

# Advice Access

## BROCHURE

Merrill Lynch, Pierce, Fenner & Smith Incorporated  
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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 Advice Access. If you have any questions about the contents of this brochure, please contact us at (866) 731-3127. The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission ("SEC") or by any state securities authority. Investment adviser registration does not imply a certain level of skill or training.**

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

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

**July 1, 2012**

## Update to Your ADV Part 2A Brochure (October 1, 2012)

The section titled “Additional Information – Other Financial Industry Activities and Affiliations” provides a list of the management personnel of Merrill Lynch, Pierce, Fenner & Smith Incorporated. As of October 1, 2012, this list reads as follows:

*For purposes of Form ADV Part 2, MLPF&S management persons include William C. Caccamise (CRD# 2547189), Gloria R. Greco (CRD# 4795234), Joseph M. Nenichka (CRD# 1639260), Thomas K. Montag (CRD# 1474696), Douglas G. Preston (CRD# 2586917), Jennifer M. Hill (CRD#2434363), Michael B. Radest (CRD# 1687387), and John M. Hogarty (CRD#2876432).*



## MATERIAL CHANGES

On March 31, 2012, Merrill Lynch filed its last annual update for its Advice Access brochure ("Brochure" or "Disclosure Statement"). Set forth below are the material changes to this Brochure since that date. Capitalized terms that are not defined in this Brochure have the meanings provided in the Glossary.

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.

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Previously, on March 31, 2011, Merrill Lynch filed its annual update for this Brochure. Set forth below are the material changes to this Brochure between March 31, 2011 and March 31, 2012.

### Disciplinary Event

We have amended the disciplinary events section of each Brochure by removing certain events (as permitted by applicable regulation) and adding the following event: On October 4, 2011, Merrill Lynch entered into a consent agreement with FINRA. 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.

Other than the "Disciplinary Event" noted above, no material changes were made to this Merrill Lynch Program's Brochure since April 2011.



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## ADVISORY BUSINESS

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

## ADVICE ACCESS

Advice Access is an investment advisory service that will provide participants of a defined contribution Plan (“Plan”) with an analysis of their current investment and savings behaviors and their likelihood of achieving a specified annual retirement income. Advice Access will also recommend to Plan participants an asset allocation, specific investments for their Plan account, a savings rate in the Plan, a savings rate outside the Plan, and a retirement age that targets a 70% likelihood of generating income to meet or exceed their specified annual retirement income target. Participants may modify certain variables, such as savings rate, retirement age, desired retirement income, savings rate outside the Plan, other additional income and expenses and obtain recommendations based on these changes. They can implement, reject, or modify any of the asset allocation, investment, and other recommendations provided by Advice Access. We do not assume responsibility for their decision to modify any of the asset allocation and specific investment recommendations provided through Advice Access.

Participants can also choose to implement the discretionary managed account feature of Advice Access, called PersonalManager®. PersonalManager will initially review the participant’s current information (which may be updated automatically from Plan records, by the participant, or both) and place the participant’s account into an appropriate portfolio model, as determined by Advice Access. Periodically, PersonalManager will review the participant’s information and the specific investment allocation percentages that comprise the portfolio model and, if applicable, automatically place the participant’s account into a different portfolio model (referred to herein as “Reallocation”). PersonalManager will also periodically rebalance the participant’s account to the participant’s current asset allocation to adjust for investment gains and losses across the asset classes (referred to as “Rebalancing”). The participant may discontinue PersonalManager at any time. Participants who are enrolled in PersonalManager and subsequently separate from service with their Employer will be required to update their personal profile information to continue to take advantage of PersonalManager’s personalized investment strategy.

The scope of any investment advisory relationship we have with a participant is defined in the Advice Access agreement that the Employer executes with us. When a participant is enrolled in Advice Access, Advice Access provides advice only for the participant’s account and not any other assets or accounts, unless otherwise separately agreed to by us in writing. Our advisory relationship begins when we enter into an investment advisory contract with the Employer, which occurs when we accept the Employer’s signed contract. Preliminary discussions or recommendations before we enter into the Advice Access agreement with the Employer are not intended as investment advice and should not be relied on as such.



### **Access Channels**

Plan participants may use any of the following channels to obtain Advice Access:

**Online:** Plan participants may use Advice Access by providing relevant information, receiving the recommendations and implementing such recommendations on the Benefits OnLine system or another third party administrator's online access channel.

**Service Representatives:** Plan participants also will have access to a Retirement & Benefits Contact Center Representative ("Service Representative") at a designated Merrill Lynch call center. These Service Representatives will be able to collect relevant information from the participant for input into the Advice Access technology and will communicate the recommendations created by the Advice Access technology to the participant. The Service Representative will also be able to implement the recommendations of Advice Access if directed to do so by the participant. If the Employer uses a third party administrator other than us, the Service Representative will transmit the implementation recommendations to the Employer's third party administrator for actual implementation. The Services Representative and any third party administrator will not be able to modify or add, in any way, to the recommendations provided by the Advice Access technology.

**Financial Advisors:** Plan participants may use Advice Access with the assistance of a Financial Advisor at a designated location or by setting up an appointment to call or visit a specific Merrill Lynch Financial Advisor located in a Merrill Lynch branch office. The accessibility of the consulting services of a specific Merrill Lynch Financial Advisor at a branch office is determined based upon the complexity of the participant's retirement needs and asset thresholds.

These Financial Advisors will be able to collect relevant information from the participant for input into the Advice Access technology and will communicate the recommendations created by the Advice Access technology to the participant. Financial Advisors also will be able to implement the recommendations of Advice Access, if directed to do so by the participant, by going into Advice Access on behalf of the participant. Financial Advisors will not be able to modify or add, in any way, to the recommendations provided by the Advice Access technology.

**Participant Communication and Messaging:** Plan participants who do not use Advice Access directly may also receive Advice Access recommendations on participant benefit statements. Additional communication methods may be determined jointly by the Employer and us.

### **Financial Expert**

We have selected a financial expert (the "Financial Expert") that is responsible for constructing strategic asset class models and fund specific portfolios using the investment options determined by each Employer or the Employer's Designee, which cannot be Merrill Lynch or any of our affiliates ("Employer's Designee"). The Financial Expert has not been, and will not be, involved in any other relationship with us that would compromise the Financial Expert's independence.

We may assist the Financial Expert by providing certain background information for the development of the portfolio models, such as by providing algorithms, models, studies and other relevant materials. The Financial Expert may consider these materials and also may consider materials of others in developing the portfolio models and recommendations. Ultimately, it is the Financial Expert who retains sole control and discretion for the development and maintenance of the portfolio models. In developing the portfolio models, the Financial Expert will typically use a charting method of securities analysis and mutual fund ranking services to evaluate mutual fund risks.

**Merrill Lynch Professional Assistance**

We make our Financial Advisors and our Merrill Edge Financial Advisory Center available for consultations to those Plan participants whose Employer elects to make this feature available to them. While our employees may explain the recommendations generated by Advice Access, they will not recommend changes to the asset allocation or specific investment recommendations regarding these retirement assets. In providing assistance to participants regarding non-Plan assets, our employees may use Merrill Lynch products that project asset allocation results based on various assumptions. These projections may be generated to show how greater savings rates or higher risk tolerances might influence achieving retirement goals and objectives. These projections may differ in the amounts allocated to specific asset categories than the asset allocation recommendations provided by the Financial Expert's asset allocation and investment recommendations. Due to our using these Merrill Lynch tools that project meeting retirement goals by factoring in other assumptions, we make no promise or guarantee that any results projected will be achieved.

**RECOMMENDATIONS****Necessary Data**

Advice Access technology processes various demographic and financial data about the participant and generates recommendations for the participant. The minimum data required to generate recommendations are the participant's age, gender, state of residency, current compensation, current Plan savings rate, current Plan account balance, and current investment allocation. The participant generally does not need to provide this information as it is available from Plan records or is provided by the Employer. However, the participant may correct this and other data and provide additional data to be considered. It is the participant's responsibility to ensure any additional data is accurate and kept up to date. Failure to do so may result in our inability to provide appropriate recommendations in a timely manner.

The Employer also will provide data input regarding specific Plan information and restrictions. The Financial Expert will provide certain other data used by the Advice Access technology for generating the advice (i.e., marginal tax rates, life expectancies, simulated asset class returns, and inflation data).

**Recommendations Made**

Advice Access will provide participants with the following recommendations regarding portfolio models for their Plan accounts: specific asset allocation and investment recommendations, a savings rate in the Plan, a savings rate outside the Plan, and a retirement age. A participant may also set assumptions regarding savings rates in and outside the Plan, as well as retirement age, on which Advice Access bases its asset allocation and investment recommendations. Regardless, Advice Access will only implement actual saving rate recommendations inside the Plan if we process or the third party administrator of the Plan processes savings rate changes. If Advice Access does not process these savings rate changes, the participant will need to do this through normal Plan channels or other means. Federal tax laws may limit the savings rates in the Plan of some participants who are "highly compensated employees," as defined by the Internal Revenue Code. Some highly compensated employees may receive a return of contributions from the Plan as a result of their savings rates being limited by the federal tax laws. The Advice Access recommendations for these highly compensated employees who receive such refunds will be adversely affected. As such, participants may want to reduce and fix their savings rate in the Plan to avoid such refunds.





Advice Access will also provide each participant with a probability analysis demonstrating the likelihood that the participant will meet or exceed his or her specified annual retirement income goal with respect to his or her current asset allocations, as well as the asset allocations provided by Advice Access. (See section entitled *Hypothetical Nature of Forecasts* for more information about the hypothetical nature of probability analyses.) After reviewing the recommendations provided by Advice Access, the participant can either reject the recommendations or implement them using the options described below. The participant can also modify the portfolio model recommendations provided by Advice Access by choosing his or her own investments and allocation percentages, but we will not be responsible for the participant's changes as any such modification would not be an implementation of an Advice Access recommendation.

### **IMPLEMENTATION OPTIONS**

The methods of implementing Advice Access recommendations follow:

#### **PersonalManager**

The discretionary investment management feature of Advice Access, PersonalManager, can be selected by participants to implement the specific asset allocation and investment recommendations provided by Advice Access with respect to their Plan account. PersonalManager will initially review the participant's current information (which may be updated automatically from Plan records, provided by the participant, or both) and place the participant's account into a portfolio model as determined by Advice Access. Periodically, PersonalManager will review any participant information subsequently provided and, if applicable, reallocate the participant's account. PersonalManager will also periodically rebalance the participant's account if applicable. In addition, PersonalManager may automatically make changes to a participant's investments and asset allocations based on changes to the Advice Access portfolio models. Participants can discontinue PersonalManager at any time. Participants who are enrolled in PersonalManager and subsequently separate from service with the Employer sponsoring the Plan will be required to update their personal profile information to continue to take advantage of PersonalManager's personalized investment strategy.

#### **PersonalManager as the Plan's Default Investment**

An Employer can select PersonalManager as the default investment for Plan participants who have not selected their own investments. As new contributions are received, participants will automatically be "defaulted" into PersonalManager and both their existing assets and future contributions will be invested according to the PersonalManager recommendations. Participants can affirmatively elect to discontinue PersonalManager at any time. Advice Access will use relevant Plan participant data, including current annual compensation and other indicative data that is supplied directly by the Employer and account information to deliver the PersonalManager features, including recommendations that will be automatically implemented. If the Employer fails to provide the necessary compensation and indicative data, the participant will not be enrolled in PersonalManager; instead, the participant's investments will be invested in a cash equivalent fund until such time as the data is received in good order. Participants who are enrolled in PersonalManager and subsequently separate from service with the Employer sponsoring the Plan will be required to update their personal profile information to continue to take advantage of PersonalManager's personalized investment strategy.

**Separation from Service**

If a participant is (1) enrolled in PersonalManager, (2) subsequently separates from service from the Employer, and (3) has an account balance greater than \$25.00, that participant will need to contact us and update his or her personal profile information, current employment status and annual income amount in order to continue to receive a personalized investment allocation from PersonalManager. If the participant does not provide us with updated employment and income information, PersonalManager will no longer be able to provide the participant a personalized investment allocation. In such cases, Advice Access will continue to rebalance the participant's account on a quarterly basis to the last portfolio model allocation that was recommended to the participant prior to his or her separation from service. Advice Access will continue to rebalance the participant's account for the four scheduled quarterly rebalances following his or her date of termination or until the participant updates their personal profile information. If the participant updates his or her profile information, PersonalManager will resume managing the participant's account by considering their entire profile. If the participant has not provided updated information by the fifth quarterly rebalance, Advice Access will reallocate the participant's account balances into a diversified portfolio that is chosen based only on his or her current age and expected retirement date. The portfolio will consist of a pre-determined asset allocation strategy that will be adjusted as the participant ages. Participants can contact us at any time or review their statements to see the specific investment options that are included in their portfolio.

If a participant is (1) enrolled in PersonalManager or Portfolio Rebalancing, (2) subsequently separates from service from the Employer sponsoring the covered plan, and (3) has an account balance less than \$25.01, he or she will no longer be enrolled in Advice Access and his or her accounts will no longer be reallocated or rebalanced.

**Portfolio Rebalancing**

Under this option, participants can:

- (1) Implement the specific asset allocation and investment recommendations provided by Advice Access with respect to their account;
- (2) Implement asset allocation and investment selections they have constructed through the "Create Your Own Strategy" feature of Advice Access; or
- (3) Be placed in this option as described below if an Employer adopting Advice Access chooses to discontinue the offering of GoalManager®, a Merrill Lynch portfolio rebalancing product unrelated to Advice Access.

(1) Participants can use the Portfolio Rebalancing option to implement the specific asset allocation and investment recommendations provided by Advice Access with respect to their account. Future contributions will also be allocated to the investments according to the investment recommendations using the allocation percentages Advice Access recommends. Approximately every 90 days from the anniversary of a participant's birth date and every 90 days thereafter, the investments in the participant's account will be rebalanced. However, participant investments and asset allocations will not be automatically reallocated to reflect any changes in participant data or any revised recommendations resulting from changes in the Advice Access portfolio model. Neither Merrill Lynch nor the Financial Expert shall have any ongoing fiduciary or other responsibility for asset allocations and investments after the initial recommendation has been provided by Advice Access.



Like the discretionary investment management services provided under PersonalManager, when electing Portfolio Rebalancing, the participant's account is automatically rebalanced to the selected portfolio model every quarter. However, unlike PersonalManager, there will be no automatic, periodic review and updating of the participant's information or reallocation into a different portfolio model based upon new information. The participant will need to revisit Advice Access periodically to determine whether the last portfolio model recommended by Advice Access remains appropriate based upon current information. Participants can discontinue Portfolio Rebalancing at any time and elect another implementation option.

(2) Participants can also use the Portfolio Rebalancing option to implement asset allocation and investment selections they have constructed through the "Create Your Own Strategy" feature of Advice Access, and which have not been provided by Advice Access, and to elect ongoing periodic rebalancing using their selections. Neither Merrill Lynch nor the Financial Expert shall have any fiduciary or other responsibility for asset allocations and investments participants select that have not been provided by Advice Access.

(3) If an Employer adopting Advice Access chooses to discontinue the offering of GoalManager, the participants who do not discontinue GoalManager on their own volition after receiving advance notice of the elimination of GoalManager will be treated as follows:

Any participant with a 100% investment allocation in a GoalManager portfolio model for both existing funds and future Plan contributions will automatically be transferred out of GoalManager into the underlying funds that make up the GoalManager model. The participant also will be automatically enrolled into Portfolio Rebalancing through the "Create Your Own Strategy" feature of Advice Access. Such participants' assets will be periodically rebalanced according to the requirements of Advice Access Portfolio Rebalancing. Unlike the GoalManager models, participant allocation percentages among the funds will not be subject to modifications by the Employer. As such, neither Merrill Lynch, the Financial Expert, nor the Employer shall have any fiduciary or other responsibility for the asset allocations and investments established through this process. Any participant with an investment allocation in GoalManager for existing funds or future Plan contributions that is less than 100% will automatically be transferred out of GoalManager into the underlying funds that make up the GoalManager model, but they will not be automatically enrolled into the Portfolio Rebalancing option of Advice Access. As such, they will receive no further rebalancing unless they subsequently affirmatively elect to participate in Advice Access.

### **One-Time Implementation**

Under this option, participants can

- (1) Implement the specific asset allocation and investment recommendations provided by Advice Access with respect to their account, or
- (2) Implement asset allocation and investment selections they have constructed through the "Create Your Own Strategy" feature of Advice Access.

(1) Participants can use the One-Time Implementation option to implement the specific asset allocation and investment recommendations provided by Advice Access with respect to their account. Future contributions will also be allocated to the investments according to the investment recommendations, using the allocation percentages Advice Access recommends. However, under this option, the participant's account will neither be automatically reallocated nor rebalanced. That is, there will be no automatic, periodic review and monitoring of the participant's information or reallocation to a different portfolio model based upon new information. There will also not be any automatic, periodic rebalancing of the participant's



account to the initial portfolio model implemented by the participant. The participant will need to revisit Advice Access periodically to determine whether the last portfolio model recommended by Advice Access and implemented by the participant remains appropriate based upon current information, and to rebalance the account.

(2) Participants can also use the One-Time Implementation option to implement asset allocation and investment selections they have constructed through the “Create Your Own Strategy” feature of Advice Access, which have not been provided by Advice Access. Neither Merrill Lynch nor the Financial Expert shall have any fiduciary or other responsibility for asset allocations and investments selected by participants, which are not provided by Advice Access.

#### **Need to Keep Information Current**

The specific portfolio model and advice given to each participant will be selected and made based on individual participant data, as provided by the participant, Employer or recordkeeper. Some participants may complete more detailed financial questionnaires that provide more information on which advice will be based. It is important that information relating to each participant’s financial circumstances, including any financial questionnaires that may have been completed by participants and provided to us, be promptly updated.

#### **Other Advisory Services**

In addition to Advice Access, we and our affiliates offer a wide variety of advisory services, including (but not limited to) Merrill Lynch Consults® Service, Merrill Lynch Consulting Services, Merrill Lynch Mutual Fund Advisor® Program, Merrill Lynch Personal Advisor® Program, Merrill Lynch Personal Investment Advisory<sup>SM</sup> Program, Merrill Lynch Strategic Portfolio Advisor® Service, and Merrill Lynch Unified Managed Account. We also offer impersonal investment advice (general advice not tailored to the specific needs of any individual) in the form of publications or research. In addition, we offer financial planning services, including (but not limited to) Financial Foundation® Report and the Private Planning Service<sup>SM</sup>. More information about these programs and services is contained in the applicable Merrill Lynch brochure (or Merrill Lynch Form ADV, Part 2A) and is available upon request or through the SEC’s website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov). Special arrangements with certain clients to provide particular or unique services for clients of a specific Financial Advisor or branch office may also be established.

#### **WRAP FEE PROGRAMS**

Merrill Lynch does not make Advice Access available through wrap programs.

#### **ASSETS UNDER MANAGEMENT**

As of December 1, 2011, Merrill Lynch had assets under management of \$321 billion, of which \$175 billion was managed on a discretionary basis and \$145 billion was managed on a non-discretionary basis. This amount does not include financial planning services.

#### **FEES AND COMPENSATION**

The fee for Advice Access may include both an annual plan level fee and a per-participant fee. The annual plan level fee is an annual flat dollar charge. The per-participant fee is a quarterly asset-based or flat fee charged for all participant accounts with a balance. These fees may be negotiable. Employers should refer to their services agreement for more details concerning specific fees that may apply to their plan.



We will be responsible for paying the Financial Expert. The total compensation to be paid to the Financial Expert by Merrill Lynch for Advice Access and other services will not exceed 5 percent of the Financial Expert's gross income on an annual basis. The fee paid will not be affected by investments made in accordance with any portfolio model in the service.

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

To the extent any fees apply, Merrill Lynch will charge to the Employer.

#### **OTHER FEES AND EXPENSES**

Apart from the services provided through Advice Access, Plan participants may also use other products or services available from or through us and in such case pay additional compensation. Financial Advisors offering these services receive compensation from us. This practice creates a potential conflict of interest that may give us and our Financial Advisors an incentive to recommend advisory services based on the compensation received. Fees and commissions may also be higher for some products or services, and the remuneration and profitability to us and our Financial Advisors resulting from transactions on behalf of or management of certain accounts may be greater than the remuneration and profitability resulting from other advisory accounts, products or services. (See section entitled *Participation or Interest in Client Transactions* for more information about the receipt of compensation for the sale of securities and other investment products.)

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

#### **PREPAID FEES**

We do not charge fees for Advice Access in advance.

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

We and our employees, including the Plan participant's Financial Advisor, benefit from the compensation paid to us, and may directly or indirectly receive a portion of the fees and other compensation paid by the Employer or the Plan participant in the underlying Plan investments. We and our affiliates may also receive additional compensation as a result of changes to the participant's account holdings and implementation of Advice Access recommendations. However, it is the Financial Expert who retains sole control and discretion for the development and maintenance of the portfolio models. We do not assume responsibility for the participant's decision to modify any of the asset allocation and specific investment recommendations through Advice Access.

#### **USE OF UNAFFILIATED BROKERS**

Advice Access is an investment advisory service designed to recommend to Plan participants an asset allocation and specific investments for their Plan account. The investment advice is based on the menu of investment options available through their Plan. These investment options typically include various mutual funds. Plan participants may be able to purchase the same mutual funds for their non-Plan assets. However, they generally will not be able to purchase Plan investments through other brokers or financial



institutions, unless permitted by the Employer.

### **SOURCES OF REVENUE**

As a broker-dealer, Merrill Lynch offers a wide variety of securities and brokerage services. Our principal sources of income are derived from our business as a broker-dealer. Less than 1% of our revenues are expected to be generated from Advice Access fees on an annual basis.

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

To the extent we charge a fee for Advice Access, we do not reduce Advice Access fees to offset commissions or markups.

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

Neither Merrill Lynch nor our employees receive performance-based fees for the services provided in Advice Access.

### **TYPES OF CLIENTS**

Advice Access is an investment advisory service for Plan participants. Plan participants' Employer must execute the Advice Access Agreement for participants to receive Advice Access.

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

The Financial Expert provides the following services:

#### **SUPPLY TECHNOLOGY**

Advice Access uses technology provided and maintained by the independent Financial Expert. This technology analyzes historic and current returns, volatility, cross-correlations and uses Monte Carlo simulation, among other techniques, to develop individualized recommendations. The technology also uses historic pricing data for mutual funds, individual securities and broad asset categories, as well as current market data and information. All calculations and asset allocation, specific investment, savings rate and retirement age recommendations are created by the Financial Expert's technology and are isolated from the Plan participant's interaction with us. Thus, we cannot change such recommendations or calculations.

#### **Portfolio Models and Plan Menu Qualification**

The Financial Expert will create portfolio models appropriate for the Plan that will be used by the Advice Access technology. The Financial Expert will first review the menu of investment options selected by each Employer or the Employer's Designee to determine whether the menu is appropriate to support the Financial Expert's portfolio models. These investment options typically include various mutual funds. The Employer or Employer's Designee may need to add additional investments to the Plan's investment menu before appropriate portfolio models can be created. Determination of the appropriateness of the investment menu to support portfolio analysis and recommendations for the Advice Access technology will rest solely with the Financial Expert. The Financial Expert will convey the results of its review to us. If changes are necessary to support portfolio analysis and recommendations, we will, in turn, work with the Employer or Employer's Designee to arrive at a menu of investment options acceptable to the Financial Expert. A Plan fiduciary, rather than Merrill Lynch or the Financial Expert (unless the Financial Expert is



separately retained to do so), will determine and be responsible for the prudent selection and monitoring of the investments that will be available under the Plan.

If the Employer or the Employer's Designee elects to add or replace any investment option in the Plan's investment menu, the Financial Expert will review the new investment(s) to determine whether any change needs to be made to the portfolio models. If any change is made to the models to accommodate any new investment(s), only those Plan participants who have PersonalManager will have their accounts automatically reallocated. All other participants' accounts will reflect any investment option replacement, but such participants' accounts will not receive any new reallocation.

#### **Asset-Level Portfolio Model Construction**

The Financial Expert shall use the methodology described below to construct asset-level portfolio models for each Plan. The process can be broken into three steps.

- **Selection of Asset Classes:** The first step in the process is to choose asset-level benchmarks to represent the broad range of investment assets that can be implemented with the investment options in the menu. Examples of asset-level benchmarks include large-capitalization stocks, small-capitalization stocks, international stocks, intermediate bonds, etc.
- **Development of Inputs:** The Financial Expert will develop a forecast of return, volatility and correlation for each asset class chosen. The methodology for creating these inputs is grounded in long-term historical data and current market expectations based on standardized market barometers. In addition, the Financial Expert uses other unique techniques to equalize newer asset classes with more established asset classes.
- **Construction of Asset-Level Portfolio Models:** After determining asset class-level benchmarks and developing inputs, the Financial Expert will construct target asset class portfolio models annually and adjust them as necessary. In some cases, changes to the asset class targets may also include the addition of new asset classes to the portfolio models.

#### **Investment Selection for Asset-Level Portfolio Models**

After the asset allocation portfolio models are created, the Financial Expert matches specific investment options available in the Plan menu to each asset class. The Financial Expert primarily uses returns-based style analysis to evaluate the style mix of available investments. If necessary, the Financial Expert may also employ holdings-based or other qualitative measures to analyze the investments. Then the investments are combined so that the total style of the investments equals the target asset-level portfolio weights. The evaluation of investment performance is primarily based upon an analysis of each investment's historical "style" and consistency. The Financial Expert's goal is to determine which investment choices have the consistent performance necessary for long-term strategic asset allocation advice. Once each investment's style has been ascertained, and consistency has been demonstrated, investment performance is then evaluated by the Financial Expert. Plan investment options are compared to appropriate benchmarks and to their peer group. The Financial Expert's analysis consists of assessments of return, risk (standard deviation), Sharpe ratio (risk-adjusted return), alpha, expenses, fees, and manager tenure. These factors assist the Financial Expert in selecting the appropriate investments and their percentages to track the asset-level portfolio. In some cases when investments have short track records or the statistical evidence is contradictory, the Financial Expert will conduct investment manager interviews.

**EMPLOYER SECURITIES**

Advice Access technology will recommend that any positions in Employer securities in a participant's account be sold, unless the Employer or participant restricts the sale of all or a part of the Employer securities. Advice Access will consider restricted positions in individual and Employer securities when making asset allocation and specific investment recommendations. Merrill Lynch and the Financial Expert do not assume any responsibility, fiduciary or otherwise, for Employer securities that are restricted by the Employer or the participant.

**MATERIAL RISKS FOR SIGNIFICANT INVESTMENT STRATEGIES****Hypothetical Nature of Forecasts**

Advice Access uses a probabilistic approach to determine the likelihood that Plan participants may be able to achieve their stated goals and/or to identify a range of potential retirement income outcomes that could be realized. Plan participants should carefully review the explanation of the methodology used, including key assumptions and limitations, which is provided herein.

**IMPORTANT:** The projections or other information shown in Advice Access regarding the likelihood of various investment outcomes are hypothetical in nature, do not reflect actual investment results and are not guarantees of future results. Results may vary with each use and over time.

**Forecasts Are Based on the Expected Return of Asset Classes, Rather Than Securities**

The forecasts present forward-looking projections of portfolio models. Each portfolio model consists of up to six asset classes: large capitalization equities, mid/small capitalization equities, international equities, fixed-income, cash equivalent, and other investments. Each portfolio model is developed from a number of factors and data, including historical performance information of commonly accepted indices. For the large capitalization equity segment of the forecast, the Russell 1000 Index is used; for the mid/small capitalization equity segment, the Russell 2500 is used; for the international equity segment, the MSCI EAFE Index is used; for the fixed-income segment, the Barclays Capital US Aggregate Bond Index is used; and for the cash component, the Citi U.S Domestic 3-Month T-bill is used. Each index is not the only representative of each asset class that could have been selected. In giving advice concerning specific securities that an Employer makes available, effort is made to identify those securities that perform in the same way as the corresponding index filling the asset class.

However, specific securities recommended for a participant's Plan account, or those that the participant chooses, may not perform the same way as the index to which it corresponds. For example, if a Plan makes three equity mutual fund investments available, and Advice Access recommends, or the participant selects, one of those investments to fill the equity class of the selected portfolio model, that fund may not generate the same results as the Russell 1000 Index. The "Proposed Strategy" information a participant receives will show forecasted results of that Index, rather than the specific equity mutual fund recommended to the participant or that a participant selects. Consequently, in evaluating probability forecasts, it is important for participants to recognize that the information described as the "Achievable Retirement Income" or "Likelihood of Achieving Your Goal" is not based on returns of a portfolio of the specific securities recommended to the participant, or that the participant selected. Instead, it is based on the returns of the indices.

It is also important to recognize that indices are not actual investments and that index returns are not reduced by fees and expenses that would normally be paid by an investor. In contrast, the investment





options made available to the participant are actual investments and, therefore, fees and expenses reduce the overall return of a participant's investments.

For reasons such as these, there is no guarantee that the estimated forward-looking index returns used in forecasts will be accurate or representative of returns of a participant's specific Plan account. Further, historical rates of return (upon which the estimated forward-looking returns are based), are never predictive of future performance. The results a participant achieves for his or her portfolio may differ significantly from the forecasted results and/or estimated returns for many reasons. The consistency of these returns can and will vary over time.

### **Methodology of the Analysis and Forecasts**

The validity of the analysis is dependent upon the accuracy and completeness of the information provided by the participant and the participant's Employer. Changes to the information will yield different results. Participants are responsible for reviewing and updating changes in personal and/or financial information to ensure the recommendations are based on the most current information. A participant is also responsible for implementing any recommended savings rate outside the Plan that the participant accepts for use in Advice Access.

The analysis will determine the retirement income a participant can achieve, and/or the likelihood of meeting or exceeding the participant's stated retirement goal based on the participant's assets and asset allocation, asset class income and capital gains, effective Federal and State income tax rate, savings rates, and time horizon. The time horizon, unless otherwise specified, begins with the participant's current age and ends with an age based upon the Society of Actuaries mortality tables.

The analysis takes into account all of the information provided and creates hundreds of possible future scenarios to estimate how the participant's retirement assets might perform under a variety of circumstances, including changes in market conditions, interest rates, and inflation. The forecasted information provided in the "Achievable Retirement Income" represents a projection of the annual dollar amount the Participant could spend each year throughout their retirement phase. The forecasted information provided in the "Likelihood of Achieving Your Goal" represents the percentage of scenarios that resulted in having at least the amount of the Annual Retirement Income Goal throughout the retirement period.

In addition, Advice Access will make recommendations that are designed to help participants reach at least a 70% likelihood of achieving their retirement goal. Various influencing factors are put into the analysis to reach this 70% level. The factors considered, and the order in which they are applied to the calculations, are as follows:

- A recommended portfolio model (equities, fixed-income, and cash);
- Increase of pre-tax saving in the Plan up to the maximum allowed by the Plan;
- Increase of after-tax saving in the Plan up to the maximum allowed by the Plan;
- Increase of after-tax savings outside of the Plan up to a percent equal to 25% minus the amount saved in the Plan (both pre-tax and after-tax); and
- Delay of the desired retirement age.

These factors are evaluated in the order presented because they are ranked in order of having the biggest impact, and being the most tolerable, in reaching the retirement goal.



If the 70% likelihood level for achieving the retirement income goal is met after the participant's pre-tax savings have been increased, for example, the analysis will be complete. If the participant's current retirement strategy meets the 70% level for achieving their retirement income goal, and the participant is already contributing enough to receive full employer match, Advice Access will not recommend that the participant increase his or her savings or change his or her assumed retirement age.

When determining the recommended portfolio, in addition to a participant's investments in the Plan and the number of years left until retirement, Advice Access will also consider factors such as a participant's desired retirement income, his or her other income sources like pension and social security and any assets outside the plan earmarked for retirement. Factors such as other income sources (like pensions or social security) or a concentration in conservative investments outside of the plan may cause the recommendations to be more aggressive. Conversely, low savings rates or a concentration in aggressive investments outside of the plan may cause the recommendations to be more conservative.

Further, Advice Access recommendations do not consider an individual's comfort level with investment risk or certain other considerations such as stability of income, level of debt or emergency fund reserves in its recommendations. Participants are strongly advised to consider his or her personal goals, overall risk tolerance, and retirement horizon before accepting any recommendations made by Advice Access and adjust those investments if he or she is not comfortable. Participants are also cautioned, however, that reducing the level of investment risk in his or her portfolio may decrease the likelihood of achieving his or her retirement income goals.

It is important for the participant to understand that it is his or her responsibility to determine if and how the recommendations made by Advice Access should be implemented.

While Advice Access takes into account all assets that a Plan participant provides in determining an asset allocation recommendation, advice is not given concerning how to structure his or her overall retirement portfolio (assets held outside of his or her plan account are not considered in Advice Access or PersonalManager). Advice Access only provides advice on how to allocate assets within the Plan. Plan participants may wish to consult with a Merrill Lynch Financial Advisor to discuss how assets outside of the Plan can be allocated to best meet total retirement goals.

If a Plan Participant is retired or terminated from his or her Employer sponsoring the Plan, he or she should note that not all of the elements listed above (such as pre-tax savings rate, after-tax savings rate, and retirement age) will be used in the calculations, or in the recommendations provided by Advice Access. For example, Advice Access will not provide retired or terminated participants with any Plan savings rate recommendations, and those current rates will assumed to be zero.

### **Rate of Return Assumptions**

The following returns and values are used in determining the information provided in the "Likelihood of Achieving Your Goal."

The Financial Expert uses an asset class return-forecasting model to simulate future inflation and return data for the various asset classes used in Advice Access. The objective of this approach is to simulate a large number of possible future return scenarios in order to obtain distributions of various asset class returns over a specified period of time. The characteristics of the simulated return distributions are consistent with statistical assumptions such as expected returns, variances, and covariances used by the Financial Expert in the analysis. A subset of these is presented below.



A “building block” approach separates the expected return for each asset class into three components: real risk-free rate, expected inflation, and the premium based on the risk level of the asset class. The risk (as measured by standard deviation) estimates of the shorter-lived asset class benchmarks are extended so that they incorporate all relevant economic events. Then the correlation coefficients are derived from the historical returns of the asset class benchmarks.

Following are a few selected asset classes, their benchmarks, and the forecasted return and risk (represented by standard deviation) characteristics as produced by the Financial Expert in 2011:

Asset Class	Benchmark	Expected Return	Standard Deviation
Large Cap Equity	Russell 1000	8.40%	20.13%
Mid/Small Cap Equity	Russell 2500	10.30%	26.37%
International Equity	MSCI EAFE	8.67%	23.45%
Aggregate Bonds	Barclays Capital US Agg	4.25%	6.59%
Cash	Citi 3 Month T-bill	2.44%	3.43%

The 2011 expected return figures in the table above reflect geometric expected returns. These values are reviewed and updated periodically within this Brochure, and can be viewed at any time by clicking on the link located at the bottom of the “View Results” screen within the MLAA section of Benefits Online.

#### **MATERIAL RISKS FOR PARTICULAR TYPES OF SECURITIES**

The Financial Expert will create portfolio models appropriate for the Plan that will be used by the Advice Access technology. The portfolio models will be based on the menu of investment options selected by each Employer or Employer’s Designee. These investment options typically include various mutual funds. Information about the risks associated with each mutual fund is available in the relevant prospectus or other disclosure document for each mutual fund.

The types of securities used by the Advice Access technology are determined by the Employer or Employer’s Designee and the portfolio models are constructed by the Financial Expert. Merrill Lynch does not recommend specific investments through Advice Access.

#### **DISCIPLINARY INFORMATION**

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



On June 21, 2012, Merrill Lynch, without admitting or denying the findings, entered into a Letter of Acceptance, Waiver and Consent (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." On January 10, 2012, Merrill Lynch (as successor by merger to Banc of America



Securities LLC and Banc of America Investment Services, Inc., the “Respondents”) agreed to a settlement with the Illinois Securities Department (the “Department”) with respect to the marketing and sale of ARS. The Department alleged the Respondents had inappropriately marketed and sold ARS without adequately informing certain of their customers of the increased risks of illiquidity associated with ARS. The Department alleged that, through this conduct, the Respondents engaged in dishonest and unethical practices in the offer and sale of securities and failed to supervise their agents. 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 is being distributed among the states and U.S. territories that enter into similar administrative or civil consent orders related to ARS. The Illinois agreement is substantially similar to agreements with other NASAA jurisdictions which the Respondents have entered into on the above matter and which the Respondents anticipate entering into in the future to complete distribution of the \$50,000,000 penalty.

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

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

On May 1, 2008, the SEC issued an administrative order in which it found that BAI had willfully violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, Sections 206(2), 206(4) and 207 of the Advisers Act and Advisers Act Rule 206(4)-1(a)(5) for failing to disclose to clients that in selecting investments for discretionary mutual fund wrap fee accounts, it favored two mutual funds affiliated with BAI. In the Order the SEC also found that Columbia Management Advisors, LLC (“Columbia Management”), as successor in interest to Banc of America Capital Management, LLC willfully aided and abetted and caused BAI's violations of Sections 206(2) and 206(4) of the Advisers Act, and Advisers Act Rule 206(4)-1(a)(5). In the order, BAI and Columbia Management were censured and ordered to cease and desist from committing or causing such violations and future violations. In addition, BAI was ordered to pay disgorgement plus prejudgment interest in the aggregate amount of \$793,773.00 to certain entities specified in the Order,



and a civil monetary penalty of \$2,000,000; and Columbia Management was ordered to pay disgorgement plus prejudgment interest in the aggregate amount of \$516,382 to certain entities specified in the Order, and a civil monetary penalty of \$1,000,000. BAI and Columbia Management consented to the Order without admitting or denying the SEC's findings. BAI also agreed to certain undertakings contained within the Order.

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

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

On February 9, 2005, pursuant to an offer of settlement by BAS in which it neither admitted nor denied the findings, the SEC issued an administrative order. The SEC found that from July 2000 through July 2003, BAS, Banc of America Capital Management, LLC ("BACAP") and BACAP Distributors, LLC ("BACAP Distributors") facilitated market timing and late trading by some introducing broker-dealers and a hedge fund at the expense of shareholders of Nations Funds and other mutual fund families, provided account management tools and other assistance, and enabled introducing broker-dealers to conceal their client's market timing activities from mutual funds. In the order, BAS was: (1) censured; (2) ordered to cease and desist from committing or causing any present or future violations of 17(a) of the Securities Act, 10(b), 15(c) and 17(a) of the Exchange Act and Rules 10b-5, 15c1-2, and 17a-4 thereunder and Rule 22c-1, as adopted under 22(c) of the Investment Company Act, and from causing any present or future violations of 34(b) of the Investment Company Act and 206(1) and 206(2) of the Advisers Act; (3) ordered to pay, jointly



and severally with BACAP and BACAP Distributors \$250 million in disgorgement plus a civil monetary penalty of \$125 million. BAS also agreed to comply with certain undertakings including: (1) maintaining a compliance and ethics oversight infrastructure having, among other things, a code of ethics oversight committee, an internal compliance controls committee, a senior level compliance officer for conflicts of interest and a corporate ombudsman; (2) retaining an independent compliance consultant to, among other things, review compliance, supervisory and other policies and procedures and adopt such procedures; (3) undergoing third party compliance review every other year; and (4) retaining an independent distribution consultant.

On April 28, 2003, as part of a joint settlement with the SEC, NYSE and NASD arising from a joint investigation by the SEC, NYSE and NASD into research analysts' conflicts of interest, Merrill Lynch, without admitting or denying the allegations of the complaint filed by the SEC, consented to the entry of a final judgment. Pursuant to the settlement, which was entered on October 31, 2003, Merrill Lynch: (1) permanently enjoined Merrill Lynch from violating Section 15(c) of the Exchange Act and Rule 15c1-2 thereunder, NASD Conduct Rules 2110, 2210 and 3010, and NYSE Rules 342, 401, 472 and 476; (2) was ordered to pay a penalty of \$100,000,000, which was deemed satisfied by prior payments to the states in a related proceeding; (3) was ordered to pay substantial amounts for third party research and investor education; and (4) was ordered to comply with certain additional undertakings.

## OTHER FINANCIAL INDUSTRY ACTIVITIES AND AFFILIATIONS

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

For purposes of Form ADV Part 2A, MLPF&S management persons include William C. Caccamise (CRD# 2547189), Gloria R. Greco (CRD# 4795234), Joseph A. Guardino (CRD# 2907957), Thomas K. Montag (CRD# 1474696), William E. Tirrell (CRD#4613313), Michael B. Radest (CRD# 1687387), and John M. Hogarty (CRD#2876432). In the future, additional Merrill Lynch personnel may be considered management persons and, as such, may be registered, or have applications pending to register, as registered representatives and associated persons of Merrill Lynch to the extent necessary or appropriate to perform their job responsibilities.

ML&Co., a wholly-owned subsidiary of Bank of America, through its subsidiaries and affiliates, provides broker-dealer, investment banking, financing, wealth management, advisory, asset management, insurance, lending and related products and services on a global basis. These products and services include securities brokerage, trading and underwriting; investment banking, strategic advisory services (including mergers and acquisitions) and other corporate finance activities; wealth management products and



services including financial, retirement and generational planning; asset management and investment advisory and related record-keeping services; origination, brokerage, dealer and related activities in swaps, options, forwards, exchange-traded futures, other derivatives, commodities and foreign exchange products; securities clearance, settlement financing services and prime brokerage; private equity and other principal investing activities; proprietary trading of securities, derivatives and loans; banking, trust and lending services, including deposit-taking, consumer and commercial lending, including mortgage loans, and related services; insurance and annuities sales and research across the following disciplines: global equity strategy and economics, global fixed-income and equity-linked research, global fundamental equity research, and global wealth management strategy. Bank of America is subject to the reporting requirements of the Exchange Act and additional information about Bank of America can be found in publicly available filings with the SEC.

We address these conflicts through disclosure in this Brochure. Moreover, our Financial Advisors are required to recommend investment advisory programs, investment products and securities that are suitable for Plan participants based upon their 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 Plan participant accounts as well as between Plan participant accounts and our business.

#### **RECEIPT OF COMPENSATION FROM INVESTMENT ADVISERS**

We selected an independent Financial Expert to avoid potential conflicts of interest. The Financial Expert has not been, and will not be, involved in any other relationship with us that would compromise the Financial Expert's independence. We may replace the Financial Expert in our sole discretion and will provide notification to the Plan participant's Employer.

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

#### **CODE OF ETHICS**

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

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

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

We also have imposed policy restrictions on all personnel regarding transactions for their own accounts





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

#### **Privacy/Data Protection**

We shall not disclose to the Employer, or any other person, any “personal information” obtained directly from any Plan participant; provided, however, we may provide to our Financial Advisors personal information of a Plan participant with the consent of the Plan participant. Personal information includes any information that can specifically identify an individual, such as name, address, social security number, etc. Personal information does not include information about any Plan participant that the Employer already knows or is entitled to know in connection with the administration of the Plan.

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

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

Investment options made available to participants through a Plan may include mutual funds or products from which Merrill Lynch or our affiliates receive fees or compensation in addition to the fees for this service described above. This additional revenue can be in the form of sub-accounting or processing fees (fees for transaction and account processing functions), service fees, and distribution fees. Advice Access will likely recommend changes to Plan participants’ account holdings and any implementation of these recommendations will result in transactions in participants’ accounts and may result in additional revenue to us and our affiliates. Similarly, investment options made available to participants may change. To the extent that we provide Employers with information about existing or substitute investments, we may provide information regarding mutual funds and other investments, from which Merrill Lynch or our affiliates may receive these additional forms of revenue. However, any decision to change or substitute Plan investment options will be made by each Employer or Employer’s Designee, rather than us or any of our affiliates.

As a broker-dealer effecting transactions as part of the program, we or an affiliate may act as agent or as principal for our own account, as permitted by applicable law. Similarly, we or an affiliate may, in transactions involving such clients’ securities, act as agent while also representing another client on the other side of the transaction. In addition, we or our affiliates may have a position in, or enter purchase or



sale orders for, securities recommended to clients in the normal course of our business as a broker-dealer. We and/or our affiliates may profit from these positions or transactions in securities.

We, through our Financial Advisors, may suggest or recommend that Advice Access participants also use Merrill Lynch securities accounts, execution and custody or other services, or such services of an affiliate in connection with their non-Plan assets. Similarly, Financial Advisors, who also handle participants' securities accounts, may suggest or recommend that participants purchase our products or products of an affiliate. Where Merrill Lynch's or our affiliate's services are used or products are purchased by participants for their non-Plan assets, we and our affiliates will receive fees and compensation. Financial Advisors may, as permitted by applicable law, receive compensation (the amount of which may vary) in connection with these products and services. Compensation received in connection with participants' purchase or sale of stocks, bonds, mutual funds, other securities or insurance products through us or our affiliates may include commissions, spreads, markups and markdowns, and distribution or other fees. We will also benefit from the possession or use of free credit balances in participants' accounts, subject to the restrictions imposed by Rule 15c3-3 under the Exchange Act.

With respect to participants' non-Plan assets, we, acting in our broker-dealer capacity, may recommend that participants invest in a variety of limited partnerships, investment vehicles such as hedge funds and other investment funds, for which certain of our affiliates may act as general partners or managing members. The investments of the limited partnerships and other entities may vary but include, without limitation, real estate, futures, hedge funds and other alternative investments.

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

Merrill Lynch provides a variety of advisory and brokerage services to others and these services may involve Merrill Lynch recommending a transaction in securities that are investment options selected by an Employer. 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, recommendations made in other services or programs may be contrary to the recommendations to participants using these services. For example, Merrill Lynch may recommend that an investment advisory client in another program buy shares of a particular mutual fund and at the same time replace those shares with shares of other investment options in a participant's account.

We or our affiliates may have investment banking or other relationships with certain publicly traded companies; these relationships may from time to time compel us to forego trading in the securities of these companies. In the course of investment banking and other activities, our affiliates may acquire confidential or material nonpublic information that may prevent us or our affiliates, for a period of time, from purchasing or selling particular securities for your account. We and our affiliates are not permitted to divulge or to act upon this information with respect to our advisory or brokerage activities.

We or our affiliates may have a position in or enter into "proprietary" transactions in securities purchased or sold for clients. We or our affiliates may benefit from such securities positions or transactions.

We address these conflicts through disclosure in this Brochure.

#### **BROKERAGE PRACTICES**

Transactions in connection with Advice Access are effected by Merrill Lynch or an affiliate. The Employer has authorized us as agent to use our (or an affiliate's) own execution services to purchase, exchange and redeem fund shares and other investment options available under the Plan and to take any other



necessary action relating to transactions in Plan participant accounts, including the completion and settlement of transactions.

Mutual fund orders may be combined with other mutual fund purchases and sales across our platform for purposes of submitting consolidated purchase or redemption requests to the relevant transfer agent for each fund. We purchase and redeem all fund shares for the Program Account at net asset value without the imposition of any front-end or contingent deferred sales charges.

## **REVIEW OF ACCOUNTS**

### **ONGOING MONITORING OF PORTFOLIO MODELS**

The Financial Expert works to keep the participants' strategic targets on track by monitoring the portfolio allocations for manager style drift, addressing portfolio re-balancing issues, and reviewing strategic asset allocations. The Financial Expert will review the asset-level portfolio models annually and the underlying investment allocations quarterly. The Employer or the Employer's Designee must approve and implement any recommended changes within the time-frame established by the Financial Expert to continue to receive Advice Access. The Financial Expert will also update capital market assumptions annually and will adjust asset class target at the Plan level. The Investment Management & Guidance group ("IMG ") reviews the changes to determine reasonability but does not make any changes to the adjustments. IMG will also review changes in investment methodology (i.e., change in asset classes) made by the Financial Expert to ensure that they are reasonable and prudent.

A set of criteria is used by the Financial Expert to evaluate the Plan's investments used in the portfolios on an ongoing basis. The criteria are applied to each of these investments quarterly. If this process shows that investments have drifted in investment style, then the Financial Expert will adjust the investment allocations appropriately. If the Financial Expert determines that the investment no longer meets the objectives of one or more of the portfolios, the Financial Expert will notify us to request an appropriate replacement investment from the Employer or the Employer's Designee. The Employer or the Employer's Designee must implement suggested changes to the investment menu to continue to receive Advice Access. As noted above, the Employer or the Employer's Designee will determine and be responsible for the appropriateness of the investments available under the Plan.

### **PERSONALMANAGER**

Approximately every 90 days, PersonalManager will review the Plan participants' profile information as well as changes to the Advice Access model to determine if their investments and asset allocation percentages need to be modified. If so, reallocation and rebalancing modifications will be automatically implemented. If an Employer makes changes to the Plan's investment menu, PersonalManager will automatically rebalance the participants' account.

If a Plan participant makes changes to his/her personal profile information, the Plan participant has the option to either have PersonalManager automatically generate new recommendations if there is a need to do so, or wait for the next quarterly assessment for the reallocation and rebalancing.

### **CLIENT REPORTS**

Participants receive written participant quarterly benefit statements.

**CLIENT REFERRALS AND OTHER COMPENSATION**

Not applicable.

**CUSTODY**

Plan assets for which Merrill Lynch serves as recordkeeper generally are custodied with Bank of America, N.A. However, Employers may also enter into separate custody agreements to maintain Plan participant funds and securities with other qualified custodians that are not affiliated with Merrill Lynch.

In our capacity as recordkeeper, Merrill Lynch provides Plan participants with participant quarterly benefit statements. Plan participants should review their statements carefully.

**INVESTMENT DISCRETION**

Plan participants may use the discretionary investment management feature of Advice Access, PersonalManager, to implement the specific asset allocation and investment recommendations provided by Advice Access with respect to their Plan accounts.

**VOTING CLIENT SECURITIES**

Merrill Lynch does not accept authority to vote client securities. Depending on the terms of the Employer's Plan document and its related trust, either the Plan fiduciary may vote proxies relating to securities in the participant's Plan accounts or the proxies may be passed through to the Plan participant to vote the proxies. Merrill Lynch does not provide advice with respect to a particular proxy solicitation.

Merrill Lynch will not render any advice or take any action with respect to securities or other property currently or formerly held in Plan accounts that become the subject of any legal proceedings, including bankruptcies and class actions.

**FINANCIAL INFORMATION**

Not applicable.



## GLOSSARY

“Advice Access Agreement” means the agreement between Plan participants’ Employer and Merrill Lynch, as it may be amended from time to time.

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

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

“Bank of America” means Bank of America Corporation.

“Benefits OnLine” means the internet website provided by Merrill Lynch to an Employer and their Plan participants as part of the record-keeping services Merrill Lynch provides to an Employer’s Plan.

“Brochure” means the Merrill Lynch program brochure relating to Advice Access, as amended or updated from time to time.

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

“Disclosure Statement” means the Merrill Lynch program brochure relating to Advice Access, as amended or updated from time to time.

“Employer” means the employer sponsoring the Plan.

“Employer’s Designee” means an Employer’s designee whom is not Merrill Lynch or its affiliates.

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

“Financial Advisor” means a Merrill Lynch Financial Advisor.

“Financial Expert” means the financial expert that is responsible for constructing strategic asset class level portfolio models in Advice Access.

“FINRA” means the Financial Services Regulatory Authority.

“GoalManager™” means a portfolio rebalancing service unrelated to Advice Access that Merrill Lynch offers to Plan participants.

“IMG” means the Investment Management & Guidance group of Merrill Lynch.

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

“IRS” means the Internal Revenue Service.

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

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

“PersonalManager” means the discretionary investment management feature of Advice Access.

“Plan” means the defined contribution plan sponsored by the participant’s Employer.

“Portfolio Rebalancing” means a service in which Plan participants may enroll to implement asset allocation and investment recommendations or selections.

“Reallocation” means the automatic placement of a participant’s account into a different portfolio model by PersonalManager, if applicable, after review of the participant’s information and the specific investment allocation percentages that comprise the portfolio model.



**“Rebalancing”** means the periodic rebalancing of the participant’s account by PersonalManager to the participant’s current asset allocation to adjust for investment gains and losses across the asset classes.

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

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

**“Service Representative”** means a Retirement & Benefits Contact Center Representative at a designated Merrill Lynch call center to which Plan participants will have access.