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11 ATTORNEYS FOR DEFENDANTS,
 MERRILL LYNCH & CO., INC. AND
 12 MERRILL LYNCH, PIERCE, FENNER &
 SMITH INCORPORATED

13
 14 **UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**
 16 **SAN FRANCISCO DIVISION**

17
 18 THE ANSCHUTZ CORPORATION,

19 Plaintiff,

20 v.

21 MERRILL LYNCH & CO., INC.; MERRILL
 LYNCH, PIERCE, FENNER & SMITH INC.;
 22 MOODY'S INVESTORS SERVICE, INC.;
 THE MCGRAW-HILL COMPANIES, INC.;
 23 FITCH, INC.; AND FITCH RATINGS, LTD.,

24 Defendants.

) CASE No.: C 09-3780-SI

) **STIPULATION AND [PROPOSED]**
) **ORDER EXTENDING**
) **TIME FOR DEFENDANTS**
) **TO RESPOND TO COMPLAINT**

) COMPLAINT FILED: AUGUST 17, 2009

) JUDGE: HON. SUSAN ILLSTON

1 WHEREAS, on June 10, 2009, the United States Judicial Panel on Multidistrict
2 Litigation centralized four actions before the Honorable Loretta A. Preska in the Southern
3 District of New York, captioned *In re Merrill Lynch Auction Rate Securities Litigation*, 1:08-cv-
4 3037-LAP; *Community Trust Bank, Inc. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 1:09-cv-
5 5403-LAP; *Louisiana Stadium & Exposition District, et al. v. Financial Guaranty Ins. Co., et al.*,
6 1:09-cv-5404-LAP; and *The Cooperative Bank, et al., v. Merrill Lynch, Pierce, Fenner & Smith,*
7 *Inc.*, 1:09-cv-5405-LAP (the “Centralized Actions”);

8 WHEREAS, on August 17, 2009, Plaintiff filed in this Court its complaint (the
9 “Complaint”) in the above-captioned action (the “Action”);

10 WHEREAS, on September 2, 2009, Defendants Merrill Lynch & Co., Inc. and Merrill
11 Lynch, Pierce, Fenner & Smith, Inc., filed a Notice of Tag-Along Action with the United States
12 Judicial Panel on Multidistrict Litigation (“MDL Panel”), seeking to transfer the Action for
13 coordinated or consolidated pretrial proceedings with the Centralized Actions currently pending
14 before Judge Preska in the United States District Court for the Southern District of New York;

15 WHEREAS, on September 16, 2009, the Clerk of the MDL Panel entered a Conditional
16 Transfer Order conditionally transferring the Action to Judge Preska in the Southern District of
17 New York;

18 WHEREAS, on September 18, 2009, defendant Deutsche Bank Securities Inc. (“DBSI”)¹
19 filed a notice of opposition to the September 16, 2009 Conditional Transfer Order;

20 WHEREAS, on September 21, 2009, the MDL Panel issued a stay of its September 16,
21 2009 Conditional Transfer Order pending the resolution of DBSI’s opposition;

22 WHEREAS, on September 24, 2009, DBSI filed a motion pursuant to 28 U.S.C. §
23 1404(a) seeking to transfer the Action to the Southern District of New York, but not seeking
24 consolidation with the Centralized Actions (“DBSI’s Transfer Motion”);

25 WHEREAS the procedures applicable to the Centralized Actions, as enumerated in the
26

27 ¹ DBSI was omitted from the caption of the Complaint, but is nonetheless a defendant.
28 See Compl. ¶ 12 (listing DBSI as a party).

1 Stipulation and Revised Scheduling Order signed by Judge Preska on August 17, 2009 (attached
2 hereto as Exhibit A), require defendants to inform plaintiff by letter of what they believe to be
3 any deficiencies in the complaint before filing a motion to dismiss and allow plaintiff the
4 opportunity to amend the complaint after receiving the letter;

5 Now, therefore, the Parties, through their respective undersigned counsel, hereby
6 STIPULATE, AGREE, and JOINTLY REQUEST the following:

- 7 1. By October 15, 2009, each Defendant will deliver to Plaintiff a letter enumerating what it
8 believes to be the deficiencies in the Complaint that will form the bases for its motion to
9 dismiss. With respect to any Federal Securities law claims, such letters shall focus on
10 Second Circuit law, and not Ninth Circuit law.
- 11 2. By October 22, 2009, Plaintiff will notify Defendants whether it intends to amend the
12 Complaint, with the understanding that Defendants do not currently intend to consent to
13 any further amendments, except as provided in Paragraph 6 below.
- 14 3. If Plaintiff notifies Defendants that it will not amend the Complaint, Defendants will
15 answer or otherwise move in response to the Complaint no later than: (a) 20 days after
16 Defendants' counsel receive notice that the MDL Panel has filed the Conditional Transfer
17 Order in the United States District Court for the Southern District of New York; (b) 20
18 days after an Order is entered should this Court transfer this Action to the Southern
19 District of New York under 28 U.S.C. § 1404(a); or (c) 30 days after an Order is entered
20 should this Court decline to transfer this Action to the Southern District of New York.
- 21 4. If Plaintiff notifies Defendants that it will amend the Complaint, Defendants will answer
22 or otherwise move in response to the Amended Complaint no later than 25 days after
23 service of the Amended Complaint. However, in no event shall Defendants be required
24 to answer or otherwise move in response to the Amended Complaint until: (a) 20 days
25 after Defendants' counsel receive notice that the MDL Panel has filed the Conditional
26 Transfer Order in the United States District Court for the Southern District of New York;
27 (b) 20 days after an Order is entered should this Court transfer this Action to the Southern
28 District of New York under 28 U.S.C. § 1404(a); or (c) 30 days after an Order is entered

- 1 should this Court decline to transfer this Action to the Southern District of New York.
- 2 5. If any Defendant elects to move to dismiss the Complaint and this action has been
- 3 transferred to the Southern District of New York either by the MDL Panel or pursuant to
- 4 DBSI's Transfer Motion, such motion will not raise any arguments not set forth in that
- 5 particular Defendant's Deficiency Letter.
- 6 6. If (a) Plaintiff gives notice pursuant to ¶ 2 above that it does not intend to amend the
- 7 Complaint, (b) this Action has not been transferred to the Southern District of New York,
- 8 (c) any Defendant makes any argument not included in that particular Defendant's
- 9 Deficiency Letter in a motion to dismiss, and (d) Plaintiff seeks to amend its Complaint,
- 10 then such Defendant will consent to Plaintiff's amendment of the Complaint.
- 11 7. In the event that any Defendant elects to move to dismiss the Complaint or the Amended
- 12 Complaint, Plaintiff will serve an opposition to that particular motion to dismiss no later
- 13 than 45 days after service of that motion to dismiss. That particular Defendant shall have
- 14 30 days to serve any reply to Plaintiff's opposition.
- 15 8. This stipulation should not be construed to be a consent to jurisdiction by Fitch Ratings
- 16 Ltd. or a waiver by Fitch Ratings Ltd. of its objection to jurisdiction.

Respectfully submitted,

18 DATED: OCTOBER 5, 2009

FOLEY & LARDNER LLP
PAGE R. BARNES
BILL J. SYMES

20 BY: /s/ Page R. Barnes

21 ATTORNEYS FOR DEFENDANTS
22 MERRILL LYNCH & CO., INC., AND
23 MERRILL LYNCH, PIERCE, FENNER &
SMITH INCORPORATED

24 DATED: OCTOBER 5, 2009

SAVERI & SAVERI, INC.
R. ALEXANDER SAVERI
GEOFFREY C. RUSHING
GIANNA GRUENWALD

26 BY: /s/ R. Alexander Saveri

27 ATTORNEYS FOR PLAINTIFF
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DATED: OCTOBER 5, 2009

WILSON, SONSINI, GOODRICH & ROSATI

BY: /s/ David McCarthy

ATTORNEYS FOR DEFENDANT
MOODY'S INVESTORS SERVICE, INC.

DATED: OCTOBER 5, 2009

PERKINS COIE

BY: /s/ David T. Biderman

ATTORNEYS FOR DEFENDANTS
THE MCGRAW-HILL COMPANIES, INC.

DATED: OCTOBER 5, 2009

TAYLOR & COMPANY LAW OFFICES, LLP

BY: /s/ Jayesh S. Hines-Shah

ATTORNEYS FOR DEFENDANTS
FITCH, INC. AND FITCH RATINGS, LTD.

DATED: OCTOBER 5, 2009

MORGAN, LEWIS, & BOCKIUS LLP

BY: /s/ Jami W. McKeon

ATTORNEYS FOR DEFENDANT
DEUTSCHE BANK SECURITIES, INC.

PURSUANT TO STIPULATION, IT IS SO ORDERED

Dated: _____, 2009



Hon. Susan Illston
United States District Judge

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GENERAL ORDER 45 CERTIFICATION

I, Page R. Barnes, hereby attest pursuant to N.D. Cal. General Order No. 45 that the concurrence to the filing of this document has been obtained from each signatory hereto.

DATED: OCTOBER 5, 2009

FOLEY & LARDNER LLP

BY: /s/ Page R. Barnes

ATTORNEYS FOR DEFENDANTS
MERRILL LYNCH & CO., INC., AND
MERRILL LYNCH, PIERCE, FENNER &
SMITH INCORPORATED