

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
INVESTOR PROTECTION BUREAU

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In the Matter of

No. 18-025

**Investigation by ERIC T. SCHNEIDERMAN,  
Attorney General of the State of New York, of**

**BANK OF AMERICA CORPORATION and  
MERRILL LYNCH, PIERCE, FENNER and  
SMITH INCORPORATED,**

**Respondents.**

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**SETTLEMENT AGREEMENT**

1. The Office of the Attorney General of the State of New York ("OAG") commenced an investigation pursuant to General Business Law § 352, *et seq.* (the "Martin Act") and Executive Law § 63(12) regarding fraud in connection with the electronic trading practices of Merrill Lynch, Pierce, Fenner & Smith Incorporated, a subsidiary affiliate of Bank of America Corporation (hereinafter referred to collectively as "Bank of America Merrill Lynch," "BofAML," or "Respondents").
2. This Settlement Agreement contains the findings of the OAG's investigation and the relief agreed to by the OAG and Respondents, whether acting through their respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries (collectively, the "Parties").
3. OAG finds that the facts set forth herein establish that BofAML violated the Martin Act and Executive Law § 63(12).
4. BofAML admits the factual findings of OAG's investigation. BofAML further acknowledges that the conduct described in ¶¶ 9 to 33 violated the Martin Act and Executive Law § 63(12).
5. OAG finds the relief and agreements contained in this Settlement Agreement appropriate and in the public interest. Therefore, OAG is willing to accept this Settlement Agreement pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of the Martin Act and Executive Law § 63(12), based on the conduct described below.

## OAG's FINDINGS

6. Bank of America Corporation, through its subsidiaries and affiliates, provides consumer banking, investment banking, wealth management, and other financial services in its offices and branches around the United States and globally, including in New York.

7. Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") is a registered broker dealer, and is a subsidiary affiliate of Bank of America Corporation, with offices in New York at One Bryant Park, New York, New York 10036.

8. "Bank of America Merrill Lynch" ("BofAML")<sup>1</sup> is the marketing name for the global businesses of Bank of America Corporation and Merrill Lynch. As part of its business in New York, BofAML operates as a registered broker-dealer. BofAML's brokerage clients, serviced out of its New York offices, include individual retail investors and many institutional investors like mutual funds, pension funds, and others.

### **I. BofAML Concealed From Its Institutional Clients That Orders Were Routed To And Executed By "Electronic Liquidity Providers"**

9. Beginning in March 2008, BofAML entered into agreements with "electronic liquidity providers" ("ELPs") to execute a portion of BofAML's institutional client orders. Those ELPs, which changed over time, included Citadel Securities, D.E. Shaw, Madoff Securities, Knight Capital, Getco (which later merged with Knight Capital to become KCG, now owned by Virtu Financial), Two Sigma Securities, Sun Trading, and ATD (then a division of Citigroup, now owned by Citadel Securities). The agreements, initially negotiated by BofAML's then-head of Global Equity Trading and then-head of electronic trading, provided that BofAML would route certain "direct strategy access" or "DSA" orders to the ELPs before routing the orders to public stock exchanges. Direct strategy access orders are orders that are submitted by institutional clients to BofAML's electronic trading algorithms for execution. Pursuant to the agreements, the ELPs could choose whether to fill the DSA orders themselves. In return, the ELPs did not charge BofAML for the executions. The prices at which those trades executed with the ELPs were, in industry parlance, at the "far side" of the spread between the bid and the ask.

10. BofAML entered into agreements with the ELPs because it wanted to increase the volume of trades it sent to the ELPs, which BofAML sometimes described in internal communications as "trading partners." In discussing one ELP agreement in an internal BofAML email, the then-head of electronic trading explained that BofAML needed to increase the volume of trades it sent to that ELP "based on other revenue opportunities currently being discussed with them."

11. At the request of at least one of the ELPs, BofAML agreed not to disclose to its clients that their orders were being routed to and were executed by the ELPs. Instead, BofAML would tell institutional clients that those orders executed in-house at BofAML.

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<sup>1</sup> Although the factual findings of OAG's investigation involve events that began prior to Bank of America's acquisition of Merrill Lynch, for ease of reference, the acronym "BofAML" is used throughout this Settlement Agreement.

12. *First*, between March 2008 and May 2013, BofAML repeatedly and falsely represented to its institutional clients that it did not route orders to ELPs for execution.

13. In certain marketing material disseminated to clients between March 2008 and May 2013, BofAML listed all of the venues to which institutional client orders could be routed, but did not disclose ELP venues.

14. BofAML also failed to disclose the ELP venues in response to certain direct, written client questions about how their orders would be routed.

a. For example, in an August 23, 2010 email exchange, when an institutional client asked BofAML to “provide an updated list of all venues – public or private – that BA/ML algorithms access,” a salesperson in BofAML’s electronic trading division responded with a list of venues that did not include the ELPs to which BofAML routed client orders. In the same exchange, when the client asked specifically, “Does BA/ML flash or route orders through any external liquidity providers on [the order’s] way to the public markets, dark pools, or ATSS? If so, please describe,” BofAML falsely responded “No.”

b. In February 2013, when another institutional client asked BofAML to identify the execution venues to which BofAML routed trades, a BofAML salesperson drafted an initial response that included the ELPs to which BofAML was routing orders. However, before the salesperson sent the response back to the client, he sent the draft to other BofAML employees for comment. A BofAML managing director forwarded a proposed response to other BofAML employees with a note referring to the ELPs: “[B]efore I send, is there anything you want to streamline or eliminate (i.e., the HFT stuff at the end of to whom do we route)?”<sup>2</sup> When BofAML sent its final response to the client later that same day, the ELPs had been deleted.

15. *Second*, between March 2008 and May 6, 2013, BofAML altered post-trade messaging sent electronically to DSA clients to conceal the fact that their trades had been executed by ELPs.

16. BofAML did this by altering the post-trade FIX Protocol messaging used to tell traders where and how their trades were executed.

17. “FIX Protocol” is a standard electronic messaging protocol used by the financial industry. It allows parties to an electronic trade (client, broker, and trading venue) to pass along information about orders.<sup>3</sup> This is done through a system of digital “tags” that are filled by “values” at different steps of the trading process. Of the hundreds of possible FIX Protocol tags,

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<sup>2</sup> Many of the ELP firms with whom BofAML entered into agreements also engage in high frequency trading activity. In internal communications, BofAML employees sometimes refer to “HFT” when describing ELPs.

<sup>3</sup> “FIX” stands for “Financial Information eXchange.”

only a handful may be populated and transmitted on a given trade. Among other things, FIX tags are populated when an order is executed, creating a record of the venue on which the trade was executed, the price at which it executed, and other information.

18. Tag 76 is "Executing Broker," and identifies the broker with whom an order was held at the point of execution. In 2008, BofAML used Tag 76 to populate the name of the venue on which a client trade took place, which in the case of ELP executions, were the brokers themselves. Tag 30, which came into more widespread use in the industry during the 2011/2012 time period, is "Last Market," and identifies the trading venue on which an order was executed, such as a stock exchange or dark pool. Most trading venues have a specific identifying acronym – known as a Market Identifier Code or "MIC" – that is used to populate FIX Tag 30, among other purposes. Depending on the conventions followed by the particular broker, a client who receives an execution confirmation in FIX Protocol with an accurately populated Tag 76 and/or Tag 30 can identify which broker handled it last, or the trading venue on which the order was executed.

19. Many traders, including institutional traders, use the FIX Protocol data they receive in real-time to adjust their trading process during the trading day. Traders also compile the FIX messages they receive over time to analyze their historical trade performance, optimize their systems, and evaluate the performance of their electronic brokers.

20. In March 2008, after entering into the agreements with the ELPs, described above, BofAML's then-head of Global Equity Trading and then-head of electronic trading directed BofAML employees to alter FIX messages for BofAML client trades executed by ELPs, by replacing the codes which identified ELPs with a new code referencing BofAML. Pursuant to this direction, BofAML employees re-programmed BofAML's internal trading systems to automatically remove the original codes which accurately reflected the ELP venues in Tag 76 (e.g., "CDRG" for Citadel, "SHAW" for D.E. Shaw, and "MADF" for Madoff) and insert a new identifying code ("MLCO") which inaccurately reflected the trading venue as BofAML.

21. When Tag 30 ("Last Venue") later began to be used more commonly in the industry, BofAML again re-programmed its systems to remove the MIC code that automatically populated in Tag 30 upon an execution at an ELP venue, and to replace it with the inaccurate "MLCO" code. BofAML personnel referred to this practice internally as "masking."

22. BofAML began masking ELP executions for DSA orders in late March 2008, and did so through May 6, 2013. During that period, BofAML altered the information in FIX messages on more than sixteen million DSA executions, accounting for over four billion shares.

23. In addition to altering the FIX Protocol messages that were transmitted directly to clients following an execution at an ELP venue, employees in BofAML's electronic trading division also altered written reference materials provided to institutional clients who sought more information about the venues to which BofAML routed orders, including information about how BofAML populated FIX tags.

- a. For example, during the relevant time period, BofAML maintained an internal database of information that could be shared with institutional clients about the often-complicated technical aspects of electronic trading, including a spreadsheet of MIC codes of the execution venues to which BofAML routed institutional client orders. Initially, that spreadsheet included the ELP venues that BofAML was masking.
- b. In November 2011, BofAML personnel became concerned that disseminating the spreadsheet of MIC codes would reveal that BofAML had been concealing ELP executions on DSA orders in FIX messages. A BofAML sales representative proposed creating a “client facing” version of the spreadsheet. In an email to several colleagues, the sales representative noted that the “spreadsheet contains venues which we mask to MLXN [*referring to BofAML’s internal alternative trading system*],” and asked if there was “a ‘client facing’ version readily available.” The BofAML sales representative also said that she had “created” a client facing version of the spreadsheet in the past. In response, BofAML personnel created and made available a new version of the spreadsheet intended for distribution to clients or potential clients – what they called a “client facing” version – that omitted the ELP venues.

24. *Third*, between March 2008 and May 2013, BofAML sent post-trade reports to clients that concealed the fact that trades had been executed by ELPs.

25. BofAML institutional clients were regularly provided with reports, known as “transaction cost analysis” or “TCA” reports, that summarized the client’s trading activity with BofAML over the past weeks or months, and which provided a window into the execution quality of the client’s trades. TCA reports contained, among other things, detailed information about the various venues at which the client’s trades have been executed. BofAML marketed TCA reports to its institutional clients as an important component of the services it offered. For instance, in one communication, BofAML advertised “In-depth, customized TCA reports [that] can be generated for a specified time frame for overall and strategy-specific trading analysis.”

26. From 2008 to May 2013, BofAML concealed the identities of ELPs in the TCA reports provided to its institutional clients. During that period, TCA reports identified BofAML as the venue on which certain of the institutional client’s trades had been executed, even though in actuality a significant number of the trades attributed to BofAML in the TCA reports had actually been executed by ELPs. Between March 2008 and May 2013, BofAML disseminated several thousand TCA reports to its institutional clients containing inaccurate venue information.

27. Employees in BofAML’s electronic trading division knew that TCA reports were misleading. For instance, in an April 5, 2013 email to ten other BofAML employees, a BofAML sales associate noted that the system that generated TCA reports was set up to “effectively misidentify[] executions from trading partners” as executions having occurred in BofAML’s dark pool.

28. *Fourth*, between mid-2008 to May 2013, BofAML concealed ELP executions reflected on bills and invoices sent to certain institutional clients.

29. In July 2008, BofAML personnel became aware that certain institutional client invoices contained a billing line item for ELP executions (referred to on the invoices as “trading partner” executions). This line item could have revealed to institutional clients that certain of their trades had been executed with ELPs, even though FIX messages and TCA reports had concealed that fact and misrepresented the trading partner to be BofAML.

30. The then-head of electronic trading wrote to the then-Chief Operating Officer of BofAML’s Cash Equities business: “[W]e have to lock this down asap. It’s a huge business risk to have these invoices include ‘Trading Partners’ as a line item.” The then-Chief Operating Officer responded by agreeing and confirming, “We deleted the line last month.”

31. Subsequently, BofAML undertook to, in one BofAML employee’s words, “develop code to suppress the trading partners data from the external clients’ bills going forward.”

32. Beginning in approximately March 2013, BofAML removed functionality from various aspects of its operation that allowed it to “mask” or otherwise conceal ELP executions from institutional clients. As a result of those efforts, as of May 6, 2013, orders routed to and executed by ELPs were identified accurately in Tag 76 and Tag 30 by the broker and MIC codes associated with those ELPs. Additionally, BofAML also accurately reported the execution venues of client orders in TCA reports for executions taking place after May 6, 2013.

33. BofAML did not provide written notice to its institutional clients disclosing that it had concealed the identities of ELPs between March 2008 and May 6, 2013 in FIX messages, TCA reports, and invoices. Nor did it systematically communicate to institutional clients how its practices on those matters had changed as of May 6, 2013.

## **II. BofAML Misstated The Composition Of Orders And Trades In Instinct X**

34. In multiple communications disseminated to institutional clients and potential clients between 2009 and 2013, BofAML overstated the amount of retail liquidity available in its dark pool Instinct X.

- a. For instance, in 2011, a client asked BofAML, in writing, “What [percentage] of your dark pool’s volume comes from the following categories: Institutions; High-frequency firms; Retail; Other sell-side algo partners.” BofAML responded “Over 2/3 of our [dark pool] is made up of client flow and 20% is retail flow.”
- b. Similarly, in 2012, BofAML sent a PowerPoint deck to clients and potential clients advertising the benefits of trading in its Instinct X dark pool. In the written presentation, BofAML represented that “Retail represents 20% of [Instinct X] executions.”

- c. In a 2013 document entitled “Instinct X Sales Points,” BofAML instructed its sales personnel to tell clients that the Instinct X dark pool had order flow that was “unique” to BofAML, and that the “majority” of the order flow in Instinct X originated from BofAML’s retail clients (also known as “Private Clients”) and institutional clients.
- d. In late August 2013, a BofAML sales associate sent an email to a prospective institutional client, claiming, “~30% of the flow in our pool is our Merrill Wealth Mgt flow.” “Wealth Mgt” flow referred to BofAML’s “wealth management” order flow, which is synonymous with “retail” order flow.

35. These representations were not accurate.

36. At no point during the time period of the statements set forth above did “20%” or “30%” of Instinct X “order flow” originate with retail clients. Rather, retail order flow accounted for approximately five percent of the order flow in the pool by volume.

37. Further, at no point during the time period of the statements set forth above did “[r]etail represent 20% of [Instinct X] executions” by number of executions or by volume of shares executed.

### **III. BofAML Did Not Accurately Describe Its Use Of A Proprietary “Venue Ranking” Analysis**

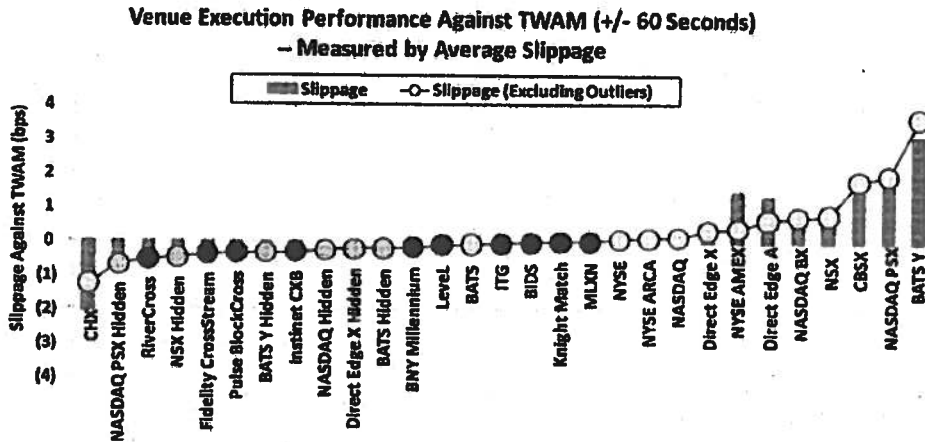
38. As described below, BofAML disseminated inaccurate information to institutional clients about how its electronic trading division routed orders.

39. Beginning in 2010, BofAML developed and marketed a service called “Execution Consulting,” a sub-group within its electronic trading division designed to provide electronic trading clients with information and research into trading performance, broader market conditions, and other pertinent information. Among other things, BofAML’s Execution Consulting group examined whether BofAML’s trading strategies and algorithms improved the prices that institutional clients received when trading across the market, and whether trading in certain venues resulted in more frequent and less-advantageous interactions with certain trading counterparties.

40. One of the ways in which BofAML’s Execution Consulting group analyzed the various private and public trading venues to which certain institutional client orders were routed was by calculating a performance metric called “time weighted average midpoint,” or “TWAM.” This TWAM metric purported to compare the prices as which client orders were executed against a weighted midpoint in the minute preceding and following each execution, to identify potential reversion or information leakage.

41. In 2011, BofAML disseminated to certain institutional clients the below graphic that depicted an analysis of how well each venue performed in this TWAM-based venue analysis, displayed as a function of the price “slippage,” or movement. This graphic also depicted that Instinct X (referred to by its then-trade name “MLXN”) performed as well as

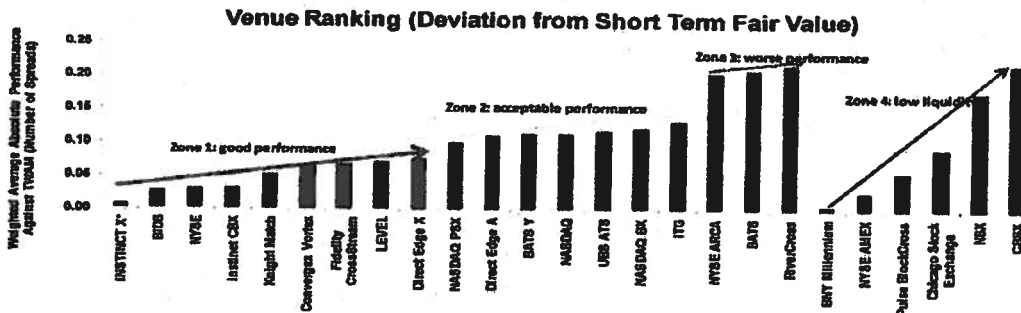
several other venues to which BofAML routed institutional client orders. BofAML excluded the ELP venues to which BofAML was routing orders, as discussed in paragraphs 9-33.



42. In 2013, BofAML began using a different graphic in marketing materials, using the same TWAM-based metric discussed above. The new graphic (below) represented that BofAML’s execution algorithms used the information generated by BofAML’s venue ranking to make “strategic” and “tactical” decisions on an “order by order” basis to determine the best venue to which orders were routed. BofAML excluded the ELP venues to which BofAML was routing orders, as discussed in paragraphs 9-33.

### Venue Rankings

- Venues are grouped into 4 zones based on the deviation of their execution price from the “fair” price. The closer to the fair price, the less toxic the venue is. Venue liquidity is also taken into consideration when ranking venues
- INSTINCT X was ranked as the best venue (among high-liquidity venues) in terms of performance against the benchmark
- This analysis is used at a strategic level to assess venue connectivity, and at a tactical level by the algorithms in order to maximize liquidity while minimizing risk on an order-by-order basis



INSTINCT X™ institutional flow only that crossed with non-institutional counterparty



43. The "Venue Ranking" graphic was not accurate. BofAML's venue analysis was not used "on a strategic level to assess venue connectivity," or "on a tactical level by the algorithms to maximize liquidity while minimizing risk on an order-by-order basis," as BofAML represented to its clients. At no time was BofAML's "Venue Ranking" analysis, or the data underlying it, accessed by BofAML's algorithms or smart order router in making trading decisions. Nor did the algorithms or the smart order router use this "Venue Ranking" analysis to allocate or route individual orders on an "order-by-order" basis. BofAML personnel did consider TWAM-based analysis when making adjustments to BofAML's algorithms and smart order router.

44. Further, the underlying data on the performance of venues changed over time, but BofAML did not update or revise the "Venue Rankings" graphic set forth in paragraph 42. BofAML continued to include the same graphic in marketing materials provided to clients in 2013 and 2014.

### **RELIEF**

WHEREAS OAG finds that BofAML cooperated with OAG's investigation; and

WHEREAS BofAML is engaging a third party to conduct a review of its electronic trading policies and procedures relating to the conduct described herein, including but not limited to (i) policies and procedures regarding communications with clients and the use and distribution of marketing materials; (ii) procedures for supervision and control of algorithmic trading strategies and smart order routing; and (iii) the implementation of those policies and procedures,

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

45. Respondents shall not engage, or attempt to engage, in conduct in violation of any applicable laws, including but not limited to the Martin Act and Executive Law § 63(12), and expressly agree and acknowledge that any such conduct is a violation of the Settlement Agreement, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 48, in addition to any other appropriate investigation, action, or proceeding.

46. **Monetary Relief**

a. *Monetary Relief Amount:* Respondents shall pay to the State of New York a penalty in the amount of \$42,000,000 (the "Monetary Relief Amount"). Respondents shall pay the Monetary Relief Amount thirty (30) business days after the effective date of this Settlement Agreement.

b. Payments shall be made by attorney check, corporate or certified check, or bank draft, which shall be made payable to the "State of New York", and shall reference Settlement Agreement No. 18-025; payments shall be addressed to the attention of John D. Castiglione, Assistant Attorney General, Investor Protection Bureau, 28 Liberty Street, New York, New

York, 10005. Payments in excess of \$50,000 shall be made by wire transfer, with instructions available upon request of Respondents.

47. Upon completion, BofAML will provide OAG a summary of the review of its electronic trading policies and procedures. OAG may require additional information or review work, if it determines that the review did not cover the necessary issues or did not address, or provide a plan for addressing, any identified issues. Any such request must be submitted within fourteen (14) days of receiving the summary.

### MISCELLANEOUS

#### Subsequent Proceedings

47. Respondents expressly agree and acknowledge that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Settlement Agreement, for violations of the Settlement Agreement, or if the Settlement Agreement is voided pursuant to paragraph 54, and agrees and acknowledges that in such event:

- a. any statute of limitations or other time-related defenses are tolled from and after the effective date of this Settlement Agreement;
- b. the OAG may use statements, documents or other materials produced or provided by the Respondents prior to or after the effective date of this Settlement Agreement;
- c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Respondents irrevocably and unconditionally waive any objection based upon personal jurisdiction, inconvenient forum, or venue;
- d. evidence of a violation of this Settlement Agreement shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

48. If a court of competent jurisdiction determines that the Respondents have violated the Settlement Agreement, Respondents shall pay to the OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Settlement Agreement, including without limitation legal fees, expenses, and court costs.

#### Effects of Settlement Agreement:

49. This Settlement Agreement is not intended for use by any third party in any other proceeding.

50. All terms and conditions of this Settlement Agreement shall continue in full force and effect on any successor, assignee, or transferee of the Respondents. Respondents shall include any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to the terms of the Settlement Agreement. No party may assign,

delegate, or otherwise transfer any of its rights or obligations under this Settlement Agreement without the prior written consent of the OAG.

51. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

52. Any failure by the OAG to insist upon the strict performance by Respondents of any of the provisions of this Settlement Agreement shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Settlement Agreement to be performed by the Respondents.

Communications:

53. All notices, reports, requests, and other communications pursuant to this Settlement Agreement must reference Settlement Agreement No. 18-025 and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to the Respondents, to: Daniel T. Chaudoin, Partner, Wilmer Cutler Pickering Hale and Dorr LLP, 1875 Pennsylvania Avenue NW, Washington, DC 20006, daniel.chadoin@wilmerhale.com;

If to the OAG, to: John D. Castiglione, Assistant Attorney General, Investor Protection Bureau, 28 Liberty Street, New York, New York, 10005, john.castiglione@ag.ny.gov, or in his/her absence, to the person holding the title of Bureau Chief, Investor Protection Bureau.

Representations and Warranties:

54. OAG has agreed to the terms of this Settlement Agreement based on, among other things, the representations made to OAG by Respondents and their counsel and the OAG's own factual investigation as set forth in Findings paragraphs 9-44 above. The Respondents represent and warrant that neither they nor their counsel have made any material representations to the OAG that are inaccurate or misleading. If any material representations by Respondents or their counsel are later found to be inaccurate or misleading, this Settlement Agreement is voidable by the OAG in its sole discretion.

55. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Settlement Agreement has been made to or relied upon by the Respondents in agreeing to this Settlement Agreement.

56. The Respondents represent and warrant, through the signatures below, that the terms and conditions of this Settlement Agreement are duly approved. Respondents further represents and warrants that BofAML, by J. David Montague, as the signatory to this Settlement

Agreement, is a duly authorized officer acting at the direction of the Boards of Directors of Bank of America Corporation and Merrill Lynch, Pierce, Fenner & Smith Incorporated.

General Principles:

57. Unless a term limit for compliance is otherwise specified within this Settlement Agreement, the Respondent's obligations under this Settlement Agreement are enduring. Nothing in this Settlement Agreement shall relieve Respondents of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

58. Respondents agree not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in the Settlement Agreement or creating the impression that the Settlement Agreement is without legal or factual basis. BofAML may advance defenses in litigation or regulatory proceedings with other parties regarding the same or similar conduct. This Settlement Agreement is not a final order of any court or governmental authority, and is not intended to form the basis for any disqualification(s) regarding the subject of a final order of a court or governmental authority, including, without limitation, Regulation A, and Rules 504 and 506(d) under the Securities Act of 1933, and Regulation CF.

59. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that the Respondents violate the Settlement Agreement after its effective date.

60. This Settlement Agreement may not be amended except by an instrument in writing signed on behalf of the Parties to this Settlement Agreement.

61. In the event that any one or more of the provisions contained in this Settlement Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Settlement Agreement.

62. Respondents acknowledge that they have entered this Settlement Agreement freely and voluntarily and upon due deliberation with the advice of counsel.

63. This Settlement Agreement shall be governed by the laws of the State of New York without regard to any conflict of laws principles.


64. The Settlement Agreement and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

65. This Settlement Agreement may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Settlement Agreement, all of which shall constitute one agreement to be valid as of the effective date of this Settlement Agreement. For

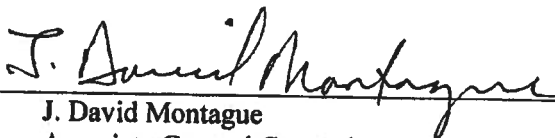
purposes of this Settlement Agreement, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Settlement Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

66. The effective date of this Settlement Agreement shall be March 22, 2018.

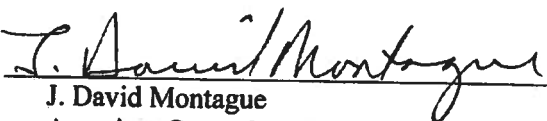
ERIC T. SCHNEIDERMAN  
Attorney General of the State of New York  
120 Broadway  
New York, NY 10271

By:   
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John D. Castiglione  
Assistant Attorney General  
Investor Protection Bureau

Bank of America Corporation

By:   
\_\_\_\_\_  
J. David Montague  
Associate General Counsel

Merrill Lynch, Pierce, Fenner & Smith Incorporated

By:   
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J. David Montague  
Associate General Counsel