

ATTORNEY GENERAL OF THE STATE OF NEW YORK
INVESTOR PROTECTION BUREAU

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IN THE MATTER OF

MERRILL LYNCH, PIERCE, FENNER &
SMITH INCORPORATED

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AOD No. 08-174

ASSURANCE OF DISCONTINUANCE
PURSUANT TO EXECUTIVE LAW § 63(15)

On April 14, 2008, the Office of the Attorney General of the State of New York (the “Attorney General”), commenced an investigation, pursuant to Article 23-A of the General Business Law (the “Martin Act”), of Merrill Lynch, Pierce, Fenner & Smith Incorporated and its subsidiaries and affiliates (“Merrill Lynch”), concerning Merrill Lynch’s marketing, sale and distribution of auction rate securities (the “Investigation”). This Assurance of Discontinuance (“Assurance”) contains the findings of the Attorney General’s Investigation and the relief agreed to by the Attorney General and Merrill Lynch.

FINDINGS

The Attorney General finds as follows:

I. Relevant Entity

1. Merrill Lynch, a Delaware corporation, is an operating subsidiary of Merrill Lynch & Co. It is licensed to do business in the State of New York and its principal executive offices are located in New York City. Merrill Lynch is a registered broker/dealer offering brokerage, financial planning and investment products and services to investors across the United States.

II. Background on Auction Rate Securities

2. Auction rate securities are long-term bonds issued by municipalities, corporations and student loan companies, or perpetual equity instruments issued by closed end mutual funds, with variable interest rates that reset through a bidding process known as a Dutch auction.

3. At a Dutch auction, bidders generally state the number of auction rate securities they wish to purchase and the minimum interest rate they are willing to accept. Bids are ranked, from lowest to highest, according to the minimum interest rate each bidder is willing to accept. The lowest interest rate required to sell all of the auction rate securities available at auction, known as the “clearing rate,” becomes the rate paid to all holders of that particular security until the next auction. The process is then repeated, typically every 7, 28 or 35 days.

4. When there are not enough orders to purchase all of the auction rate securities being sold, a “failed” auction occurs. In the event of a failed auction, investors cannot sell their auction rate securities.

5. As a leading underwriter of auction rate securities, Merrill Lynch also acted as the managing broker-dealer for many issues of auction rate securities. When acting as sole manager, Merrill Lynch was the only firm that could submit bids into the auction on behalf of its clients and/or other broker-dealers who wanted to buy and/or sell any auction rate securities. When acting as lead manager, Merrill Lynch was the primary firm that could submit bids into the auction, while other broker-dealers were able to submit orders on behalf of their clients as well. Merrill Lynch received revenue

in connection with auction rate securities, including an underwriting fee representing a percentage of total issuance and a fee for managing the auctions.

III. Merrill Lynch Made Misrepresentations in Connection With the Sale of Auction Rate Securities

6. Merrill Lynch represented to certain of its customers that auction rate securities were “money market alternatives” and liquid investments. It did so in marketing materials that compared auction rate securities to other money market instruments and through its sales force, which represented to certain investors that auction rate securities were highly liquid, safe, cash management alternative investments.

7. These representations were misleading. Auction Rate securities were in fact different from cash and money market funds. As discussed above, the liquidity of an auction rate security relied on the successful operation of the Dutch auction process. In the event of a failed auction, investors cannot sell their auction rate securities and are stuck holding long-term investments, not cash management alternative investments. As discussed below, starting in late 2007, the auction rate securities market faced dislocation and an increased risk of failure.

8. Since the inception of the auction rate securities market, Merrill Lynch and other broker-dealers submitted support bids, purchase orders for the entirety of an auction rate security issue for which it acted as the sole or lead broker. Support bids were Merrill Lynch’s proprietary orders that would be filled, in whole or part, if there was otherwise insufficient demand in an auction. When Merrill Lynch purchased auction rate securities through support bids, auction rate securities were then owned by Merrill Lynch and the holdings were recorded on Merrill Lynch’s balance sheet. For

risk management purposes, Merrill Lynch imposed limits on the amounts of auction rate securities it could hold in inventory.

9. Because investors could not ascertain how much of an auction was filled through Merrill Lynch proprietary trades, investors could not determine if auctions were clearing because of normal marketplace demand, or because Merrill Lynch was making up for a lack of demand through support bids. Generally, investors were also not aware that the auction rate securities market was dependent upon Merrill Lynch's (and other broker-dealers') use of support bids for its successful operation. While Merrill Lynch could track its own inventory as a measure of the supply and demand for auction rate securities, ordinary investors had no comparable ability to assess the operation of the market. There was no way for investors to monitor supply and demand in the market or to assess when broker-dealers may decide to stop supporting the market, which could cause its collapse.

IV. By the Fall of 2007, the Auction Rate Securities Market Faced Dislocation

10. In August 2007, the credit crisis and other deteriorating market conditions strained the auction rate securities market. Some institutional investors withdrew from the market, decreasing demand for auction rate securities.

11. The resulting market dislocation was impossible for Merrill Lynch to ignore. Merrill Lynch's and other broker-dealers' support bids filled the increasing gap in the demand for auction rate securities, sustaining the impression that the market was functioning. As a result, Merrill Lynch's auction rate securities inventory grew significantly, requiring Merrill Lynch to raise its risk management limits on its auction rate securities inventory several times.

12. From the Fall of 2007 through February of 2008, demand for auction rate securities continued to erode and Merrill Lynch's auction rate securities inventory reached unprecedented levels. Merrill Lynch was aware of the increasing strains on its auction rate securities market and began to question the viability of the auction rate securities market even while there were increasing indications of potential widespread market failure. Merrill Lynch never disclosed these increasing risks of owning or purchasing auction rate securities to its customers.

13. In early February 2008, Merrill Lynch and other broker-dealers stopped supporting the auctions. Without the benefit of support bids, the auction rate securities market collapsed, leaving investors who had been led to believe that these securities were "money market alternatives" and "liquid investments" appropriate for managing short-term cash needs, holding long-term or perpetual securities that could not be sold at par value.

V. Merrill Lynch's Auction Trading Desk Influenced the Content of Reports on Auction Rate Securities for its Own Benefit at the Expense of Customers.

14. From approximately August 8, 2007 through February 12, 2008, the auction trading desk ("Desk"), aware that auction rate securities were facing increasing liquidity risk, nonetheless pressured the Merrill Lynch analysts who covered auction rate securities to disseminate – through research reports, conference calls with financial advisers, and other means – opinions that promoted the sale of auction rate securities. They did so in an attempt to reduce Merrill Lynch's own inventory levels

15. Analysts responded by providing opinions that were misleading and that failed to disclose facts known to both the Desk and the analysts that would have alerted investors to the increasing liquidity risk of auction rate securities. This activity was a

breach of Merrill Lynch's Policy and Procedures manual for research analysts which states that "the Firm's research may not be provided solely to assist Trading in the . . . disposition of proprietary positions."

16. In August 2007, Merrill Lynch began to fail auctions of certain auction rate securities, available only to large institutional investors, that were indirectly backed by subprime mortgages. At the request of the head of the Desk ("Head Trader"), the analyst who regularly covered auction rate securities ("Auction Analyst") published a report on August 10. That report downplayed the failure of these auctions, did not disclose that Merrill Lynch itself was responsible for all but two of the ten failures that had occurred and did not disclose that investors were dependent on Merrill Lynch for the liquidity of auction rate securities when supply exceeded demand.

17. On August 21, the head of the Desk ("Head Trader") demanded the retraction of an analyst's report just published that unfavorably compared auction rate securities to Variable Rate Demand Obligations (VRDOs), a type of security with guaranteed liquidity. A revised report was released on August 23, to the trading desk's satisfaction. This report downplayed the liquidity advantages of VRDOs, and focused instead on the "attractive" rates of auction rate securities. The report's focus on high interest rates hid the realities that the rise in interest rates for auction rate securities was due to an excess of supply and that liquidity was threatened. By the close of trading on August 23, sales of auction rate securities had improved. In an email to her supervisor, the Head Trader attributed this in part to the "revised research" published that day, describing this and another report as "essential tools in our sales arsenal."

18. By late November, Merrill Lynch's inventory of auction rate securities had grown to over \$2.5 billion, largely because Merrill Lynch had been placing support bids in order to clear the auctions for which it was lead manager. The Head Trader emailed risk management that the Desk "continue[d] to experience selling [of auction rate securities] from the larger corporate accounts and concern from retail about liquidity in the markets in general." The sales force was offered increased commissions for selling auction rate securities and the Head Trader sought help from the research analysts for "renewed research focusing on the high credit quality" of auction rate securities.

19. In mid-November, the Auction Analyst was aware of the dependence of investors on lead managers, such as Merrill Lynch, to maintain the liquidity of auction rate securities and prevent failures. On this topic, he emailed a fellow analyst that "[t]he potential exists to go from bad to worse on this."

20. Nonetheless, in response to the Head Trader's request, the Auction Analyst published a report on December 6 featuring auction rate securities as offering "extraordinary values" for both the short-term investor and the "cash investor," noting that investors in auction securities are largely shielded" from "the problems facing the financial market" and that "the auction preferred market offers excellent value for investors looking for . . . money market alternatives."

21. On February 8, 2008, with knowledge that another major broker-dealer had failed six auctions the day before, Merrill Lynch released for use by its sales force and the public a research report entitled "Back to Basics in the Auction Market" which, on the front page, touted the auction market's "resiliency" and referred to "greater liquidity." The report minimized the recent failures and encouraged customers to invest

in the securities.

VI. Violations

22. The foregoing acts and practices of Merrill Lynch violated the Martin Act, Article 23-A of the General Business Law.

23. The foregoing acts and practices of Merrill Lynch violated § 349 of the General Business Law.

24. The foregoing acts and practices of Merrill Lynch violated § 63(12) of the Executive Law.

AGREEMENT

WHEREAS, the parties agree to settle allegations that Merrill Lynch's conduct violated the Martin Act, General Business Law § 349 and Executive Law § 63(12) and the Attorney General can bring an action when misrepresentations are made in connection with the sale of securities and scienter need not be proven to establish a violation of the Martin Act, General Business Law § 349 and Executive Law § 63(12);

WHEREAS, Merrill Lynch neither admits nor denies the Attorney General's Findings set forth above;

WHEREAS, the Attorney General is willing to accept the terms of this Assurance pursuant to New York Executive Law § 63(15), and to terminate, as described and limited in paragraph 66 below, its Investigation of Merrill Lynch;

WHEREAS, the parties each believe that the obligations imposed by this Assurance are prudent and appropriate;

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

I. Relief for Auction Rate Securities Investors

A. Buybacks from Individual Auction Rate Securities Investors

25. Merrill Lynch will provide liquidity to Eligible Investors by buying back Eligible Auction Rate Securities (as defined below) that have failed at auction at least once between February 13, 2008 and September 2, 2008, at par, in the manner described below.

1. Definitions and Buyback Offer

26. “Eligible Auction Rate Securities,” for the purposes of this Assurance, shall mean publicly registered auction rate securities purchased at Merrill Lynch on or before February 13, 2008. Notwithstanding any other provision, Eligible Auction Rate Securities shall not include privately issued or placed auction rate securities that are unregistered and/or offered pursuant to SEC Rule 144A, or other exemptions of the Securities Act of 1933.

27. “Eligible Investors,” for the purposes of this Assurance, shall mean:

- i. Natural persons (including their IRA accounts, testamentary trust and estate accounts, custodian UGMA and UTMA accounts, and guardianship accounts) who purchased Eligible Auction Rate Securities at Merrill Lynch; and
- ii. All small businesses and not for profit clients in Merrill Lynch’s Global Wealth Management Group who purchased Eligible Auction Rate Securities at Merrill Lynch that had \$100 million or less in assets in their accounts with Merrill Lynch, net of margin

loans, as of August 7, 2008, or, if the customer was not a customer of Merrill Lynch as of August 7, 2008, as of the date that the customer terminated its customer relationship with Merrill Lynch. Notwithstanding any other provision, Eligible Investors covered by this section does not include broker-dealers or banks acting as conduits for their customers.

28. Merrill Lynch shall offer to buyback Eligible Auction Rate Securities in two tranches (“Buyback Offer”):
- i. Tranche One Offer. No later than September 26, 2008, Merrill Lynch shall have offered to buy back at par (plus accrued and unpaid dividends or interest, if any), Eligible Auction Rate Securities for which auctions have failed at least once between February 13, 2008 and September 2, 2008, from Eligible Investors defined in paragraph 27 above that had less than \$4 million dollars in assets at Merrill Lynch as of August 7, 2008.
 - ii. Tranche Two Offer. No later than December 18, 2008, Merrill Lynch shall have offered to buyback at par (plus accrued and unpaid dividends or interest, if any), Eligible Auction Rate Securities for which auctions have failed at least once between February 13, 2008 and September 2, 2008 from all Eligible Investors who purchased Eligible ARS from Merrill Lynch prior to February 13, 2008 and who had \$100 million or less in assets at Merrill Lynch as of August 7, 2008.

29. Merrill Lynch shall keep the Buyback Offer open until January 15, 2010 (“Offer Period”). Merrill Lynch may extend the Offer Period beyond this date.

2. Notification and Buyback Procedures

30. Merrill Lynch shall have undertaken its best efforts to identify and provide notice to Eligible Investors receiving a Tranche One Offer of the relevant terms of this Assurance by September 26, 2008. Merrill Lynch shall have undertaken its best efforts to identify and provide notice to Eligible Investors receiving a Tranche Two Offer of the relevant terms of this Assurance by December 18, 2008. Merrill Lynch will also undertake its best efforts to identify and cause notice of the relevant terms of this Assurance to be sent to Eligible Investors not previously identified.

31. To the extent that any Eligible Investor who invested in Eligible Auction Rate Securities that have failed at auction at least once between February 13, 2008 and September 2, 2008 has not responded to the Buyback Offer, Merrill Lynch shall undertake best efforts to provide any such Eligible Investor a second written notice on or before 45 days before the end of the Offer Period informing them of the relevant terms of this Assurance, notifying them of the impending expiration of the Offer Period, describing the state of the auction rate securities market at that time, and explaining the consequences of failing to sell their auction rate securities to Merrill Lynch prior to the expiration of the Offer Period.

32. Eligible Investors may accept the Buyback Offer by notifying Merrill Lynch at any time before 5 p.m., Eastern Time, January 15, 2010, or such later date and

time as Merrill Lynch may extend the Offer Period. The buyback will be conducted as follows:

- i. For Eligible Investors that received a Tranche One Offer and who accepted the Buyback Offer on or before October 1, 2008, Merrill Lynch shall have purchased Eligible Auction Rate Securities on or before October 1, 2008. For Eligible Investors that received a Tranche One Offer and who accept the Buyback Offer after October 1, 2008, but within the Offer Period, Merrill Lynch shall purchase their Eligible Auction Rate Securities on or before the next scheduled auction date that occurs after seven (7) business days after Merrill Lynch's receipt of notification of acceptance; or
- ii. For Eligible Investors that received a Tranche Two Offer and who accepted the Buyback Offer on or before January 2, 2009, Merrill Lynch shall have purchased Eligible Auction Rate Securities on or before January 2, 2009. For Eligible Investors that received a Tranche Two Offer and who accept the Buyback Offer after January 2, 2009, but within the Offer Period, Merrill Lynch shall purchase their Eligible Auction Rate Securities on or before the next scheduled auction date that occurs after seven (7) business days after Merrill Lynch's receipt of notification of acceptance.

3. **Customer Assistance**

33. No later than September 26, 2008, Merrill Lynch shall have established a dedicated toll-free telephone assistance line, with appropriate staffing, to provide information and to respond to questions concerning the terms of this Assurance.

34. No later than fourteen (14) days from the date of this Assurance, Merrill Lynch shall establish and maintain a public Internet page on its corporate Web site(s), with a prominent link to that page appearing on Merrill Lynch's relevant homepage(s), to provide information concerning the terms of this Assurance and, via an e-mail address or other reasonable means, to respond to questions concerning the terms of this Assurance. Merrill Lynch shall maintain the telephone assistance line and Internet page through January 15, 2010.

B. Relief for Eligible Investors Who Sold Below Par

35. By October 1, 2008, Merrill Lynch shall have undertaken its best efforts to identify Eligible Investors who sold Eligible Auction Rate Securities below par between February 13, 2008 and September 2, 2008 and shall have paid them the difference between par and the price at which the investor sold the Eligible Auction Rate Securities. Merrill Lynch will undertake its best efforts to identify and pay, as soon as reasonably possible, any Eligible Investor identified thereafter who sold Eligible Auction Rate Securities below par between February 13, 2008 and September 2, 2008.

C. Reimbursement for Related Loan Expenses

36. Merrill Lynch shall make best efforts to identify customers who took out loans between February 13, 2008 and September 2, 2008 that were secured by Eligible Auction Rate Securities that were not successfully auctioning at the time the loan was taken out from Merrill Lynch and paid interest associated with the auction rate securities

based portion of those loans in excess of the total interest and dividends received on the auction rate securities during the duration of the loan. Merrill Lynch shall reimburse such customers for the excess amount of loan interest paid, if any, plus reasonable interest thereon. Such reimbursement shall have occurred no later than June 1, 2009.

D. Consequential Damages Arbitration Process

37. Merrill Lynch shall consent to participate in a special arbitration (“Arbitration”) for the exclusive purpose of arbitrating any Eligible Investor’s consequential damages claim arising from their inability to sell Eligible Auction Rate Securities. Merrill Lynch shall notify such customers of the terms of the Arbitration process through the notice described in paragraph 30 above.

38. The Arbitrations involving consequential damages of less than \$1 million shall be conducted by a single public arbitrator (as defined by section 12100(u) of the NASD Code of Arbitration Procedures for Customer Disputes, eff. April 16, 2007), under the auspices of FINRA. In Arbitrations where the consequential damages claimed are equal to or greater than \$1 million, the parties can by mutual agreement, expand the panel to include three public arbitrators who will be appointed through FINRA’s list procedure. The consent of an Eligible Investor to expand the panel to three arbitrators must be expressly obtained. Merrill Lynch shall pay all applicable forum and filing fees.

39. Any Eligible Investors who choose to pursue such claims in the arbitration shall bear the burden of proving that they suffered consequential damages and that such damages were caused by the customers’ inability to access funds invested in Eligible Auction Rate Securities. In the Arbitration, Merrill Lynch shall be able to defend itself against such claims; provided, however, that Merrill Lynch shall not contest liability for

the illiquidity of the underlying auction rate securities position or use as part of its defense any decision by an Eligible Investor not to borrow money from Merrill Lynch.

40. Eligible Investors who elect to use the special arbitration process provided for herein shall not be eligible for special or punitive damages.

41. All customers, including but not limited to those Eligible Investors who avail themselves of the relief provided pursuant to this Assurance, may pursue any remedies against Merrill Lynch available under the law. However, Eligible Investors that elect to utilize the special arbitration process set forth above are limited to the remedies available in that process and may not bring or pursue a claim relating to Eligible Auction Rate Securities covered by this Assurance in another forum.

E. Municipal Issuers

42. Within thirty (30) business days from the date of this Assurance, Merrill Lynch shall refund refinancing fees Merrill Lynch received from municipal auction rate issuers that issued such securities through Merrill Lynch in the initial primary market between August 1, 2007 and February 13, 2008, and that refinanced those securities through Merrill Lynch after February 13, 2008.

F. Institutional Investors

43. Merrill Lynch shall endeavor to work with issuers and other interested parties, including regulatory and governmental entities, to expeditiously provide liquidity solutions for institutional investors that purchased Eligible Auction Rate Securities from Merrill Lynch and are not entitled to participate in the buyback described in Section IA above (“Institutional Investors”).

44. The Attorney General has refrained from taking legal action against Merrill Lynch with respect to Institutional Investors. The Attorney General shall issue continuances as it deems appropriate.

45. Beginning October 1, 2008, and continuing on a quarterly basis after that, Merrill Lynch shall submit written reports to the Attorney General, within 45 days of the end of each quarter, outlining Merrill Lynch's efforts to provide liquidity solutions for Institutional Investors and the results thereof. Merrill Lynch shall confer with the Attorney General on a quarterly basis to discuss Merrill Lynch's progress to date. Such quarterly reports and meetings shall continue at the Attorney General's request until January 15, 2010. Following every quarterly meeting, the Attorney General shall advise Merrill Lynch of any concerns regarding Merrill Lynch's progress in providing liquidity solutions for Institutional Investors and, in response, Merrill Lynch shall discuss how Merrill Lynch plans to address such concerns. The reporting or meeting deadlines set forth above may be amended with written permission from the Attorney General.

G. Penalty and Remedial Procedures

46. Merrill Lynch shall pay a total civil penalty of one hundred and twenty-five million dollars (\$125,000,000), of which \$23,245,213.97 shall be paid to the State of New York, on or before July 15, 2009, and the remainder to those states and territories that enter administrative or civil consent orders approving the terms of the North American Securities Administrators Association ("NASAA") settlement. The payment shall be in the form of a certified or bank check made out to "State of New York" and mailed to: Office of the Attorney General of the State of New York, 120

Broadway, 23rd Floor, New York, New York, 10271, Attn: David A. Markowitz, Chief, Investor Protection Bureau.

47. Merrill Lynch agrees that it shall not, collectively or individually, seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to, payment made pursuant to any insurance policy, with regard to any or all of the amounts payable pursuant to paragraph 46 above.

II. Other Provisions

48. Merrill Lynch admits the jurisdiction of the Attorney General. Merrill Lynch will cease and desist from engaging in any acts in violation of the Martin Act, General Business Law § 349 and/or Executive Law § 63(12) and will comply with the Martin Act, General Business Law § 349 and Executive Law § 63(12).

49. The Attorney General retains the right under Executive Law § 63(15) to compel compliance with this Assurance. Evidence of a violation of this Assurance proven in a court of competent jurisdiction shall constitute prima facie proof of a violation of the Martin Act, General Business Law § 349 and/or Executive Law § 63(12) in any civil action or proceeding hereafter commenced by the Attorney General against Merrill Lynch.

50. Should the Attorney General prove in a court of competent jurisdiction that a material breach of this Assurance by Merrill Lynch has occurred, Merrill Lynch shall pay to the Attorney General the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses and court costs.

51. If Merrill Lynch defaults on any obligation under this Assurance, the Attorney General may terminate this Assurance, at his sole discretion, upon 10 days

written notice to Merrill Lynch. Merrill Lynch agrees that any statute of limitations or other time related defenses applicable to the subject of the Assurance and any claims arising from or relating thereto are tolled from and after the date of this Assurance. In the event of such termination, Merrill Lynch expressly agrees and acknowledges that this Assurance shall in no way bar or otherwise preclude the Attorney General from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Assurance, against Merrill Lynch, or from using in any way any statements, documents or other materials produced or provided by Merrill Lynch prior to or after the date of this Assurance, including, without limitation, such statements, documents or other materials, if any, provided for purposes of settlement negotiations, except as may otherwise be provided in a written agreement with the Attorney General.

52. Except in an action by the Attorney General to enforce the obligations of Merrill Lynch in this Assurance or in the event of termination of this Assurance by the Attorney General, neither this Assurance nor any acts performed or documents executed in furtherance of this Assurance: (a) may be deemed or used as an admission of, or evidence of, the validity of any alleged wrongdoing, liability or lack of wrongdoing or liability; or (b) may be deemed or used as an admission of or evidence of any such alleged fault or omission of Merrill Lynch in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. This Assurance shall not confer any rights upon persons or entities who are not a party to this Assurance.

53. Merrill Lynch shall cooperate fully and promptly with the Attorney General and shall use its best efforts to ensure that all the current and former officers,

directors, trustees, agents, members, partners and employees of Merrill Lynch (and of any of Merrill Lynch's parent companies, subsidiaries or affiliates) cooperate fully and promptly with the Attorney General in any pending or subsequently initiated investigation, litigation or other proceeding relating to auction rate securities and/or the subject matter of the Assurance. Such cooperation shall include, without limitation, and on a best efforts basis:

- (a) production, voluntarily and without service of subpoena, upon the request of the Attorney General, of all documents or other tangible evidence requested by the Attorney General and any compilations or summaries of information or data that the Attorney General requests that Merrill Lynch (or the Merrill Lynch's parent companies, subsidiaries or affiliates) prepare, except to the extent such production would require the disclosure of information protected by the attorney-client and/or work product privileges;
- (b) without the necessity of a subpoena, having the current (and making all reasonable efforts to cause the former) officers, directors, trustees, agents, members, partners and employees of Merrill Lynch (and of any of the Merrill Lynch's parent companies, subsidiaries or affiliates) attend any Proceedings (as hereinafter defined) in New York State or elsewhere at which the presence of any such persons is requested by the Attorney General and having such current (and making all reasonable efforts to cause the former) officers, directors, trustees, agents, members, partners and employees answer any and all inquiries that may be put by the Attorney General to any of them at any proceedings or otherwise, except to the extent such production would require the disclosure of information protected by the attorney-client and/or work product privileges; "Proceedings" include, but are not limited to, any meetings, interviews, depositions, hearings, trials, grand jury proceedings or other proceedings;
- (c) fully, fairly and truthfully disclosing all information and producing all records and other evidence in its possession, custody or control (or the possession, custody or control of the Merrill Lynch parent companies, subsidiaries or affiliates) relevant to all inquiries made by the Attorney General concerning the subject matter of the Assurance, except to the extent such inquiries call for the disclosure of information protected by the attorney-client and/or work product privileges; and

- (d) making counsel reasonably available to provide comprehensive presentations concerning any internal investigation relating to all matters in the Assurance and to answer questions, except to the extent such presentations or questions call for the disclosure of information protected by the attorney-client and/or work product privileges.

54. In the event Merrill Lynch fails to comply with paragraph 53 of this Assurance, the Attorney General shall be entitled to specific performance, in addition to any other available remedies.

55. To the extent applicable, this Assurance hereby waives any disqualification from relying upon the registration exemptions or registration safe harbor provisions that may be contained in the federal securities laws, the rules and regulations thereunder, the rules and regulations of self regulatory organizations or any states' or U.S. Territories' securities laws. In addition, this Assurance is not intended to form the basis for any such disqualifications.

56. The Attorney General has agreed to the terms of this Assurance based on, among other things, the representations made to the Attorney General by Merrill Lynch, its counsel, and the Attorney General's own factual Investigation. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the Attorney General in its sole discretion.

57. Merrill Lynch shall, upon request by the Attorney General, provide all documentation and information reasonably necessary for the Attorney General to verify compliance with this Assurance.

58. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

If to Merrill Lynch:

Timothy P. Burke, Esq.
Bingham McCutchen LLP
One Federal Street
Boston, MA 12110-1726

If to the Attorney General:

Office of the Attorney General of the State of New York
120 Broadway, 23rd Floor
New York, New York 10271
Attn: David A. Markowitz

59. This Assurance and any dispute related thereto shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.

60. Merrill Lynch consents to the jurisdiction of the Attorney General in any proceeding or action to enforce this Assurance.

61. Merrill Lynch agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Assurance or creating the impression that this Assurance is without factual basis. Nothing in this paragraph affects Merrill Lynch's: (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Attorney General is not a party.

62. This Assurance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance.

63. This Assurance constitutes the entire agreement between the Attorney General and Merrill Lynch and supersedes any prior communication, understanding or agreement, whether written or oral, concerning the subject matter of this Assurance. No

representation, inducement, promise, understanding, condition or warranty not set forth in this Assurance has been relied upon by any party to this Assurance.

64. In the event that one or more provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

65. This Assurance may be executed in one or more counterparts, and shall become effective when such counterparts have been signed by each of the parties hereto.

66. Upon execution by the parties to this Assurance, the Attorney General agrees to terminate, pursuant to Executive Law § 63(15), this Investigation as and against Merrill Lynch solely with respect to its marketing and sale of auction rate securities to Eligible Investors.

67. Any payments and all correspondence related to this Assurance must reference **AOD # 08-174**.

WHEREFORE, the following signatures are affixed hereto on the dates set forth below.

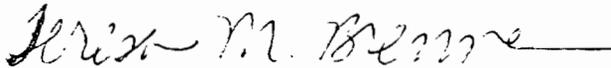
ANDREW M. CUOMO,
Attorney General of the State of New York

By: 
David A. Markowitz

Chief, Investor Protection Bureau
120 Broadway
23rd Floor
New York, New York 10271
(212) 416-8198

Dated: ~~June~~ ^{July 2} __, 2009

MERRILL LYNCH PIERCE, FENNER & SMITH INC.

By: 

Name: Teresa M. Brenner
Title: Associate General Counsel

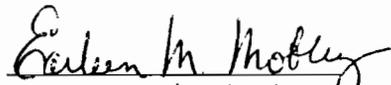
ACKNOWLEDGMENT

STATE OF NORTH CAROLINA)

:ss.

COUNTY OF MECKENBURG)

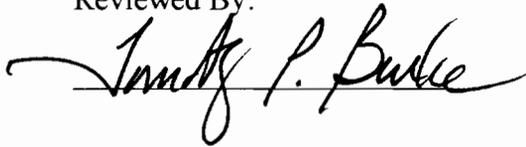
On this 25th day of June, 2009, before me personally came Teresa M. Brenner, known to me, who, being duly sworn by me, did depose and say that she is the Associate General Counsel of Merrill Lynch Pierce, Fenner & Smith Inc., the entity described in the foregoing Assurance, and is duly authorized by Merrill Lynch, Pierce, Fenner & Smith Inc. to execute the same, and that she signed her name in my presence by like authorization.


Earleen M. Mobley
Notary Public

My commission expires: March 27, 2011

Assurance of Discontinuance

Reviewed By:



Attorneys for Merrill Lynch Pierce, Fenner & Smith Inc.

Dated: June 25th, 2009