UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

May 24, 2017

Amy Natterson Kroll, Esq.
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Re: SEC v. Bank of America, N.A. et al., Civil Action No. 3:13-cv-447 (W.D.N.C., November 25, 2014)
Waiver of Disqualification under Rule 506(d)(2)(ii) of Regulation D
Securities Act of 1933 Release No. 9682, November 25, 2014

Dear Ms. Kroll:

This letter responds to your letter dated May 24, 2017 ("2017 Waiver Letter"), written on behalf of Bank of America, N.A. and Merrill Lynch, Pierce, Fenner & Smith, Inc. (the "Respondents"), and constituting an application for the extension of a previously-granted waiver of disqualification under Rule 506(d)(2)(ii) of Regulation D under the Securities Act of 1933. In your 2017 Waiver Letter, you requested relief from any disqualification that will arise as to the Respondents under Rule 506 of Regulation D under the Securities Act by virtue of the expiration of the Commission's waiver order dated November 25, 2014 (Release No. 9682) in relation to the entry of a final judgment ("2014 Final Judgment") by the United States District Court for the Western District of North Carolina Charlotte Division (Civil Action No. 3:13-cv-447) on November 25, 2014.

Based on the facts and representations in the 2017 Waiver Letter and assuming the Respondents will comply with the 2014 Final Judgment, the Division of Corporation Finance, acting for the Commission pursuant to delegated authority, has determined that the Respondents have made a showing of good cause under Rule 506(d)(2)(ii) of Regulation D that it is not necessary under the circumstances to deny reliance on Rule 506 of Regulation D by reason of the entry of the 2014 Final Judgment. Accordingly, the relief requested in the Waiver Letter regarding any disqualification that arose as to the Respondents under Rule 506 of Regulation D by reason of the entry of the 2014 Final Judgment is granted on the condition that the Respondents will fully comply with its terms. Any different facts from those represented or failure to comply with the terms of the 2014 Final Judgment would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Very truly yours,

/s/ Sebastian Gomez Abero

Sebastian Gomez Abero
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May 24, 2017

Sebastian Gomez Abero, Esq.
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Re: ***Securities and Exchange Commission v. Bank of America, N.A., Banc of America Mortgage Securities, Inc., and Merrill Lynch, Pierce, Fenner & Smith Inc. f/k/a Banc of America Securities LLC***

Dear Mr. Gomez Abero:

I am writing on behalf of Bank of America, N.A. ("BANA") and Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") (successor by merger to Banc of America Securities LLC ("BAS")) (together the "Respondents"), both wholly owned subsidiaries of Bank of America Corporation ("BAC"). This letter is to request a waiver from disqualification from relying on the exemptions available under Rule 506 of Regulation D ("Rule 506"), adopted under the Securities Act of 1933, as amended (the "Securities Act"), for the period May 25, 2017 through November 24, 2019 (the "remainder of the disqualification period") as provided in the order issued by the Securities and Exchange Commission ("SEC" or "Commission"), on November 25, 2014 granting such a waiver for 30 months with the right to apply for an additional waiver from disqualification for the remainder of the disqualification period.[1]

The need for a waiver initially arose upon the entry of the final judgment by the United States District Court for the Western District of North Carolina Charlotte Division (Civil Action No. 3;13-CV-447) on November 25, 2014, enjoining the Respondents from committing violations of Sections 17(a)(2) and (3) and Section 5(b)(1) of the Securities Act of 1933 ("Judgment").[2] At that time, the Commission issued the 2014 Waiver Order, waived the disqualification for 30 months, and stated that if the terms of the 2014 Waiver Order were satisfied the Respondents could apply for a waiver covering the remaining 30 months of the disqualification period.

A. The 2014 Waiver Order

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[1] In the Matter of Bank of America, N.A. and Merrill Lynch, Pierce, Fenner & Smith, Inc., *Order Under Rule 506(d) of the Securities Act of 1933 Granting a Waiver of the Rule 506(d)(1)(ii) Disqualification Provision*, Securities Act Release no. 9682 **(Nov. 25, 2014) (the "2014 Waiver Order"). The 2014 Waiver Order is attached as Exhibit A.**

[2] The Commission filed a Complaint on August 6, 2013 (the "Complaint") alleging violations of these provisions.

In the 2014 Waiver Order, the Respondents were directed, in substance, to:

1. Retain an independent consultant (the "Consultant") to conduct a comprehensive review of the policies and procedures relating to compliance with Rule 506 of Regulation D by the Respondents and those subsidiaries or affiliates of Respondents conducting any activities that would otherwise be disqualified pursuant to the Judgment.

2. Cooperate fully with the Consultant.

3. Require the Consultant to complete its review and submit a written preliminary report "Preliminary Report") to the Respondents and the Commission staff within 360 days of the issuance of the Order.

4. Within 180 days of receipt of the Preliminary Report, adopt and implement all recommendations contained in the Preliminary Report.

5. Within 180 days from the date of implementation of recommendations, require the Consultant to submit a final written Report ("Final Report") to the Respondents and Commission staff certifying in the Final Report that the Respondents have implemented the recommendations contained in the Preliminary Report and that the Respondent's policies and procedures designed to ensure compliance with Rule 506 are reasonably designed to achieve their stated purpose.

The 2014 Waiver Order provided that Respondents could apply to the Commission for a waiver covering the remaining 30 months in the disqualification period that are not covered by the 2014 Waiver Order.

B. Discussion

The Commission has the authority to waive the Rule 506 disqualifications upon a showing of good cause that such disqualifications are not necessary under the circumstances.

Respondents respectfully request the waivers from any disqualifications from relying on exemptions under Rule 506 for the 30 months that remain in the disqualification period resulting from the Judgment on the following grounds:

1. Respondents have satisfied each of the requirements of the 2014 Waiver Order described above.

As required by the 2014 Waiver Order, Respondents retained a Consultant to conduct a comprehensive review of Respondents, and Respondents' affiliates that participate in activities that would otherwise have been disqualified pursuant to the Judgment. The Consultant conducted such a review and submitted both a Preliminary and Final Report within the time frames required by the 2014 Waiver Order. Specifically, the Preliminary and Final Reports documented that:

- The Consultant was retained to conduct a comprehensive review as required in the 2014 Waiver Order;
- Respondents and their affiliates cooperated fully with the Consultant;
- The Consultant completed its review and submitted a Preliminary Report to the Respondents and the Commission staff within 360 days of the issuance of the Order.
- Within 180 days of receipt of Consultant's Preliminary Report, Respondents fully adopted and implemented the Consultant's recommendations; and
- Within 180 days following such implementation, Consultant submitted a Final Report to the Respondents and the Commission Staff in which the Consultant certified (a) to Respondents' implementation of the recommendations in the Preliminary Report and (b) that Respondents' policies and procedures designed to ensure compliance with Rule 506 are reasonably designed to achieve their stated purpose.

2. The Alleged Misconduct was Non-Scienter Based

As noted in our original letter to you requesting a waiver from the Rule 506 disqualification upon the entry of the Judgment dated November 18, 2014 ("Original Waiver Request"),[3] the Commission did not allege in the Complaint that Respondents acted with scienter or intent to defraud. Furthermore, the Judgment did not allege that the Respondents acted with scienter or intent to defraud.

3. The Alleged Misconduct Involved an Offer of Securities under the Securities Act.

The misconduct alleged in the Complaint involved the offer or sale of securities resulting in a violation of Section 5(b)(1) of the Securities Act, a disclosure and filing requirement. As a result of the Judgment, Merrill Lynch and BOAMS are enjoined from violations of Section 5(b)(1) of the Securities Act. As described in the Original Waiver Request, Merrill Lynch and BANA have taken, and continue to take, steps to ensure that violations of Section 5(b)(1) do not occur in the future as a result of transmission of prospectuses related to non-agency RMBS.

4. The Alleged Misconduct Was Limited and of Limited Duration.

As described in the Original Waiver Request, the duration of the conduct alleged in the Complaint was extremely limited. The alleged misconduct related to a single RMBS transaction, BOAMS 2008-A, that closed in 2008 – nine years ago. The alleged conduct relates only to disclosures in one specific RMBS offering sponsored by BANA, underwritten by BAS, and offered by BOAMS. BANA and Merrill Lynch instituted policies and procedures described in detail in the Original Waiver Request that address the issues raised by BOAMS 2008-A. Finally, BOAMS 2008-A was BOAMS's last RMBS issuance. BOAMS remains dormant and is not an Applicant for a waiver from the disqualifications under Rule 506(d).

[3] The Original Waiver Request is attached as Exhibit B.

5. The Senior Personnel Involved in the Conduct are No Longer Employed by Bank of America.

As explained in the Original Waiver Request, the Commission did not name any individuals in the Complaint and no individuals were enjoined as a result of the Judgment. While the Complaint referred to two senior personnel by title -- a BOAMS Principal[4] and a BAS Managing Director[5] -- the Commission did not charge either individual. Moreover, neither of those individuals has been employed by a Bank of America entity since 2011.

6. Remedial Steps Were Implemented

The Original Waiver Request describes in detail the remedial steps that had been taken prior to November 2014, as well as the remedial steps in process at that time, which have since been implemented. As noted in the Original Waiver Request, Merrill Lynch and BANA no longer sponsor Non-agency RMBS and all but one of the Non-agency RMBS offerings that Merrill Lynch has underwritten since 2008 have been issued as Rule 144A eligible private placements.[6]

Since the date of the Original Waiver Request, Merrill Lynch and its U.S. affiliates have continued to develop their policies and procedures -- not only to achieve compliance with applicable rules and regulations -- but also to achieve best practices with regard to underwriting Non-agency RMBS in the United States. For instance, the policies and procedures described in the Original Waiver Request related to Non-agency RMBS have continued to evolve as sections of the Dodd-Frank Wall Street Reform and Consumer Act (the "Dodd-Frank Act") are implemented and as industry best practices have emerged. These policies and procedures address regulatory requirements for both registered and unregistered offerings. Merrill Lynch and its U.S. affiliates, as a matter of best practice, seek the disclosures in offering materials for privately placed Non-agency RMBS offerings that by rule are required only for registered offerings, such as transaction party information (including affiliations and information regarding possible conflicts of interest), material loan level information about the underlying assets which also provide protections of personally identifiable information, information regarding the more extensive third party due diligence procedures and

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[4] The Commission alleged that the "BOAMS Principal was a Senior Vice President of BANA, who at all relevant times, had responsibility for reviewing the offering documents for BANA and managing the BOAMS' filings with the Commission. The BOAMS Principal (a) assisted with mortgage loan securitizations, (b) reviewed and signed public filings for RMBS, including the offering documents for BOAMS 2008-A and (c) was an agent of BAS responsible for investor relations." *See* Complaint.

[5] The Commission alleged that the "BAS Managing Director was a Senior Vice President of BANA [and] president and Chief Executive Officer of BOAMS." The Commission alleged that the quarterly assurance reports ("QARs") "were regularly received by the managing director of BAS who was responsible for creating and supervising BAS' RMBS program. The Commission also alleged that "at all relevant times, the BAS Managing Director was in charge of the BAS Mortgage Finance Group, responsible for the underwriting of BOAMS 2008-A [and] had supervisory responsibility for structuring BOAMS 2008-A and for preparing the offering documents." *See* Complaint.

[6] In 2013, the Firm underwrote a registered Non-agency RMBS offering entitled Sequoia Mortgage Trust 2013-8. This is the only registered Non-agency RMBS offering in which the Firm has participated since 2007, and to the best of our understanding this was the only issuer offering registered Non-agency RMBS in recent years. *See*, https://www.sec.gov/Archives/edgar/data/1176320/000114420413034658/v347661_424b5.htm

detailed disclosure regarding the results, including information about exception loans, and if an investor's return is materially dependent upon third-party credit enhancement (including through a derivatives instrument) or any other derivative contract, additional financial disclosure about the counterparty. In addition, Merrill Lynch, as a best practice, applies the standards for registered offerings to the marketing and road show materials it uses to market privately placed Non-agency RMBS.

Bank of America, on an enterprise-wide basis has also adopted, policies related to: (i) Volcker Rule disclosures under Section 619 of the Dodd-Frank Act, (ii) disclosures to NRSROs under Rule 17g-5, (iii) disclosures of repurchase requests under Rule 15Ga-1, (iv) disclosures of third party review services and due diligence reports provided to NRSROs under Rule 15Ga-2 and Rule 17g-10 and (v) disclosures related to implementation of credit risk retention under Regulation RR, all of which have been implemented for registered RMBS offerings and drive the practices applied to unregistered RMBS offerings, including privately placed Non-agency RMBS.

7. *Impact*

As described in detail below, a disqualification under Rule 506 would have a significant impact on Merrill Lynch, BANA, Merrill Lynch Alternative Investments LLC ("MLAI"), certain third party funds and issuers of private placements (other than funds), and especially on Merrill Lynch customers and BANA clients. The impact to all of these parties has not changed since the Original Waiver Request. Merrill Lynch continues to be the only outlet for distribution of alternative investment funds, including the feeder funds sponsored or administered by MLAI to provide Merrill Lynch customers access to certain third-party funds. Without a waiver, Merrill Lynch's high-net-worth and institutional clients and BANA customers would lose access to MLAI sponsored feeder funds. They also would lose access to current and future third-party funds offered by Merrill Lynch and/or BANA ("selling agreement funds") unless they open accounts with other broker-dealers that are solicitors or promoters of the funds or move their accounts from Merrill Lynch and BANA to broker-dealers and banks that are not disqualified from offering the third-party funds. In addition, without a waiver, feeder funds that are sponsored by MLAI, selling agreement funds that rely on Rule 506 exemptions, and issuers engaged in private placements relying on Rule 506 for which Merrill Lynch is the only or one of the only outlets and that currently have active offerings, would be severely hampered in their ability to distribute their securities. Finally, without a waiver, MLAI would be unable to continue its business without finding a new distribution outlet for the feeder funds it sponsors and selling agreement funds.

As discussed more fully below, the impact in each of these situations would be significant, and could result in the demise of certain funds and also of MLAI.

a. Impact on Merrill Lynch Customers and BANA Clients.

Merrill Lynch and BANA offer access to funds and private placements (other than funds) to approximately 412,000[7] Merrill Lynch eligible high-net-worth and institutional customers and BANA

[7] This number represents only those Merrill Lynch and BANA household accounts that meet the eligibility requirements to invest in funds and private placements by virtue of having a net worth that exceeds $1 million (excluding the value of the primary residence). Accordingly, the actual number of Merrill Lynch high-net-worth and institutional customers and BANA

clients representing a combined net worth of at least $2.4 trillion.[8] Over 49,000 Merrill Lynch households and other accounts currently hold interests in funds sold by Merrill Lynch.[9] Such access affords eligible high net worth and institutional customers an extensive range of investment options in addition to, among other things, traditional stocks, debt and mutual funds. In addition, Merrill Lynch regularly considers entering into new selling agreements with third-party funds that have different strategies, terms and other features from those of funds currently available that may more closely meet the needs of certain customers due to ever-changing market conditions. Applicant BANA also regularly evaluates the funds available to US Trust clients and considers adding new third-party funds that may be well suited to these clients' needs, including funds offered through Merrill Lynch selling agreements. In addition, Merrill Lynch offers access to private placements to its eligible high-net-worth and institutional customers.

If Merrill Lynch and/or BANA is unable, because of a disqualification, to act as a promoter or solicitor pursuant to selling agreements for MLAI-sponsored, -managed or -advised funds and third-party funds, and/or as placement agent for private placements, that offer their securities in reliance on the exceptions under Rule 506(b) or (c), the customers and clients of Merrill Lynch and BANA will be substantially negatively impacted by losing access to the many investment options represented by the funds and private placements.[10]

Specifically, if Merrill Lynch or BANA is prohibited from acting as the solicitor/promoter for current or future funds or as placement agent for the private placements, approximately 412,000 Merrill Lynch high-net-worth and institutional customers and BANA clients would lose access through Merrill Lynch to funds and private placements that might in the future better suit their needs than public funds or offerings or other securities. This would unnecessarily disadvantage these customers and the BANA clients by limiting their ability to diversify their portfolios.

Merrill Lynch and BANA provide their customers and clients a wide selection of fund and private placement investment options. Indeed, Merrill Lynch offers one of the largest selections of alternative investments of any U.S. broker-dealer. In particular, 179 funds are sponsored or administered by MLAI with over 22,000 eligible Merrill Lynch and BANA households and other accounts investing $10.7 billion of assets in these funds. Furthermore, Merrill Lynch or BANA

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clients with access through Merrill Lynch to funds and private placements may be higher than 412,000, as (i) this number does not reflect institutional clients, and (ii) there are Merrill Lynch and BANA customers who do not have a net worth in excess of $1 million, but are able to satisfy the eligibility requirements to invest in funds and private placements by meeting other criteria for eligibility.

[8] Many Merrill Lynch funds and private placements may not be available to all Merrill Lynch high-net-worth and institutional customers and BANA clients, as many funds and private placements may impose eligibility requirements that not all Merrill Lynch high-net-worth and institutional customers and BANA clients can meet.

[9] This number represents only Merrill Lynch or BANA household accounts as of February 2017, and does not reflect any institutional accounts. Accordingly, the actual number of Merrill Lynch accounts that presently hold interest in funds may be higher than 49,000.

[10] While any fund or issuer can structure future offerings pursuant to Section 4(a)(2) of the Securities Act, such an offering can ONLY be made available to a very limited group of potential investors. As a result, if a fund or issuer of a private placement advised, managed, sponsored or sold through Merrill Lynch or BANA were to rely on Section 4(a)(2), the majority of otherwise eligible Merrill Lynch and BANA clients likely would be directly impacted by the reduction in the number of funds and private placements available for investment.

serves as the solicitor/promoter for an additional 220 selling agreement funds with approximately 32,700 Merrill Lynch and BANA customers investing $13.6 billion of assets in these funds.[11] Additionally, Merrill Lynch or BANA serves as solicitor to private placements with $209 million of Merrill Lynch and BANA customer assets invested. Merrill Lynch and BANA also offer social-impact investment opportunities to their customers and clients.[12] Finally, as of the date of this letter, MLAI is in various stages of negotiations with third parties and expects to act as solicitor/promoter for at least 16 additional selling agreement funds by the end of 2017.

While Merrill Lynch and BANA offer MLAI-sponsored, -managed, or -advised funds, as well as third-party funds (directly and through MLAI-sponsored feeder funds) the adoption of the Volcker Rule makes it more difficult for firms (broker-dealers affiliated with banks and banks) to offer "affiliated" funds. Merrill Lynch and BANA want to be able to continue to provide their high-net-worth and institutional customers and clients with a wide selection of funds. Therefore, increasingly, MLAI is offering third-party funds through selling agreements, as well as offering funds that it directly manages and/or sponsors.

Without a waiver, Merrill Lynch's high-net-worth and institutional customers and BANA clients would lose access to current and future third-party funds unless they opened accounts with other broker-dealers that are solicitors or promoters of the funds, or moved their accounts from Merrill Lynch and BANA to banks that are not disqualified from offering the third-party funds.[13] This would impose an undue hardship for these customers and clients, for many reasons. Beyond the difficulty of maintaining accounts with different broker-dealers, it is unlikely that the other broker-dealers or banks will offer the variety of funds that Merrill Lynch currently offers and expects to offer in the future. It also could be particularly punitive for BANA accounts that are fiduciary accounts held and advised through the BANA US Trust line of business.[14]

In addition, if Merrill Lynch is unable to act as placement agent for the private placements that rely on Rule 506 to offer securities, then its high-net-worth and institutional customers would lose access through Merrill Lynch to current and future Private Placements, because these issuers likely

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[11] Data includes Merrill Lynch and BANA customer investments in private equity funds offered and sold in reliance on the exemptions under Rule 506 (both MLAI sponsored funds and funds where Merrill Lynch serves as the solicitor/promoter).

[12] For instance, Merrill Lynch has to date offered two, and intends in the future to offer additional, social-impact investment opportunities, in reliance on Rule 506. These offerings may be structured as debt, equity, or funds and represent an emerging market in which private sector capital is raised to fund the expansion of effective social service programs. These programs provide funding for nonprofits with a proven track record of successfully addressing social problems; enable governments to save money and repay investors only when positive results are achieved; and, when identified success metrics are met, private and institutional investors can recoup their principal plus a rate of return. If Merrill Lynch does not receive a waiver from Rule 506 disqualification, then other social impact investment opportunities could become unavailable to eligible Merrill Lynch high-net-worth and institutional clients.

[13] We note that while pursuant to Rule 506(d)(2)(iv) an issuer is not disqualified if it "establishes that it did not know, and in the exercise of reasonable care, could not have known that a disqualification existed under paragraph (d)(1)," the disqualifying event described in the Background section above was widely publicized, casting some doubt on whether the standard for relying on paragraph 506(d)(2)(iv) could be satisfied by a private placement issuer or a fund.

[14] We note that third-party funds are likely to terminate selling agreements with an Applicant, rather than seek waivers to continue employing an Applicant as solicitor or promoter through a selling agreement, if Applicants become disqualified and the disqualifications are not waived. This would deny access to such funds for eligible Merrill Lynch customers and BANA clients.

would offer their securities through placement agents other than Merrill Lynch in order to rely on Rule 506.

b. Impact on Merrill Lynch and BANA.

As discussed below, if Merrill Lynch and BANA are disqualified pursuant to Rule 506(d), they would be precluded from acting as placement agent, solicitor or promoter of funds and private placements. If so limited, many of Merrill Lynch's customers, and BANA's clients, might determine that they would be better served by transferring their accounts to other broker-dealers and banks that are able to offer securities issued in reliance on the Rule 506 safe harbor. Such private investment opportunities have become an increasing portion of the investment portfolios of high-net-worth investors and institutional investors seeking to diversify their portfolios. As we note earlier in this letter, over 49,000 eligible Merrill Lynch households and other accounts presently have invested, through Merrill Lynch, in funds and in issuers of private placements. If Merrill Lynch were to lose even a small portion of these accounts, this could significantly impact the financial resources of Merrill Lynch and the scope of services it offers. In addition, financial advisors of Merrill Lynch could decide to move to third-party broker-dealers in order to ensure that their clients continue to have access to investments that are similar to the funds. As a result, it is highly likely that additional customers beyond the over 49,000 eligible Merrill Lynch households and other accounts already invested in funds would move their accounts in order to retain relationships with their financial advisors.

Moreover, BANA, in its fiduciary capacity must make available to its trust and other advised accounts a full range of investments to meet its investment objectives. If BANA is unable to offer and sell the funds and private placements, it will make it more difficult for it to satisfy its fiduciary obligations. As such, it is possible that clients could terminate their business relationships with BANA, which would result in material adverse impact to its trust and fiduciary businesses.

c. Impact on Funds and Issuers of Private Placements.

As discussed above, Merrill Lynch currently acts as solicitor for funds that are sponsored, managed or advised by MLAI, as well as third-party funds that rely on the exemptions under Rule 506(b) or (c). Indeed, the Applicants have served as solicitor, promoter or placement agent for approximately 187 offerings by Funds since November 2014 which have raised approximately $14.8 billion dollars. Applicants believe, to the best of their knowledge, that all of these fund offerings are currently active. These offerings have relied on the exemptions under Rule 506(b) or (c) of Regulation D. Additionally, one affiliate of Respondents also has a precious metals program that currently relies on the exemptions under Rule 506(b) and for which interests are solicited exclusively through Merrill Lynch. The precious metals program has 108 different coins or metals weight denominations offered and total value of over $357 million. Applicants currently have approximately 28 engagements under consideration for new fund and new private placement transactions that would rely on the exemptions under Rule 506(b) or (c) and regularly seek to identify new funds (through MLAI), and private placements (through Merrill Lynch) that it can offer through Merrill Lynch and BANA, to customers and clients, respectively.

If the Commission does not grant the requested waivers to Applicants, then if the Applicants enter into these proposed and future engagements with funds or private placement issuers, the funds and issuers of private placements will themselves be disqualified from relying on Rule 506 and therefore will be unable to offer interests in reliance on Rule 506 at all. The funds and issuers of private placements would then only be able to offer interests in reliance on Section 4(a)(2) of the Securities Act. This would (i) significantly affect the number of customers that could invest in such funds, and (ii) most third parties, whether through funds or private placements, would not likely continue to use MLAI given that Section 4(a)(2) of the Securities Act offerings are not likely to raise much money so they would prefer to devote their limited resources to other platforms.

d. Impact on Certain Third-Party Funds and Issuers of Private Placements.

While third-party funds could seek new distribution channels for their funds and private placement issuers can find new placement agents, if Merrill Lynch and BANA are disqualified under Rule 506, this would place a burden on the third-party funds and private placement issuers that have long-standing and deep relationships with Merrill Lynch and rely on Merrill Lynch's institutional knowledge and extensive investor base. Some of these third-party funds and issuers of private placements have offered their securities through Merrill Lynch and/or BANA for up to twenty-five years, and as a result, have developed a high degree of confidence in the abilities of Merrill Lynch and BANA to offer and sell their securities, allowing the funds and issuers to raise capital when needed. Furthermore, certain of the funds distributed by Merrill Lynch and private placement issuers do not have large distribution channels outside of Merrill Lynch and could be negatively impacted in their abilities to raise capital should Merrill Lynch customers be prevented from investing in such funds.

e. Impact on Merrill Lynch Affiliate, MLAI.

Merrill Lynch is the only outlet for distribution of MLAI managed and sponsored funds, including the feeder funds advised by MLAI to provide Merrill Lynch customers access to certain third-party funds. If Applicants do not receive a waiver from Rule 506 disqualification, they will effectively not be able to act as the promoters or solicitors for these funds (those sponsored, managed or advised by MLAI) because to do so would result in the funds becoming disqualified from being able to offer their securities pursuant to Rule 506. As a result, MLAI would have to find a new distribution outlet for these funds. If MLAI finds such a new distribution outlet and contracts with a new broker-dealer to provide promoter or solicitor services for the funds that MLAI manages, sponsors and advises, then Merrill Lynch customers and BANA clients would only have access to the MLAI funds if they open accounts with the new broker-dealer. This would be an undue hardship on the Merrill Lynch and BANA client base, and, we believe, is not the intention of the Rule 506 disqualification provisions.

There is substantial benefit in MLAI using Merrill Lynch to sell the funds it manages, sponsors and advises because Merrill Lynch and its financial advisors have substantial experience in offering and selling, and substantial knowledge about, the funds. Most of the funds use alternative investment strategies which can be complicated and difficult to understand. If MLAI is required to replace Merrill Lynch with a new broker-dealer, adverse consequences would include that it would take a substantial period of time to educate the registered representatives of the new broker-dealer about

the array of funds and the terms and strategies of each of the funds. Funds managed, sponsored and advised by MLAI would lose the benefits of being part of the "Merrill Lynch" platform offered to Merrill Lynch's customers -- including an extensive, experienced and well-educated group of financial advisors who understand and offer a wide range of financial products to their qualified investors.[15]

Furthermore, if MLAI does not identify a new broker-dealer to serve as distributor of the funds that MLAI sponsors, manages and advises, MLAI likely would be put out of business. The sponsorship, management and advising of new funds constitutes one hundred percent (100%) of MLAI's business. Without a waiver for Merrill Lynch and BANA, they would be precluded from offering these funds because they are sold to Merrill Lynch's qualified customers and BANA's clients pursuant to Rule 506. If MLAI is unable to identify a new distribution outlet as discussed above, not only would the Merrill Lynch customers and BANA clients be denied access to the funds MLAI currently sponsors, manages and advises, but MLAI would likely be required to cease managing, sponsoring and advising funds, the net effect of which would be to shutter MLAI and the funds that Merrill Lynch customers and BANA clients currently invest in and would otherwise have invested in in the future.

Merrill Lynch has a well-earned reputation for offering one of the most diverse array of alternative investment products to Merrill Lynch's customers, and many of these funds are sponsored, managed or advised by MLAI. This platform of funds was developed over many years of devoting significant resources to educating financial advisors and, in turn, customers. If Merrill Lynch and BANA are disqualified, then the funds advised, managed and sponsored by MLAI would not be able to be offered through Merrill Lynch, and it is likely that, as a result, MLAI's business would be fundamentally changed, and likely substantially reduced.

8. *Provision of Written Description of the Injunctions*

If Respondents receive the requested waiver from Rule 506 disqualification, they will continue to furnish or cause to be furnished to each purchaser in a Rule 506 offering that would otherwise be subject to disqualification under Rule 506(d) as a result of the Judgment, a description in writing of the Judgment a reasonable time prior to the sale.[16] Merrill Lynch and BANA currently provide, or cause to be provided, disclosures in accordance with Rule 506.

Request for Waivers

In light of the foregoing, Respondents believe disqualification is not necessary for the remainder of the disqualification period resulting from the Judgment, they have complied with all the requirements of the 2014 Waiver Order, and they have shown good cause that relief in the form of

[15] We also note, and discuss above in this letter, that, like the funds managed, sponsored and advised by MLAI, this group of financial advisors is one of the primary reasons why third-party managers are interested in offering their funds through selling agreements with Merrill Lynch. However, if Merrill Lynch were disqualified, and such third-parties are directed to contract with another broker-dealer, identified by MLAI, for instance, it is likely that many of them will choose to work with other platforms, of their own choosing.

[16] For clarification, Respondents will continue to fulfill this provision by furnishing, or causing to be furnished, to each purchaser of a Rule 506 offering that is purchased through a Respondent, a description of the Judgment.

waivers from disqualification should be granted for the remainder of the disqualification period, which ends at midnight on November 24, 2019. Accordingly, Respondents respectfully request that, pursuant to Rule 506(d)(2)(ii), the Commission waive the disqualification provisions of Rule 506 that would otherwise disqualify Respondents when the waiver provided in the 2014 Waiver Order expires effective May 25, 2017.

Respondents reiterate to the Commission the comprehensive adverse impact that denial of a waiver to the Respondents, their affiliates, funds managed, sponsored or advised by Respondents' affiliates, would have on third-party funds and issuers of private placements with longstanding relationships with Respondents, and most importantly, on Respondents' clients and customers. Therefore, Respondents believe that a waiver of disqualification for the remainder of the disqualification period is the most effective way to avoid this widespread adverse impact.

Respondents therefore reiterate that for the reasons discussed in detail above, the Commission has good cause to grant the requested waivers.

Sincerely,

Amy Natterson Kroll