

# Merrill Lynch Financial Foundation® Report

## BROCHURE

Merrill Lynch, Pierce, Fenner & Smith Incorporated  
One Bryant Park  
New York, NY 10036  
(800) 637-7455  
[www.ml.com](http://www.ml.com)

This brochure provides information about the qualifications and business practices of Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") relating to the Merrill Lynch Financial Foundation® Report. If you have any questions about the contents of this brochure, please contact us at 800-MERRILL (800-637-7455). The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission ("SEC") or by any state securities authority. Investment adviser registration does not imply a certain level of skill or training.

The advisory services described in this brochure are not insured or otherwise protected by the Federal Deposit Insurance Corporation or any other government agency; are not an obligation of any bank or any affiliate of Merrill Lynch; are not endorsed or guaranteed by Bank of America, N.A., Merrill Lynch, or any bank or any affiliate of Merrill Lynch; and involve investment risk, including possible loss of principal.

Additional information about Merrill Lynch also is available on the SEC's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).

**March 31, 2013**



## MATERIAL CHANGES

On March 30, 2012, Merrill Lynch filed its last annual update for its Merrill Lynch Financial Foundation Report brochure ("Brochure" or "Disclosure Statement"). Set forth below is a summary of the material changes to this Brochure since that date. This summary of material changes is designed to make clients aware of information that has changed since the Brochure's last annual update and that may be important to them. The material changes summarized below were also incorporated within this Brochure. Capitalized terms that are not defined in this Brochure have the meanings provided in the Glossary.

### Disciplinary Event

On June 21, 2012, Merrill Lynch, without admitting or denying the findings, entered into an AWC with FINRA related to the following five issues: (1) Merrill Lynch failed to have an adequate supervisory system to ensure that clients in certain investment advisory programs were billed in accordance with applicable contract and disclosure statements, and, as a result, overcharged certain client accounts unwarranted fees from April 2003 to December 2011; the client accounts impacted were less than 5% of Merrill Lynch's total advisory accounts, and the fees overcharged represented less than one-half of 1% (\$32,174,369) of the total advisory fees billed during that period; all impacted clients have been reimbursed; (2) between July 2006 and November 2010, Merrill Lynch failed to send contemporaneous and/or periodic trade confirmations to certain client accounts for ten investment advisory programs; (3) between 1992 and June 2011, Merrill Lynch did not include or accurately state whether Merrill Lynch acted as an agent or a principal on trade confirmations and account statements relating to certain mutual fund transactions; (4) between 2007 and 2010, Merrill Lynch, either directly or through third-party vendors, failed to deliver proxy materials to certain clients or to their designated investment advisers, and to have an adequate supervisory system to detect its failure to deliver proxies; the clients impacted constituted less than 1% of Merrill Lynch's clients during that period; and (5) between October 2001 and June 2010, Merrill Lynch failed to send margin risk disclosure statements and/or business continuity plans to certain clients upon the opening of their accounts; the clients impacted constituted less than 1% of Merrill Lynch's clients during that period. In determining the appropriate sanctions, FINRA considered Merrill Lynch's internal review through which it identified the violations, the remedial measures that Merrill Lynch took to correct its systems and procedures, and Merrill Lynch's efforts to provide remediation to affected clients. Merrill Lynch consented to the imposition of a censure and a fine of \$2.8 million.



## TABLE OF CONTENTS

MATERIAL CHANGES.....	I
TABLE OF CONTENTS .....	II
ADVISORY BUSINESS.....	1
Financial Foundation .....	1
Wrap Fee Programs.....	2
Assets Under Management.....	2
FEES AND COMPENSATION .....	2
Calculation and Deduction of Advisory Fees .....	2
Other Fees and Expenses .....	2
Compensation for the Sale of Securities .....	3
Conducting Business Through Merrill Lynch.....	3
Sources of Revenue .....	4
Fee Offset for Execution Charges .....	4
PERFORMANCE-BASED FEES AND SIDE-BY-SIDE MANAGEMENT.....	4
TYPES OF CLIENTS .....	4
METHODS OF ANALYSIS, INVESTMENT STRATEGIES AND RISK OF LOSS .....	4
Client Responsibilities .....	4
Risk Disclosure.....	5
Material Risks .....	5
DISCIPLINARY INFORMATION .....	6
OTHER FINANCIAL INDUSTRY ACTIVITIES AND AFFILIATIONS .....	9
CODE OF ETHICS, PARTICIPATION OR INTEREST IN CLIENT TRANSACTIONS AND PERSONAL TRADING .....	11
Code of Ethics.....	11
Participation or Interest in Client Transactions .....	11
Investments in Securities by Merrill Lynch and Our Personnel.....	12
BROKERAGE PRACTICES.....	13
REVIEW OF ACCOUNTS .....	13
CLIENT REFERRALS AND OTHER COMPENSATION .....	13
CUSTODY.....	13
INVESTMENT DISCRETION.....	13



<b>VOTING CLIENT SECURITIES .....</b>	<b>13</b>
<b>FINANCIAL INFORMATION .....</b>	<b>13</b>
<b>GLOSSARY .....</b>	<b>14</b>



## ADVISORY BUSINESS

Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch,” “we,” “us,” or “our”), a direct wholly-owned subsidiary of Merrill Lynch & Co., Inc. (“ML&Co.”) and an indirect wholly-owned subsidiary of Bank of America, is a global investment banking firm and a registered broker-dealer, investment adviser and futures commission merchant. Merrill Lynch offers a broad range of brokerage, investment advisory, retail and other services and has been registered with the Securities and Exchange Commission (“SEC”) as an investment adviser since 1978. This brochure relates to the Merrill Lynch Financial Foundation® Report (“Financial Foundation”) offered by Merrill Lynch. Clients are referred to as “Client” or “You.” Capitalized terms that are not defined in this Brochure have the meanings provided in the Glossary.

## FINANCIAL FOUNDATION

Financial Foundation is an investment advisory service designed to assist you in the area of personal financial planning by analyzing various aspects of your current financial situation, including net worth, income tax, asset allocation, cash flow (starting at retirement), estate planning, survivor protection, education planning (where appropriate), disability protection and risk management. You have sole responsibility for deciding whether, and how, to implement any aspect of this financial plan. There is no obligation for you to do so or to use us for this purpose.

Financial Foundation does not make specific investment recommendations or analyze particular securities. Rather, the report typically contains a proposed asset allocation model based upon your stated risk tolerance, age, current asset allocation and value of the assets. We have changed the allocation models in the past and may change these models in the future depending on research and investment strategy analysis. We have no obligation to revise any financial planning report already prepared if an allocation model changes in the future. In addition, we will provide you with historical statistical data, derived from the performance of various indexes, to give you more information about the relative historical risks and returns of broad asset classes and the suggested general asset allocation models.

Financial Foundation does not provide ongoing financial planning advice. The financial planning advice provided as part of this service is contained in the report itself, is current as of the date of the report and is completed upon the delivery of the report. Preliminary discussions or recommendations that occur before we deliver the report are not intended as investment advice and should not be relied on as such. Your Financial Advisor – acting in a brokerage capacity – is available to discuss the report. However, it is your responsibility to determine whether any further action with respect to the report should be taken, and we will only act upon your instruction. If you desire to engage us for additional services, whether brokerage, investment advisory or otherwise, you should carefully consider the difference among these types of services before using them.

We also provide financial planning education to individuals, generally through an employer or other group relationship. Financial planning education does not address specific individual financial circumstances; rather, it is designed to provide an overview of fundamental concepts of personal finance, including debt reduction, education, retirement and estate planning, asset allocation, etc.

In addition to Financial Foundation, we, and our affiliates, offer a wide variety of advisory services, including (but not limited to) Merrill Lynch Consults® Service, Merrill Lynch Consulting Services, Merrill Lynch Mutual Fund Advisor® Program, Merrill Lynch Personal Advisor® Program, Merrill Lynch Personal Investment Advisory® Program, Merrill Lynch Strategic Portfolio Advisor® Service, and Merrill Lynch Unified Managed Account. We also offer impersonal investment advice (general advice not tailored to the specific needs of any individual) in the form of publications or research. In addition, we offer financial planning services, including (but not limited to) the Private Planning Services<sup>SM</sup>. More information about these programs and services is contained in the applicable Merrill Lynch brochure (or Merrill Lynch Form ADV, Part 2A) and is



available upon request or through the SEC's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov). Special arrangements with certain clients to provide particular or unique services for clients of a specific Financial Advisor or branch office may also be established.

### **WRAP FEE PROGRAMS**

We do not make Financial Foundation available through wrap fee programs. However, clients with at least \$100,000 invested in any combination of managed accounts may request one complimentary plan each year.

### **ASSETS UNDER MANAGEMENT**

As of December 31, 2012, Merrill Lynch had assets under management of \$385 billion, of which \$211 billion was managed on a discretionary basis and \$173 billion was managed on a non-discretionary basis.

### **FEES AND COMPENSATION**

The fee for Financial Foundation is generally \$1,000 and may be negotiable. You may pay more or less than similar clients depending on a number of factors including, but not limited to the:

- Amount of your assets,
- Number and size of your related accounts maintained at Merrill Lynch,
- Range and extent of services provided or to be provided to you in the aggregate by us, and
- Financial Advisor assisting you.

The fee for Financial Foundation may be waived for certain categories of clients, including those maintaining a certain asset level in a fee-based service. Discounts may be available for our employees, for clients purchasing multiple financial planning or other services, or in connection with sales promotions or marketing campaigns. Furthermore, financial planning or other services can be included in a grouping of products and services that may be offered to clients for a combined or asset-based fee.

The cost of financial planning education varies depending on, among other things, the number of individuals involved and method of delivery. The fee for financial planning education is payable when the employer or group organization engages us to provide such services. The fee for this education is nonrefundable.

We may, from time to time, enter into specialized agreements to provide particular or unique services to certain clients, subject to negotiated fees. In addition, the fees for certain of the services described above may be reduced for our employees or our affiliates or for clients whom may be subject to prior fee schedules.

### **CALCULATION AND DEDUCTION OF ADVISORY FEES**

The fee for Financial Foundation is payable when your order for the report is entered by the Financial Advisor and is nonrefundable. You may either pay by check or have the fee debited from your Cash Management Account® or other eligible Merrill Lynch securities account.

### **OTHER FEES AND EXPENSES**

You are neither required to implement any of the recommendations made in Financial Foundation, nor are you required to transact business with us if you choose to implement any aspects of a report. Similarly, there is no obligation for you to open a securities account with us, to purchase any insurance products through a Financial Advisor (some of whom are also insurance salespersons) or to use any of the products or services offered by us or our affiliates (such as credit, mortgage, employee benefits or trust services) either before or



after receiving Financial Foundation. Should you decide to use or purchase our products or services or those of an affiliate, we, our affiliates and employees (including Financial Advisors) will receive fees and compensation for such products and services. Such fees and compensation may include commissions, spreads, markups or markdowns and mutual fund advisory and distribution fees.

In addition, where Financial Foundation is offered to employers, trade associations or other groups and additional financial planning support services are provided, other fees that are in addition to the Financial Foundation fee may be charged.

### **COMPENSATION FOR THE SALE OF SECURITIES**

We and our employees, including your Financial Advisor, benefit from the compensation paid to us, and may directly or indirectly receive a portion of the fees and other compensation paid by Financial Foundation clients. Such clients may also use other products or services available from or through us and in such case pay additional compensation. Financial Advisors offering these services receive compensation from Merrill Lynch. This practice creates a potential conflict of interest that may give us and our Financial Advisors an incentive to recommend advisory services based on the compensation received. Fees and commissions may also be higher for some products or services, and the remuneration and profitability to us and our Financial Advisors resulting from transactions on behalf of or management of certain accounts may be greater than the remuneration and profitability resulting from other advisory accounts, products or services. (See section entitled *Participation or Interest in Client Transactions* for more information about the receipt of compensation for the sale of securities and other investment products.)

We address these conflicts through disclosure in this Brochure. Moreover, our Financial Advisors are required to recommend investment advisory programs, investment products and securities that are suitable for you based upon your investment objectives, risk tolerance and financial situation and needs. In addition, we have adopted policies and procedures to address the suitability of advisory products offered to clients.

### **CONDUCTING BUSINESS THROUGH MERRILL LYNCH**

It is your responsibility to determine if, and how, the suggestions contained in Financial Foundation should be implemented or otherwise followed. You are neither required to implement any of the recommendations made in Financial Foundation, nor are you required to transact business with us if you choose to implement any aspects of a report.

As noted above, Financial Foundation is an investment advisory service that is completed upon the delivery of the report. Thereafter, if you choose to implement any of the suggestions made in the report through your Merrill Lynch securities account, we will be acting solely as a broker-dealer, not as an investment adviser (unless otherwise agreed in writing). In executing transactions for your accounts in accordance with your instructions, we, acting as a broker-dealer, may act as agent or as principal for our own account.

We are both a broker-dealer and an investment adviser, and we offer both brokerage and investment advisory services. There are important differences between brokerage and investment advisory services, including the types of advice and assistance provided, the fees charged, and the rights and obligations of the parties. Brokerage services are also regulated under different laws and rules than advisory services. Among our many obligations as a broker-dealer, we will execute transactions upon your instruction, deal fairly with you, and make recommendations that are suitable in light of your stated risk tolerance, financial needs and investment objectives. As an investment adviser, we must act solely in your best interest, provide certain specific disclosures and generally act in accordance with the standards of a fiduciary as that term is interpreted under applicable law. Of course, the above is an exceedingly brief summary, and numerous laws and regulations apply to each capacity as well as to the specific products or services being provided. It is important for you to understand these differences, particularly when determining which service or services



you might select. You should carefully read all the applicable agreements and disclosures for the services you are considering. For additional information, you should contact your Financial Advisor.

In our capacity as a broker-dealer, we, through our Financial Advisors, may provide you with additional analyses, reports and proposals at various times, including during the course of discussing possible implementation steps. These analyses, reports and proposals are not part of Financial Foundation. In addition, our employees or an affiliate may review client data, including your responses to the Financial Foundation client questionnaire, to assist you and your Financial Advisor with implementation issues or in connection with offering other Merrill Lynch products or services.

### **SOURCES OF REVENUE**

As a broker-dealer, Merrill Lynch offers a wide variety of securities and brokerage services. Our principal sources of income, which include commissions and other compensation for the sale of investment products, are derived from our business as a broker-dealer. Less than 1% of our revenues are expected to be generated from Financial Foundation on an annual basis.

### **FEE OFFSET FOR EXECUTION CHARGES**

We do not reduce our fees for financial planning to offset commissions or markups you may bear in connection with your implementation of the recommendations made in the report.

### **PERFORMANCE-BASED FEES AND SIDE-BY-SIDE MANAGEMENT**

Neither we nor our Financial Advisors receive performance-based fees for Financial Foundation. As described above, Financial Foundation does not make specific investment recommendations or analyze particular securities. The asset allocation recommendations provided in connection with Financial Foundation do not raise the conflicts associated with the side-by-side management of accounts.

### **TYPES OF CLIENTS**

Financial Foundation is designed to assist individual clients. You are not required to open or maintain an account with us in order to obtain Financial Foundation.

### **METHODS OF ANALYSIS, INVESTMENT STRATEGIES AND RISK OF LOSS**

Principal sources of information that the WMA group of Merrill Lynch use to prepare the report include a client questionnaire, as well as government reports and publications, tax and financial planning publications, and material prepared by us. You are responsible for providing us with information that is accurate and complete, and any failure to do so is likely to affect the analyses and recommendations contained in the report. Any change in your financial circumstances would also impact the conclusions and suggestions provided through the report.

### **CLIENT RESPONSIBILITIES**

It is important for you to understand that it is your responsibility to determine if, and how, the suggestions contained in the report should be implemented or otherwise followed. You should carefully consider all relevant factors in making these decisions, and you are encouraged to consult any of your outside professional advisers. Any information presented about tax considerations affecting your financial transactions or arrangements is not intended as tax advice and should not be relied upon for the purpose of avoiding any tax penalties. Neither we nor our Financial Advisors provide tax, accounting or legal advice. You should review any planned financial transactions or arrangements that may have tax, accounting, or legal implications with your personal professional advisers.



**RISK DISCLOSURE**

Financial Foundation does not make specific investment recommendations or analyze particular securities. If you decide to implement any of these proposed asset allocation models through a brokerage or investment advisory account, your account will be subject to investment risk and you may lose money. Brokerage or investment advisory accounts are not bank accounts. They are not insured or otherwise protected by the Federal Deposit Insurance Corporation, are not an obligation of any bank or any affiliate of Merrill Lynch; and are not endorsed or guaranteed by BANA, Merrill Lynch, or any bank or any affiliate of Merrill Lynch. You should further understand that all investments involve risk (the amount of which may vary significantly), that performance of any kind can never be predicted or guaranteed and that the value of your portfolios will fluctuate due to market conditions and other factors.

**MATERIAL RISKS**

Following are the material risks associated with Financial Foundation:

- The report typically contains a proposed asset allocation model based upon your stated risk tolerance, age, current asset allocation and value of the assets. We have changed the allocation models in the past and may change these models in the future depending on research and investment strategy analysis. We have no obligation to revise the report or otherwise advise you if an allocation model or any of our assumptions change in the future.
- The analyses and suggested asset allocations contained in the report are based on historical financial data, assumptions about future financial trends (including market appreciation or decline, rates of return and risks for various asset classes), assumptions about applicable laws and regulations, and appropriate financial planning strategies.
- Any projections, analyses or other information contained in or with the report regarding various investment outcomes are hypothetical in nature, do not reflect actual investment results and are not guarantees of future results.
- The report does not provide ongoing advice regarding your specific securities investments. Therefore, it is important for you to monitor current events, such as changes in tax laws or in the financial markets, which may affect your plans and circumstances. You should reconsider your financial planning strategy and decisions from time to time to determine the impact that these events or changes may have on your circumstances.
- We apply certain assumptions to your particular circumstances. The analyses and recommendations provided in or with the report can be significantly affected by even small changes in our assumptions or your individual circumstances. It is imperative that you inform us of any changes in your financial position and objectives.
- The return rates and dollar figures contained in the report do not include investment expenses; thus, any results shown will be reduced by such costs. Also, where applicable (and only as indicated) assumptions as to federal income tax rates, state income tax rates, and estate taxes reflected in the report would only be general estimates.

**DISCIPLINARY INFORMATION**

In the past, we have entered into certain settlements with our regulators and other third parties and have been the subject of adverse legal and disciplinary events. Below are summaries of certain events that may be material to your decision of whether to retain us for your investment advisory needs. Please note that certain disclosures discuss disciplinary events associated with Banc of America Investment Services, Inc. ("BAI") and Banc of America Securities LLC ("BAS"). BAI merged with Merrill Lynch on October 23, 2009, and BAS merged with Merrill Lynch on November 1, 2010. In addition to the descriptions below, you can find additional information regarding these settlements in Part 1 of Merrill Lynch's Form ADV at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).

On June 21, 2012, Merrill Lynch, without admitting or denying the findings, entered into an AWC with FINRA related to the following five issues: (1) Merrill Lynch failed to have an adequate supervisory system to ensure that clients in certain investment advisory programs were billed in accordance with applicable contract and disclosure statements, and, as a result, overcharged certain client accounts unwarranted fees from April 2003 to December 2011; the client accounts impacted were less than 5% of Merrill Lynch's total advisory accounts, and the fees overcharged represented less than one-half of 1% (\$32,174,369) of the total advisory fees billed during that period; all impacted clients have been reimbursed; (2) between July 2006 and November 2010, Merrill Lynch failed to send contemporaneous and/or periodic trade confirmations to certain client accounts for ten investment advisory programs; (3) between 1992 and June 2011, Merrill Lynch did not include or accurately state whether Merrill Lynch acted as an agent or a principal on trade confirmations and account statements relating to certain mutual fund transactions; (4) between 2007 and 2010, Merrill Lynch, either directly or through third-party vendors, failed to deliver proxy materials to certain clients or to their designated investment advisers, and to have an adequate supervisory system to detect its failure to deliver proxies; the clients impacted constituted less than 1% of Merrill Lynch's clients during that period; and (5) between October 2001 and June 2010, Merrill Lynch failed to send margin risk disclosure statements and/or business continuity plans to certain clients upon the opening of their accounts; the clients impacted constituted less than 1% of Merrill Lynch's clients during that period. In determining the appropriate sanctions, FINRA considered Merrill Lynch's internal review through which it identified the violations, the remedial measures that Merrill Lynch took to correct its systems and procedures, and Merrill Lynch's efforts to provide remediation to affected clients. Merrill Lynch consented to the imposition of a censure and a fine of \$2.8 million.

On October 4, 2011, Merrill Lynch entered into a consent agreement with FINRA regarding the following events. FINRA alleged that Merrill Lynch failed to have a supervisory system to ensure that all accounts in which an employee either had a financial interest or over which the employee had control were monitored and reviewed for potential misconduct. In addition, FINRA found that Merrill Lynch failed to establish, maintain and enforce written procedures to adequately supervise a registered representative who was subsequently found to have used a business account at the firm to implement a fraudulent scheme. Without admitting or denying the findings, Merrill Lynch consented to the entry of findings, a censure, and a fine of \$1,000,000.

On June 6, 2009, the United States District Court for the Southern District of New York entered a judgment enjoining BAI and BAS from violating, directly or indirectly, Section 15(c) of the Exchange Act. The SEC had filed a complaint alleging that BAI and BAS misled customers regarding the fundamental nature and increasing risks associated with auction rate securities ("ARS") underwritten, marketed and sold by BAS and BAI and that by engaging in such conduct, BAI and BAS had violated Section 15(c) of the Exchange Act. Without admitting or denying the allegations, BAI and BAS entered into a consent, whereby they agreed to a series of undertakings designed to provide relief to "individual investors" (as defined in the consent) including: (1) through their affiliate, offering to purchase at par from individual investors certain ARS; (2)



agreeing to use reasonable efforts to identify individual investors who sold certain ARS below par, and to pay such investors the difference between par and the price at which they sold the securities; (3) agreeing to participate in a special arbitration process for the purpose of arbitrating any individual investor's consequential damage claim related to its investment in ARS; (4) agreeing to refund certain refinancing securities through the firms; and (5) undertaking to make their best efforts to work with issuers and other interested parties to seek to provide liquidity solutions for institutional investors that are not considered "individual investors." Two similar regulatory actions involving the marketing and sale of ARS occurred on January 10, 2012: (1) Merrill Lynch (as successor by merger to BAS and BAI, the "Respondents") agreed to a settlement with the Illinois Securities Department (the "Department"); and (2) Merrill Lynch agreed to a settlement with the North Carolina Department of the Secretary of State, Securities Division (the "Division"). In both actions, it was alleged that inappropriate marketing and sales of ARS occurred without adequately informing certain customers of the increased risks of illiquidity associated with ARS. Both the Department and the Division of the respective states alleged that, through the aforementioned conduct, there occurred dishonest and unethical practices in the offer and sale of securities and failure to supervise agents resulted. In the Illinois action, the Respondents agreed, among other things, to repurchase at par certain illiquid ARS held by certain clients of Merrill Lynch. Additionally, the Respondents agreed to pay a total fine of \$1,578,320.87 to the State of Illinois representing Illinois's portion of a total civil penalty of \$50,000,000 that will be distributed among the states and U.S. territories that enter into similar administrative or civil consent orders related to ARS. With respect to the North Carolina action, Merrill Lynch agreed, among other things, to repurchase at par certain illiquid ARS held by certain clients of Merrill Lynch. Additionally, Merrill Lynch agreed to pay a total fine of \$3,193,552.24 to the Division representing its portion of a total civil penalty of \$125,000,000 that will be distributed among the states and U.S. territories that enter into similar administrative or civil consent orders related to ARS.

On March 11, 2009, the SEC issued an order against Merrill Lynch alleging that from 2002 to 2004, several Merrill Lynch retail brokers permitted day traders to hear confidential information regarding Merrill Lynch institutional customers' unexecuted orders as they were transmitted over Merrill Lynch's squawk box system. According to the SEC, Merrill Lynch lacked written policies or procedures to limit access to the equity squawk box, to track which employees had access to the equity squawk box or to monitor employees' use of the equity squawk box in violation of Section 15(f) of the Exchange Act and Section 204A of the Advisers Act. Without admitting or denying the SEC's findings, Merrill Lynch consented to the entry of the order that: (1) found violations of Section 15(f) of the Exchange Act and Section 204A of the Advisers Act for allegedly failing to maintain written policies and procedures reasonably designed to prevent the misuse of customer order information; (2) required that Merrill Lynch cease and desist from committing or causing any future violations of the provisions charged; (3) censured Merrill Lynch; (4) imposed a \$7,000,000 civil money penalty; and (5) required Merrill Lynch to comply with certain undertakings regarding the enhancement of certain policies and procedures.

On January 30, 2009, the SEC issued an order against Merrill Lynch regarding the Merrill Lynch Consulting Services program and the offering of those services through a Florida branch office for a period of several years concluding in 2005. The Order found that material misrepresentations had been made and certain conflicts of interest not disclosed, and that Merrill Lynch had not maintained adequate records or reasonably supervised certain Florida investment advisory representatives. Without admitting or denying the non-jurisdictional findings thereof, Merrill Lynch consented to a censure, to cease and desist from violations of sections 204 and 206(2) of the Advisers Act and Rule 204-2(a) (14) thereunder, and a fine of \$1,000,000. In accepting the settlement, the SEC noted the voluntary and significant remedial acts promptly undertaken by Merrill Lynch.



On May 1, 2008, the SEC issued an administrative order in which it found that BAI had willfully violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, Sections 206(2), 206(4) and 207 of the Advisers Act and Advisers Act Rule 206(4)-1(a)(5) for failing to disclose to clients that in selecting investments for discretionary mutual fund wrap fee accounts, it favored two mutual funds affiliated with BAI. In the Order the SEC also found that Columbia Management Advisors, LLC ("Columbia Management"), as successor in interest to Banc of America Capital Management, LLC willfully aided and abetted and caused BAI's violations of Sections 206(2) and 206(4) of the Advisers Act, and Advisers Act Rule 206(4)-1(a)(5). In the order, BAI and Columbia Management were censured and ordered to cease and desist from committing or causing such violations and future violations. In addition, BAI was ordered to pay disgorgement plus prejudgment interest in the aggregate amount of \$793,773.00 to certain entities specified in the Order, and a civil monetary penalty of \$2,000,000; and Columbia Management was ordered to pay disgorgement plus prejudgment interest in the aggregate amount of \$516,382 to certain entities specified in the Order, and a civil monetary penalty of \$1,000,000. BAI and Columbia Management consented to the Order without admitting or denying the SEC's findings. BAI also agreed to certain undertakings contained within the Order.

On February 14, 2008, Merrill Lynch consented to an AWC issued by FINRA. FINRA alleged that from at least January 2001 until January 2006, as a result of certain operational and supervisory deficiencies Merrill Lynch failed to timely and consistently update the firm's record system relating to certain investment advisory and fee-based accounts. When clients change investment advisers or terminated enrollment in certain investment advisory or fee-based accounts, Merrill Lynch failed to consistently make changes in account proxy delivery addresses and/or remove traits that suppressed trade confirmation delivery in the firm's record systems. Additionally, Merrill Lynch failed to maintain written supervisory procedures and a reasonable system of follow-up and review with respect to such operational changes. Without admitting or denying the findings, Merrill Lynch consented to a censure and a fine of \$175,000.

On March 4, 2005, Merrill Lynch entered into a consent order with the State of New Jersey Office of the Attorney General Department of Law and Public Safety and the New Jersey Bureau of Securities ("Attorney General"). The Attorney General alleged: (1) market timing conduct by three Merrill Lynch Financial Advisors engaged in market timing on behalf of their principal client, a hedge fund and that despite warnings from supervisors that they were violating Merrill Lynch's policies, the Financial Advisors continued to market time for the client until they were fired in October 2003, using among other things, multiple accounts and undisclosed agreements to conduct and disguise their trading; (2) that Merrill Lynch failed to adequately supervise certain activities in connection with the conduct described above including failure to keep adequate books and records in violation of the Exchange Act and New Jersey law; (3) the client entered into variable annuity contracts and certain other variable life insurance contracts with certain non-proprietary insurance carriers through the Financial Advisors to engage in short term trading in the investment sub-accounts of these products and although the client's reallocation instructions were relayed through the Financial Advisors to the insurance companies, Merrill Lynch gave no specific instruction to the Financial Advisors concerning the reallocation of the underlying sub-accounts of variable products; and (4) that Merrill Lynch failed to adequately enforce its established policy prohibiting market timing. Without admitting or denying the findings in the order, Merrill Lynch agreed to pay a civil monetary penalty of \$10 million and to certain undertakings including implementation of new procedures to maintain, as a required book and record under New Jersey and federal securities laws, records of all client reallocation requests made through a Merrill Lynch employee that involve mutual funds held as sub-accounts of variable annuity products of outside insurance carriers.

On February 9, 2005, pursuant to an offer of settlement by BAS in which it neither admitted nor denied the findings, the SEC issued an administrative order. The SEC found that from July 2000 through July 2003, BAS, Banc of America Capital Management, LLC ("BACAP") and BACAP Distributors, LLC ("BACAP Distributors")



facilitated market timing and late trading by some introducing broker-dealers and a hedge fund at the expense of shareholders of Nations Funds and other mutual fund families, provided account management tools and other assistance, and enabled introducing broker-dealers to conceal their client's market timing activities from mutual funds. In the order, BAS was: (1) censured; (2) ordered to cease and desist from committing or causing any present or future violations of 17(a) of the Securities Act, 10(b), 15(c) and 17(a) of the Exchange Act and Rules 10b-5, 15c1-2, and 17a-4 thereunder and Rule 22c-1, as adopted under 22(c) of the Investment Company Act, and from causing any present or future violations of 34(b) of the Investment Company Act and 206(1) and 206(2) of the Advisers Act; (3) ordered to pay, jointly and severally with BACAP and BACAP Distributors \$250 million in disgorgement plus a civil monetary penalty of \$125 million. BAS also agreed to comply with certain undertakings including: (1) maintaining a compliance and ethics oversight infrastructure having, among other things, a code of ethics oversight committee, an internal compliance controls committee, a senior level compliance officer for conflicts of interest and a corporate ombudsman; (2) retaining an independent compliance consultant to, among other things, review compliance, supervisory and other policies and procedures and adopt such procedures; (3) undergoing third party compliance review every other year; and (4) retaining an independent distribution consultant.

On April 28, 2003, as part of a joint settlement with the SEC, NYSE and NASD arising from a joint investigation by the SEC, NYSE and NASD into research analysts' conflicts of interest, Merrill Lynch, without admitting or denying the allegations of the complaint filed by the SEC, consented to the entry of a final judgment ("Final Judgment"). Pursuant to the settlement, which was entered on October 31, 2003 and modified on March 15, 2010, Merrill Lynch: (1) was permanently enjoined from violating Section 15(c) of the Exchange Act and Rule 15c1-2 thereunder, NASD Conduct Rules 2110, 2210 and 3010, and NYSE Rules 342, 401, 472 and 476; (2) was ordered to pay a penalty of \$100,000,000, which was deemed satisfied by prior payments to the states in a related proceeding; (3) was ordered to pay substantial amounts for third party research and investor education; and (4) was ordered to comply with certain additional undertakings. In a related disciplinary event, Merrill Lynch (as successor by merger to BAS) entered into an amended offer of settlement with the SEC on October 9, 2012. The settlement stems from an SEC Order dated March 14, 2007 against BAS (the "2007 BAS Order") claiming that BAS investment bankers inappropriately influenced equity research analysts, resulting in the publication of materially false and misleading research during the period of January 1999 through December 2001. The 2007 BAS Order censured BAS and ordered BAS to: (i) cease and desist from committing or causing any violations or future violations of Section 15(c) and 15(f) of the Exchange Act, and Rule 15c1-2(a); (ii) pay \$26 million in disgorgement and penalties into a fair fund for distribution to its affected customers; (iii) retain an independent consultant to conduct a comprehensive review of the firm's internal controls to prevent the misuse of material nonpublic information concerning BAS research; (iv) certify to the SEC's staff in the second year following the issue of the 2007 BAS Order that BAS had established and continued to maintain Exchange Act Section 15(f) policies, practices, and procedures consistent with the findings of the 2007 BAS Order; and (v) comply with Addendum A to the 2007 BAS Order, which implemented certain structural changes to the operations of the firm's equity research and investment banking departments. In the Merrill Lynch action, the District Court, on March 15, 2010, modified Addendum A to the October 31, 2003 Final Judgment by, among other things, removing similar provisions that remained in Addendum A to the 2007 BAS Order. The 2007 BAS Order, which remains in effect and binding on Merrill Lynch (as successor by merger to BAS), was modified on October 9, 2012, to strike Addendum A and provide that Merrill Lynch analysts, including ex-BAS analysts, must comply with the Final Judgment.

## OTHER FINANCIAL INDUSTRY ACTIVITIES AND AFFILIATIONS

Merrill Lynch, a wholly-owned subsidiary of Bank of America, is a leading global investment banking firm and a registered broker-dealer, investment adviser and futures commission merchant. In the United States, Merrill Lynch acts as a broker (i.e., agent) for corporate, institutional and governmental and private clients



and as a dealer (i.e., principal) in the purchase and sale of corporate securities, primarily equity and debt securities traded on exchanges or in the over-the-counter markets. Merrill Lynch also acts as a broker and/or a dealer in the purchase and sale of mutual funds, money market instruments, government securities, high-yield bonds, municipal securities, financial futures contracts, and options. The futures business and foreign exchange activities are conducted through Merrill Lynch and other affiliates. Merrill Lynch operates the firm's U.S. retail branch system, and also provides financing to clients, including margin lending and other extensions of credit as well as a wide variety of financial services, such as securities clearing, retirement services, and custodial services. As a registered adviser, Merrill Lynch completes a Form ADV, which contains additional information about itself, Bank of America and their affiliates. Information is available through publicly available filings at the SEC or at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).

For purposes of Form ADV Part 2, Merrill Lynch management persons include William C. Caccamise (CRD# 2547189), Gloria R. Greco (CRD# 4795234), Thomas K. Montag (CRD# 1474696), Michael B. Radest (CRD# 1687387), David C. Darnell (CRD# 4907306), Jennifer M. Hill (CRD# 2434363) and Joseph M. Nenichka (CRD# 1639260). In the future, additional Merrill Lynch personnel may be considered management persons and, as such, may be registered, or have applications pending to register, as registered representatives and associated persons of Merrill Lynch to the extent necessary or appropriate to perform their job responsibilities.

ML&Co., a wholly-owned subsidiary of Bank of America, through its subsidiaries and affiliates, provides broker-dealer, investment banking, financing, wealth management, advisory, asset management, insurance, lending and related products and services on a global basis. These products and services include securities brokerage, trading and underwriting; investment banking, strategic advisory services (including mergers and acquisitions) and other corporate finance activities; wealth management products and services including financial, retirement and generational planning; asset management and investment advisory and related record-keeping services; origination, brokerage, dealer and related activities in swaps, options, forwards, exchange-traded futures, other derivatives, commodities and foreign exchange products; securities clearance, settlement financing services and prime brokerage; private equity and other principal investing activities; proprietary trading of securities, derivatives and loans; banking, trust and lending services, including deposit-taking, consumer and commercial lending, including mortgage loans, and related services; insurance and annuities sales and research across the following disciplines: global equity strategy and economics, global fixed income and equity-linked research, global fundamental equity research, and global wealth management strategy. Bank of America is subject to the reporting requirements of the Exchange Act and additional information about Bank of America can be found in publicly available filings with the SEC.

We, through our Financial Advisors, may suggest or recommend that clients, including clients receiving Financial Foundation, use our securities account, execution and custody or other services, or such services of an affiliate. Similarly, Financial Advisors, who also handle clients' securities accounts, may suggest or recommend that clients purchase our products or products of an affiliate. Where Merrill Lynch's or our affiliate's services are used or products are purchased by clients, we and our affiliates will receive fees and compensation. Financial Advisors may, as permitted by applicable law, receive compensation (the amount of which may vary) in connection with these products and services.

We address these conflicts through disclosure in this Brochure. Moreover, our Financial Advisors are required to recommend investment advisory programs, investment products and securities that are suitable for each client based upon the client's investment objectives, risk tolerance and financial situation and needs. In addition, we have established a variety of restrictions, procedures and disclosures designed to address potential conflicts of interest – both those arising between and among client accounts as well as between client accounts and our business.

We do not recommend or select other investment advisers in connection with Financial Foundation.

**CODE OF ETHICS, PARTICIPATION OR INTEREST IN CLIENT TRANSACTIONS AND PERSONAL TRADING****CODE OF ETHICS**

We have adopted an Investment Adviser Code of Ethics (the “Code of Ethics”) covering our personnel who are involved in the operation and offering of investment advisory services. The Code of Ethics is based on the principle that clients’ interests come first, and requires employees to meet the high standards that we follow in conducting our business with integrity and professionalism. The Code of Ethics covers such topics as the:

- Requirement that all employees comply with all applicable securities and related laws and regulations;
- Reporting and clearance of employee personal trading;
- Prevention of misuse of material non-public information; and
- Obligation to report possible violations of the Code of Ethics to management or other appropriate personnel.

All covered personnel must certify receipt of the Code of Ethics. We will provide a copy of the Code of Ethics to you upon request.

We also have imposed policy restrictions on all personnel regarding transactions for their own accounts and accounts over which they have control or a beneficial interest. In addition, we have special policies requiring that certain personnel obtain specific approval of their securities transactions and have implemented procedures for monitoring these transactions as well as those of all employees.

**PARTICIPATION OR INTEREST IN CLIENT TRANSACTIONS**

In the United States, Merrill Lynch acts as a broker (i.e., agent) for corporate, institutional and governmental and private clients and as a dealer (i.e., principal) in the purchase and sale of corporate securities, primarily equity and debt securities traded on exchanges or in the over-the-counter markets. We also act as a broker and/or dealer in the purchase and sale of mutual funds, money market instruments, government securities, high-yield bonds, municipal securities, financial futures contracts and options. We and other affiliates also conduct the futures business and foreign exchange activities. We operate the firm’s U.S. retail branch system, and also provide financing to clients, including margin lending and other extensions of credit as well as a wide variety of financial services, such as securities clearing, retirement services and custodial services. As a result of the involvement in multiple business activities, we and our employees may have interests unrelated to Financial Foundation clients which may give rise to potential conflicts of interest, including those discussed below. This discussion does not seek to identify all actual or potential conflicts. Information about certain additional conflicts is described throughout this Brochure and in many of the contracts and offering documents that govern the specific products and services we offer.

We and our affiliates and employees benefit from the compensation paid to us by you and other Financial Foundation clients. Our Financial Advisors or other employees who introduce clients to Financial Foundation and provide services to these clients receive compensation in connection with Financial Foundation.

We, through our Financial Advisors, may suggest or recommend that clients receiving Financial Foundation also use Merrill Lynch securities accounts, execution and custody or other services, or such services of an affiliate. Similarly, Financial Advisors, who also handle clients’ securities accounts, may suggest or recommend that clients purchase our products or products of an affiliate. Where Merrill Lynch’s or our affiliate’s services are used or products are purchased by clients, we and our affiliates will receive fees and compensation. Financial Advisors may, as permitted by applicable law, receive compensation (the amount of which may vary) in connection with these products and services. Compensation received in connection with



clients' purchase or sale of stocks, bonds, mutual funds, other securities or insurance products through us or our affiliates may include commissions, spreads, markups and markdowns, and distribution or other fees. We will also benefit from the possession or use of free credit balances in client accounts, subject to the restrictions imposed by Rule 15c3-3 under the Exchange Act.

As a broker-dealer effecting transactions on behalf of clients, including those clients who have purchased financial planning products, we or an affiliate may act as agent or as principal for our own account, as permitted by applicable law. Similarly, we or an affiliate may, in transactions involving such clients' securities, act as agent while also representing another client on the other side of the transaction. In addition, we or our affiliates may have a position in, or enter purchase or sale orders for, securities recommended to clients in the normal course of our business as a broker-dealer. We and/or our affiliates may profit from these positions or transactions in securities.

We, acting in our broker-dealer capacity, may recommend that financial planning clients invest in a variety of limited partnerships and limited liability companies, for which certain of our affiliates may act as general partners or managing members. The investments of the limited partnerships may vary but include, without limitation, securities, real estate and futures.

#### **INVESTMENTS IN SECURITIES BY MERRILL LYNCH AND OUR PERSONNEL**

We and our affiliates act in a variety of capacities to a wide range of clients. From time to time in the course of those duties, confidential information may be acquired that cannot be divulged or acted upon for advisory or other clients. Similarly, we may give advice or take action with regard to certain clients, including Financial Foundation clients, which may differ from that given or taken with regard to other clients. This includes the advice given or actions taken with respect to certain securities or investment managers. In some instances, the actions taken by affiliates with respect to similar services and programs may conflict with the actions taken by us. This is due to, among other things, the differing nature of the affiliate's investment advisory service and differing processes and criteria upon which determinations are made.

We may share our analyses of securities with Financial Advisors and others within Merrill Lynch or our affiliates. In certain cases, this may precede the implementation of investment management decisions in investment advisory accounts. Financial Advisors may consider such analyses in connection with services provided to brokerage and other customers who are not clients participating in any investment advisory program.

Many of the conflicts related to participation or interest in client transactions and personal trading are less pronounced in the context of financial planning products, such as Financial Foundation, because the report does not make specific investment recommendations or analyze particular securities. Rather, the report typically contains a proposed asset allocation model based upon your stated risk tolerance, age, current asset allocation and value of the assets. We nevertheless attempt to address conflicts of interest through disclosure in this Brochure and other disclosure documents. Merrill Lynch Financial Advisors are required to recommend investment advisory programs, investment products and securities that are suitable for you based upon your investment objectives, risk tolerance and financial situation and needs. In addition, we have established a variety of restrictions, procedures and disclosures designed to address potential conflicts of interest – both those arising between and among client accounts as well as between client accounts and our business. For example, our personnel also are subject to personal trading restrictions as detailed in our policies and procedures and Code of Ethics. These policies and procedures and the Code of Ethics require our Financial Advisors to pre-approve certain securities transactions, disclose his or her investment accounts, and provide or cause Merrill Lynch to receive annual holdings reports and quarterly transaction reports.





#### **BROKERAGE PRACTICES**

As described above, Financial Foundation is an investment advisory service that is completed upon the delivery of the report. You are neither required to implement any of the recommendations made in Financial Foundation, nor are you required to transact business with us if you choose to implement any aspects of a report. If you choose to implement any or all of the recommendations made in the report through us, we will be acting solely as a broker-dealer, not as an investment adviser (unless otherwise agreed in writing).

#### **REVIEW OF ACCOUNTS**

Financial Foundation results in a specific report and does not provide ongoing advice. Accordingly, there are no account reviews. We do not provide Financial Foundation clients with regular reports. However, you will receive Financial Foundation that includes a proposed asset allocation model for you to consider.

#### **CLIENT REFERRALS AND OTHER COMPENSATION**

We have entered into solicitation arrangements with certain third party entities to refer prospective investment advisory clients to us ("Solicitors"). Generally, the fees paid to Solicitors will be paid from the fee earned by us for providing Financial Foundation. This fee will generally be a percentage of the fee ordinarily credited to your Financial Advisor. We will pay this fee to the Solicitor for each Financial Foundation we create on your behalf. If we terminate the agreement with the Solicitor for certain reasons, we may continue to pay the Solicitor for a period of time after termination. We will not increase the fees payable by you as a result of our payments to the Solicitor. The fees we charge will not be higher than our usual fees because of the payments to the Solicitor.

Employees of Merrill Lynch may refer advisory clients to BANA, including its private bank, U.S. Trust, Bank of America Private Wealth Management, and its affiliates for products and services. Similarly, employees of BANA and other affiliates may refer clients to Merrill Lynch for brokerage or advisory services. These referrals may involve the payment of referral fees between Merrill Lynch and BANA or its affiliates.

#### **CUSTODY**

We do not have custody of client funds and securities in connection with Financial Foundation.

#### **INVESTMENT DISCRETION**

We do not accept discretionary authority in connection with Financial Foundation.

#### **VOTING CLIENT SECURITIES**

Financial Foundation does not make specific investment recommendations or analyze particular securities. Accordingly, Financial Foundation does not involve the voting of client securities.

#### **FINANCIAL INFORMATION**

Not applicable.



## GLOSSARY

“Advisers Act” means the Investment Advisers Act of 1940, as amended.

“AWC” means a FINRA letter of acceptance, waiver and consent.

“BAI” means Banc of America Investment Services, Inc.

“BANA” means Bank of America, N.A.

“Bank of America” means Bank of America Corporation.

“BAS” means Banc of America Securities LLC.

“Brochure” means the Merrill Lynch program brochure relating to Merrill Lynch Financial Foundation Report and financial planning education, as amended or updated from time to time. The Brochure is also referred to as the Disclosure Statement.

“Client” or “You” means the Financial Foundation client.

“Columbia Management” means Columbia Management Advisors, LLC.

“Code of Ethics” means Merrill Lynch’s Investment Adviser Code of Ethics.

“Consent” means a letter of acceptance, waiver and consent.

“Disclosure Statement” means the Merrill Lynch program brochure relating to Merrill Lynch Financial Foundation Report and financial planning education, as amended or updated from time to time. The Disclosure Statement is also referred to as the Brochure.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Financial Advisor” means your Merrill Lynch Financial Advisor or, for certain clients, a representative of the Merrill Edge Advisory Center.

“Financial Foundation” means the Merrill Lynch Financial Foundation Report.

“FINRA” means the Financial Industry Regulatory Authority, Inc.

“Investment Company Act” means the Investment Company Act of 1940, as amended.

“Merrill Lynch,” “we” or “us” means Merrill Lynch, Pierce, Fenner & Smith Incorporated.

“ML&Co.” means Merrill Lynch & Co., Inc.

“Order” means an order issued by the SEC.

“SEC” means the U.S. Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended.

“Solicitors” means third party entities that Merrill Lynch has entered into solicitation agreements with to refer prospective investment advisory clients to Merrill Lynch.

“UITs” means unit investment trusts.

“WMA” means the Wealth Management Analytics group of Merrill Lynch.

Unless otherwise noted, registered service marks and service marks are the property of Merrill Lynch & Co., Inc.  
© 2013 Merrill Lynch, Pierce, Fenner & Smith Incorporated  
Printed in the U.S.A.