

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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, 07-cv-9633 (JSR)(DFE)

[PROPOSED] ORDER AND FINAL JUDGMENT

On the ____ day of _____, a hearing having been held before this Court to determine: (1) whether the terms and conditions of the Stipulation and Agreement of Settlement dated February 17, 2009 (the "Settlement Stipulation") are fair, reasonable and adequate for the settlement of all claims asserted by the Settlement Class against Defendants Merrill Lynch & Co., Inc. ("Merrill"); Merrill Lynch, Pierce, Fenner & Smith, Inc.; E. Stanley O'Neal; Gregory J. Fleming; Ahmass L. Fakahany; Jeffrey Edwards; Citigroup Global Markets; Morgan Stanley & Co.; UBS Securities; Wachovia Capital Markets LLC; Deloitte & Touche LLP; Merrill Lynch Capital Trust I; Merrill Lynch Capital Trust II; and Merrill Lynch Capital Trust III; (2) whether judgment should be entered dismissing the Securities Action on the merits and with prejudice, in favor of the Defendants and as against all persons or entities who are members of the Settlement Class herein who have not requested exclusion therefrom; (3) whether to approve the proposed Plan of Allocation as a fair and reasonable method to allocate the settlement proceeds among members of the Settlement Class; and (4) whether and in what amount to award attorneys' fees and reimbursement of expenses to Co-Lead Counsel;

The Court having considered all matters submitted to it at the hearing and otherwise; and

It appearing that a notice of the Settlement Hearing substantially in the form approved by the Court in the Order Preliminarily Approving Settlement and Providing for Notice (“Preliminary Approval Order”) was mailed to all persons and entities reasonably identifiable who purchased or acquired the common stock or Preferred Securities of Merrill that are the subject of the Securities Action, during the Settlement Class Period, except those persons and entities which validly excluded themselves from the definition of the Settlement Class; and

It appearing that a Summary Notice of the hearing substantially in the form approved by the District Court in the Preliminary Approval Order was published in accordance with the Preliminary Approval Order and the specifications of the Court;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Court has jurisdiction over the subject matter of the Securities Action, Lead Plaintiff, all Settlement Class Members and the Defendants.
2. All capitalized terms used but not otherwise defined herein shall have the same meanings as set forth and defined in the Settlement Stipulation.
3. The Court finds that the prerequisites for a class action under Rule 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 thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of the Lead Plaintiff are typical of the claims of the Settlement Class it seeks to represent; (d) Lead Plaintiff fairly and adequately represents 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.

4. 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 consolidation litigation, is hereby certified as a class action on behalf of all persons who purchased or acquired the common stock or Preferred Securities of Merrill 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 have excluded themselves by filing a timely, valid request for exclusion.

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for purposes of the Settlement only, Lead Plaintiff is certified as class representative, 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.

6. The Court hereby finds that the notice provided to the Settlement Class provided the best notice practicable under the circumstances. Said notice provided due and adequate notice of these proceedings and the matters set forth herein, including without limitation the Settlement and Plan of Allocation, to all persons entitled to such notice to the fullest extent practicable and said notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Private Securities Litigation Reform Act, and the requirements of due process. A full opportunity has been offered to the Settlement Class Members to object to the

proposed Settlement and matters related thereto, and to participate in the hearing thereon. Thus, it is hereby determined that all Members of the Settlement Class are bound by this Order and Final Judgment, except those persons set forth on Exhibit A.

7. The Settlement Stipulation is approved as fair, reasonable and adequate, and in the best interests of the Settlement Class. Lead Plaintiff and the Defendants are directed to consummate the Settlement in accordance with the terms and provisions the Settlement Stipulation.

8. The Securities Action is hereby dismissed with prejudice and without costs. Lead Plaintiff and the Settlement Class Members, on behalf of themselves, their heirs, joint tenants, tenants in common, beneficiaries, executors and administrators, successors and assigns, hereby release and forever discharge 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 unaccrued, 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, 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 by the Plaintiffs in the Amended Complaint 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.

9. Lead Plaintiff and the Settlement Class Members are hereby permanently barred and enjoined from prosecuting the Released Claims against the Released Parties.

10. The Court finds that all parties and their counsel have complied with each requirement of Rule 11 of the Federal Rules of Civil Procedure as to all proceedings herein.

11. Neither this Order and Final Judgment, the Settlement Stipulation, nor any of the negotiations, documents or proceedings connected with them shall be:

- (a) referred or used against the Released Parties or against the Settlement Class, or any Member thereof, as evidence of wrongdoing by anyone;
- (b) construed against the Released Parties or the Settlement Class, or any Member thereof, as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; or
- (c) construed as, or received in evidence as, an admission, concession or presumption against the Settlement Class, or any Member thereof, that any of their claims are without merit or that damages recoverable under the Amended Complaint would not have exceeded the Settlement Fund.

12. Without further order of the Court, the parties may agree to reasonable extensions of time to carry out any of the provisions of the Settlement Stipulation.

13. There is no just reason for delay in the entry of this Order and Final Judgment, and immediate entry by the Clerk of the Court is directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

14. The finality of this Order and Final Judgment shall not be affected, in any manner, by rulings that the District Court may make on the Plan of Allocation or Co-Lead Counsel's application for an award of attorneys' fees and reimbursement of expenses.

15. In the event that the Settlement does not become final and effective in accordance with the terms and conditions set forth in the Settlement Stipulation, then this Order and Final Judgment shall be rendered null and void and be vacated, and the Settlement and all orders entered in connection therewith shall be rendered null and void (except as provided in ¶¶ 28, 31 in the Settlement Stipulation), and the parties shall be returned to their respective positions immediately prior to the execution of the Settlement Stipulation.

16. Exclusive jurisdiction is hereby retained over the parties and the Settlement Class Members for all matters relating to the Securities Action, including the administration, interpretation, effectuation or enforcement of the Settlement Stipulation and this Order and Final Judgment, and including any application for fees and expenses in this litigation including without limitation any such fees and expenses incurred in connection with administering and distributing the settlement proceeds to the Settlement Class Members.

Dated: New York, New York
_____, 2009

UNITED STATES DISTRICT JUDGE
JED S. RAKOFF