auction Rate Securities at Merrill Lynch that had  
7 \$100 million or less in assets in their accounts with Merrill Lynch, net of margin loans, as of  
8 August 7, 2008, or, if the customer was not a customer of Merrill Lynch as of August 7, 2008, as of  
9 the date that the customer terminated its customer relationship with Merrill Lynch.  
10 Notwithstanding any other provision, “small business and not for profit clients” does not include  
11 broker-dealers or banks acting as conduits for their customers.

12 6. Tranche I Eligible Investors. No later than September 26, 2008, Merrill Lynch shall  
13 have offered to purchase at par, plus any accrued but unpaid interest or dividends, Eligible Auction  
14 Rate Securities for which auctions are not successfully auctioning from Eligible Investors who had  
15 less than \$4 million in assets at Merrill Lynch as of August 7, 2008. Merrill Lynch’s offer to  
16 purchase such securities from Eligible Investors will remain open from October 1, 2008, through  
17 January 15, 2010, and Merrill Lynch shall promptly purchase such securities from any Eligible  
18 Investor who accepts this offer between January 2, 2009, and January 15, 2010.

19 For purposes of this Settlement, legal entities forming an investment vehicle for closely  
20 related individuals, including but not limited to IRA accounts, Trusts, Family Limited Partnerships  
21 and other legal entities performing a similar function, charities and non-profits, and small  
22 businesses who had less than \$4 million in assets at Merrill Lynch shall be covered by Section  
23 III.5(i).

24 7. Tranche II Eligible Investors. No later than December 18, 2008, Merrill Lynch shall  
25 have offered to purchase at par, plus any accrued but unpaid interest or dividends, Eligible Auction  
26 Rate Securities from other Eligible Investors who purchased Eligible Auction Rate Securities from

1 Merrill Lynch prior to February 13, 2008, and who had less than \$100 million in assets at Merrill  
2 Lynch as of August 7, 2008.

3 Merrill Lynch's offer to purchase such securities from Eligible Investors shall remain open  
4 from January 2, 2009 through January 15, 2010, and Merrill Lynch shall promptly purchase such  
5 securities from any investor who accepts this offer between January 2, 2009, and January 15, 2010.

6 8. Asset Amounts. Merrill Lynch shall calculate investor asset amounts as of August  
7 7, 2008, for all Eligible Investors with assets with Merrill Lynch as of that date. For Eligible  
8 Investors with no assets at Merrill Lynch as of that date, Merrill Lynch shall calculate investor  
9 asset amounts as of the date such investor removed their assets from Merrill Lynch.

10 9. Notice and Assistance. Merrill Lynch shall provide prompt notice to customers of  
11 the settlement terms, and Merrill Lynch shall establish a dedicated telephone assistance line, with  
12 appropriate staffing, to respond to questions from customers concerning the terms of the  
13 settlement.

14 10. Relief for Eligible Investors Who Sold Below Par. No later than October 1, 2008,  
15 any investor covered by Section III.5 that Merrill Lynch can reasonably identify who sold Eligible  
16 Auction Rate Securities below par between February 13, 2008, and October 1, 2008, shall be paid  
17 by Merrill Lynch the difference between par and the price at which such investor sold the Eligible  
18 Auction Rate Securities.

19 11. Consequential Damages Claims. No later than October 1, 2008, Merrill Lynch shall  
20 make reasonable efforts promptly to notify those Eligible Investors covered by Section III.5 above  
21 who own Eligible Auction Rate Securities, pursuant to the terms of the settlement, that an  
22 independent arbitrator, under the auspices of the Financial Industry Regulatory Authority (FINRA),  
23 shall be available for the exclusive purpose of arbitrating any Eligible Investor's consequential-  
24 damages claim. Merrill Lynch shall consent to participate in the North American Securities  
25 Administrators Association's ("NASAA") Special Arbitration Procedures (the "SAP") established  
26 specifically for arbitrating any Eligible Investor's consequential damages claim arising from their  
inability to sell Eligible Auction Rate Securities. Nothing in this Offer shall serve to limit or

1 expand any party's rights or obligations as provided under the SAP. Arbitration shall be conducted  
2 before a single non-industry arbitrator and Merrill Lynch will pay all forum and filing fees.

3 Arbitrations asserting consequential damages of less than \$1 million will be decided  
4 through a single chair-qualified public arbitrator who will be appointed through the FINRA list  
5 selection process for single arbitrator cases. In arbitrations where the consequential damages  
6 claimed are greater than or equal to \$1 million, the parties can, by mutual agreement, expand the  
7 panel to include three public arbitrators who will be appointed through FINRA's list procedure.

8 Any Eligible Investors who choose to pursue such claims through the SAP shall bear the  
9 burden of proving that they suffered consequential damages and that such damages were caused by  
10 their inability to access funds invested in Eligible Auction Rate Securities at Merrill Lynch as of  
11 February 13, 2008. In the SAP, Merrill Lynch shall be able to defend itself against such claims;  
12 provided, however, that: Merrill Lunch shall not contest liability for the illiquidity of the  
13 underlying ARS position or use as part of its defense any decision by an Eligible Investor not to  
14 borrow money from Merrill Lynch. Special or punitive damages shall not be available in the SAP<sup>1</sup>.

15 All customers, including but not limited to Eligible Investors who avail themselves of the  
16 relief provided pursuant to this Order, may pursue any remedies against Merrill Lynch available  
17 under the law. However, Eligible Investors that elect to utilize the SAP are limited to the remedies  
18 available in that process and may not bring or pursue a claim relating to Eligible Auction Rate  
19 Securities in another forum.

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<sup>1</sup> However, it is agreed by the parties that "consequential damages" shall have a meaning separate and apart from "punitive or special damages." Under no circumstances should this provision be read to mean that a consequential damages claim may not be maintained due to any state law which may categorize consequential damages as a subset within punitive and/or special damages.

1           12.    Institutional Investors Not Covered By Section III.5. Merrill Lynch shall endeavor  
2 to continue to work with issuers and other interested parties, including regulatory and other  
3 authorities and industry participants, to expeditiously and on a best efforts basis provide liquidity  
4 solutions for investors who purchased Eligible Auction Rate Securities from Merrill Lynch and are  
5 not entitled to participate in the buyback described in Section III.5 above (referred to herein as  
6 “Institutional Investors”).

7           Beginning January 2, 2009, and then quarterly after that, Merrill Lynch shall submit a  
8 written report to a representative specified by NASAA outlining the efforts in which Merrill Lynch  
9 has engaged and the results of those efforts with respect to Merrill Lynch Institutional Investors’  
10 holdings in Eligible Auction Rate Securities. Merrill Lynch shall confer with the representative no  
11 less frequently than quarterly to discuss Merrill Lynch’s progress to date. Such quarterly reports  
12 shall be submitted within 20 days following the end of each quarter and continue until no later than  
13 January 15, 2010. Following every quarterly report, the representative shall have the option of  
14 requiring a meeting between the State and Merrill Lynch to advise Merrill Lynch of any concerns  
15 and, in response, Merrill Lynch shall detail the steps that Merrill Lynch plans to implement to  
16 address such concerns. The reporting or meeting deadlines set forth above may be amended with  
17 written permission from the representative.

18           13.    Relief for Municipal Issuers. Merrill Lynch shall refund refinancing fees to  
19 municipal auction rate issuers that issued such Eligible Auction Rate Securities in the initial  
20 primary market through Merrill Lynch between August 1, 2007, and February 13, 2008, and  
21 refinanced those securities through Merrill Lynch after February 13, 2008. Refinancing fees are  
22 those fees paid to Merrill Lynch in connecting with a refinancing and are exclusive of legal fees  
23 and any other fees or costs not paid to Merrill Lynch in connection with the transaction.

24           14.    No Disqualification. The Order entered pursuant to this Offer hereby waives any  
25 disqualification contained in the laws of Wisconsin, or rules or regulations thereunder, including  
26 any disqualifications from relying upon the registration exemptions or safe harbor provisions that  
Merrill Lynch or any of its affiliates may be subject to. The Order entered pursuant to this Offer

1 also is not intended to subject Merrill Lynch or any of its affiliates to any disqualifications  
2 contained in the federal securities laws, the rules and regulations thereunder, the rules and  
3 regulations of self regulatory organizations or various states' or U.S. Territories' securities laws,  
4 including, without limitation, any disqualifications from relying upon the registration exemptions  
5 or safe harbor provisions. In addition, this Order is not intended to form the basis for any such  
6 disqualifications.

7 15. Nothing herein shall preclude Wisconsin, its departments, agencies, boards,  
8 commissions, authorities, political subdivisions and corporations (collectively, "State Entities"),  
9 other than the Division and only to the extent set forth in paragraph 1 above, and the officers,  
10 agents or employees of State Entities from asserting any claims, causes of action, or applications  
11 for compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive  
12 relief against Merrill Lynch in connection with certain auction rate securities sales practices at  
13 Merrill Lynch.

14 16. For any person or entity not a party to the Order issued pursuant to this Offer, this  
15 Offer and the Order do not limit or create any private rights or remedies against Merrill Lynch  
16 including, without limitation, the use of any e-mails or other documents of Merrill Lynch or of  
17 others for auction rate securities sales practices, limit or create liability of Merrill Lynch, or limit or  
18 create defenses of Merrill Lynch, to any claims.

19 17. In Consideration of the Settlement the Division will:

20 a. Except as allowed by paragraph 17(b), terminate the investigation by the Division  
21 and any other action that the Division could commence on behalf of Wisconsin as it relates to Merrill  
22 Lynch's underwriting, marketing, and sales of Eligible Auction Rate Securities, provided, however,  
23 that excluded from and not covered by this paragraph are any claims by the Division arising from  
24 or relating to the "Order" provisions contained herein.

25 b. Refrain from further investigation and from taking legal action, if necessary, against  
26 Merrill Lynch with respect to Institutional Investors until a date after December 31, 2009.

1 c. Not seek additional monetary penalties from Merrill Lynch relating to the issues  
2 raised by the Division relating to Merrill Lynch's marketing and sale of Eligible Auction Rate  
3 Securities to investors and the firm permitting trading in auction rates securities by any individuals  
4 affiliated with Merrill Lynch.

5 18. Failure to Comply With Terms of Settlement. If after this settlement is executed,  
6 Merrill Lynch fails to comply with any of the terms set forth herein, the State may institute an  
7 action to vacate this Order. Upon issuance of an appropriate order, after an opportunity for a fair  
8 hearing, a state may reinstitute the actions and investigations referenced in this Order.

9 19. This Order and any dispute related thereto shall be construed and enforced in  
10 accordance with, and governed by, the laws of Wisconsin without regard to any choice of law  
11 principles.

12 20. This Order shall be binding upon Merrill Lynch and its successors and assigns as  
13 well as to successors and assigns of relevant affiliates with respect to all conduct subject to the  
14 provisions above and all future obligations, responsibilities, undertakings, commitments,  
15 limitations, restrictions, events, and conditions.

16 Dated this 15<sup>th</sup> day of January, 2009.

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18  
19 BY ORDER OF THE  
20 WISCONSIN DEPARTMENT OF FINANCIAL INSTITUTIONS  
21 DIVISION OF SECURITIES

22   
23 \_\_\_\_\_  
24 Patricia D. Struck, Division Administrator  
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1 **CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY MERRILL LYNCH**

2  
3 Merrill Lynch hereby acknowledges that it has been served with a copy of this Administrative  
4 Consent Order ("Order"), has read the foregoing Order, is aware of its right to a hearing and appeal in  
5 this matter, and has waived the same.

6 Merrill Lynch admits the jurisdiction of the Division, neither admits nor denies the Statement  
7 of Facts and Conclusions of Law contained in this Order; and consents to entry of this Order by the  
8 Division as settlement of the issues contained in this Order.

9 Merrill Lynch agrees that it shall not claim, assert, or apply for a tax deduction or tax credit  
10 with regard to any state, federal or local tax for any administrative monetary penalty that Merrill  
11 Lynch shall pay pursuant to this Order.

12 Merrill Lynch states that no promise of any kind or nature whatsoever was made to it to induce  
13 it to enter into this Order and that it has entered into this Order voluntarily.

14 David Futterman represents that he is an Associate General Counsel and, as such, has been authorized to enter  
15 into this Order for and on behalf of Merrill Lynch.

16 Dated this 5 day of January, 2010.

17 MERRILL LYNCH, PIERCE, FENNER & SMITH  
18 INCORPORATED  
By: \_\_\_\_\_  
David Futterman  
Title: Associate General Counsel

19 STATE OF NEW YORK )  
20 )SS.:  
COUNTY OF NEW YORK )

21 I certify that David Futterman personally known to me, appeared before me this day and acknowledged the due  
22 execution of the foregoing instrument.

23 Witness my hand and official seal, this the 5 day of January, 2010.

24 (Official Seal)

25 Marianne Bretton Granatoor  
26 Notary Public  
My Commission Expires: 2010

MARIANNE BRETTON-GRANATOOR  
NOTARY PUBLIC STATE OF NEW YORK  
NO. 02BR4932444  
QUALIFIED IN KINGS COUNTY  
COMMISSION EXPIRES MAY 02 20 10