

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 9494 / December 12, 2013**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 71052 / December 12, 2013**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15642**

**In the Matter of**

**MERRILL LYNCH, PIERCE,  
FENNER & SMITH  
INCORPORATED,**

**Respondent.**

**ORDER UNDER SECTION 27A(b) OF THE  
SECURITIES ACT OF 1933 AND SECTION  
21E(b) OF THE SECURITIES EXCHANGE  
ACT OF 1934, GRANTING WAIVERS OF  
THE DISQUALIFICATION PROVISIONS  
OF SECTION 27A(b)(1)(A)(ii) OF THE  
SECURITIES ACT OF 1933 AND SECTION  
21E(b)(1)(A)(ii) OF THE SECURITIES  
EXCHANGE ACT OF 1934 AS TO BANK  
OF AMERICA CORPORATION AND ITS  
AFFILIATES**

Bank of America Corporation (“Bank of America”) has submitted a letter on behalf of itself and its affiliates, dated October 21, 2013, for a waiver of the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act of 1933 (the “Securities Act”) and Section 21E(b)(1)(A)(ii) of the Securities Exchange Act of 1934 (the “Exchange Act”) arising from Merrill Lynch, Pierce, Fenner & Smith Incorporated’s (“MLPFS’s”)<sup>1</sup> public settlement of public administrative and cease-and-desist proceedings instituted by the Commission. On December 12, 2013, the Commission instituted an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act and Sections 15(b)(4) and 21C of the Exchange Act, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”) against MLPFS.

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<sup>1</sup> Bank of America acquired MLPFS in January 2009.

Under the Order, the Commission found that MLPFS, a registered broker-dealer and investment adviser, willfully violated Sections 17(a)(2) and 17(a)(3) of the Securities Act in connection with its structuring and marketing of two collateralized debt obligations (“CDOs”) in 2006 and 2007. The Order concerned CDO issuers named, *inter alia*, Octans I CDO Ltd. (“Octans I”) and Norma CDO I Ltd. (“Norma”). MLPFS failed to inform investors in Octans I (a \$1.5 billion CDO that closed on September 26, 2006) and Norma (a \$1.5 billion CDO that closed on March 1, 2007) that an undisclosed third party—a hedge fund firm that bought the equity in the transactions but whose interests were not necessarily the same as those of the CDOs’ other investors—had rights relating to, and exercised significant influence over, the selection and assembly of the CDOs’ collateral.

Without admitting or denying the findings in the Order, except as to the Commission’s jurisdiction over it and the subject matter of the proceedings, MLPFS consented to the Order. In the Order, the Commission ordered that MLPFS, *inter alia*, be censured, cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act, and pay disgorgement of \$56,286,000, prejudgment interest of \$19,228,027, and a civil money penalty of \$56,286,000 to the United States Treasury.

The safe harbor provisions of Section 27(A)(c) of the Securities Act and Section 21E(c) of the Exchange Act are not available for any forward looking statement that is “made with respect to the business or operations of an issuer, if the issuer . . . during the 3-year period preceding the date on which the statement was first made . . . has been made the subject of a judicial or administrative decree or order arising out of a governmental action that (I) prohibits future violations of the antifraud provisions of the securities laws. . . .” Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act. The disqualifications may be waived “to the extent otherwise specifically provided by rule, regulation, or order of the Commission.” Section 27A(b) of the Securities Act and Section 21E(b) of the Exchange Act.

Based on representations set forth in Bank of America’s letter, the Commission has determined that, under the circumstances, the request for a waiver of the disqualifications resulting from the entry of the Order (as defined above) is appropriate and should be granted.

Accordingly, **IT IS ORDERED**, pursuant to Section 27A(b) of the Securities Act and Section 21E(b) of the Exchange Act, that a waiver from the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act as to Bank of America and its affiliates resulting from the Commission’s Order (as defined above) is hereby granted.

By the Commission.

Elizabeth M. Murphy  
Secretary