

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2008014763601**

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

RE: Merrill Lynch, Pierce, Fenner & Smith Incorporated (CRD No. 7691), as successor in interest to Banc of America Investment Services, Inc. (CRD No. 16361), Respondent

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent submits 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 Respondent alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent hereby accepts and consents, 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

This AWC relates to conduct at Banc of America Investment Services, Inc. ("BAI" or the "Firm") between January 1, 2007 and December 31, 2008 (the "relevant period"). BAI became a FINRA member on December 23, 1985. During the relevant period, BAI was a registered broker-dealer with the United States Securities and Exchange Commission and a member of FINRA. On January 4, 2010, BAI terminated its registration with FINRA after its merger with Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"). At the time of its merger with Merrill Lynch, BAI had approximately 2,000 registered personnel and approximately \$125 billion in customer assets.

BAI was not affiliated with Merrill Lynch during the relevant period. Merrill Lynch is named as a respondent in this matter solely as the successor to BAI and based on its assumption of the liabilities of BAI.

OVERVIEW

Between January 1, 2007 and December 31, 2008, BAI made unsuitable recommendations to customers to purchase floating rate loan funds that resulted in 214 customers incurring total

losses of \$1,095,680.83. These unsuitable recommendations violated NASD Rules 2310 and 2110 and FINRA Rule 2010.¹

During the relevant period, BAI also failed to establish and maintain a system for supervising sales of floating rate loan funds that was reasonably designed to achieve compliance with the suitability requirements of NASD and FINRA rules. BAI did not have an adequate system or procedures to identify potentially unsuitable transactions in floating rate loan funds, failed to provide adequate training to its personnel about the risks and features of floating rate loan funds, and failed to adequately take into account the increased volatility in the floating rate loan market and sharp decreases in the net asset value of floating rate loan funds when determining the types of customers for whom floating rate loan funds would be suitable. By virtue of these supervisory failures, BAI violated NASD Rules 3010 and 2110 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

1. Characteristics of Floating Rate Funds

In general, floating rate loan funds² are characterized by relatively low interest rate risk but significant credit and liquidity risk. Floating rate loan funds are mutual funds that generally invest in secured senior loans extended by financial institutions to entities whose credit is in many cases rated below investment-grade, or "junk." The loans in which floating rate loan funds invest are sometimes called "leveraged" loans because companies that are extended these high-interest loans usually have a significant level of debt relative to equity. The interest rates on the loans adjust by a pre-determined spread over a reference rate, such as the London Interbank Offered Rate (LIBOR). The interest rates on the loans are adjusted periodically, typically at 30, 60, or 90-day intervals.

Some floating rate loan funds are subject to additional liquidity risk because they only permit redemptions during specified monthly or quarterly redemption windows. Typically, such funds offer to repurchase a certain percentage of their outstanding shares in a given redemption window. If the fund's investors try to redeem more shares than the fund offers to repurchase during a redemption window, the fund may repurchase customers' shares on a pro-rated basis.

2. Sales of Floating Rate Loan Funds by BAI

Between January 1, 2007 and December 31, 2008, BAI representatives solicited and sold floating rate loan funds to numerous customers whose risk tolerances, investment objectives, and financial conditions were inconsistent with the risks and features of floating rate loan funds.

Many of these transactions were not identified by BAI as potentially unsuitable. Individual registered representatives at BAI were responsible for assessing the suitability of

¹ FINRA Rule 2010 superseded NASD Rule 2110 on December 15, 2008. NASD Rule 2110 applies to conduct prior to December 15, 2008 and FINRA Rule 2010 applies for conduct on and after December 15, 2008.

² Floating rate loan funds are also sometimes referred to as "bank-loan funds," "senior loan funds," or "leveraged loan funds."

recommendations to purchase floating rate loan funds. Other personnel in the branch offices were responsible for conducting a supervisory review of these transactions. Those personnel received alerts from an electronic surveillance system, which had the ability to identify potentially unsuitable sales. However, BAI's electronic surveillance system was not appropriately implemented to flag potentially unsuitable transactions in floating rate loan funds. As a result, numerous potentially unsuitable sales of floating rate loan funds were not identified for appropriate supervisory review by the Firm. Some BAI registered representatives also recommended that certain customers purchase unsuitably concentrated positions in floating rate loan funds without sufficient review by the Firm.

BAI did not provide adequate training or other formal guidance to its registered representatives or their managers to assist them in assessing the suitability of floating rate funds for the Firm's customers. In spite of the unique risks and features of floating rate loan funds, BAI did not provide guidance to its employees about the special features, credit risk, or liquidity risks of floating rate loan funds, or the customers for whom these products would be suitable. As a result, some BAI employees incorrectly believed that floating rate loan funds would be suitable for conservative investors, investors with short time horizons, and investors seeking to preserve capital.

BAI also failed to respond adequately to developments in the market for floating rate loans. As described above, although floating rate loan funds have relatively low interest rate risk, they are subject to substantial credit risks. As the financial crisis began to unfold in the summer of 2007, the market for senior secured floating rate loans began to experience turbulence and became less liquid. Between late 2007 and early 2009, the net asset value of floating rate loan funds declined substantially. In spite of the increased volatility and sharp declines in the prices of the underlying assets in floating rate loan funds during the relevant period, BAI did not alert its registered representatives to developments in the market or otherwise alter the way that it supervised the sale of floating rate loan funds.

3. BAI Made Unsuitable Recommendations of Floating Rate Loan Funds in 2007 and 2008

Between January 1, 2007 and December 31, 2008, BAI registered representatives made recommendations that customers purchase floating rate loan funds that were unsuitable for those customers in light of their financial situations and needs. In particular, BAI made numerous recommendations to purchase floating rate loan funds to customers whose risk tolerances, other assets, and investment objectives were inconsistent with the risks and features of floating rate loan funds.

The floating rate loan funds sold by BAI were subject to significant credit and liquidity risks. Consequently, these funds were not typically suitable for investors with conservative risk tolerances or those customers who were seeking to preserve principal, particularly when those customers' purchases constituted a large percentage of their investable assets or liquid net worth. Moreover, floating rate loan funds, particularly those with restrictive redemption policies, were not typically suitable for investors with short time horizons. In spite of these features of floating rate funds, BAI representatives recommended floating rate fund investments to numerous

customers for whom the investments were unsuitable in light of the customers' financial situations, risk tolerances, and investment objectives.

Between late 2007 and early 2009, the net asset value of the typical floating rate loan funds declined substantially. Since that time, the net asset value of the typical floating rate loan fund has partially recovered. However, many BAI customers for whom the floating rate loan fund investment was unsuitable sold their holdings in floating rate loan funds and incurred losses. As a result, 214 customers suffered losses in the total amount of \$1,095,680.83 caused by the unsuitable transactions in floating rate loan funds recommended by BAI.

As described above, BAI recommended investments in floating rate loan funds to customers when it did not have reasonable grounds for believing that its recommendations were suitable. As a result, BAI violated of NASD Rules 2310 and 2110 and FINRA Rule 2010.

4. BAI Failed to Reasonably Supervise its Sales of Floating Rate Loan Funds or Establish an Adequate Supervisory System to Supervise Those Sales

BAI did not establish and maintain a system for supervising its sales of floating rate loan funds that was reasonably designed to achieve compliance with the suitability requirements of NASD and FINRA rules. BAI failed to implement procedures reasonably designed to ensure that its sales of floating rate loan funds were suitable for its customers, even as the market for floating rate loan funds changed significantly. In addition, BAI failed to ensure that it implemented appropriate systems to flag potentially unsuitable transactions in floating rate loan funds.

BAI also failed to provide sufficient guidance about floating rate loan funds to registered representatives and their supervisors. The Firm failed to adequately train its registered persons about the credit and liquidity risks associated with floating rate funds, or the customers for whom such funds would be suitable.

As described above, BAI failed to reasonably supervise sales of floating rate funds to customers and to implement an adequate supervisory system with respect to those sales. BAI thus violated NASD Rules 3010 and 2110 and FINRA Rule 2010.

B. Respondent also consents to the imposition of the following sanctions:

1. a censure;
2. a fine in the amount of \$900,000; and
3. the payment of restitution to the customers listed on the attached Exhibit A in the amount of \$1,095,680.83.

A registered principal on behalf of Respondent Firm shall submit satisfactory proof of payment of restitution or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted to Tom Kimbrell, Senior Counsel, FINRA, Department of Enforcement, 15200 Omega Drive, 3rd Floor, Rockville, MD 20850-3241 either by letter that identifies the

Respondent and the case number or by e-mail from a work-related account of the registered principal of Respondent Firm to EnforcementNotice@FINRA.org. This proof shall be provided to the FINRA staff member listed above no later than 120 days after acceptance of the AWC.

If for any reason Respondent cannot locate any customer identified in Attachment A after reasonable and documented efforts within 120 days from the date the AWC is accepted, or such additional period agreed to by a FINRA staff member in writing, Respondent shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property or abandoned property fund for the state in which the customer is last known to have resided. Respondent shall provide satisfactory proof of such action to the FINRA staff member identified above and in the manner described above, within 14 days of forwarding the undistributed restitution and interest to the appropriate state authority.

The imposition of a restitution order or any other monetary sanction herein, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

The Firm agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. The Firm has submitted an Election of Payment form showing the method by which the Firm proposes to pay the fine imposed.

The Firm specifically and voluntarily waives any right to claim that the Firm is unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

The Respondent specifically and voluntarily waives 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, Respondent specifically and voluntarily waives any right to claim bias or prejudgment 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.

Respondent further specifically and voluntarily waives 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

Respondent understands 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 it; and
- C. If accepted:
 - 1. this AWC will become part of the Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about its 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. Respondent 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. Respondent 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 Respondent's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that it 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.

The undersigned, on behalf of the Respondent, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that Respondent has 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 the Respondent to submit it.

04/22/2013

Date (mm/dd/yyyy)

Merrill Lynch, Pierce, Fenner & Smith Incorporated
Respondent

Merrill Lynch, Pierce, Fenner & Smith
Incorporated, as successor in interest to Banc of
America Investment Services, Inc.

By:

Name:

Title:

J. David Montague

J. DAVID MONTAGUE

Associate General Counsel & SVP

Reviewed by:

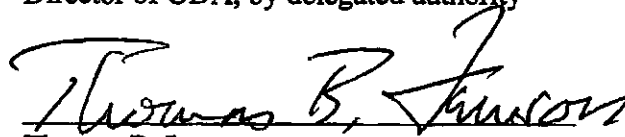


Amy J. Greer
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215-851-8211

Accepted by FINRA:

June 3, 2013
Date

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



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