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**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2005002254702**

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: John L. Ong
CRD No. 1232869

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, John L. Ong ("Ong"), submit this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against me alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. I hereby accept and consent, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

Ong has been registered as a general securities representative since December 1977, and has been registered as a general securities representative with Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill") since April 1994. He has no prior disciplinary history.

FACTS AND VIOLATIVE CONDUCT

Merrill's CEF Program

Between March 2003 and August 2006 (the "relevant period"), Merrill underwrote 114 initial public offerings ("IPO") of closed end funds ("CEFs"). CEFs are investment companies that sell a fixed number of shares in an initial public offering, after which the shares typically trade on a secondary market. The sales charges to the customer are built into the offering price of the CEF purchased at the initial public offering. During the

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relevant period, the CEFs at issue included a sales load of 4.5%, from which the underwriters' fee and sales concession were paid. The proceeds, after the expenses, were then invested by the CEF based on the investment objectives of the CEF.

The CEFs had a "stabilization period," which was the period of time immediately following the IPO in which the lead underwriter (at least in theory) generally supported the price of the fund. The CEFs' prospectuses noted that the underwriter may purchase common shares to stabilize the fund's price or to reduce short positions, and that this may cause the price of the common shares to be higher than it might otherwise be. Stabilization periods did not exceed 90 days and were generally shorter in duration.

Following the stabilization period, the price of CEF shares in the secondary market was determined by the market and may have reflected either a premium or a discount of the shares' net asset value ("NAV") excluding the offering expenses. Since expenses to the customer at the time of the IPO were built into the offering price of the CEF, its market price generally declined after the stabilization period. Without trading at a discount or a premium, all other factors being equal, it would have been reasonable to expect the market price of the CEF at the end of the stabilization period to be approximately 4.5% below the initial offering price.

Ong's Unsuitable Recommendations

From March 2003 through September 2006, Ong recommended that certain of his customers purchase CEFs in the initial public offering. Generally, he received a production credit of 3% of the value of the shares his customers purchased at IPO. These production credits were applied to his commission grid or pay-out percentage such that he typically received a commission equal to approximately .75 – 1.25% of the value of the shares purchased by his clients.¹

Despite the generally long term nature of these investments, Ong consistently recommended his customers sell these CEFs in the short term, less than 120 days after they were purchased in the initial public offering. Ong recommended a sale within 120 days of purchasing the CEF in the initial public offering in 18 of the 20 customer accounts to which he recommended an IPO purchase. Approximately 59% of the shares his customers bought in the initial public offering were sold on his recommendation within 120 days of the IPO.

Ong made the recommendations to buy the CEFs in the initial public offering and sell them in the short term without a sufficient understanding of the pricing considerations of the investment. During the relevant period, Ong did not fully understand how the issuer or Merrill Lynch intended the product to be used when purchased at IPO or the potential risks and rewards of the product. Among other things, Ong did not understand the impact

¹ Until November 2004, the registered representatives at Merrill received both the sales concession and a fee on the assets invested in fee-based accounts. Beginning on November 5, 2004, fees in Merrill fee-based accounts were not assessed on the value of CEFs bought at the initial public offering for 190 days from the date of purchase.

of the underwriting fee of closed end funds bought at IPO on the aftermarket price. Ong's recommendations to buy the CEFs in the initial public offering and sell them in the short term contributed to his customers losing approximately \$350,000.

Before recommending a transaction, NASD Rule 2310 requires a broker to "have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs." A broker cannot determine whether a recommendation is suitable for a specific customer unless the broker understands the nature of the product, as well as the potential risks and rewards associated with the product. Because Ong failed to fully understand the pricing of CEFs and the risks and rewards of the investment, Ong did not have reasonable grounds for believing that his recommendations that his customers purchase CEFs in the initial public offering and sell them in the short term were suitable.

By engaging in the course of conduct described above, Ong violated NASD Conduct Rules 2310 and 2110.

B. I also consent to the imposition of the following sanctions:

1. A 15 business day suspension from association with any FINRA member firm in any capacity; and
2. A fine in the amount of \$10,000.

After consideration of the sanctions previously imposed by Merrill on Ong of a fine of \$10,000 for the short term sales of CEFs, FINRA has determined to give Ong credit for the amount paid by him to Merrill. Accordingly, the fine assessed pursuant to this AWC is deemed paid.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

I understand that if I am barred or suspended from associating with any FINRA member, I become subject to a statutory disqualification as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. Accordingly, I may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension (see FINRA Rules 8310 and 8311).

II.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against me;
- B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, I specifically and voluntarily waive any right to claim bias or prejudice of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

I further specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

I understand that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to

prove any of the allegations against me; and

C. If accepted:

1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about my disciplinary record;
3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
4. I may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. I may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects my right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- D. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce me to submit it.

06/18/09
Date

Reviewed by:

Daniel C. Zinman
Daniel C. Zinman, Esquire
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One World Financial Center
New York, NY 10281-1003
Counsel for John L. Ong

Accepted by FINRA:

7/14/09
Date

John L. Ong
John L. Ong

Signed on behalf of the
Director of ODA, by delegated
authority

Samuel L. Israel
Samuel L. Israel
AVP and Chief Counsel
FINRA Department of Enforcement
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