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**STATE OF ILLINOIS
SECRETARY OF STATE
SECURITIES DEPARTMENT**

In the matter of)
MERRILL LYNCH, PIERCE, FENNER) **Case Number. 08-00256**
& SMITH INCORPORATED,)
Respondent.)

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CONSENT ORDER

WHEREAS, Merrill, Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch" or "Respondent") is a broker-dealer registered in the state of Illinois, with a Central Registration Depository ("CRD") number of 7691; and

WHEREAS, coordinated investigations into Merrill Lynch's activities in connection with its marketing and sale of financial instruments known as auction rate securities ("ARS") to retail and other customers have been conducted by a multistate task force; and

WHEREAS, Merrill Lynch has cooperated with regulators conducting the investigations by responding to inquiries, providing documentary evidence and other materials, and providing regulators with access to facts relating to the investigations; and

WHEREAS, Merrill Lynch has advised regulators of its agreement to resolve the investigations relating to its marketing and sale of ARS to Eligible Investors¹ on the terms specified in this Administrative Consent Order (the "Order" or "Consent Order"); and

WHEREAS, Merrill Lynch agrees to implement certain changes with respect to its marketing and sale of ARS, and to make certain payments in accordance with the terms of this Order; and

WHEREAS, Merrill Lynch elects to permanently waive any right to a hearing and appeal under the Illinois Securities Law of 1953 (the "Act") and/or Illinois law with respect to this Order; and

¹ As defined on page 16 of this Order, paragraph 6.

1 4. Investors looking to acquire ARS bid into the auction at the rate and quantity that
2 they were willing to hold the securities.

3 5. Orders for the available quantity of ARS are then filled, starting with the lowest bid
4 rate up until all the shares offered for sale in the auction are allocated.

5 6. The rate at which the final share from the auction is allocated is the clearing rate,
6 and sets the rate to be paid for the entire issue until the next auction.

7 7. If there are not enough purchasers the auction fails, no shares change hands, and the
8 rate resets to a rate that is prescribed in the instrument's offering documents.

9 **B. Merrill Lynch Marketed And Sold Auction Rate Securities As Safe, Liquid**
10 **Short-Term Investments.**

11 1. Merrill Lynch Marketed Auction Rate Securities as Safe, Liquid
12 Investments.

13 8. Merrill Lynch marketed and sold ARS as money market like instruments, which
14 were safe and liquid.

15 9. Merrill Lynch additionally used research pieces to market ARS to customers.

16 10. Financial advisers ("FAs") would often forward Merrill Lynch marketing pieces to
17 customers to reassure them of the safety and value of the instruments.

18 11. FAs who sold ARS were not required to provide customers with disclosures, instead
19 customers would receive customer's trade confirmations directing customers to where they could
20 access Merrill Lynch's "Auction Rate Practices and Procedures."

21 12. On March 15, 2006, Merrill Lynch ended its practice of sending ARS purchasers a
22 "Master Purchasers Letter." The Master Purchasers Letter was a disclosure document that all
23 purchasers of ARS had been required to sign and return to Merrill Lynch.

24 13. Merrill Lynch's policies and procedures did disclose some important elements of its
25 ARS program, including that Merrill Lynch plays multiple roles in the ARS market, that Merrill
26 Lynch's interest may differ from those of its clients who purchased ARS, that Merrill Lynch is

1 permitted but not obligated to submit orders for its own account and routinely does, and that a
2 purchaser's ability to sell the purchaser's ARS may be limited.

3 14. Yet, since Merrill Lynch FAs were not required to affirmatively disclose these
4 practices prior to selling a client ARS, purchasers were largely unaware of Merrill Lynch's
5 practices in supporting its ARS program.

6 15. Merrill Lynch did not undertake any analysis of whether any customers actually
7 went to the website discussing its practices and procedures to review them.

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9 2. Merrill Used Triple-A Rating as a Selling Point for Auction Rate Securities
10 Even After it had Allowed Certain Triple-A Rated Auction Rate Securities
11 to Fail.

12 16. The fact that its ARS carried a AAA rating was an important marketing point for
13 Merrill Lynch. The AAA rating on ARS was routinely touted in marketing materials, as well as
14 research pieces that discussed ARS and their safety.

15 17. Marketing materials produced by the ARS desk promoted ARS as follows:

- 16 • **Auction Market Securities provide many advantages for**
17 **investors**
- 18 • Large and liquid market with over \$306 billion currently
19 outstanding
 - 20 • High quality credits with over 92% of the market rated AAA
 - 21 • Incremental yield to comparable securities such as
22 commercial paper and money market funds
 - 23 • Taxable, tax advantaged and tax exempt investment options

24 18. A triple-A rating is a long term credit rating.

25 19. The AAA rating on Merrill Lynch's ARS do not speak to an investor's ability to
26 liquidate the instrument through auction at par.

20. A number of the collateralized debt obligations and other auction rate securities
underwritten and offered by Merrill Lynch carried the AAA rating from major rating agencies.

1 21. In August 2007, as described below, Merrill ceased supporting the auctions of a
2 number of its triple-A rated auction rate securities.

3 22. Those securities became illiquid and subsequently lost most of their market value.

4 23. Despite the fact that Merrill had failed a number of triple-A auction-rate securities
5 in August 2007, subsequent to August 2007, Merrill continued to use the AAA rating as a selling
6 point for auction rate securities.

7 24. Merrill Lynch was aware—yet did not disclose to investors--that certain auction rate
8 securities retained their triple-A rating after their auctions had failed.

9 25. Merrill Lynch was aware—yet did not disclose to investors--that the triple-A rating
10 did not provide protection against Merrill deciding to no longer support its auction program.

11 26. Nonetheless, Merrill Lynch relied heavily on the triple-A rating to convince
12 investors that the auction rate securities it was selling were safe and principal protected.

13 **C. Merrill Lynch's Auction Rate Securities Program Stands in Contrast to its**
14 **Representations to Customers.**

15 1. Merrill Lynch's Auction Rate Program Provided Issuers with Inexpensive
16 Financing and Generated Substantial Fees for Merrill Lynch.

17 27. Merrill Lynch's ARS program was funded by issuers of ARS, who paid Merrill
18 Lynch fees to underwrite securities and remarket them.

19 28. The ARS market allowed issuers to achieve long-term financing at short-term rates.

20 29. The Merrill Lynch ARS program had four branches, an investment bank that
21 underwrote ARS, the ARS desk that acted as a remarketing agent for the securities, a sales force
22 that sold ARS to retail and other clients, and a research division that assisted the ARS desk in
23 placing ARS.

24 30. The ARS that Merrill Lynch underwrote then sold to its clients consisted of auction
25 preferred shares ("APS"), with perpetual maturity, with dividends that reset every 7 to 35 days at
26 auction, or long-term debt instruments, issued by municipalities and student loan organizations
with maturities of 20-40 years with interest rates that reset through the same process.

1 31. Due to the upward sloping yield curve, issuers of long-term instruments would
2 typically have to pay higher interest rates.

3 32. By supporting the auction mechanism, both in its role as a remarketing agent and by
4 purchasing ARS at auction to avoid failures, Merrill Lynch allowed issuers to have long-term
5 financing at short-term rates.

6 33. Purchasers of ARS were willing to accept short-term rates because they believed
7 they would have access to their principal on short-term notice at the next auction, and they would
8 get a slightly higher rate than a money market fund because they would have to wait until the next
9 auction to access their money.

10 34. This belief was cultivated by Merrill Lynch and other broker-dealers who used their
11 own capital to ensure auctions did not fail, and generally touted the 20-year track record of very
12 rare failures, and creating the impression with investors that there was a deep liquid market for the
13 securities.

14 35. Due to the practice of Merrill Lynch and other broker-dealers of placing support
15 bids, for the 20 years prior to August of 2007 there had been only a handful of failed auctions that
16 prevented investors from accessing their principal.

17 2. Merrill Lynch Generated Significant Fees by Underwriting Auction Rate
18 Securities with Constrictive Maximum Rates and Selling them to Clients.

19 a. Merrill Lynch Generated Significant Fees Underwriting Auction
20 Rate Securities and Distributing Them To Clients.

21 36. The investment bank at Merrill Lynch generated significant fees from underwriting
22 new issuances of ARS. From 2001 through 2008 Merrill Lynch underwrote approximately \$13
23 billion of APS, earning \$130 million of underwriting fees.

24 37. In order to help move new issues Merrill Lynch awarded FAs who placed new ARS
25 issues with a placement credits.
26

1 b. Merrill Lynch Underwrote Auction Rate Securities With Restrictive
2 Maximum Rates, Which Allowed The Securities To Achieve AAA
 Ratings.

3 38. Upon information and belief 92% of the auction rate securities that Merrill Lynch
4 underwrote received a AAA rating from rating agencies such as Fitch and Moodys, and 97% had
5 ratings of AA or better.

6 39. AAA ratings from agencies such as Fitch and Moodys signify the rating agencies'
7 assessment that there is a high likelihood that the security will pay interest or dividends as well as
8 principal when due in a timely manner.

9 40. Maximum rate provisions place a ceiling on the rate of interest at which an auction
10 can clear, and additionally provide the rate the issuer must pay should auctions fail.

11 41. When evaluating whether an issuer could make payments as due on its ARS, rating
12 agencies would look at the terms of the instrument to determine how much interest it may be
13 obligated to pay. The maximum rate places an absolute cap on the interest or dividend the
14 instrument will pay, restricting its potential obligations, therefore making it easier for the
15 instrument to achieve a AAA rating.

16 42. Once Merrill Lynch stopped placing support bids in the auctions for which it was
17 the lead broker-dealer, there were auction failures across its program.

18 43. When auctions fail the rate resets to the maximum rate.

19 44. The ARS with high maximum rates, typically municipal auction rate certificates
20 ("ARCS") with maximum rates in the range of 12-15%, have drawn investor interest and have
21 cleared without Merrill Lynch's support.

22 45. The ARS with low maximum rates, typically taxable and tax-exempt APS with
23 maximum rates in the range of 3-5%, have not drawn investor interest and without Merrill Lynch's
24 support have continued to fail, leaving investors with illiquid instruments.

c. Merrill Lynch Additionally Received Fees To Remarket The Auction Rate Securities It Underwrote.

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2 46. When Merrill Lynch underwrote an issue of ARS, it typically served as the broker-
3 dealer or remarketing agent for the issue.

4 47. Merrill Lynch would typically receive a fee of 25 basis points of the value of the
5 ARS for which it acted as remarketing agent.

6 48. Merrill Lynch would share a portion of this fee with FAs in order to incentivize
7 them to place clients into ARS.

8 49. Prior to every auction for which Merrill Lynch was the sole or lead broker-dealer,
9 Merrill Lynch would provide "price talk," a range of bids provided to FAs indicating where Merrill
10 Lynch expected auctions to clear.

11 50. All ARS for which Merrill Lynch acted as sole broker-dealer were placed through
12 Merrill Lynch FAs.

13 51. Under Merrill Lynch's ARS program, as remarketing agent, the ARS desk had the
14 option but not the obligation to bid in auctions.

15 52. Until August of 2007 Merrill Lynch had a policy of placing support bids into every
16 auction for which it was sole or lead broker-dealer.

17 53. In August of 2007 Merrill Lynch withdrew its support for certain CDO-backed
18 ARS.

19 54. When placing a support bid, Merrill Lynch would bid for the entire notional value
20 of the issue being auctioned, regardless of the size or volume of buy, sell, or hold orders Merrill
21 Lynch had received.

22 55. By placing support bids for the entire notional value of the issue being auctioned,
23 Merrill Lynch ensured that no auctions in its ARS program would fail.

24 56. Merrill Lynch often set the rate at which the auctions would clear with its support
25 bids.

26 57. For the period of January 3, 2006, through May 27, 2008, 5892 auctions for which
Merrill Lynch was the sole lead dealer would have failed but for Merrill Lynch's support bid.

1 58. Investors were not provided with information about the volume of shares that
2 moved at auction.

3 59. Investors were not provided with information about the level of support from
4 Merrill Lynch that was required to clear the auction.

5 60. Investors were not informed of how many ARS Merrill Lynch was carrying on its
6 own inventory as a result of supporting auctions.

7 **D. Auction Rate Securities Inventory Concerns At Merrill Lynch**

8 1. Weakness in the Credit Markets Initiated Inventory Concerns In the
9 Summer Of 2007.

10 61. Beginning in late July 2007, certain negative market influences surrounding
11 collateralized debt obligations (“CDOs”) and collateralized loan obligations (“CLOs”) and a credit
12 crunch began to negatively impact Merrill Lynch’s auction market business.

13 62. As investors began selling these ARS due to concerns about their credit quality
14 (despite the fact that many were triple-A rated), Merrill Lynch purchased ARS into its own
15 inventory to make sure those auctions did not fail.

16 63. At a certain point, Merrill Lynch decided to limit the amount of inventory of these
17 instruments it was taking on and ceased submitting support bids, thus allowing the auctions to fail.

18 64. Merrill Lynch FAs began to seek answers to questions concerning ARS as early as
19 August 7, 2007.

20 65. FAs from all over the United States sent emails and made telephone calls to request
21 information from the Global Markets & Investment Banking staff managing the Merrill Lynch
22 Auction Trading Desk.

23 66. The Auction Desk and the Financial Products Group, along with several of the
24 supposedly independent research analysts for closed-end funds and Fixed Income/Cash, organized
25 and participated in Sales Calls during the second and third week of August 2007 in an effort to
26 clear auctions, reduce the rates of important issuers, and maintain a strong interest in ARS among
the Merrill Lynch FAs all over the country.

1 2. Communications With Issuers And Others Expressing Concern About The
2 Auction Markets.

3 67. As early as August 3, 2007, senior management of Merrill Lynch was requesting a
4 sample term sheet for AMPS to understand the liquidity and downgrade risk.

5 68. In August 2007, representatives from major issuers in the closed-end fund
6 investment world were also trying to get a sense of the risks and demand reductions for their
7 preferred shares.

8 69. None of these growing risks concerning weak demand in the ARS market were
9 disclosed to Merrill Lynch clients during the third quarter of 2007.

10 70. Upon information and belief, Merrill Lynch began, in late 2007, discussing with
11 issuers, concerns with the auction markets.

12 3. Merrill Lynch Surpasses Its Inventory Limit In September 2007, As ARS
13 Market Conditions Worsened.

14 71. In late September, inventory levels rose significantly and the Auction Desk was fast
15 approaching its limit of \$1 billion dollars.

16 72. In addition, Merrill Lynch had certain lenders that provided financing for its
17 inventory of auction rate securities.

18 73. Those lenders had previously accepted auction rate securities as collateral for the
19 loans.

20 74. In the Fall of 2007, certain of these lenders became uncomfortable with the liquidity
21 of auction rate securities and ceased accepting them as collateral.

22 75. Merrill did not inform its retail and other customers, to whom it was marketing
23 auction rate securities as principal protected cash-like instruments, that entities that financed its
24 inventory no longer accepted certain auction rate securities (even some rated AAA) as collateral.
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1 **E. Merrill Lynch's Consolidated Effort to Reduce Inventory – A Three Pronged**
2 **Approach.**

3 1. Calming Fears, Providing Assurances And Motivating Additional Sales Of
4 Auction Rate Securities Through Sales Calls with FAs.

5 76. Just after the first hint of investor concern with the auction market, the Auction
6 Desk and Sales and Trading immediately mobilized to stem the tide of negative news. Managers
7 moved quickly to set up sales calls to provide assurances to FAs and to motivate future sales of
8 ARS.

9 77. In late November and early December, with inventory backing up and reaching new
10 highs at Merrill Lynch, a decision was made to do another national sales call. The formula would
11 be similar to the successful call made previously in August. Auction Desk personnel would be
12 joined by a member or members of the Research Department to reassure and motivate FAs to
13 concentrate on selling Auction Desk inventory.

14 78. During the call, there was no discussion regarding the risk of any type of auction
15 failure, or the likelihood or possibility that any market dislocation could result in retail customers'
16 cash becoming illiquid.

17 79. Moreover, there was no discussion about the possibility that Merrill Lynch could
18 decide at any time to stop its support of the auction market or to otherwise withdraw from
19 supporting the auctions that it sole managed or co-managed.

20 80. There was no mention of the fact that with the pressures that existed in the credit
21 market since August 2007, any auction failure by any auction dealer could spread contagion to the
22 rest of the market.

23 2. FA Incentives - Increased Production Credits Sales Drive.

24 81. At various times during the second half of 2007, Merrill Lynch provided incentives
25 in the form of enhanced production credits as a means of motivating FAs to sell ARS to customers
26 and reduce Merrill Lynch's inventory. Typically, FAs earned 12.5 bps on an annualized basis for
 investments in ARS. FAs would then earn a percentage of the 12.5 bps according to a payout grid.

1 82. During periods where enhanced credits were awarded, FAs could earn as much as 8
2 times that amount (or 100 bps) for sales of ARS. Other enhanced payouts could include payouts of
3 25 bps, or 50 bps. Similar to regular production credits earned, FAs enhanced production credits
4 would be applied to the grid resulting in FAs being paid a certain predetermined percentage of the
5 enhanced production credit.

6 3. Coordination with Research

7 a. Proactive Involvement From The Supposedly Independent Research
8 Department To Aid In Sales Efforts.

9 83. Merrill Lynch's Research Department played a pivotal role in assisting sales of
10 Auction Rate Securities.

11 84. On at least two occasions during the Fall of 2007, Sales and Trading and the
12 Auction Desk made direct and specific requests for the Research Department to draft favorable
13 research pieces regarding the auction market to assist in Sales.

14 b. Improper Information Sharing –Between Research and Sales and
15 Trading.

16 85. The task force's investigation revealed frequent communications among research,
17 sales, and trading staff.

18 86. Merrill Lynch Policy & Procedures Manual (the "Policies Manual") employs a so-
19 called "Chinese Wall," which is designed to prevent "the misuse of material non-public
20 information" and to prevent "even the appearance of impropriety."

21 87. The "Chinese Wall" is designed to "restrict and monitor the flow of information
22 between the various areas of [Merrill Lynch] such as Global Research, Sales [and] Trading,"
23 among others "to avoid the misuse of such information and the appearance of impropriety as well
24 as to manage potential conflicts of interest..."

25 88. Among those departments that constitute the "Private Side of the Wall" include:
26 "Investment Banking, including Global Capital Markets and Financing (Equity Capital Markets

1 and Debt Capital Markets),” and “other departments or individuals that regularly receive inside
2 information,” while the Research Division is on the “Public Side of the Wall.”

3 89. Among the categories of information that cannot be discussed between Sales or
4 Trading and Research are the levels or amounts of inventory that Merrill Lynch maintained for its
5 own account.

6 90. Such information was discussed.

7 **F. Improper Influence And Pressure Over Supposedly Independent Research
8 Personnel.**

9 91. Merrill Lynch permitted its Sales and Trading and Auction Desk personnel to have
10 undue influence over its Research Department regarding its coverage of the auction market.

11 92. In addition to the direct requests of Sales and Trading and the Auction Desk to
12 Research for positive published material related to the auction market, undue influence was also
13 exercised over the content of the published research reports.

14 93. Other times, Auction Desk Personnel attempted to directly influence how Research
15 responded to FA questions during sales calls.

16 **G. Events Leading To Merrill Lynch’s Decision To Stop Broadly Supporting Its
17 Auction Program.**

18 94. Concerns surrounding the auction market grew more ominous going into the new
19 year and Merrill Lynch’s Auction Desk personnel began to brace for the worst.

20 95. Likewise, Inventory concerns at Merrill Lynch continued.

21 96. On January 23, 2008, word began circulating among broker-dealers that Lehman
22 Brothers had a number of auctions fail the previous day.

23 97. Concerns were not shared with FAs or retail customers.

24 98. Between the dates February 1, 2008 and February 8, 2008, staff wrote or contributed
25 to approximately three published research pieces, including: Fixed Income Digest, “Preserve
26 Income Lock in Yields”; Fixed Income Digest Supplement, “Auction Market Securities” and

1 Auction Market Value Sheet, "Back to Basics In The Auction Market." Each of these publications
2 continued to recommend that investors should feel confident about the auction market.

3 99. On or about February 1, 2008, Merrill Lynch's Research Department published a
4 volume of its Fixed Income Digest, entitled "Preserve Income Lock in Yields." The cover page
5 included a section entitled "Preserve Income." The last sentence of the section provided: "For
6 funds that investors need to keep liquid, we continue to find the best value in auction market
7 securities." Inside the research piece, there was a subheading: "For Cash Holdings: auction market
8 securities," which recommended, [n]aturally, most investors need to keep some portion of their
9 portfolios in liquid cash-like instruments. We find auction market securities (AMS) to be better
10 alternative than money funds for these purposes for investors with larger amounts to invest." The
11 section was followed immediately by another section dedicated to: "Answering Your Questions
12 About Auction Market Securities" which responded to common questions relating to the auction
13 markets at the time.

14 100. On February 4, 2008, the Research Department re-published the "Answering
15 Questions" piece on its own as a supplement to the Fixed Income Digest in part, because of
16 questions the Research Department was getting from calls and that FAs were likely having a
17 problem locating the information in the otherwise lengthy February 1, 2008 publication.

18 101. On the evening of February 12, 2008, Merrill Lynch executives decided to cease
19 supporting its auction rate securities program and intentionally allowed the vast majority of their
20 auctions to fail the following day.

21 102. Merrill Lynch's decision to stop broadly supporting its auction program was made
22 without any real consideration or analysis of its effect on retail and other investors holding the
23 securities.
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1 investigation, and is not intended to be used for any other purpose.

2 3. Merrill Lynch will CEASE AND DESIST from violating the Act and will comply with
3 the Act.

4 4. Within ten (10) calendar days following the entry of this Order, Merrill Lynch shall
5 pay the sum of six million, two hundred and seventy one thousand, thirteen dollars and thirty nine
6 cents (\$ 6,271,013.39) to the Illinois Securities Department, Audit and Enforcement Fund.

7 5. In the event another state securities regulator determines not to accept Merrill
8 Lynch's settlement offer, the total amount of the payment to the State of Illinois shall not be
9 affected.

10 6. Definitions and Buyback Offer. Merrill Lynch will provide liquidity to Eligible
11 Investors by buying Eligible Auction Rate Securities that have failed at auction at least once
12 between February 13, 2008, and the date of this Offer, at par, in the manner described below.

13 "Eligible Auction Rate Securities," for purposes of this Order, shall mean auction rate
14 securities publicly issued by municipalities or closed-end funds or backed by student loans and
15 purchased at Merrill Lynch on or before February 13, 2008. Notwithstanding any other provision,
16 Eligible Auction Rate Securities shall not include privately issued or placed auction rate securities
17 that are unregistered and/or offered pursuant to SEC Rule 144A, or other exemptions of the
18 Securities Act of 1933.

19 "Eligible Investors," for purposes of this Settlement, shall mean:

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

23 (ii) All small business and not for profit clients in Merrill Lynch's Global Wealth
24 Management Group who purchased Eligible Auction Rate Securities at Merrill Lynch that had
25 \$100 million or less in assets in their accounts with Merrill Lynch, net of margin loans, as of
26 August 7, 2008, or, if the customer was not a customer of Merrill Lynch as of August 7, 2008, as of
the date that the customer terminated its customer relationship with Merrill Lynch.

1 Notwithstanding any other provision, "small business and not for profit clients" does not include
2 broker-dealers or banks acting as conduits for their customers.

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

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

15 7. Tranche II Eligible Investors. No later than December 18, 2008, Merrill Lynch shall
16 have offered to purchase at par, plus any accrued but unpaid interest or dividends, Eligible Auction
17 Rate Securities from other Eligible Investors who purchased Eligible Auction Rate Securities from
18 Merrill Lynch prior to February 13, 2008, and who had less than \$100 million in assets at Merrill
19 Lynch as of August 7, 2008.

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

23 8. Asset Amounts. Merrill Lynch shall calculate investor asset amounts as of August
24 7, 2008, for all Eligible Investors with assets with Merrill Lynch as of that date. For Eligible
25 Investors with no assets at Merrill Lynch as of that date, Merrill Lynch shall calculate investor
26 asset amounts as of the date such investor removed their assets from Merrill Lynch.

1 9. Notice and Assistance. Merrill Lynch shall provide prompt notice to customers of
2 the settlement terms, and Merrill Lynch shall establish a dedicated telephone assistance line, with
3 appropriate staffing, to respond to questions from customers concerning the terms of the
4 settlement.

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

10 11. Consequential Damages Claims. No later than October 1, 2008, Merrill Lynch shall
11 make reasonable efforts promptly to notify those Eligible Investors covered by Section III.5 above
12 who own Eligible Auction Rate Securities, pursuant to the terms of the settlement, that an
13 independent arbitrator, under the auspices of the Financial Industry Regulatory Authority (FINRA),
14 shall be available for the exclusive purpose of arbitrating any Eligible Investor's consequential-
15 damages claim. Merrill Lynch shall consent to participate in the North American Securities
16 Administrators Association's ("NASAA") Special Arbitration Procedures (the "SAP") established
17 specifically for arbitrating any Eligible Investor's consequential damages claim arising from their
18 inability to sell Eligible Auction Rate Securities. Nothing in this Offer shall serve to limit or
19 expand any party's rights or obligations as provided under the SAP. Arbitration shall be conducted
20 before a single non-industry arbitrator and Merrill Lynch will pay all forum and filing fees.

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

26 Any Eligible Investors who choose to pursue such claims through the SAP shall bear the
burden of proving that they suffered consequential damages and that such damages were caused by

1 their inability to access funds invested in Eligible Auction Rate Securities at Merrill Lynch as of
2 February 13, 2008. In the SAP, Merrill Lynch shall be able to defend itself against such claims;
3 provided, however, that: Merrill Lynch shall not contest liability for the illiquidity of the
4 underlying ARS position or use as part of its defense any decision by an Eligible Investor not to
5 borrow money from Merrill Lynch. Special or punitive damages shall not be available in the SAP².

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

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

17 Beginning January 2, 2009, and then quarterly after that, Merrill Lynch shall submit a
18 written report to a representative specified by NASAA outlining the efforts in which Merrill Lynch
19 has engaged and the results of those efforts with respect to Merrill Lynch Institutional Investors’
20 holdings in Eligible Auction Rate Securities. Merrill Lynch shall confer with the representative no
21 less frequently than quarterly to discuss Merrill Lynch’s progress to date. Such quarterly reports
22 shall be submitted within 20 days following the end of each quarter and continue until no later than
23 January 15, 2010. Following every quarterly report, the representative shall have the option of
24 requiring a meeting between the State and Merrill Lynch to advise Merrill Lynch of any concerns
25 and, in response, Merrill Lynch shall detail the steps that Merrill Lynch plans to implement to

26 ² 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 address such concerns. The reporting or meeting deadlines set forth above may be amended with
2 written permission from the representative.

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

9 14. No Disqualification. The Order entered pursuant to this Offer hereby waives any
10 disqualification contained in the laws of Illinois, or rules or regulations thereunder, including any
11 disqualifications from relying upon the registration exemptions or safe harbor provisions that
12 Merrill Lynch or any of its affiliates may be subject to. The Order entered pursuant to this Offer
13 also is not intended to subject Merrill Lynch or any of its affiliates to any disqualifications
14 contained in the federal securities laws, the rules and regulations thereunder, the rules and
15 regulations of self regulatory organizations or various states' or U.S. Territories' securities laws,
16 including, without limitation, any disqualifications from relying upon the registration exemptions
17 or safe harbor provisions. In addition, this Order is not intended to form the basis for any such
18 disqualifications.

19 15. Nothing herein shall preclude Illinois, its departments, agencies, boards,
20 commissions, authorities, political subdivisions and corporations (collectively, "State Entities"),
21 other than Department and only to the extent set forth in paragraph 1 above, and the officers,
22 agents or employees of State Entities from asserting any claims, causes of action, or applications
23 for compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive
24 relief against Merrill Lynch in connection with certain auction rate securities sales practices at
25 Merrill Lynch.

26 16. For any person or entity not a party to the Order issued pursuant to this Offer, this
Offer and the Order do not limit or create any private rights or remedies against Merrill Lynch

1 including, without limitation, the use of any e-mails or other documents of Merrill Lynch or of
2 others for auction rate securities sales practices, limit or create liability of Merrill Lynch, or limit or
3 create defenses of Merrill Lynch, to any claims.

4 17. In Consideration of the Settlement the Department will:

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

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

12 c. Not seek additional monetary penalties from Merrill Lynch relating to the issues
13 raised by the Department relating to Merrill Lynch's marketing and sale of Eligible Auction Rate
14 Securities to investors and the firm permitting trading in auction rates securities by any individuals
15 affiliated with Merrill Lynch.

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

20 19. This Order and any dispute related thereto shall be construed and enforced in
21 accordance with, and governed by, the laws of Illinois without regard to any choice of law
22 principles.

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

