

# Merrill Lynch Fiduciary Advisory Services Program

## BROCHURE

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This Brochure provides information about the qualifications and business practices of Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") relating to the Merrill Lynch Fiduciary Advisory Services Program. 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.

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Additional information about Merrill Lynch also is available on the SEC's website at [http://www.adviserinfo.sec.gov/IAPD/Content/Search/iapd\\_Search.aspx](http://www.adviserinfo.sec.gov/IAPD/Content/Search/iapd_Search.aspx).

**February 9, 2018**

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Investment products offered through MLPF&S:

Are Not FDIC Insured	Are Not Bank Guaranteed	May Lose Value
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## SUMMARY OF MATERIAL CHANGES

On June 9, 2017, Merrill Lynch filed its initial Merrill Lynch Fiduciary Advisory Services brochure ("Brochure"). 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 initial filing of the Brochure and that may be important to them. The material changes summarized below were also incorporated within this Brochure.

- The Program minimum annual fee amount has been reduced from \$1,500 to \$1,000 effective January 1, 2018. (Please see the section called *Fees and Compensation—Program Fees*.)
- We added or updated disclosures regarding the due diligence review process for FAS Eligible Investments in the section called *Methods of Analysis, Investment Strategies and Risk of Loss—FAS Eligible Investments*:
  - Updated information in the sub-section called *Actively Managed Mutual Funds, Collective Investment Funds and Group Annuity Separate Accounts* to reflect that, in addition to qualitative analytical methods, Merrill Lynch or a third-party reviewer uses a quantitative analytical method, or a combination of both methods, for these types of investments.
  - Added disclosure regarding the review process for passively and actively managed group annuity separate accounts in the sub-sections called *Other Investments* and *Actively Managed Mutual Funds, Collective Investment Funds and Group Annuity Separate Accounts*. Merrill Lynch or a third-party reviewer uses a qualitative or quantitative analytical method, or a combination of both methods, for these types of investments.
  - Enhanced and clarified the descriptions of the review process for (1) passively managed and target date mutual funds, group annuity separate accounts and collective investment funds in the sub-section called *Other Investments*, and (2) the investments described in the sub-section called *Stable Value and Money Market Funds; Certain Insurance Company General Account Options*.
- We added disclosure explaining that certain Financial Advisors, including your Designated Advisor, are eligible to participate in a client retention awards program designed to encourage the transition to FAS of existing defined contribution Plan clients (See section *Fees and Compensation - Client Retention Awards Program and Compensation for the Sale of Products* for detailed information).



This Brochure relates to the Merrill Lynch Fiduciary Advisory Services Program (the "Program" or "FAS") offered by Merrill Lynch, Pierce, Fenner & Smith Incorporated (referred to in this Brochure as "Merrill Lynch", "we" or "us"). For purposes of this Brochure, "client", "you", or "your" refers to the Plan Sponsor (or other named fiduciaries) and "Plan" refers to the participant-directed defined contribution plan maintained by the Plan Sponsor and enumerated in the Client Agreement.

FAS is an investment advisory service offered for participant-directed, defined contribution plans subject to ERISA (each a "Plan"). Through the Program, we can help Plan Sponsors construct and maintain an investment menu for their respective Plans.

All capitalized terms are defined in the body of this Brochure and/or in the Glossary, which can be found at the end of this Brochure.

## ADVISORY BUSINESS

### A. ABOUT MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

Merrill Lynch, an indirect wholly-owned subsidiary of Bank of America, is a global investment banking and financial services firm. Merrill Lynch offers a broad range of brokerage, investment advisory, retail and other services and is registered with the Securities and Exchange Commission ("SEC") as a broker-dealer and an investment adviser.

### B. FIDUCIARY ADVISORY SERVICES

When providing services in this Program we acknowledge our status as a fiduciary under the Investment Advisers Act of 1940 ("Advisers Act") and under section 3(21)(A)(ii) of ERISA with respect to the investment advice we provide to the Plan in our Fiduciary Advisory Services Client Agreement.

#### 1. Summary Description of Services

The services in this Program are provided through a select group of Merrill Lynch Financial Advisors who are designated to provide FAS services ("Designated Advisor"). Our Designated Advisors will provide you with initial and ongoing advice with respect to the creation and maintenance of an investment menu for your Plan. Services include the initial design and ongoing maintenance of an investment menu and the creation of an investment policy statement. Your Designated Advisor also will deliver periodic investment performance reports and will provide recommendations as needed to help you select and modify investment options over time.

A more detailed description of the Program is provided elsewhere in this Brochure, along with other material information about Merrill Lynch. Before selecting this Program, please review this Brochure carefully and speak with your Designated Advisor if you have any questions.

The following services are included in the Program:

- Recommendations for the design of an investment menu for your Plan
- Recommendations for the creation of a written Investment Policy Statement ("IPS")
- Investment due diligence and recommendations of investment options for your Plan's investment menu
- Periodic Investment performance reporting and ongoing advice



FAS is available to defined contribution Plans for which either Merrill Lynch or our Advisor Alliance providers serve as recordkeeper and subject to certain requirements.

## **2. Investment Advisory Agreement**

The scope of any investment advisory relationship we have with you is defined in the Client Agreement that you sign with respect to the Program. Through FAS, we act as your investment adviser only for the Plan specifically referenced in the Client Agreement, and not for any other assets or accounts (including any other employee benefit plans), unless otherwise separately agreed to by us in writing. Our advisory relationship begins when we enter into the Client Agreement with you, which occurs when we accept your signed contract. Preliminary discussions or recommendations before we enter into the Client Agreement with you are not intended as investment advice and should not be relied upon as such. By participating in FAS, you acknowledge that the services we are providing in FAS are non-discretionary and that you have retained, and will exercise, final decision-making authority and responsibility for all matters concerning the Plan as well as for the implementation of any investment plan or strategy resulting from the services provided under the Client Agreement.

Through the Client Agreement, Merrill Lynch acknowledges that it is an ERISA fiduciary to the extent that we render investment advice (within the meaning of section 3(21)(A)(ii) of ERISA) to you regarding the Plan's investment options, including but not limited to the recommendation of FAS Eligible Investments as defined below (except as specifically noted below with respect to any Excluded Assets), but not in any other aspects of our relationship.

You may make investment-related decisions contrary to our recommendations, or make your own decisions without the benefit of our advice. However, if you repeatedly disregard our investment advice, we may, at our discretion, and with notice to you, terminate you as an FAS client.

## **3. Detailed Description of Services**

The following are detailed descriptions of the services available through the Program:

### **Recommendations For The Design Of An Investment Menu For Your Plan**

Your Designated Advisor will provide initial and ongoing advice in the design of an investment menu for your Plan. Merrill Lynch's views on menu design are outlined in a menu design and fund selection guide which can be obtained from your Designated Advisor. To assist in designing the menu, we will collect certain information from you through a questionnaire and through other information you provide. The questionnaire gathers information about your Plan that includes Plan Sponsor information and asset class selections for the menu. Please note that the guidance we provide in the design of an investment menu for your Plan is a recommendation we are providing to you and it is your responsibility to provide final approval of the investment menu for your Plan.

Please note that it is your responsibility to provide all requested information, which we rely upon to assist in menu design and for the IPS creation described below. In addition, you should provide prompt written notice to Merrill Lynch of any change in the Plan Sponsor information or the Plan's investment objectives, guidelines, or similar information, which would materially change the information previously provided by you and used in the design of your Plan's IPS or investment menu.



#### Recommendations For The Creation Of A Written Investment Policy Statement ("IPS")

Merrill Lynch will assist you in creating a single IPS for the purpose of providing guidelines, limitations and direction for the selection and monitoring of the investment choices in the Plan. To assist you in creating an IPS for your Plan, Merrill Lynch will use the information collected from you through the Plan menu design questionnaire. The IPS will be created based on the asset classes you selected in the questionnaire and discussions with your Advisor; if applicable for your Plan, the IPS will also include the Qualified Default Investment Alternative ("QDIA") option you selected. After the draft IPS is completed, your Designated Advisor will review the IPS with you and answer questions you may have. Please note that the assistance we provide in creating a single IPS is a recommendation we are providing to you and it is your responsibility to provide final approval of the IPS for your Plan.

As noted above, it is your sole responsibility to provide all necessary information for us to provide assistance with the creation of the IPS. In considering the implications of recommendations associated with the creation of your Plan's IPS, we encourage you to consult with your Plan's other professional advisers as appropriate. You are responsible for implementing the IPS on behalf of the Plan.

Merrill Lynch shall not have discretion nor any authority over the Plan's documents or in implementing any aspect of the Program, including, without limitation, the investment menu or IPS, and shall not otherwise have management or control of the Plan assets or its legal documents. Please note that it is your responsibility to maintain a copy of the IPS and to make timely updates and reflect any changes that may be made from time to time. To the extent you want us to remain current with any changes, you must also supply us timely with any modifications or changes you need to make to the IPS or investment menu. It will be your responsibility to update and provide us with such updated materials on a timely basis. It is also your responsibility to adhere to the IPS in managing and supporting your Plan and its menu. Accordingly, Merrill Lynch will not be responsible for verifying that investment menu recommendations that are provided to you on an ongoing basis adhere to your Plan's IPS. You should review the Plan investment menu periodically to verify that it remains in compliance with the IPS. The Plan Sponsor will be solely responsible for approving and implementing any change in the Plan's investment menu and/or IPS.

You should provide prompt written notice to Merrill Lynch of any change in Plan Sponsor information and any change in your Plan's investment objectives, guidelines, or similar information, which could materially change the information previously provided by you and which you expect should be used by us to provide any ongoing advice under FAS. You should also provide Merrill Lynch with such other information as Merrill Lynch may reasonably request from time to time.

#### Investment Due Diligence And Recommendations Of Investment Options For Your Plan's Investment Menu

Your Designated Advisor will provide you with initial and ongoing investment recommendations to assist in your selection of investment options (hereinafter referred to collectively as "Investments") for your Plan's investment menu, specifically FAS Eligible Investments as described below. These Investments may include actively managed and passively managed (index) mutual funds, target date mutual funds, and money market funds, all of which are registered under the Investment Company Act of 1940 ("1940 Act"), as well as other types of funds such as Collective Investment Funds ("CIFs"), target date CIFs, group annuity separate accounts, and stable value funds, which are not



registered under the 1940 Act and certain insurance company general account options. You are solely responsible for the final selection of all Investments to be included in your Plan menu.

FAS Eligible Investments will include those Investments that meet Merrill Lynch's due diligence standards. As a general matter, we select FAS Eligible Investments based on a variety of factors, including investment styles available in the marketplace, platform capacity, client needs, and the outcome of due diligence reviews. Due diligence on Investments is performed by Merrill Lynch and by third parties that Merrill Lynch contracts with to provide such services (see *Methods of Analysis, Investment Strategies and Risk of Loss* for further information).

Actively and passively managed mutual funds and target date mutual funds recommended through FAS will be offered with the lowest cost share class (generally, shares denominated by a fund sponsor as zero revenue or institutional share classes, or equivalents) available to Plans through Merrill Lynch or Advisor Alliance recordkeeping services. If you select a different, more costly share class, which will adversely affect the performance of the fund, that decision will be solely your responsibility and that decision will not fall within the advisory services that Merrill Lynch provides through FAS. Merrill Lynch shall bear no responsibility for your decision to select a different share class. Designated Advisors' compensation is not affected by the share class selected. Please see *Code of Ethics, Participation or Interest in Client Transactions and Personal Trading—Conflicts of Interest and Information Walls—Mutual Fund-Related Compensation; Other Compensation*.

Merrill Lynch will communicate if an Investment selected for your Plan is no longer an FAS Eligible Investment and will provide a recommendation for a replacement (see *Advisory Business – Periodic Investment Performance Reporting and Ongoing Advice* and see *Methods of Analysis, Investment Strategies and Risk of Loss - Status Change of FAS Eligible Investments*).

#### Periodic Investment Performance Reporting And Ongoing Advice

Merrill Lynch will provide a periodic Plan-level report called the Fiduciary Advisory Services Report ("FASR") that includes an analysis of the performance of the Investments in your Plan menu. The report will also highlight any Investments that are no longer FAS Eligible Investments and which will no longer be eligible for selection by the Plan and for which Merrill Lynch will cease to be responsible for providing ongoing advice under the Program. Replacement recommendations of FAS Eligible Investments will be provided by your Designated Advisor for any Investments on a Plan's menu that have been determined not to meet Merrill Lynch's due diligence standards. Your Designated Advisor may also make additional recommendations for changes in your Plan's menu design, including without limitation the addition of new asset classes or substitution of other FAS Eligible Investments.

You should use the report to evaluate your Investment menu and progress towards your Plan investment goals. Your Designated Advisor will be available to assist you in understanding the format and content of the report, which includes graphic and tabular presentations of performance, and will assist you in reviewing and evaluating the reports, and, if appropriate, make recommendations for changes in the Plan's investment menu.

The principal source of information for the FASR is data from your recordkeeper. We also use outside information sources including investment research and data analysis firms.





You shall have the responsibility to review such information, reports or statements provided on a periodic basis in the normal course of the delivery of services by Merrill Lynch through web access or by requesting a physical copy of materials from your Designated Advisor. You are responsible for accessing the provided information through web delivery means, including the establishment of user ID's and passwords.

***Additional Information Included in the Investment Performance Report***

The FASR includes Plan data from your recordkeeper that is separate from FAS and is being provided for informational purposes only. In addition, your recordkeeper may make available certain model portfolio services (which are separate from FAS), including GoalManager's Portfolio Rebalancing Service ("GoalManager") which allows Plan Sponsors to create diversified portfolios. For clients who select GoalManager as part of the recordkeeping arrangement, the FASR will include information about the portfolio allocation and performance of the model portfolios. Model portfolio services, including GoalManager, are subject to a separate agreement (See *Advisory Business - Limitation of Services - Model Portfolio Services*).

**4. Limitation of Services**

Universe of Investment Recommendations – Investments recommended for your Plan's investment menu are limited to the FAS Eligible Investments. The FAS Eligible Investment options will be dependent on the investments available on the selected recordkeeping platform. In addition, there may be other investments that are appropriate for your Plan that are not included as FAS Eligible Investments.

Bank of America Affiliated Products - Bank of America or Merrill Lynch affiliated mutual funds or other affiliated products (including, without limitation, deposit products including Retirement Bank Account) will not be presented as FAS Eligible Investments. In the event you were ever to include a Bank of America or Merrill Lynch affiliated fund or product in your Plan investment menu, it would be solely upon your own initiative without any responsibility by Merrill Lynch or any affiliate and, you understand and agree that, with respect to any such investments: (i) Merrill Lynch does not and will not act in a fiduciary capacity under ERISA (or otherwise) with respect to the decision to select or maintain the Plan's holdings of such affiliated investments, and has not and will not recommend to you any purchase, sale or retention of such investments under the Client Agreement or otherwise in connection with the Program, and (ii) with respect to any such Plan assets that are now, or hereafter invested in any Bank of America or Merrill Lynch affiliated mutual funds or products, that the terms of Merrill Lynch's engagement will not cover such investments. Without limiting the generality of the immediately foregoing, Merrill Lynch may provide periodic investment performance reporting for any such affiliated investments, which you agree is not a fiduciary act by Merrill Lynch.

In Plan Retirement Income Options - These are annuity based options that can provide participants with income for retirement. These options are a separate service from FAS, subject to a separate agreement, and not subject to any ongoing review.

Excluded Assets ("Excluded Assets") - These assets include, but are not limited to, "employer securities" or "employer real property" within the meaning of section 407 of ERISA, participant loan balances, self-direct brokerage accounts/balances, in plan retirement income options, custom funds, or Bank of America or Merrill Lynch affiliated mutual funds or other affiliated products (including, without limitation, deposit products including Retirement Bank Account). Excluded assets are not subject to the Client Agreement and therefore will not be a part of any ongoing review.



**Model Portfolio Services**– As described above in the section called *Advisory Business - Investment Performance Reporting - Additional Information Included in the Investment Performance Report*, for clients utilizing GoalManager, information included in the FASR is included for informational purposes only. Model portfolio services, including Goal Manager, are a separate service from FAS and subject to a separate agreement.

**Education & Plan Services; Recordkeeping & Plan Administration** – These services are separate from FAS and are subject to a separate agreement.

## **5. Termination**

The Client Agreement may be terminated at any time by you or Merrill Lynch by giving notice as described in the Client Agreement. FAS services will continue until the termination date.

A termination by a Plan of Merrill Lynch or Advisor Alliance recordkeeping services, as applicable, will result in the termination of FAS. Plan Sponsors are required to provide notification to their Designated Advisor and recordkeeper of the decision to terminate recordkeeping services, in accordance with their applicable recordkeeping arrangements.

## **6. Qualifications of Designated Advisors**

Designated Advisors are registered as broker-dealer and investment adviser representatives. To become designated to provide FAS, Financial Advisors are generally required to demonstrate specialized experience and meet certain qualification requirements. These requirements may include the (1) Certified Plan Fiduciary Advisor (CPFA) credential from National Association of Plan Advisors or (2) The C(k)P® Certified 401(k) Professional from Retirement Advisor University at UCLA Anderson School of Management Executive Education. In addition, Financial Advisors must complete training administered by Merrill Lynch. Those who meet Merrill Lynch's criteria may be designated to provide FAS services.

## **7. Other Investment Advisory Programs and Services**

In addition to FAS, Merrill Lynch offers a wide variety of advisory services. These include, but are not limited to, the following: Merrill Lynch Defined Contribution Investment Consulting Services, Merrill Lynch Consulting Services, Merrill Lynch Institutional Investment Consulting, Merrill Lynch Advice Access, Merrill Lynch Investment Advisory Program, Merrill Edge Guided Investing, Merrill Edge Advisory Account, and Merrill Lynch Strategic Portfolio Advisor® Service. We also offer general information not directed to and not tailored to the specific needs of any individual or individual clients in the form of publications or research. In addition, we offer financial planning services, including (but not limited to) Wealth Management Analysis Report. 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 [http://www.adviserinfo.sec.gov/IAPD/Content/Search/iapd\\_Search.aspx](http://www.adviserinfo.sec.gov/IAPD/Content/Search/iapd_Search.aspx). 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.

## **C. ASSETS UNDER MANAGEMENT**

As of December 29, 2017, Merrill Lynch had assets under management of \$819.82 billion, of which \$259.14 billion was managed on a discretionary basis and \$560.68 billion was managed on a non-discretionary basis.

Assets related to this Program are not included in this data.



## FEES AND COMPENSATION

### A. PROGRAM FEES

For services provided in the Program, FAS clients will pay a Program fee. The Program fee will equal an annual fixed dollar amount or an annual asset-based fee rate applied to certain Plan assets. The Program fee is subject to a Program minimum and maximum annual fee amount. The Program minimum annual fee amount is \$1,000 effective as of January 1, 2018. The Program maximum annual fee amount is an amount calculated as an annual asset-based fee rate of 0.45% of Plan assets less any Excluded Assets (defined below).

The fee for FAS may be negotiated with your Designated Advisor depending on a number of factors. The extent to which we may negotiate the fee for FAS is solely within our discretion. In general, all fees are payable quarterly, in arrears (except as described below).

### B. CALCULATION OF PROGRAM FEES

#### 1. Calculation of Program Fees for Non-Group Annuity Plans

The following describes the calculation of Program fees for FAS except for Plans with recordkeeping services provided by Advisor Alliance providers on group annuity or group funding agreement based platforms ("Group Annuity Plans").

##### Asset-Based Fee Rate

Asset-based fees are calculated and payable quarterly, in arrears, based on the average market value of the Plan assets less Excluded Assets as described below. The fee rate applied will be one quarter of the annual asset-based fee rate. The market value of Plan assets as of the last business day of each calendar month less Excluded Assets is used to calculate the average market value for the billing quarter.

Excluded Assets include, but are not limited to, "employer securities" or "employer real property" within the meaning of section 407 of ERISA, participant loan balances, self-direct brokerage accounts/balances, in plan retirement income options, custom funds, or Bank of America or Merrill Lynch affiliated mutual funds or other affiliated products (including, without limitation, deposit products including Retirement Bank Account). Merrill Lynch reserves the right to designate assets as Excluded Assets. Merrill Lynch will not be an investment adviser or take any fiduciary responsibility with respect to Excluded Assets.

##### Fixed Dollar Fee

Except for Group Annuity Plans, fixed fee payments equal to one quarter of the agreed upon annual fee are payable quarterly, in arrears.

#### 2. Calculation of Program Fees for Group Annuity Plans

The following describes the calculation of Program fees for Group Annuity Plans.

The asset based fee or fixed fee is agreed to between you and Merrill Lynch. For asset based fees, the market value of Plan assets and fee will be calculated by your recordkeeper. For fixed dollar fees, the fee will be calculated by your recordkeeper.

#### 3. Initial Billing of Program Fees

Fees for the initial period will be charged and pro-rated in accordance with the applicable agreement.



For Group Annuity Plans, for the first quarter in which the Plan is receiving FAS services, the fees charged for FAS will be calculated by your recordkeeper on a pro-rated basis.

#### **4. Billing Upon Termination of Service**

For all Plans, excluding Group Annuity Plans, in the event of termination, the Program fees payable hereunder shall be pro-rated based upon the effective date of termination.

For Group Annuity Plans, the Program fee due through termination date will be calculated by your recordkeeper based upon the effective date of termination.

For additional information, see *Advisory Business- Fiduciary Advisory Services - Termination section*.

### **C. INVOICES AND METHODS OF PAYMENT**

#### **1. Invoices**

For all Plans, excluding Group Annuity Plans, Merrill Lynch will provide you with an invoice for your FAS fee.

For Group Annuity Plans, Merrill Lynch will not provide an invoice. Group Annuity Plans must instruct the recordkeeper to remit payment to Merrill Lynch for FAS fees.

#### **2. Methods of Payment**

Plan sponsors may pay Program fees from corporate assets or Plan assets, or from compensation Merrill Lynch receives (but does not retain) in connection with Investments, as described below. If your Plan holds mutual funds and other investments at Merrill Lynch, Merrill Lynch may, at the client's direction, apply compensation that Merrill Lynch receives (but does not retain) from these investments toward payment of the Program fees. The amount of compensation applied toward payment of the Program fees will depend on whether such compensation will also be applied toward fees for other services selected by the client, such as Education and Plan Services fees and recordkeeping services fees, as applicable.

#### **Fund-Related Compensation Available for Program Fee**

Merrill Lynch has entered into agreements with various fund families and/or their service providers and various stable value and collective trust fund providers to be paid fees with respect to sales and/or servicing these funds and our customers who invest in these funds, including retirement plan customers. The type, amount and source of payment of these fees varies depending upon the fund, the services being provided by Merrill Lynch, and the share class or tier in which Plan participants are invested, as applicable. (See *Code of Ethics, Participation or Interest in Client Transactions and Personal Trading - Conflicts of Interest and Information Walls - Mutual Fund-Related Compensation; Other Compensation* below. In addition, for more information, please refer to the document entitled "Mutual Fund Investing at Merrill Lynch" or refer to the ERISA 408(b)(2) Fee Disclosure available from your Advisor upon request.)

For Group Annuity Plans, Program Fees can be paid from Plan assets or corporate assets, depending on the recordkeeper. Merrill Lynch does not receive investment-related compensation from Investments in Group Annuity Plans.



#### **D. OTHER FEES AND EXPENSES**

The Program fee does not cover the following services which are subject to separate agreements and disclosures and not part of the FAS Program:

- Education and Plan Services
- Recordkeeping fees and plan administration charges

For further information, see *Code of Ethics, Participation or Interest in Client Transactions and Personal Trading - Conflicts of Interest and Information Walls*.

#### **E. CLIENT RETENTION AWARDS PROGRAM AND COMPENSATION FOR THE SALE OF PRODUCTS**

Certain Financial Advisors, including your Designated Advisor, are eligible to participate in a client retention awards program designed to encourage the transition to FAS of existing defined contribution Plan clients. This client retention award program encourages Financial Advisors to recommend the FAS Program to plans and plan sponsors.

In addition, we and our employees, including your Designated Advisor, benefit from the compensation paid to us for FAS and other services, and employees may receive a portion of the fees and other compensation paid for FAS and other services. These compensation practices create 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 for certain products or services may be higher than others, and the remuneration and profitability to us and our Financial Advisors resulting from management of certain accounts may be greater than that associated with other advisory accounts. (See section entitled *Code of Ethics, Participation or Interest in Client Transactions and Personal Trading* 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 in a manner consistent with our regulatory obligations based upon your investment objectives, risk tolerance and financial situation and needs. In addition, we have adopted policies and procedures to address the offering of advisory products to our clients consistent with our regulatory obligations.

#### **F. SOURCES OF REVENUE**

As a broker-dealer, Merrill Lynch offers a wide variety of products and 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 gross revenues are expected to be generated from FAS on an annual basis.

#### **G. CONDUCTING BUSINESS THROUGH MERRILL LYNCH**

You should discuss the investment advisory services we make available with your Designated Advisor to determine which may be most appropriate for you. Program fees may be higher or lower than the fees charged by other firms for comparable services, assuming such services are available.



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

Neither we nor our Designated Advisors receive performance-based fees for FAS. The investment recommendations provided in connection with FAS do not raise the conflicts associated with the side-by-side management of accounts.

## **TYPES OF CLIENTS**

FAS clients include Plan Sponsors (or other named fiduciaries) of employee benefit plans subject to ERISA.

FAS is available to participant-directed, defined contribution Plans for which either Merrill Lynch or our Advisor Alliance providers serve as recordkeeper, and subject to certain requirements. Certain Plans that have the Merrill Lynch or Advisor Alliance recordkeeping services are required to utilize FAS services.

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

### **A. FAS ELIGIBLE INVESTMENTS**

As part of FAS, Merrill Lynch employs separate due diligence review processes for different types of investments as described below. FAS Eligible Investments are Investments that meet Merrill Lynch's due diligence standards for the Designated Advisor to make recommendations for your Plan investment menu. These Investments include actively managed and passively managed (index) mutual funds, target date mutual funds, and money market funds, all of which are registered under the Investment Company Act of 1940 ("1940 Act"), as well as other types of funds such as collective investment funds ("CIFs"), target date CIFs, group annuity separate accounts, and stable value funds which are not registered under the 1940 Act, and certain insurance company general account options. The due diligence review processes described below are conducted by Merrill Lynch (by different groups at Merrill Lynch) or third-party reviewers retained by Merrill Lynch. From time to time we may make additional investment options available in the Program. You will make the final selection of investment options to be included in your Plan menu.

As a general matter, we select FAS Eligible Investments based on a variety of factors, including investment styles available in the marketplace, platform capacity, client needs, and the outcome of due diligence reviews. You should discuss with your Designated Advisor which investment options are appropriate for your Plan. FAS Eligible Investment options will be dependent on the investments available on the selected recordkeeping platform.

#### **1. Actively Managed Mutual Funds, Collective Investment Funds and Group Annuity Separate Accounts**

Actively managed mutual funds are subject to initial and periodic reviews conducted by Merrill Lynch or one or more third-party reviewers whose services are retained by Merrill Lynch. The initial and periodic review of actively managed mutual funds, whether conducted by Merrill Lynch or a third party, is subject to a multi-factor process ("Review Process"). Merrill Lynch retains the decision-making authority to add or remove an actively managed mutual fund from the Program, regardless of which entity is responsible for the Review Process.



The Review Process generally includes the following factors:

- Organizational structure and stability of a fund manager
- Adherence to investment style
- Evaluation of risk and volatility
- Investment professional and strategy resources
- Investment philosophy and process
- Portfolio construction
- Performance
- Operating and administrative capability

Based on these factors, Merrill Lynch or a third party reviewer uses a quantitative analytical method, a qualitative analytical method, or a combination of both methods, to review and select actively managed mutual funds. Some of the analytical methods may be subjective. Different weightings may be assigned to each of the factors considered and generally no single factor will be determinative as to whether a particular actively managed mutual fund is included as an FAS Eligible Investment. Further, over time, we may replace one or more factors with different factors that we reasonably believe are appropriate. Funds are monitored on an ongoing basis and are subject to a Review Process re-evaluation at least annually. Note that the third parties may use different factors in evaluating actively managed mutual funds, or a subset of these factors, or may assign different weightings to the same factors. However, Merrill Lynch has reviewed such third parties' due diligence processes and believes they are appropriate in light of the objectives of the Program.

In evaluating actively managed CIFs, Merrill Lynch or a third party reviews a similar actively managed mutual fund, based on the factors described above. In evaluating actively managed group annuity separate accounts, Merrill Lynch will review the underlying investment vehicle and expenses of the group annuity separate account. Merrill Lynch retains the decision-making authority to add or remove an actively managed CIF or group annuity separate account from the Program, regardless of which entity is responsible for the Review Process.

## **2. Other Investments**

The following investments (together, "Other Investments") are subject to a separate review process, described below:

- passively managed mutual funds, group annuity separate accounts and CIFs
- target date mutual funds, group annuity separate accounts and CIFs

We may, from time to time, add additional types of Other Investments to the FAS Program.

The review of Other Investments will be conducted by Merrill Lynch. In certain instances, we may engage one or more third parties to perform investment reviews or to provide investment analytics.

Merrill Lynch retains the decision-making authority to add or remove Other Investments from the Program, regardless of which entity is responsible for the Review Process.

Passively managed mutual funds, group annuity separate accounts, and CIFs are subject to a quantitative assessment based on, among other things, the fund's performance versus the index. In evaluating passively managed group annuity separate accounts, Merrill Lynch will review the underlying investment vehicle and expenses of the group annuity separate account.

Target date mutual funds, group annuity separate accounts and CIFs are subject to a qualitative assessment based on factors including the quality and experience of fund management, the



applicable glide path, the underlying funds, and overall expenses of the mutual fund, group annuity separate account or CIF, as applicable. In evaluating certain target date CIFs and target date group annuity separate accounts, Merrill Lynch will review a similar target date mutual fund for the factors described above.

Note that we may add other factors or replace one or more factors as we deem appropriate.

Other Investments will be monitored on an ongoing basis and will be subject to a re-evaluation at least annually.

### **3. Stable Value and Money Market Funds; Certain Insurance Company General Account Options**

The initial and periodic review of stable value and money market funds, and certain insurance company general account options, is conducted by Merrill Lynch using investment analytics from a third-party reviewer, which we have engaged for this purpose.

Stable value funds and money market funds are evaluated using quantitative and qualitative methods based on, among other factors, manager's tenure or experience, yield, internal expenses, the credit quality of the underlying securities and, with respect to stable value funds and general accounts, the credit quality of the insurance providers.

Merrill Lynch retains the decision-making authority to add or remove a stable value fund, money market fund or certain insurance company general account options from the Program.

## **B. INFORMATION AVAILABLE TO DESIGNATED ADVISORS REGARDING INVESTMENTS**

Merrill Lynch makes available to Designated Advisors through regular or ad hoc internal publications or communications information reflecting our internal opinions and views with respect to Investments. In addition, we will communicate information to Designated Advisors regarding determinations to remove Investments as FAS Eligible Investments. All such information is available to your Designated Advisor in considering whether a particular Investment is appropriate for the Plan investment menu. You should discuss with your Designated Advisor any questions you may have about our views with respect to a particular Investment.

## **C. STATUS CHANGE OF FAS ELIGIBLE INVESTMENTS**

If your Plan investment menu contains investments that no longer meet Merrill Lynch's due diligence standards or other Program considerations for inclusion as an FAS Eligible Investment, Merrill Lynch will provide you with an investment performance report that highlights those ineligible Investments. Your Designated Advisor will provide recommendations of FAS Eligible Investments to replace any investments no longer considered FAS Eligible Investments.

FAS Eligible Investments may change at any time. Merrill Lynch will generally not provide specific information regarding the basis for a change. If an FAS client repeatedly disregards our investment advice, we may, at our discretion, terminate a client from FAS.

Note that not all investments recommended for other Merrill Lynch clients outside of this Program will be included as FAS Eligible Investments, and vice versa.

Our review of investments is not a substitute for your continued review of your Plan investment menu and the performance of your Plan's investment options.





#### **D. RISKS ASSOCIATED WITH CERTAIN INVESTMENTS**

You should understand that all investments involve risk (the degree of risk may vary significantly), that investment performance can never be predicted or guaranteed and that the values of the Plan's assets will fluctuate due to market conditions, and other factors. We make no representations or warranties with respect to the present or future level of risk or volatility of any Investments' future performance or activities. There is no assurance that the performance results of any benchmark or index used in connection with FAS, including those shown on the performance report or other Merrill Lynch reports, can be attained. Nor is there any guarantee that our Review Process will identify the best performing funds in their respective competitive universe. You are assuming the risks involved in selecting Investments for the Plan's menu and participants could lose all or a portion of the amount held in those Investments.

Typically, Merrill Lynch recommends that a client seek a diversified menu in an effort to meet the Plan's investment objectives and include Investments diversified across multiple asset classes in order to reduce Investment risk associated with concentrated Investments.

##### **1. Mutual Funds**

Mutual funds are sold by prospectus. To determine whether a particular investment is an appropriate investment for you, carefully consider the important information on the investment objectives, risks, charges and expenses. Please read the prospectus carefully before you invest. Your Designated Advisor can provide a copy of the prospectus.

Mutual funds charge various fees and expenses, which will reduce the actual returns of your investment.

##### **2. Collective Investment Funds**

A Collective Investment Fund, including certain target date CIFs, are not available for direct investment by individual shareholders. Unlike a mutual fund, an investor gains access to a collective investment fund through a retirement plan, such as a 401(k) plan. Additionally, regulation of mutual funds and Collective Investment Funds varies. For instance, the mutual fund industry is regulated by the Securities and Exchange Commission (SEC), and mutual funds are subject to the Investment Company Act and the rules adopted thereunder, which provide important protections to fund shareholders. For example, mutual funds are sold by prospectus, are subject to limitations on leverage and extensive regulatory reporting requirements, and are governed by independent boards of trustees.

In contrast, Collective Investment Funds including certain target date CIFs, are not regulated by the SEC or subject to the Investment Company Act; instead, their investment managers and the CIFs are subject to less stringent guidelines and are overseen by the U.S. Office of the Comptroller of the Currency or by a state banking authority.

##### **3. Stable Value Funds**

The objective of most stable value funds is to provide safety of principal and an investment return that is generally higher than a money market return, while providing participants the ability to withdraw their assets for ordinary transactions at book rather than market value. However, the ability to withdraw stable value assets at book value has limitations based on the insurance contracts that wrap the underlying assets. In addition, most stable value funds require a hold period before assets can be withdrawn from the fund by the Plan Sponsor at book value and may refuse to honor book value withdrawals after communications from a Plan Sponsor or Plan fiduciaries that it determines



caused participants' withdrawals. Additionally, the Plan is often restricted from offering investment alternatives that are viewed as competitive with the stable value offering. Finally, stable value funds are subject to counterparty risk of the insurers that provide the fund's book value liquidity.

#### **4. Money Market Funds**

The FAS Eligible Investments may include money market funds that invest in government and treasury securities ("Government Money Market Funds"), as well as money market funds that invest in corporate commercial paper ("Prime Money Market Funds").

A Government Money Market Fund seeks to preserve the value of your investment at \$1.00 per share. However, there is no guaranty it will do so. The sponsors of these funds have no legal obligation to provide financial support to the fund, and you should not expect that the sponsor will provide financial support to these funds at any time.

A Prime Money Market Fund does not seek to maintain a stable per share net asset value, and the securities held by the fund are subject to the risk that issuers and/or counterparties will fail to make payments when due or default completely. You could lose money by investing in a Prime Money Market Fund. Because the share price of these funds will fluctuate, when you sell your shares they may be worth more or less than what you originally paid for them.

All money market funds may impose a fee upon the sale of your shares or may temporarily suspend your ability to sell shares if a fund's liquidity falls below required minimums because of market conditions or other factors. Neither Government Money Market Funds nor Prime Money Market Funds are insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency.

Money market funds are sold by prospectus. Please read the prospectus carefully before you invest. Your Designated Advisor can provide a copy of the prospectus.

#### **5. Target Date Funds**

The target date (or retirement date, as applicable) for these funds is the approximate date when an investor plans to start withdrawing the assets from their retirement account. The principal value of these funds is not guaranteed at any time, including at the target date. Nor do these funds guarantee a certain amount of retirement income. These funds are designed to become more conservative over time as the target date approaches.

Target date mutual funds are sold by prospectus. Please read the prospectus carefully before you invest. Your Financial Advisor can provide a copy of the prospectus. Target date mutual funds are subject to the investment risks associated with each of the underlying funds in which a target date fund invests.

#### **6. Insurance Company General Account Options**

All contract and rider guarantees, including optional benefits and any fixed crediting rates, are backed by the claims-paying ability of the issuing insurance company. They are not backed by Merrill Lynch or its affiliates, nor does Merrill Lynch or its affiliates make any representations or guarantees regarding the claims-paying ability of the issuing insurance company.



## **7. Group Annuity Separate Accounts**

Investment options may be available to your plan through a group annuity contract issued by your recordkeeping provider. Group Annuity contracts offer a choice of investment options that are funded by investments through an insurance company separate account also referred to as subaccounts. Separate accounts are creations under state insurance law and typically invest in shares of registered mutual funds or similar pooled investments. The value of a separate account investment will fluctuate up or down, depending on the performance of the underlying investments in the account. Most group contracts are exempt from registration under the federal securities laws. However, certain of the separate account investment choices invest in mutual funds which are subject to SEC registration. Prospectuses for these mutual funds can be obtained by calling your Merrill Lynch Designated Advisor.

## **IMPORTANT CLIENT RESPONSIBILITIES**

For the various services described herein, you are asked to complete a questionnaire or other form that elicits various types of information. You are responsible for providing accurate and complete information, and a failure to do so could significantly affect the services that we provide. Further, you are obligated to notify your Designated Advisor promptly of any material change in financial circumstances or investment objectives that may affect the IPS, menu design or other Program Services provided by Merrill Lynch.

By participating in FAS you represent and confirm that: (i) you have sole and final responsibility for selecting all investments for inclusion in your Plan menu; and (ii) you have determined that these services and fees are reasonable, necessary and suitable investment services in relation to your Plan.

You have also concluded that participation in FAS is prudent and shall determine, in your own discretion, that each investment included in the Plan is a suitable investment for the Plan participants. You will use best efforts to notify Merrill Lynch if any of the foregoing representations become inaccurate or if the identity of any of the Plan's named fiduciaries with respect to this relationship changes. Such notification must be made in writing to your Designated Advisor. In no event shall Excluded Assets be included as assets subject to the Client Agreement.

You should understand that our services described above should not substitute for or diminish the careful deliberation and determination made by those Plan fiduciaries having responsibility for management and administration of the Plan, following appropriate consultation with your other professional advisers and the review of relevant Plan documentation.

## **RELATED PERSONS**

In addition, other Bank of America Affiliates or divisions, such as U.S. Trust, Bank of America Private Wealth Management, offer their own managed products or wrap programs that are similar to this or other Merrill Lynch programs. Advice and/or recommendations provided to accounts in these programs will be different from or even conflict with the advice and guidance provided in connection with the Program, including advice related to the recommendation of certain funds or investment managers. This is due to, among other things, the differing nature of the Affiliate's investment advisory services and differing processes and criteria upon which determinations are made. For



example, Merrill Lynch may recommend a specific fund or investment manager for inclusion in a U.S. Trust program, but not in a Merrill Lynch program.

#### 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 [http://www.adviserinfo.sec.gov/IAPD/Content/Search/iapd\\_Search.aspx](http://www.adviserinfo.sec.gov/IAPD/Content/Search/iapd_Search.aspx).

On June 16, 2014, Merrill Lynch, without admitting or denying the findings, entered into an AWC with FINRA. The AWC related to Merrill Lynch's failure to have an adequate supervisory system to ensure that certain clients received Class A shares with sales charge waivers when purchasing certain mutual funds. As a result, those clients paid sales loads when purchasing Class A shares, or purchased Class B or C shares with higher expenses, during various periods. The clients included those having two types of retirement accounts and another type of client in brokerage accounts offered by Merrill Lynch. Merrill Lynch reported certain of these issues to FINRA and all impacted clients have been or are in the process of being reimbursed as set forth in the AWC. Merrill Lynch consented to the imposition of a censure and a fine of \$8 million, and agreed to provide additional reimbursement to impacted clients as set forth in the AWC.

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) there under, 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; and (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 there under 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 there under, 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, an indirect wholly-owned subsidiary of Bank of America, is a leading global investment banking firm, registered broker-dealer, and investment adviser. 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 investment 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 [http://www.adviserinfo.sec.gov/IAPD/Content/Search/iapd\\_Search.aspx](http://www.adviserinfo.sec.gov/IAPD/Content/Search/iapd_Search.aspx).

For purposes of Form ADV Part 2, certain Merrill Lynch management persons are registered as registered representatives or associated persons of Merrill Lynch. In the future, certain 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.





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 Program clients, use Merrill Lynch's 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 Merrill Lynch's products or products of an Affiliate. Where you use or purchase Merrill Lynch's or our Affiliate's services or products, 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.

Merrill Lynch may have business relationships with the officers, directors, or employees of a variety of clients, including corporations, pension and retirement plans, and other entities receiving FAS. These business arrangements may create a conflict of interest to the extent that these individuals have any role or influence in the hiring or retention of Merrill Lynch and its Financial Advisors or with respect to their compensation. It is the responsibility of the FAS client to determine whether any such Merrill Lynch business relationship creates a conflict of interest, to implement appropriate policies and procedures for the disclosure and handling of such matters and to resolve any such conflicts in its best interest.

We address these conflicts in a variety of ways, including disclosure of various conflicts 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.

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

### **A. CONFLICTS OF INTEREST AND INFORMATION WALLS**

Merrill Lynch is an indirect wholly-owned subsidiary of Bank of America. Bank of America engages in a wide range of activities and businesses across a broad spectrum of clients. As a result, we recognize actual, potential and perceived conflicts of interest may develop in the normal course of



operations in various parts of the Bank of America organization. To address these potential conflicts, information walls are in place to allow multiple businesses to engage with the same or related clients at the same time while mitigating the conflicts which may arise from such a situation. For example, information walls are designed to prevent the unauthorized disclosure of material nonpublic information and allow public side sales, trading and research activities to continue while other businesses within Bank of America possess material nonpublic information. Additionally, Bank of America maintains a Code of Ethics which provides guidelines for the business practices and personal conduct all associates and board members are expected to adopt and uphold.

Managing conflicts of interest is an integral part of Bank of America's risk management process. We believe that no organization can totally eliminate conflicts that exist explicitly or implicitly. Bank of America, including Bank of America Merrill Lynch's investment advisory business, evaluates its business activities and the actual and possible conflicts that may emerge from its activities on an ongoing basis. To the extent that existing or new business activities raise an actual conflict of interest, or even the appearance of a conflict, we endeavor to provide you with full and clear disclosure or to take action to avoid them.

### **1. Mutual Fund-Related Compensation; Other Compensation**

Your Plan may invest in mutual funds. Each mutual fund or its respective principal underwriter or other agent has entered into an agreement with us for the performance of sub-accounting and related services including recordkeeping, processing, reporting and dividend reinvestment services for shareholders of such mutual funds who maintain their shares in a Merrill Lynch securities account, including participants in Plans that access the Program. We and our Affiliates receive sub-accounting fees for the performance of these services, which are borne by the mutual fund (like other mutual fund expenses) and/or by its adviser, principal underwriter or other agent. These sub-accounting and related service arrangements generally vary by mutual fund. We also receive distribution (12b-1) fees, administrative and shareholder servicing fees with respect to mutual funds offered to customers, including participants in Plans that access the FAS Program. We receive but do not retain compensation for sub-accounting, distribution (12b-1) fees, and Administrative and Shareholder servicing fees with respect to mutual fund assets held in Merrill Lynch accounts for Plans that access the FAS Program. For more information, please refer to the document entitled "Mutual Fund Investing at Merrill Lynch" or refer to the ERISA 408(b)(2) Fee Disclosure available from your Advisor upon request. We may also receive compensation from some mutual fund sponsors for our distribution, marketing, and other support with regard to their mutual funds in amounts that may vary by fund; we do not collect (or if we receive, we do not retain) such fees with respect to mutual fund assets held in Merrill Lynch accounts for Plans that access the FAS Program. You should be aware that the amount of fees paid by the different mutual funds and/or mutual fund sponsors varies and that mutual funds that would otherwise meet our criteria for inclusion in the Program but whose principal underwriters, agents or sponsors do not agree to pay such fees may not be selected, thereby limiting the available universe of mutual funds.

Your Plan may also invest in Collective Investment Funds ("CIFs"). Merrill Lynch receives certain servicing fees from CIFs. These fees are set forth in the purchase, subscription or participation agreement governing each investing plan's investment in the fund as well as in the annual collective trust fund financial statement. We receive but do not retain these servicing fees with respect to CIF assets held in Merrill Lynch accounts for Plans that access the FAS Program. For more information, please refer to the ERISA 408(b)(2) Fee Disclosure available from your Designated Advisor upon request.



Consistent with applicable laws, management and employees of Bank of America and its Affiliates may be provided a broader level of access and exposure to Merrill Lynch, our management, Advisors and other personnel, marketing events and materials, and client-related and other information. Such access and exposure may not be available to other asset managers and may enhance the ability of Bank of America Affiliates to distribute their investment products through us.

The presence of compensation arrangements which may vary with respect to different mutual funds and CIFs may also create an incentive for us to recommend an investment in mutual funds or CIFs that pay higher fees to us or our Affiliates for other programs or services we offer. The presence of these compensation arrangements may also cause us and our Affiliates to forego opportunities to negotiate more favorable financial terms for client investments in mutual funds or CIFs. We address the conflicts of interests associated with the compensation arrangements by calculating the compensation paid to our Advisors on the same basis for all Program assets without regard to the amount of compensation arrangements we or our Affiliates receive in connection with the Investments. Additionally, we and our Affiliates select funds that are available on our retirement platforms and offered through the Program based on qualitative, quantitative or both qualitative and quantitative evaluation of such factors as performance, risk management policies and procedures, and consistency of the execution of their strategy. We have adopted various policies and procedures reasonably designed to prevent the receipt of such compensation arrangements and other business arrangements from affecting the nature of the advice we and our Advisors provide, although such policies and procedures do not eliminate such conflicts of interest.

As described above, Retirement Bank Account (RBA) is a Bank of America bank deposit product. Deposits in RBA at Bank of America, N.A. (BANA) are financially beneficial to Merrill Lynch and its affiliates. BANA uses bank deposits to fund its lending, investment and other business activities. Like other depository institutions, the profitability of BANA is determined in large part by the difference between the interest paid by BANA on bank deposits, and the interest or other income earned by BANA on loans, investments and other assets which may be funded in part by bank deposits. For RBA, Merrill Lynch receives but does not retain compensation it receives as agent. (See section entitled *Fees and Compensation – Invoices and Methods of Payment*.) As described above, RBA will not be included as an FAS Eligible Investment that will be recommended to clients, and will be considered an Excluded Asset (and therefore, not included in the amount of Plan assets used to calculate an FAS fee).

## **B. 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. Each Code of Ethics is based on the principle that clients’ interests come first, and it is intended to assist employees in meeting the high standards that we follow in conducting our business with integrity and professionalism. Each Code of Ethics covers such topics as the:

- Requirement that all employees comply with all applicable securities and related laws and regulations;
- Reporting and/or clearance of employee personal trading;
- Prevention of misuse of material nonpublic information; and



- Obligation to report possible violations of the Code of Ethics to management or other appropriate personnel.

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

We also have imposed policy restrictions on all personnel for 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 our securities transactions and have implemented procedures for monitoring these transactions as well as those of all employees.

### **C. PARTICIPATION OR INTEREST IN CLIENT TRANSACTIONS**

We, our Affiliates and employees benefit from the fees and charges you pay for FAS. You may also use other products or services available from or through us and, in such case, pay additional compensation. Financial Advisors offering these services and providing ongoing assistance to you will, in turn, receive compensation from us.

As noted above, you are not obligated to implement any of the FAS recommendations or to trade through Merrill Lynch. Similarly, you may determine to use our new or additional products and services offered by us. In such cases, we and our Financial Advisors will benefit from the additional compensation paid or generated from the above.

### **D. SECURITIES TRADING 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 FAS 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 for 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.

Many of the conflicts related to participation or interest in client transactions and personal trading are less pronounced in the context of FAS because FAS Designated Advisors do not make specific securities recommendations or analyze particular securities, other than the reviewed funds and other investment types to be considered for the Plan's menu.

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 obtain pre-approval for certain securities transactions, disclose their investment accounts, and provide or cause Merrill Lynch to receive annual holdings reports and quarterly transaction reports.



## **BROKERAGE PRACTICES**

The FAS Program does not make specific securities recommendations or analyze particular securities, other than the funds and other investment vehicles to be considered for a Plan's menu.

## **REVIEW OF ACCOUNTS**

An important part of the Program relationship involves providing you with the opportunity to engage in periodic reviews with your Designated Advisor. These reviews provide updates on the progress of your Plan towards your goals and other important information about your Plan menu investments. On a periodic basis, your Designated Advisor will review with you the Plan's Menu Design, IPS, and investments included on the Plan's menu.

Any review we perform does not substitute for your continued review of your reports or accounts.

## **CLIENT REFERRALS AND OTHER COMPENSATION**

### **A. COMPENSATION FOR CLIENT REFERRALS**

Merrill Lynch has not entered into any client referral arrangements with third parties in connection with referrals of clients to FAS (Please see the section entitled *Fees and Compensation - Client Retention Awards Program and Compensation for the Sale of Products*).

### **B. OTHER COMPENSATION**

Please see the section entitled *Code of Ethics, Participation or Interest in Client Transactions and Personal Trading - Conflicts of Interest and Information Walls—Mutual Fund-Related Compensation; Other Compensation*.

#### **1. Event Payments from Fund Providers**

Some third-party vendors, including third party managers, distributors, and insurance companies, will periodically participate in Merrill Lynch- or affiliate-hosted internal training and education conferences, as well as conferences that Merrill Lynch or affiliates may host for clients. The amount paid for participation is used to offset the expenses incurred for these events and cannot be reasonably allocated to any particular plan client. The amount paid by any third party vendor may vary. Note that the level of vendor support is not dependent or related to the level of assets invested by you or any other of our clients in or with the products or services of the particular vendor. Neither

Merrill Lynch nor its affiliates incentivize Financial Advisors to recommend one vendor's products over another vendor.

#### **2. Gifts and Other Non-Monetary Compensation**

From time to time, third-party vendors (such as mutual fund companies, broker-dealers, etc.) may provide Merrill Lynch with non-monetary gifts and gratuities, such as promotional items (e.g., coffee mugs, calendars or gift baskets), meals and access to certain industry related conferences (collectively, "gifts"). Merrill Lynch has implemented policies and procedures intended to identify, quantify and track gifts that Merrill Lynch receives. Merrill Lynch will report gifts received by it or its employees to the extent such amounts exceed the DOL de minimis thresholds for any plan. The



determination of whether the gifts that we receive exceed the de minimis threshold is made by Merrill Lynch after examining the gifts recorded each year and the value of the recorded gifts as may be attributable to a qualified retirement plan client under the DOL rules. Based on historic trends, Merrill Lynch does not expect to receive gifts in excess of the de minimis threshold under the regulations with respect to the Plan.

#### **CUSTODY**

To the extent that Merrill Lynch acts as your custodian, please refer to the applicable documentation for information regarding our responsibilities as a custodian and applicable fees and expenses.

#### **INVESTMENT DISCRETION**

We do not accept discretionary authority in connection with FAS.

#### **VOTING CLIENT SECURITIES**

FAS does not involve voting proxies on the client's behalf.

#### **FINANCIAL INFORMATION**

Not applicable.



## GLOSSARY

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

“Affiliate” means a company that is controlled by, in control of, or under common control with another company.

“AWC” means a FINRA Letter of Acceptance, Waiver and Consent.

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

“Bank of America” means Bank of America Corporation.

“BAS” means Banc of America Securities LLC.

“Brochure” means the Merrill Lynch program brochure relating to the Merrill Lynch Fiduciary Advisory Services Program, as amended or updated from time to time.

“Client” or “you” or “your” means the FAS Plan Sponsor (or other named fiduciaries).

“Client Agreement” means the investment advisory agreement between the Client and Merrill Lynch that you sign for the Program, as amended from time to time.

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

“FAS” means the Merrill Lynch Fiduciary Advisory Services Program.

“Designated Advisor” means a Merrill Lynch Financial Advisor that has met certain Merrill Lynch requirements and qualifications to deliver FAS services.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

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

“Financial Advisor” means a Merrill Lynch Financial Advisor.

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

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

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

“Order” means an order issued by the SEC.

“Qualified Default Investment Alternative” or “QDIA” refers to an investment option chosen by the Plan Sponsor or fiduciary to direct Plan participant contributions when the participant otherwise fails to make an election. If the Plan complies with the requirements of QDIA rules, the Plan Sponsor and Plan fiduciary will not be liable for losses that result from investments in the QDIA.

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

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

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