

**Exh. A****NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

***LaBriola v. Bank of America, National Association; Merrill Lynch, Pierce, Fenner & Smith Incorp.; Bank Of America Corporation; and Does 3-50, inclusive, Case No. 12-79 (N.D. Cal.)***

To all persons employed by MERRILL LYNCH PIERCE FENNER & SMITH, INCORPORATED as financial advisors in California whose employment with Merrill Lynch ended from December 2, 2008 through December 31, 2011 (the “Class Period”), and (b) who received a payment for incentive compensation wages (also referred to as “commissions” or “commission wages”) after their last day of employment if they were involuntarily terminated, or more than 72 hours after their resignation if they resigned: **YOU MAY BE ENTITLED TO MONEY FROM THIS PROPOSED SETTLEMENT.**

**Your legal rights are affected whether you act or don’t act. Read this notice carefully to understand your options and the deadlines to exercise them.**

The Court in charge of this case still has to decide whether to approve the settlement.

If you wish to make a claim, you must postmark or fax your claim according to the directions explained below no later than \_\_\_\_\_. That is the only way to get a payment under this proposed settlement. If there is anything that you do not like about the settlement, you can also write to the Court about your objections or appear at the Fairness Hearing that will be held by the Court to explain your objections. If you do not want to be a part of this settlement, you may exclude yourself from this settlement; this is the only option that allows you to be part of any other lawsuit against Merrill Lynch about the legal claims in this case.

**WHAT THE ACTION IS ABOUT**

This notice is related to a case called *LaBriola v. Bank of America, N.A., Merrill Lynch Pierce Fenner & Smith, Inc., & Bank of America Corp.*, Case No. 12-79 (referred to as the “Action”). The Action is now pending before Chief Judge Claudia Wilken in the United States District Court for the Northern District of California.

The plaintiff in this Action is John LaBriola, who previously worked as a financial advisor for the defendant in this lawsuit, Merrill Lynch Pierce Fenner & Smith, Incorporated (“Merrill Lynch” or “Defendant”). Bank of America, N.A. and Bank of America Corporation were originally defendants in this action and were dismissed from the case with prejudice. Merrill Lynch is the only remaining defendant.

In the Action, LaBriola claims that Merrill Lynch failed to pay him and other terminated financial advisors their final incentive compensation check within the time allowed by California law. Specifically, LaBriola alleges that final incentive compensation checks must be paid immediately upon involuntary termination, or within 72 hours of voluntary termination of employment without notice. LaBriola asserts that he and all other similarly situated former financial advisors (called the “Class”) are entitled to waiting time penalties for Merrill Lynch’s failure to make final payments to financial advisors within these time periods.

LaBriola brings claims on behalf of himself and the Class members for (1) waiting time penalties for

failure to pay final wages at time of termination pursuant to Cal. Labor Code §§ 201-203, and (2) for unfair competition in violation of Cal. Bus. & Prof. Code § 17200, *et. seq.* The operative complaint seeks relief for the Class members in the form of monetary waiting time penalties, injunctive relief, and reasonable attorney's fees and costs.

Merrill Lynch denies that it has violated the law in any manner alleged in the Action. Merrill Lynch asserts that it has paid LaBriola and the members of the Class all wages in the manner required by law. Nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Merrill Lynch.

Subject to the Court's approval, the parties have agreed to settle all claims under the terms set forth in this Notice.

### **DEFINITION OF THE CLASS**

The Court in this Action has entered an order certifying the Class for settlement purposes. The Class is defined as follows:

All persons employed by Merrill Lynch as financial advisors in California (a) whose employment with Merrill Lynch terminated from December 2, 2008 through December 31, 2011 (the "Class Period"), and (b) who received a payment for incentive compensation wages (also referred to as "commissions" or "commission wages") after their last day of employment if they were involuntarily terminated, or more than 72 hours after their resignation if they resigned. Excluded from the Class are the judicial officer presiding over this action and any member of the judicial officer's family.

You are a Class member if you fall into this definition.

### **PLAN OF DISTRIBUTION AND RELIEF**

The following is a summary of the terms of the proposed Settlement Agreement.

#### **A. Gross Fund Value of the Settlement**

This Settlement Agreement creates a total settlement fund of Two Million Seven Hundred Seventy-Five Thousand Dollars (\$2,775,000.00) ("Gross Fund Value"). This Gross Fund Value includes, without limitation, the payments to the Plaintiff Class and Class Counsel's attorneys' fees and costs. It does not include the costs of the Settlement Administrator, which will be borne separately by Merrill Lynch in addition to the Gross Fund Value.

In addition to the Gross Fund Value, Merrill Lynch will also pay the amount of any enhancement payment awarded by the Court to John LaBriola ("Class Representative Enhancement Payment"). Merrill Lynch has agreed it will not oppose an application for a Class Representative Enhancement Payment of up to Ten Thousand Dollars (\$10,000.00). John LaBriola has agreed that he shall not seek more than \$10,000 for a Class Representative Enhancement Payment.

In the event the Court awards less than \$10,000 for a Class Representative Enhancement Payment,

the difference between the amount awarded and \$10,000 will be added to the amount of the Gross Fund Value. Under no circumstances will the amount of the Gross Fund Value plus the amount of the Class Representative Enhancement Payment exceed Two Million Seven Hundred Eighty-Five Thousand Dollars (\$2,785,000.00).

Any award of attorneys' fees and costs to Class Counsel will be paid from the Gross Fund Value. As attorneys' fees, Class Counsel intends to ask the Court to award 25% of the value of claims submitted (prior to payment of attorneys' fees) plus any *cy pres* funds distributed per Section C below. In addition, Class Counsel will seek to recover reasonable out of pocket costs. Merrill Lynch will not oppose such an application for fees and costs.

The Court's approval, in whole or in part, of any request for attorneys' fees and costs or Class Representative Enhancement Payment are not conditions of the settlement and will be considered by the Court separately from the fairness, reasonableness, adequacy and good faith of the settlement.

#### B. Calculation of Individual Claims

Merrill Lynch will pay the Gross Fund Value in settlement of the Lawsuit subject to the retention of certain unclaimed funds, as described below.

Class Counsel will file a motion for an award of reasonable attorneys' fees and reimbursement of reasonable costs, which will be heard by the Court concurrently with the hearing on final approval of the settlement. These fees and costs are included in, and come from, the Gross Fund Value. The Gross Fund Value minus the amount of any attorneys' fees and costs awarded to Class Counsel is referred to as the "Net Fund Value."

If you are a member of the Class, you will be entitled to receive a portion of the Net Fund Value ("Individual Settlement Share") on a claims-made basis. Your Individual Settlement Share will be calculated as a pro rata share of the Net Fund Value based on: (1) your effective daily rate of pay (based on compensation Merrill Lynch paid you during your last twelve months of employment, as reflected in Merrill Lynch's records) (the "Daily Rate"), and (2) the number of days, as reflected in Merrill Lynch's records, that passed between your final date of employment and the date you were given your final payment of commission wages (minus three days if you resigned voluntarily), up to a maximum of thirty days ("Eligible Days"). The determination of whether you were terminated voluntarily or involuntarily will be based on Merrill Lynch's personnel records.

For purposes of illustration only, if you were terminated involuntarily on March 1, 2010 and were paid your final incentive compensation payment on March 15, 2010, you would have fourteen Eligible Days. If you were terminated voluntarily on March 1, 2010 and were paid your final incentive compensation payment on March 15, 2010, you would have eleven Eligible Days.

Your Daily Rate will include the following types of monetary compensation that Merrill Lynch paid you: (a) salaries/draws, (b) incentive compensation, (c) mandatory bonuses, (e) discretionary bonuses, and (f) loan forgiveness, during the last twelve months of employment with, divided by 260 days. If you did not work a full twelve months for Merrill Lynch prior to your termination, your Daily Rate will be calculated based on the compensation and business days that you worked.

For purposes of illustration only, if you worked for only 26 weeks prior to your termination, to determine your Daily Rate, the amount of compensation you received during those six months will be divided by 130 days.

The Settlement Administrator will calculate the combined total of each Class member's Daily Rate times his or her Eligible Days to determine the "Aggregate Potential Exposure." The amount of the Net Fund Value will then be divided by the Aggregate Potential Exposure to calculate the "Individual Claim Ratio."

To determine your Individual Settlement Share, the Settlement Administrator will calculate your Daily Rate, multiplied by your Eligible Days, multiplied by the Individual Claim Ratio.

The Claim Form enclosed with this Notice sets forth your Eligible Days, Daily Rate, and Individual Potential Exposure, together with your estimated pro rata Individual Settlement Share.

C. Claims-Made Structure and Minimum Payment by Defendant

The Settlement Agreement provides that this settlement will be on a claims-made basis. This means that any amounts from the Net Fund Value that are not claimed by Class members will remain the property of Merrill Lynch. However, the Settlement Agreement includes a minimum payment requirement, which requires that Merrill Lynch must pay at least 80% of the Net Fund Value.

If more than 20% of the Net Fund Value is unclaimed, 20% of the Net Fund Value will remain the property of Merrill Lynch and the unclaimed amount in excess of 20% of the Net Fund Value will be given as a *cy pres* distribution to the Legal Aid Society – Employment Law Center, a 501(c)(3) organization. If less than 20% of the Net Fund Value is unclaimed, the entirety of the unclaimed amount shall remain the property of Merrill Lynch.

D. Release

Upon the final approval by the Court of the settlement, all members of the Class who did not opt out, regardless of whether that member submitted a timely claim, shall be deemed to have fully released and discharged Merrill Lynch and Merrill Lynch's present and former parent companies, subsidiaries, shareholders, officers, directors, employees, agents, affiliates, servants, registered representatives, attorneys, insurers, successors and assigns from any and all individual and class claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action of whatever kind or nature, whether known or unknown, that were alleged in the Lawsuit, including, but not limited to any claims under federal and state law alleged in the First Amended Complaint in the Action.

E. Effect of Errors in Database Regarding Class Members

If any financial advisor comes forward and can show that he or she separated from Merrill Lynch during the Class Period and satisfies the criteria of the "Definition Of The Class" above, yet did not appear in the database Defendant provided to the Settlement Administrator setting forth the class members and data to be used to calculate settlement payments, that financial advisor shall have the ability to take part in the settlement, such that Merrill Lynch shall make a payment to that financial

advisor using the same methodology of calculation as the remainder of the Class Members, and that financial advisor shall be subject to the same release of claims as the Class Members. Such payment shall be separate from and in addition to the Gross Fund Value. In addition, if any financial advisor can show via the method described below that the information Defendant provided to the Settlement Administrator was inaccurate and that the inaccuracy(ies) resulted in a reduced settlement payment to such financial advisor, Merrill Lynch shall make a payment to the financial advisor using the same methodology of calculation as the remainder of the Class Members. Any increase in the amount of payment to the financial advisor caused by the correction of the information will be paid separate from and in addition to the Gross Fund Value.

### **HOW TO MAKE A CLAIM**

To receive money, you must return the claim form enclosed with this Notice to Epiq Systems, [INSERT ADDRESS], and it must be postmarked no later than \_\_\_\_\_, 2013. Alternatively you may fax the claim form by midnight Pacific time on \_\_\_\_\_, 2013 to the following fax number: 503-350-7895. The claim form provides individualized information about the estimated amount owed to you, if all class members make claims.

If you wish to challenge the information set forth in the Claim Form, then you must submit with your Claim Form a written, signed challenge under penalty of perjury, along with any supporting documents to the Settlement Administrator at the address or fax number provided above by \_\_\_\_\_. No dispute will be considered timely if postmarked or faxed after this date. Counsel for the parties may agree to a compromise to resolve your challenge or they may agree to allow the Settlement Administrator to resolve your challenge and make a final and binding determination without hearing or right of appeal. The Settlement Administrator will inform you whether your dispute was resolved in your favor within ten days after your challenge is made. In the case of a challenge, you will have the burden of proof to show that Merrill Lynch's records are incorrect. If any other dispute arises about the propriety of a Claim Form, counsel for the Parties may agree to a compromise of the dispute or agree to allow the Settlement Administrator to resolve the dispute and make a final and binding determination without hearing or right of appeal. Please note that engaging in the dispute process set forth in this paragraph does not extend the time to exclude yourself from the class, which is discussed below.

### **NOTICE OF FINAL FAIRNESS HEARING**

On \_\_\_\_\_, at \_\_\_\_\_, the Court will hold a hearing on the fairness of the proposed settlement, and on Plaintiff's petition for attorneys' fees and costs and enhancement payment to John LaBriola. At the hearing, the Court will be available to hear any objections and arguments concerning the fairness of the proposed settlement. The hearing will take place before Honorable Claudia Wilken in the Oakland Courthouse of the United States District Court for the Northern District of California, Courtroom 2, 4th Floor, 1301 Clay Street, Oakland, California 94612.

The hearing date or time may change without any further notice being sent directly to you. Changes to the hearing date or time will appear on the following website: [www.labriolasettlement.com](http://www.labriolasettlement.com).

### **HOW TO OBJECT TO THE SETTLEMENT, ATTORNEYS FEES, OR INCENTIVE**

## PAYMENT

If you don't like some part of the proposed settlement, including, but not limited to, the proposed settlement described above, the requested award of attorneys' fees and costs, or the requested award of incentive payment to the class representative, you can file an objection to tell the Court why you don't think the settlement should be approved. To submit such an objection, you must file it in writing with the Court no later than **November 27, 2013**. You also must serve any filed objections on Class Counsel and Merrill Lynch's Counsel prior to the date of the Final Approval Hearing, at the following addresses:

### CLASS COUNSEL

QUADRA & COLL, LLP  
James Quadra (SBN 131084)  
Email: jquadra@quadracoll.com  
Rebecca Coll (SBN 184468)  
Email: rcoll@quadracoll.com  
649 Mission Street, Fifth Floor  
San Francisco, CA 94105

### MERRILL LYNCH'S COUNSEL

MCGUIREWOODS LLP  
Matthew C. Kane (SBN 171829)  
Email: mkane@mcguirewoods.com  
Michael D. Mandel (SBN 216934)  
Email: mmandel@mcguirewoods.com  
John A. Van Hook (SBN 205067)  
Email: jvanhook@mcguirewoods.com  
Christopher A. Killens (SBN 254466)  
Email: ckillens@mcguirewoods.com  
1800 Century Park East, 8th Floor  
Los Angeles, CA 90067

Class Counsel will file the motion for an award of attorneys' fees and costs and for an enhancement payment to the class representative by November 6, 2013, twenty-one days before any objections must be filed. You can obtain a copy of this motion after it is filed by visiting the following website:

\_\_\_\_\_.

If you timely request to be excluded from the Class (as described below), you do not have the right to object to the settlement or speak at the Final Approval Hearing. If you do not exclude yourself from the Class, you are entitled to appear and speak at the Final Approval Hearing regardless of whether you have submitted a timely written objection pursuant to this paragraph. You may, but need not, enter an appearance through counsel of your choice. If you do, you will be responsible for your personal attorneys' fees and costs.

## HOW TO EXCLUDE YOURSELF FROM THE SETTLEMENT

You have the right to exclude yourself from the Class and the settlement. If you wish to be excluded, you must mail a Request for Exclusion in the form enclosed with this Notice with a postmark no later than \_\_\_\_\_ at the address set forth below.

Epiq Systems  
[INSERT ADDRESS]

If you timely request exclusion from the Class, you will be excluded from the Class, you will receive no payment from the settlement, you will not be bound by the judgment entered in the Action, and



you will not be precluded from otherwise prosecuting any individual claim against any released party.

**ADDITIONAL INFORMATION**

This description of the Action is general and does not cover all of the issues and proceedings thus far. In order to see the complete file including the individual terms of the settlement, you may visit the following website: \_\_\_\_\_.

If you have any questions about the settlement, you may contact Class counsel, who have been appointed to represent the interests of the Class in this matter:

QUADRA & COLL, LLP  
James Quadra  
Email: jquadra@quadracoll.com  
Rebecca Coll  
Email: rcoll@quadracoll.com  
649 Mission Street, Fifth Floor  
San Francisco, CA 94105  
Tel: (415) 426-3502

PLEASE DO NOT CONTACT THE COURT WITH QUESTIONS ABOUT THE SETTLEMENT.