

1 (Attorney list on signature page)

2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF CALIFORNIA
4 SAN FRANCISCO DIVISION

6 Merrill Lynch, Pierce, Fenner & Smith
7 Incorporated, as successor by merger to Banc
8 of America Securities LLC, Jason David
9 Glidden, and Verlin Olen Dobkins,

10 Plaintiffs,

11 v.

12 N.R. Hamm Quarry, LLC,

13 Defendant.

No. 3:12-cv-02127-JSW

**STIPULATION AND ~~PROPOSED~~
SCHEDULING ORDER
AS MODIFIED HEREIN**
Judge: Jeffrey S. White

15 Plaintiffs Merrill Lynch, Pierce, Fenner & Smith Incorporated, as successor by merger to
16 Banc of America Securities LLC (“BAS”), Jason David Glidden, and Verlin Olen Dobkins, and
17 Defendant N.R. Hamm Quarry, LLC, by and through their respective counsel of record, hereby
18 stipulate as follows:

19 **WHEREAS**, on April 27, 2012, Plaintiffs filed a (i) complaint seeking a declaratory
20 judgment that Defendant has waived its right to arbitrate against the Plaintiffs claims arising from
21 its auction-rate securities purchases from BAS, and (ii) motion for a preliminary injunction
22 seeking an order enjoining Defendant from prosecuting the arbitration styled *N.R. Hamm Quarry,*
23 *LLC v. Merrill Lynch, Pierce, Fenner & Smith Incorporated, et al.*, FINRA Dispute Resolution
24 Arbitration No. 12-00370 (the “Arbitration”), pending a final judgment in this action;

25 **WHEREAS**, Defendant agreed on May 4, 2012, to stay the Arbitration pending a final
26 judgment on Plaintiffs’ claim for a declaratory judgment that Defendant has waived its right to
27 arbitrate;

28 STIPULATION AND ~~PROPOSED~~ ORDER
NO. 3:12-CV-02127-JSW

1 **WHEREAS**, the parties have met and conferred regarding a schedule for Defendant to
2 move, answer, or otherwise respond to the complaint;

3 **WHEREAS**, Defendant has indicated that it intends to move to dismiss the complaint;

4 **WHEREAS**, Plaintiffs have informed Defendant that they anticipate cross-moving for
5 summary judgment when they oppose Defendant's motion to dismiss;

6 **WHEREAS**, the parties have agreed to discuss a schedule for the Court's approval
7 relating to Plaintiffs' anticipated motion for summary judgment after the motion is filed; and

8 **WHEREAS**, this is the parties' first request for an extension of time.

9 **IT IS THEREFORE STIPULATED AND AGREED**, by and between Plaintiffs and
10 Defendant, acting through their representative counsel, subject to this Court's approval, as
11 follows:

- 12 1. Defendant shall move, answer, or otherwise respond to the complaint by June 22,
13 2012;
- 14 2. If Defendant moves to dismiss the complaint, (i) Plaintiffs shall file an opposition
15 to Defendant's motion to dismiss by August 9, 2012, and (ii) Defendant shall file
16 any reply in support of a motion to dismiss by September 14, 2012.

17 Dated: May 22, 2012

18 **O'MELVENY & MYERS LLP**

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Attorneys for Defendant

Attestation

I hereby attest that I have obtained concurrence in the filing of this Stipulation from all of the parties listed in the signature blocks above.

Dated: May 22, 2012

By: /s/ Robin M. Wall
Robin M. Wall, Attorney for Plaintiffs

PROPOSED ORDER

Having reviewed the above stipulation, **IT IS HEREBY ORDERED** that:

1. Defendant shall move, answer, or otherwise respond to the complaint by June 22, 2012;
2. If Defendant moves to dismiss the complaint, (i) Plaintiffs shall file an opposition to Defendant’s motion to dismiss by August 9, 2012, and (ii) Defendant shall file any reply in support of a motion to dismiss by September 14, 2012.

Dated: May 23, 2012



 The Honorable Jeffrey S. White
 United States District Judge

It is FURTHER ORDERED that if Defendant moves to dismiss, it shall notice the hearing for Friday, October 26, 2012 at 9:00 a.m. The parties are admonished that pursuant to this Court's standing orders, briefs on motions to dismiss may not exceed fifteen (15) pages. Thus, if any party wishes to file an oversized brief, they must make a request showing good cause sufficiently in advance of the deadline by which that brief is due for the Court to make a ruling on the request.