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

DIVISION OF
CORPORATION FINANCE

June 1, 2015

Amy Natterson Kroll, Esq.
Morgan, Lewis & Bockius LLP
2020 K Street, NW
Washington, DC 20006-1806

Re: In the Matter of Merrill Lynch, Pierce, Fenner & Smith Incorporated and Merrill Lynch Professional Clearing Corporation
Waiver of Disqualification under Rule 506(d)(2)(ii) of Regulation D
Exchange Act Release No. 34-75083, June 1, 2015
Administrative Proceeding File No. 3-16567

Dear Ms. Kroll:

This responds to your letter dated June 1, 2015 ("Waiver Letter"), written on behalf of Merrill Lynch, Pierce, Fenner & Smith Incorporated and Merrill Lynch Professional Clearing Corporation ("Merrill Lynch Respondents") and constituting an application for a waiver of disqualification under Rule 506(d)(2)(ii) of Regulation D under the Securities Act of 1933. In the Waiver Letter, you requested relief from any disqualification that may arise as to the Merrill Lynch Respondents under Rule 506 of Regulation D by virtue of the Commission's order entered today in In the Matter of Merrill Lynch, Pierce, Fenner & Smith, Inc., and Merrill Lynch Professional Clearing Corporation, Release No 34-75083, pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (the "Order").

Based on the facts and representations in the Waiver Letter, and assuming the Merrill Lynch Respondents comply with the Order, the Division of Corporation Finance, acting for the Commission pursuant to delegated authority, has determined that the Merrill Lynch Respondents have made a showing of good cause under Rule 506(d)(2)(ii) of Regulation D that it is not necessary under the circumstances to deny reliance on Rule 506 of Regulation D by reason of the entry of the Order. Accordingly, the relief requested in the Waiver Letter regarding any disqualification that may arise as to the Merrill Lynch Respondents under Rule 506 of Regulation D by reason of the entry of the Order is granted on the condition that the Merrill Lynch Respondents fully comply with the terms of the Order. Any different facts from those represented or failure to comply with the terms of the Order would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances. The Commission's prior order, dated November 25, 2014, granting a waiver of Rule 506 disqualification to Bank of America, N.A., Bank of America Securities, Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated, remains in effect and is not modified or superseded by the waiver granted today.

Very truly yours,

Sebastian Gomez Abero

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Division of Corporation Finance

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June 1, 2015

Sebastian Gomez Abero, Esq.
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United States Securities and Exchange Commission
100 F Street, NE
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Re: *In the Matter of Merrill Lynch, Pierce, Fenner & Smith Incorporated and Merrill Lynch Professional Clearing Corporation*, Administrative Proceeding File No. 3-16567

Dear Mr. Gomez Abero:

We are writing on behalf of Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") and Merrill Lynch Professional Clearing Corporation ("Merrill Pro") (together, the "Respondents"), wholly owned subsidiaries of Bank of America Corporation ("BAC"), that entered into a settlement with the U.S. Securities and Exchange Commission ("SEC" or "Commission") in connection with the above-captioned proceeding ("Administrative Order").[1] As described in detail below, this letter requests for Respondents, pursuant to Rule 506 of Regulation D ("Rule 506"), adopted under the Securities Act of 1933, as amended (the "Securities Act"), a waiver of any disqualifications from relying on exemptions under Rule 506 that will be applicable as the result of the Administrative Order described below in the Background section of this letter.

Merrill Lynch currently acts, and in the future desires to continue to act, as (a) a "placement agent" for private placements of securities offered by third-party issuers ("Private Placements")[2]; and (b) "solicitor" or "promoter" pursuant to selling agreements for funds sponsored,

[1] *See In the Matter of Merrill Lynch, Pierce, Fenner & Smith Incorporated and Merrill Lynch Professional Clearing Corporation,* Administrative Proceeding File No. 3-16567(June 1, 2015).

[2] Third-party issuers may offer a range of products such as, but not limited to, equity, debt and other securities.

administered and/or advised by a Merrill Lynch affiliate (Merrill Lynch Alternative Investments ("MLAI")[3] and for funds managed by third-parties (together the "Funds"). Merrill Lynch is the only broker-dealer through which MLAI distributes its Funds. Private Placements and Funds are offered and sold in reliance on the exemptions under Rule 506.[4] Merrill Pro is registered with the Commission as a broker-dealer and is a full service clearing firm.

The issuers of Private Placements, the Funds and MLAI as sponsor, manager and/or investment adviser of Funds, have entered into placement agent agreements and selling agreements, as appropriate to each product, with Merrill Lynch.

Merrill Lynch offers the Private Placements and Funds to its qualified high net worth and institutional customers.[5]

Respondents respectfully request, pursuant to Rule 506(d)(2)(ii), waivers of any disqualifications from relying on exemptions under Rule 506 that are a consequence of the Administrative Order.[6] The Commission has the authority under Rule 506(d)(2)(ii) to waive the Rule 506 disqualification upon a showing of good cause that it is not necessary under the circumstances that an exemption be denied. We respectfully submit that Respondents have shown good cause, for the reasons provided below.

BACKGROUND

The Commission entered the Administrative Order on June 1, 2015, after Respondents entered into a settlement with the Commission. The Commission alleged that Respondents willfully violated Rule 203(b) of Regulation SHO in connection with its practices related to its execution

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[3] MLAI is registered as an investment adviser under the Investment Advisers Act of 1940, as amended ("Advisers Act") and, among other things, serves as the manager to certain proprietary domestic Funds, sponsor to certain proprietary offshore Funds and investment adviser to certain funds of funds that are themselves Funds as defined in this letter.

[4] Many of the Funds and issuers of Private Placements that sell their securities through Merrill Lynch in Rule 506 offerings have placement agent, solicitor and promoter (*i.e.*, selling) agreements with Merrill Lynch that are long standing and were negotiated without taking into account the possible disqualification of Merrill Lynch under Rule 506.

[5] The customers to whom Merrill Lynch offers the Funds are all accredited investors and the substantial majority are "qualified purchasers."

[6] *See* 17 C.F.R. §§ 230.506(d)(2)(ii).

of short sales.[7] In the Administrative Order, the Commission found that Respondents (a) accepted new short sale orders in reliance on the firm's easy to borrow list ("ETB List") after having learned of facts indicating that such reliance was no longer reasonable and therefore orders were accepted without reasonable grounds to believe the security could be borrowed and that the locates were inaccurately documented with an ETB List locate reference ("Watch List Issue"), and (b) in certain instances, used data that was more than 24 hours old to construct its ETB List, which, at times, resulted in securities being included on the ETB List when they otherwise should not have been ("Stale Feed Issue").

In anticipation of settling these proceedings Respondents consented to the Administrative Order, admitted the findings set forth within it and acknowledged that their conduct violated the federal securities laws. Respondents agreed to (a) cease and desist from committing or causing any violations and any future violations of Rule 203(b) of Regulation SHO; (b) be censured; (c) pay disgorgement of $1,566,245.67 plus prejudgment interest; (d) pay a civil monetary penalty of $9 million; and (e) comply with certain undertakings, including retaining an independent consultant within thirty (30) days of the Administrative Order to conduct a review of Respondents' policies, procedures and practices with respect to their acceptance of short sale orders for execution in reliance on Respondents' ETB List and procedures to monitor compliance therewith to satisfy certain of its obligations under Rule 203(b) of Regulation SHO.

DISCUSSION

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

Respondents respectfully request the waivers from any disqualifications from relying on exemptions under Rule 506 as a result of the Administrative Order, on the following grounds:

1. The Alleged Misconduct Did Not Involve Violations of Scienter-Based Statutory or Regulatory Provisions.[8]

The Administrative Order alleges violations of Rule 203(b) of Regulation SHO, which is not a scienter-based rule. The alleged misconduct involved compliance with the "locate" requirement

[7] The SEC states in footnote 3 of the Administrative Order that "[a] willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir 1949)). There is no requirement that the actor "'also be aware that he is violating one of the Rules or Acts.'" *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965))."

[8] In addition, we note that there were no allegations of criminal misconduct and therefore no criminal conviction.

of Rule 203(b) of Reg SHO, and, in particular, the reasonableness of Respondents' reliance on their ETB Lists.

2. The Alleged Misconduct Was Limited to Short Sale Activity

The alleged misconduct discussed in the Administrative Order was not widespread and relates only to a discrete area of Respondents' business. The alleged misconduct relates only to certain short sales in securities that were included on the ETB List erroneously and neither relates to any other areas of Respondents' businesses nor to other short sale activities. Furthermore, the alleged misconduct only relates to a small percentage of the securities on the ETB List.

The alleged misconduct regarding the Watch List Issue was the result of a programming "flaw in [Respondents'] systems," whereby Respondents execution platforms executed short sales solely in reliance on the ETB Lists, despite having placed the stock on the securities lending Watch List earlier that trading day, which indicated that Respondent had identified "countervailing factors" that rendered Respondents' reliance on the ETB Lists as a locate source unreasonable. The alleged misconduct regarding the Stale Feed Issue was the result of an inadvertent technological glitch that allowed certain availability data older than 24 hours to remain in Respondents' availability database, resulting in the use of availability data, in certain instances, that was more than 24 hours old for purposes of constructing its ETB Lists. As discussed below, Respondents have taken steps to address the conduct alleged in the Administrative Order.

3. The Duration of the Alleged Misconduct

The Commission has alleged that the Watch List Issue occurred from at least 2008 through 2014 and that the Stale Feed Issue occurred from 2008 through 2012. Although the Stale Feed Issue persisted for a period of four years, Respondents' employees identified the Stale Feed Issue in 2009 and took steps to correct the issue. Although Respondents believed that the Stale Feed Issue had been resolved, certain iterations of the issue continued. In 2010, Respondents identified that that the Stale Feed Issue persisted, despite the remedial efforts undertaken in 2009, and, again took steps to resolve the issue. The issue was completely eradicated in 2012. The Respondents' practices with regard to locates have undergone significant change (described below).

4. The Alleged Misconduct Did Not Involve Respondents' Fitness to Participate in Rule 506 Offerings

The activities underlying the Administrative Order neither relate to Rule 506 offerings nor relate in any way to the activities that Rule 506 and the disqualification are intended to address.

Therefore, the activities alleged in the Administrative Order do not affect the Respondents' fitness to participate in Rule 506 offerings.

5. Respondents Are Undertaking Remedial Steps to Address the Alleged Misconduct

Respondents became aware of the Stale Feed Issue in 2009 and, on their own initiative, took steps to address it in 2009 and 2011, completely eliminating it from their systems by 2012. Furthermore, Respondents self-reported the Stale Feed Issue (through counsel) to the Commission.

Respondents also, in 2014, developed and implemented system changes to resolve the Watch List Issue. These system changes have been completed for all of Respondents' execution platforms that receive the ETB list. Respondents have tested these systems changes to confirm that Respondents' execution platforms receive an automatic notification when Respondents add a stock to the securities lending Watch List. The execution platforms have developed systems changes to remove such stocks from their ETB Lists after receiving such notification.

In connection with the Administrative Order, Respondents have agreed to retain a qualified independent consultant to "conduct a comprehensive review of their policies, procedures and practices with respect to their acceptance of short sale orders for execution in reliance on [their] ETB [L]ist and [their] procedures to monitor compliance therefore, to satisfy its obligations under Rule 203(b) of Reg SHO to (i) accept short sale orders for equity securities only if it has borrowed the securities or entered into a bona fide arrangement to borrow the securities or has reasonable grounds to believe that securities can be borrowed for delivery when due, and (ii) document compliance with Rule 203(b)(1)."[9] Among other things, the independent consultant would verify the completion of the above-described system changes for all of Respondents' execution platforms.

Pursuant to the undertakings in the Administrative Order, Respondents have agreed to cooperate with the independent consultant; adopt and implement all recommendations contained in the independent consultant's preliminary report, or propose an alternative policy, practice or procedure designed to achieve the same objective or purpose, if Respondents believe any of the recommendations are, in whole or in part, unduly burdensome or impractical; certify in writing to the independent consultant and Commission staff that they have adopted and implemented all of the independent consultant's recommendations and that they established policies, practices and procedures consistent with their obligations under Rule 203(b); certify in writing to the Commission staff, 14 days after the one-year anniversary of the issuance of the Administrative Order, that they have continued to implement and enforce all of the independent consultant's

[9] *See* paragraph 36(A) of the Administrative Order.

recommendations and have continued to maintain policies, practices and procedures consistent with their obligations under Rule 203(b); and certify, in writing, compliance with the undertakings enumerated in the Administrative Order within sixty days from the date of the completion of the undertakings.

6. Impact of Waiver Denial on Applicants, their Affiliates, the Funds, Issuers of Private Placements and, most importantly, their Customers/Clients.

Disqualification of Respondents pursuant to Rule 506(d) would have a significant adverse impact on customers, as well as on Merrill Lynch, Merrill Pro, their affiliates, such as MLAI, and on the Funds, including, but not limited to, Funds sponsored and/or administered by MLAI, Funds managed by third parties, and issuers of Private Placements that have retained, or in the future may retain, Merrill Lynch or Merrill Pro in connection with transactions that rely on the exemptions under Rule 506(b) or (c).[10]

a. Impact on Merrill Lynch Customers.

Merrill Lynch offers access to Funds and Private Placements to approximately 405,000[11] Merrill Lynch eligible high-net-worth and institutional customers representing a combined net worth of at least $1.65 trillion.[12] Over 46,000 Merrill Lynch households and other accounts currently hold interests in Funds sold by Merrill Lynch.[13] Such access affords eligible high net worth and institutional customers an extensive range of investment options in addition to, among other things, traditional stocks, debt and mutual funds. In addition, Merrill Lynch regularly considers

[10] Most of the Funds for which MLAI serves as manager, sponsor or investment adviser are feeder funds through which qualified Merrill Lynch customers can invest in third-party Funds to which they might not otherwise have access. In particular, many of these third-party Funds have extremely high minimum investment requirements. The feeder fund structure also offers other potential benefits to customers of Merrill Lynch.

[11] This number represents only those Merrill Lynch household accounts that meet the eligibility requirements to invest in Funds and Private Placements by virtue of having a net worth that exceeds $1 million (excluding the value of the primary residence). Accordingly, the actual number of Merrill Lynch high-net-worth and institutional customers with access through Merrill Lynch to Funds and Private Placements may be higher than 415,000 as (i) this number does not reflect institutional clients, and (ii) there are Merrill Lynch customers who do not have a net worth in excess of $1 million, but are able to satisfy the eligibility requirements to invest in Funds and Private Placements by meeting other criteria for eligibility.

[12] Many Merrill Lynch Funds and Private Placements may not be available to all Merrill Lynch high-net-worth and institutional customers, as many Funds and Private Placements may impose eligibility requirements that not all Merrill Lynch high-net-worth and institutional customers can meet.

[13] This number represents only Merrill Lynch household accounts, and does not reflect any institutional accounts. Accordingly, the actual number of Merrill Lynch accounts that presently hold interest in Funds may be higher than 46,000.

entering into new selling agreements with third-party Funds that have different strategies, terms and other features from those of Funds currently available that may more closely meet the needs of certain customers due to ever-changing market conditions. In addition, Merrill Lynch offers access to Private Placements to its eligible high-net-worth and institutional customers.

If Merrill Lynch is unable, because of a disqualification, to act as a promoter or solicitor pursuant to selling agreements for MLAI-sponsored, -managed or -advised Funds and third-party Funds, and/or as placement agent for Private Placements, that offer their securities in reliance on the exceptions under Rule 506(b) or (c), the customers and clients of Merrill Lynch will be substantially negatively impacted by losing access to the many investment options represented by the Funds and Private Placements.[14]

Specifically, if Merrill Lynch is prohibited from acting as the solicitor/promoter for current or future Funds or as placement agent for the Private Placements, approximately 405,000 Merrill Lynch high-net-worth and institutional customers would lose access through Merrill Lynch to Funds and Private Placements that might in the future better suit their needs than public funds or offerings or other securities. This would unnecessarily disadvantage these customers by limiting their ability to diversify their portfolios.

Merrill Lynch provides its customers and clients a wide selection of Fund and Private Placement investment options. Indeed, Merrill Lynch, through MLAI and its selling agreements with third-party Funds, offers one of the largest selections of alternative investments of any U.S. broker-dealer. In particular, 251 Funds are sponsored by MLAI with over 46,000 eligible Merrill Lynch households and other accounts investing $16.7 billion of assets in these Funds. Furthermore, Merrill Lynch serves as the solicitor/promoter for an additional 88 third-party Funds with approximately 40,000 Merrill Lynch customers investing $4.2 billion of assets in these Funds. Additionally, Merrill Lynch serves as solicitor to Private Placements with $600 million of Merrill Lynch customer assets invested. Moreover, Merrill Lynch customers have, in recent years, invested in a number of private equity funds offered and sold in reliance on the exemptions under Rule 506 (both MLAI sponsored funds and funds where Merrill Lynch serves as the solicitor/promoter) that are not reflected in the data provided above because they may be, among other things, in various stages of the liquidation or distribution cycle. Finally, as of the date of this letter, MLAI is in various stages of negotiations with third parties and expects to act

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

as solicitor/promoter for approximately 10 additional third-party Funds[15] by the end of September 2015.[16]

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

Without a waiver, Merrill Lynch's high-net-worth and institutional customers would lose access to current and future third-party Funds unless they opened accounts with other broker-dealers that are solicitors or promoters of the Funds, or moved their accounts from Merrill Lynch to banks that are not disqualified from offering the third-party Funds. This would impose an undue hardship for these customers and clients, for many reasons. Beyond the difficulty of maintaining accounts with different broker-dealers, it is unlikely that the other broker-dealers or banks will offer the variety of funds that Merrill Lynch currently offers and expects to offer in the future.

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

b. Impact on Merrill Lynch.

As discussed below, if Merrill Lynch is disqualified pursuant to Rule 506(d), it would be precluded from acting as placement agent, solicitor or promoter of Funds and Private

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

[16] As of the date of this letter, MLAI also is acting or expects to act as solicitor/promoter for additional funds that recently launched or are about to launch.

Placements. If so limited, many of Merrill Lynch's customers, might determine that they would be better served by transferring their accounts to broker-dealers that are able to offer securities issued in reliance on the Rule 506 safe harbor. Such private investment opportunities have become an increasing portion of the investment portfolios of high-net-worth investors and institutional investors seeking to diversify their portfolios. As we note earlier in this letter, over 46,000 eligible Merrill Lynch households and other accounts presently have invested, through Merrill Lynch, in Funds and in issuers of Private Placements. If Merrill Lynch were to lose even a small portion of these accounts, this could significantly impact the financial resources of Merrill Lynch and the scope of services it offers. In addition, financial advisors of Merrill Lynch could decide to move to third-party broker-dealers in order to ensure that their clients continue to have access to investments that are similar to the Funds. As a result, it is highly likely that additional customers beyond the over 46,000 eligible Merrill Lynch households and other accounts already invested in Funds would move their accounts in order to retain relationships with their financial advisors.

c. Impact on Funds and Issuers of Private Placements.

As discussed above, Merrill Lynch currently acts as solicitor for Funds that are sponsored, managed or advised by MLAI, as well as third-party Funds that rely on the exemptions under Rule 506(b) or (c). Indeed, Merrill Lynch has served as solicitor, promoter or placement agent for approximately 353 offerings by Funds in the past three years which have raised approximately $11 billion dollars. Merrill Lynch believes, to the best of its knowledge, that all of these Fund offerings are currently active. These offerings have relied on the exemptions under Rule 506(b) or (c) of Regulation D. Additionally, one affiliate of Respondents has a precious metals program that currently relies on the exemptions under Rule 506(b) and for which interests are solicited exclusively through Merrill Lynch. The precious metals program has 108 different coins or metals weight denominations offered and total value of over $328 million. Merrill Lynch currently has approximately 11 engagements under consideration for new Fund and new Private Placement transactions that would rely on the exemptions under Rule 506(b) or (c) and regularly seek to identify new Funds (through MLAI), and Private Placements (through Merrill Lynch) that it can offer through Merrill Lynch to customers.

If the Commission does not grant the requested waivers to Respondents, then if Respondents enter into these proposed and future engagements with Funds or Private Placement issuers, the Funds and issuers of Private Placements will themselves be disqualified from relying on Rule 506 and therefore will be unable to offer interests in reliance on Rule 506 at all. The Funds and issuers of Private Placements would then only be able to offer interests in reliance on Section 4(a)(2) of the Securities Act. This would (i) significantly affect the number of customers that could invest in such funds, and (ii) most third parties, whether through funds or private placements, would not likely continue to use MLAI given that Section 4(a)(2) of the Securities

Act offerings are not likely to raise much money so they would prefer to devote their limited resources to other platforms.

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

While third-party Funds could seek new distribution channels for their funds and Private Placement issuers can find new placement agents, if Merrill Lynch is disqualified under Rule 506, this would place a burden on the third-party Funds and Private Placement issuers that have long-standing and deep relationships with Merrill Lynch and rely on Merrill Lynch's institutional knowledge and extensive investor base. Some of these third-party Funds and issuers of Private Placements have offered their securities through Merrill Lynch for up to twenty-two (22) years , and as a result, have developed a high degree of confidence in the abilities of Merrill Lynch to offer and sell their securities, allowing the Funds and issuers to raise capital when needed. Furthermore, certain of the Funds distributed by Merrill Lynch and Private Placement issuers do not have large distribution channels outside of Merrill Lynch and could be negatively impacted in their abilities to raise capital should Merrill Lynch customers be prevented from investing in such Funds.

e. Impact on Merrill Lynch Affiliate, MLAI.

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

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

"Merrill Lynch" platform offered to Merrill Lynch's customers -- including an extensive, experienced and well-educated group of financial advisors who understand and offer a wide range of financial products to their qualified investors.[17]

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

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

7. *Recidivism*

The Commission has granted Merrill Lynch one prior waiver from the Rule 506 disqualifications, in connection with the issuance of an order enjoining Merrill Lynch and other entities.[18] Merrill Lynch was enjoined, however, not because it engaged in the alleged activities

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

[18] *See In the Matter of Bank of America, N.A. and Merrill Lynch, Pierce, Fenner & Smith Incorporated,* Securities Act Release No. 9682 (Nov. 25, 2014). Merrill Lynch's prior Rule 506 waiver was granted for a period of 30 months, during which time Merrill Lynch was required to hire an independent consultant to "conduct a comprehensive review of the policies and procedures relating to compliance with Rule 506 of Regulation D by . . . Merrill Lynch [among others], and the subsidiaries of [such entities] conducting any activities that would otherwise be disqualified [pursuant to Rule 506(d)]. . . ." After certain conditions have been met, Merrill Lynch may then reapply to the Commission for a waiver for the remaining 30 months of disqualification. To date, Merrill Lynch has retained an independent consultant who currently is engaged in conducting the required review.

at issue in that matter, but rather because after the alleged activities occurred, Merrill Lynch was acquired by Bank of America Corporation ("BAC") and the BAC subsidiary that engaged in the activities was merged into Merrill Lynch. Furthermore, the previous waiver granted to Merrill Lynch involved conduct entirely different from the conduct underlying the Administrative Order; the prior waiver related to residential mortgage-backed securities ("RMBS") offerings and did not relate in any way to activities pursuant to Regulation SHO. Merrill Pro was not a party to the prior waiver.

8. Provision of Written Description of the Administrative Order.

For the period that the disqualifying limitation is in effect after the date of the Administrative Order, if Respondents receive the requested waiver they will furnish (or cause to be furnished) to each purchaser in a Rule 506 offering that would otherwise be subject to disqualification under Rule 506(d) as a result of the Administrative Order, a description in writing of the Administrative Order a reasonable time prior to the sale.[19] As noted earlier, MLAI and Merrill Lynch currently provide (or cause to be provided) disclosures in accordance with Rule 506.

REQUEST FOR WAIVERS

In light of the foregoing, Respondents believe that disqualification is not necessary under the circumstances and that they have shown good cause that relief in the form of waivers from disqualification should be granted. Accordingly, Respondents respectfully request that, pursuant to Rule 506(d)(2)(ii), the Commission waive the disqualification provisions of Rule 506 that would otherwise disqualify them as a result of the entry of the Administrative Order.[20]

Respondents reiterate to the Commission the comprehensive adverse impact that denial of a waiver to Respondents would have on them, respectively, their affiliates, Funds managed, sponsored or advised by Merrill Lynch's affiliates, on third-party Funds and issuers of Private Placements with longstanding relationships with Merrill Lynch and, most importantly, Merrill

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[19] For clarification, Respondents will fulfill this provision by furnishing, or causing to be furnished, to each purchaser of a Rule 506 offering that is purchased through a Respondent, the description of the Administrative Order as described in this paragraph.

[20] We note in support of this request that the Commission recently has granted relief under Rule 506 in situations involving administrative orders. *See, e.g., BlackRock Advisors, LLC,* SEC No-Action Letter (pub. Avail. April 20, 2015); *H.D. Vest Investment Securities, Inc.*, SEC No-Action Letter (pub. Avail March 4, 2015); *Oppenheimer & Co.*, SEC No-Action Letter (pub. Avail. Jan. 27, 2015); *Barclays Capital, Inc.*, SEC No-Action Letter (pub. avail. Sept. 23, 2014); *Wells Fargo Advisors, LLC,* SEC No-Action Letter (pub. avail. Sept. 22, 2014), *Dominick & Dominick LLC,* SEC No-Action Letter (pub. avail. July 28, 2014); *Jefferies LLC,* SEC No-Action Letter (pub. avail. March 12, 2014).

Lynch's clients and customers. Therefore, Respondents believe that a waiver of disqualification is the most effective way to avoid this widespread adverse impact.

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

Please do not hesitate to contact me at 202.739-5746, if you have any questions about this request.

Sincerely,

Amy Natterson Kroll

cc: Joaquin Sena, Esq.
David Montague, Esq.
Marianne Bretton-Granatoor, Esq.
Richard Goldman, Esq.