File No. 803-_____

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

APPLICATION FOR AN ORDER UNDER SECTION 206A OF THE
INVESTMENT ADVISERS ACT OF 1940 ("ADVISERS ACT")
PROVIDING AN EXEMPTION FROM CERTAIN PROVISIONS OF SECTION 206(3)

Merrill Lynch, Pierce, Fenner & Smith Incorporated

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This Application (including Exhibits) consists of 26 pages.

UNITED STATES OF AMERICA

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

In the Matter of MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED One Bryant Park New York, NY 10036 File No. 803 – _____	APPLICATION FOR AN ORDER UNDER SECTION 206A OF THE INVESTMENT ADVISERS ACT OF 1940 PROVIDING AN EXEMPTION FROM CERTAIN PROVISIONS OF SECTION 206(3)

Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch" or the "Applicant"), a Delaware corporation, hereby files this application ("Application") for an Order of the Securities and Exchange Commission ("Commission" or "SEC") under Section 206A of the Investment Advisers Act of 1940 ("Advisers Act") providing an exemption from the written disclosure and consent requirements of Section 206(3) of the Advisers Act. Merrill Lynch also requests that the Commission's Order apply to future investment advisers controlling, controlled by, or under common control with Merrill Lynch ("Future Advisers"). Any Future Adviser relying on any Order granted pursuant to this Application will comply with the terms and conditions stated in this Application.[1] For the reasons discussed below, the Applicant believes that the Order requested is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Advisers Act.

I. BACKGROUND

A. The Adviser

Merrill Lynch is registered as an investment adviser with the SEC and is a registered broker-dealer. Merrill Lynch is a subsidiary of Bank of America Corporation, a diversified financial services company with operations around the world. Merrill Lynch offers a number of advisory programs, including the Merrill Lynch Personal Advisor ("MLPA") Program, a nondiscretionary advisory program, and the Merrill Lynch Investment Advisory Program ("MLIAP"), a recently created investment advisory program. While Merrill Lynch offers both discretionary and nondiscretionary advisory services under MLIAP, the relief sought by the

[1] The only entity that currently intends to rely on any Order granted pursuant to this Application is named as the Applicant.

Applicant in this Application, as it relates to MLIAP, is limited to client accounts enrolled in nondiscretionary strategies.

Merrill Lynch created MLPA in 2006. In 2007, many of Merrill Lynch's fee-based brokerage accounts were converted to nondiscretionary advisory accounts in MLPA following the invalidation of former Rule 202(a)(11)-1 under the Advisers Act.[2] When these accounts had been fee-based brokerage accounts, Merrill Lynch, in its capacity as a broker-dealer, engaged in principal transactions with its customers, in accordance with applicable law.

In 2013, Merrill Lynch created MLIAP. Also that year, Merrill Lynch began transitioning its investment advisory clients from five legacy investment advisory programs, including MLPA, to MLIAP. Clients enrolled in MLIAP can select from a number of different strategy types, including strategies that Merrill Lynch manages on a nondiscretionary basis.[3] MLPA currently has 3,239 client accounts remaining in the program, and it is expected that these remaining clients will either transition to MLIAP or terminate their investment advisory relationship with Merrill Lynch, at which point the MLPA will be retired.

Merrill Lynch currently relies on Rule 206(3)-3T under the Advisers Act (the "Rule") to engage in principal transactions with its client accounts in MLPA and MLIAP. The securities involved in these principal trades include government agency debt, municipal securities, corporate debt securities, preferred securities, U.S. Treasury securities and brokered certificates of deposit.

1. MLIAP

Merrill Lynch currently has approximately 393,535 client accounts enrolled in nondiscretionary strategies in MLIAP. Those accounts had approximately $157 billion in assets under management as of June 30, 2016.

In the period January 1, 2015 through December 31, 2015, there were approximately 53.9 million trades in MLIAP, involving approximately $79.1 billion in securities. In the period January 1, 2015 through December 31, 2015, 25,114 trades were effected in reliance on the Rule in 5,978 unique MLIAP accounts, representing an approximate average of 4.2 such trades per account.[4] Approximately 70 percent of the trades done in reliance on the Rule in this period were purchases by client accounts; the average purchase was approximately $55,850. Approximately 30 percent of the trades done in reliance on the Rule in this period were sales from client accounts; the average sale was approximately $41,504.

From January 1, 2015 to December 31, 2015, Merrill Lynch did not rely on the Rule for principal trades in securities it underwrote. Any principal transactions in securities that are

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[2] In 2007, a portion of the fee-based brokerage accounts were converted to the International Asset Power Program, another nondiscretionary investment advisory program. Clients in this program were ultimately transitioned into an offering of MLPA that was suitable for international clients, and the International Asset Power Program was closed to clients in 2011.

[3] As noted above, the relief sought by the Applicant in this Order is limited to client accounts enrolled in nondiscretionary strategies in MLIAP and the remaining client accounts in MLPA.

[4] While only 5,978 accounts effected trades in reliance on the rule in 2015, this represents only a portion of the accounts for which the client has prospectively consented to principal trades.

underwritten by Merrill Lynch are effected in accordance with section 206(3) of the Advisers Act.

2. MLPA

Merrill Lynch currently has approximately 3,239 client accounts in MLPA. Those accounts had approximately $5.5 billion in assets under management as of June 30, 2016.

In the period January 1, 2015 through December 31, 2015, there were approximately 675,000 trades in MLPA, involving approximately $13 billion in securities. In the period January 1, 2015 through December 31, 2015, 11,400 trades were effected in reliance on the Rule in 2,857 unique MLPA accounts, representing an approximate average of 4 such trades per account were effected in reliance on the Rule. Approximately 70 percent of the trades done in reliance on the Rule in this period were purchases by client accounts; the average purchase was approximately $77,600. Approximately 30 percent of the trades done in reliance on the Rule in this period were sales from client accounts; the average sale was approximately $77,517.

From January 1, 2015 to December 31, 2015, Merrill Lynch did not rely on the Rule for any principal trades in securities it underwrote. Any principal transactions in securities that are underwritten by Merrill Lynch are effected in accordance with section 206(3) of the Advisers Act.

B. Request for an Order

Section 206(3) of the Advisers Act provides that it is unlawful for any investment adviser, directly or indirectly, acting as principal for its own account, knowingly to sell any security to or purchase any security from a client without disclosing to the client in writing before the completion of the transaction the capacity in which the adviser is acting and obtaining the client's consent to the transaction. The Rule deems an investment adviser to be in compliance with the provisions of Section 206(3) when the investment adviser, or a person controlling, controlled by, or under common control with the investment adviser, acting as principal for its own account, sells to or purchases from an advisory client any security, provided that the investment adviser complies with the conditions of the Rule.

The Rule requires, among other things, that the investment adviser obtain a client's written, revocable consent prospectively authorizing the adviser, directly or indirectly, acting as principal for its own account, to sell any security to or purchase any security from the client. The consent must be obtained after the adviser provides the client with written disclosure about: (i) the circumstances under which the investment adviser may engage in principal transactions with the client; (ii) the nature and significance of the conflicts the investment adviser has with its client's interests as a result of those transactions; and (iii) how the investment adviser addresses those conflicts. The investment adviser also must provide trade-by-trade disclosure to the client, before the execution of each principal transaction, of the capacity in which the adviser may act with respect to the transaction, and obtain the client's consent to the transaction. The trade-by-trade disclosure and consent may be written or oral.

The investment adviser also must provide to the client a trade confirmation that, in addition to the requirements of Rule 10b-10 under the Securities Exchange Act of 1934

("Exchange Act"), includes a conspicuous, plain English statement informing the client that the investment adviser disclosed to the client before the execution of the transaction that the investment adviser may act as principal in connection with the transaction, that the client authorized the transaction, and that the investment adviser sold the security to or bought the security from the client for its own account. The investment adviser also must deliver to the client, at least annually, a written statement listing all transactions that were executed in the account in reliance on the Rule, including the date and price of each transaction. The Rule is available only to an investment adviser that is also a broker-dealer registered under section 15 of the Exchange Act and may only be relied upon with respect to a nondiscretionary account that is a brokerage account subject to the Exchange Act, and the rules thereunder, and the rules of the self-regulatory organization(s) of which it is a member. Rule 206(3)-3T is not available for principal transactions if the investment adviser or a person who controls, is controlled by, or is under common control with the adviser ("control person") is the issuer or is an underwriter of the security, except that an adviser may rely on the Rule for trades in which the adviser or a control person is an underwriter of non-convertible investment-grade debt securities.

The Rule is scheduled to expire on December 31, 2016. Upon expiration, the Applicant would be required to provide trade-by-trade written disclosure to each nondiscretionary advisory client with whom the Applicant sought to engage in a principal transaction in accordance with Section 206(3). The Applicant submits that its nondiscretionary clients, through the Applicant's current reliance on the Rule, have had access to the Applicant's inventory through principal transactions for a number of years, and expect to continue to have such access in the future. The Applicant believes that engaging in principal transactions with its clients provides certain benefits to its clients, including access to debt securities of limited availability, such as municipal bonds. Being able to engage in principal transactions with the Applicant also provides the Applicant's clients additional liquidity with respect to the fixed income securities they hold. The written disclosure requirement of Section 206(3) acts as an operational barrier to its ability to engage in principal trades with its clients, especially when the transaction involves securities of limited availability. These securities often are purchased and sold through electronic communications networks that operate rapidly; in the time needed for an adviser to prepare and deliver a written disclosure to the client and obtain the client's consent, the opportunity to act on a favorable price may be lost.

Merrill Lynch engages in approximately 3,042 principal trades on average a month with its nondiscretionary advisory clients in reliance on the Rule. It would be an operational barrier for the Applicant to provide a written notice to all of its clients with whom it trades as principal before the completion of each principal transaction. Further, clients may be unable to receive a written notification or respond to one quickly, and delays could result in the opportunity no longer being available to the clients, or not available at a favorable price. Unless the Applicant is provided an exemption from Section 206(3), it will be unable to provide the same range of services and access to the same types of securities to its nondiscretionary advisory clients as it currently is able to provide to clients under the Rule.

The Applicant acknowledges that the Order, if granted, would not be construed as relieving in any way the Applicant from acting in the best interests of an advisory client, including fulfilling the duty to seek the best execution for the particular transaction for the advisory client; nor shall it relieve the Applicant from any obligation that may be imposed by

Section 206(1) or (2) of the Advisers Act or by other applicable provisions of the federal securities laws or applicable FINRA Rules. The Applicant requests that the Commission issue it an Order pursuant to Section 206A providing an exemption from the written disclosure and consent requirements of Section 206(3) only with respect to client accounts in MLPA, nondiscretionary strategies in MLIAP, and any similar nondiscretionary program to be created in the future.

II. DISCUSSION

The Applicant submits that the conditions set forth below will adequately protect advisory clients that choose to engage in principal transactions with their investment advisers. The conditions set forth below incorporate all of the provisions of the Rule, as well as additional conditions requiring the Applicant to, among other things, (i) adopt and implement written policies and procedures reasonably designed to ensure compliance with the conditions of an Order granted by the Commission; (ii) create and maintain records to enable the chief compliance officer of the Applicant to review the Applicant's compliance with the conditions of such an order; and (iii) cause the chief compliance officer of the Applicant to monitor the Applicant's compliance with the conditions of such an Order and conduct testing reasonably sufficient to verify such compliance. These additional conditions are designed to ensure compliance with the requested Order's substantive conditions and to ensure that the Commission staff is able to examine records relative to the Applicant's compliance with the conditions of the requested order. The Applicant further submits that the conditions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Advisers Act.

Notably, the Applicant will remain subject to the fiduciary duties that are generally enforceable under Sections 206(1) and 206(2) of the Advisers Act. In general terms, an investment adviser's fiduciary duty requires an adviser to: (i) disclose material facts about the advisory relationship to its clients; (ii) treat each client fairly; and (iii) act only in the best interests of its client, disclosing conflicts of interest when present and obtaining client consent to such arrangements. More specifically, an adviser's fiduciary duty has been interpreted to require a duty of care in providing investment advice, requiring the exercise of due care throughout the process of recommending securities rather than to the eventual success or failure of its recommendations.[5] In addition, the SEC has recognized that an investment adviser has an obligation to recommend only those securities that are suitable for a particular client's stated investment objectives and circumstances. The antifraud provisions of the Advisers Act impose a duty of best execution, which requires an adviser to seek the most favorable terms reasonably available under the circumstances for the execution of clients' securities transactions.[6] Fiduciary duties under the Advisers Act also direct an adviser's obligations with respect to allocation of trades. When an adviser manages multiple accounts with substantially similar investment objectives and restrictions, absent clear disclosure to the contrary and informed consent from the relevant clients, the adviser has a duty to treat each account fairly and may not give preference to one client (or its proprietary account) over others. These obligations combine to protect a client's

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[5] *See, e.g.,* Jones Memorial Trust v. Tsai Inv. Services, Inc., 3676 F.Supp. 491 , 497 (S.D.N.Y. 1973).
[6] *See In re* Arleen W. Hughes, Exchange Act Release No. 4048 (Feb. 18, 1948) *aff'd sub nom.,* Hughes v. SEC, 174 F.2d 969 (D.C. Cir. 1949).

interests against improper dumping of undesirable securities in a client account and unfair fees and pricing structures.

Moreover, in its capacity as a broker-dealer with respect to these accounts, the Applicant will remain subject to a comprehensive set of Commission and FINRA regulations that apply to the relationship between a broker-dealer and its customer in addition to the fiduciary duties an adviser owes a client. These rules require, among other things, that the Applicant deal fairly with its customers, seek to obtain best execution of customer orders, and make only suitable recommendations. These obligations are designed to promote business conduct that protects customers from abusive practices that may not necessarily be fraudulent, and to protect against unfair prices and excessive commissions. Specifically, under the antifraud provisions of the Exchange Act, a broker-dealer has a duty of fair dealing, which includes, among other things, the requirement that a broker-dealer only charge prices reasonably related to the prevailing market.[7] The antifraud provisions of the Exchange Act also impose a duty of best execution, which requires a broker-dealer to seek to obtain the most favorable terms available under the circumstances for its customer orders.[8] This applies whether the broker-dealer is acting as agent or as principal. FINRA rules also impose a duty of best execution.[9] For example, FINRA members must use "reasonable diligence" to determine the best market for a security and buy or sell the security in that market, so that the price to the customer is as favorable as possible under prevailing market conditions. FINRA rules also govern the broker-dealer's activities related to mark-ups.[10] For example, "It shall be deemed a violation of Rule 2010 and Rule 2121 for a member to enter into any transaction with a customer in any security at any price not reasonably related to the current market price of the security or to charge a commission which is not reasonable."[11]

Broker-dealers also are subject to a specific set of suitability requirements that serve to protect against "dumping" securities in a client account. FINRA Rule 2111 requires, in part, that a broker-dealer or associated person "have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the [firm] or associated person to ascertain the customer's investment profile." Under suitability requirements, a broker-dealer must have an "adequate and reasonable basis" for any recommendation that it makes. Reasonable basis suitability, or the reasonable basis test, relates to the particular security or strategy recommended. Therefore, the broker-dealer has an obligation to investigate and obtain adequate information about the security it is recommending. FINRA Rule 2111 also requires a broker-dealer to determine customer-specific suitability. In effect, this requires a broker-dealer to make recommendations based on a customer's particular financial situation, needs, and other security holdings. An attempt to execute a principal transaction that would place a security that is

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[7] U.S. SEC Study on Investment Advisers and Broker Dealers, at 51 (January 2011), available at: https://www.sec.gov/news/studies/2011/913studyfinal.pdf, citing *Report of the Special Study of Securities Markets of the Securities and Exchange Commission*, H.R. Doc. No. 88-95, at 238 (1st Sess. 1963).

[8] *Id. at* 69, citing *Newton v. Merrill, Lynch, Pierce, Fenner & Smith, Inc.*, 135 F.3d 266, 269-270 (3d Cir.), *cert. denied*, 525 U.S. 811 (1998).

[9] FINRA Rule 5310; *see also, Best Execution: Guidance on Best Execution Obligations in Equity, Options and Fixed Income Markets*, FINRA Regulatory Notice 15-46 (Nov. 2015).

[10] *E.g.*, FINRA Rule 2121.

[11] *Mark-Up Policy,* FINRA Rule 2121 Supplementary Material .01

inconsistent with the customer's investment objectives would be unsuitable, and is prohibited by FINRA Rule 2111.

Finally, FINRA rules impose an overarching principle that governs a broker-dealer's handling of customer trades and operates to protect a customer from inappropriate principal trades. Specifically, FINRA Rule 2110 requires a broker-dealer "to observe high standards of commercial honor and just and equitable principles of trade." This manifests as a requirement that a broker-dealer must not use its ability to execute trades as principal to improperly impose excessive charges or place securities in a customer's account that it would not otherwise recommend.

Merrill Lynch has a number of policies and procedures in place designed to meet its fiduciary duties under the Advisers Act and suitability obligations under FINRA Rule 2111. For example, Merrill Lynch's enrollment procedures for the investment advisory program incorporate a review of suitability considerations, such as establishing the client's risk tolerance, investment objective and liquidity needs. Merrill Lynch has established program specific guidelines and supervisory monitoring routines to monitor for and respond to circumstances when a client account is out of compliance with certain program guidelines or requirements. In addition, Merrill Lynch's Financial Advisors are required to meet with each investment advisory client periodically, and perform a comprehensive account review at least annually, which includes a review of target asset allocation, applicable program guidelines, current investment objective and risk tolerance as well as any changes in the client's financial circumstances, account performance, trading and investment activity.

Merrill Lynch utilizes a number of trading tools and transaction reports in executing, and reviewing its execution of its customers' orders in securities transactions that help facilitate Merrill Lynch's compliance with its best execution and fair pricing obligations. For example, depending on the security and transaction type, Merrill Lynch's trading platforms may incorporate a number filters which screen available offerings and display only the best available price under prevailing market conditions to its financial advisors and customers. In addition, Merrill Lynch has in place best execution working groups, with the objective to review pricing and execution data for transactions executed for its customers. The working groups include business representatives, sales traders, and representatives from legal and compliance teams, and meet no less than quarterly; meetings may occur more frequently as needed. In its reviews, the best execution working groups consider, among other things, Merrill Lynch's routing practices (*e.g.,* where its customers' orders are routed for execution, whether to an external venue or to a Merrill Lynch trading desk), the execution quality of the venues to which customers' orders are routed, the execution prices and variances of such execution prices from prices reported in the market and/or published by unaffiliated third party providers, and, where available, transaction reports filed by market centers with the SEC (*e.g.,* monthly reports of statistical information concerning order execution required by Rule 605 of Regulation NMS). Such reviews are conducted with a goal toward ensuring that Merrill Lynch is meeting its obligations as to the fairness and reasonableness of prices to its customers, taking into consideration prevailing market conditions.

III. PRECEDENT

The Commission has not previously granted an order under the Advisers Act exempting a firm from compliance with the provisions of Section 206(3). The Rule itself, however, is support for the granting of the requested Order, in light of the Commission's careful consideration of the needs of advisory clients balanced against the investor protection goal of Section 206(3). The proposed conditions incorporate all of the provisions of the Rule, as well as additional conditions designed to ensure compliance with the substantive conditions and to provide a means by which the SEC and its staff can examine the Applicant's compliance with the conditions. The Applicant further notes as support for the requested order that, more than fifteen years ago, the Commission stated that "advisory clients can benefit from [principal] transactions, depending on the circumstances, by obtaining a more favorable transaction price for the securities being purchased or sold than otherwise available."[12]

IV. REQUEST FOR ORDER OF EXEMPTION

For the foregoing reasons, and subject to the conditions listed below, the Applicant requests that the Commission issue an Order under Section 206A of the Advisers Act providing an exemption from the written disclosure and consent requirements of Section 206(3).

Applicant's Conditions:

The Applicant agrees that any Order granting the requested relief will be subject to the following conditions:

1. The investment adviser will exercise no "investment discretion" (as such term is defined in Section 3(a)(35) of the Exchange Act, except investment discretion granted by the advisory client on a temporary or limited basis,[13] with respect to the client's account.

2. The investment adviser will not trade in reliance on this Order any security for which the investment adviser or any person controlling, controlled by, or under common control with the investment adviser is the issuer, or, at the time of the sale, an underwriter (as defined in Section 202(a)(20) of the Advisers Act.

3. The investment adviser will not directly or indirectly require the client to consent to principal trading as a condition to opening or maintaining an account with the investment adviser.

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[12] *See* "Interpretation of Section 206(3) of the Investment Advisers Act of 1940," Advisers Act Release No. 1732 (July 17, 1998).

[13] Discretion is considered to be temporary or limited for purposes of this condition when the investment adviser is given discretion: (i) as to the price at which or the time to execute an order given by a client for the purchase or sale of a definite amount or quantity of a specified security; (ii) on an isolated or infrequent basis, to purchase or sell a security or type of security when a client is unavailable for a limited period of time not to exceed a few months; (iii) as to cash management, such as to exchange a position in a money market fund for another money market fund or cash equivalent; (iv) to purchase or sell securities to satisfy margin requirements; (v) to sell specific bonds and purchase similar bonds in order to permit a client to take a tax loss on the original position; (vi) to purchase a bond with a specified credit rating and maturity; and (vii) to purchase or sell a security or type of security limited by specific parameters established by the client. *See e.g., Temporary Rule Regarding Principal Trades with Certain Advisory Clients*, Investment Advisers Act Release No. 2653 (Sept. 24, 2007) at n. 31.

4. The advisory client has executed a written revocable consent prospectively authorizing the investment adviser directly or indirectly to act as principal for its own account in selling any security to or purchasing any security from the advisory client. The advisory client's written consent must be obtained through a signature or other positive manifestation of consent that is separate from or in addition to the signature indicating the client's consent to the advisory agreement. The separate or additional signature line or alternative means of expressing consent must be preceded immediately by prominent, plain English disclosure containing either: (a) an explanation of: (i) the circumstances under which the investment adviser directly or indirectly may engage in principal transactions; (ii) the nature and significance of conflicts with its client's interests as a result of the transactions; and (iii) how the investment adviser addresses those conflicts; or (b) a statement explaining that the client is consenting to principal transactions, followed by a cross-reference to a specific document provided to the client containing the disclosure in (a)(i)-(iii) above and to the specific page or pages on which such disclosure is located; provided, however, that if the Applicant requires time to modify its electronic systems to provide the disclosure in (a)(i)-(iii) above immediately preceding the separate or additional signature line, the Applicant may, while updating such electronic systems, and for no more than 90 days from the date of the Order, instead provide a cross-reference to a specific document provided to the client containing the disclosure in (a)(i)-(iii) above and to the specific section in such document in which such disclosure is located. *Transition provision*: To the extent that the adviser obtained fully-informed written revocable consent from an advisory client for purposes of rule 206(3)-3T(a)(3) prior to the date of this Order, the adviser may rely on this Order with respect to such client without obtaining additional prospective consent from such client.

5. The investment adviser, prior to the execution of each transaction in reliance on this Order, will: (a) inform the advisory client, orally or in writing, of the capacity in which it may act with respect to such transaction; and (b) obtain consent from the advisory client, orally or in writing, to act as principal for its own account with respect to such transaction.

6. The investment adviser will send a written confirmation at or before completion of each such transaction that includes, in addition to the information required by Rule 10b-10 under the Exchange Act, a conspicuous, plain English statement informing the advisory client that the investment adviser: (a) disclosed to the client prior to the execution of the transaction that the adviser may be acting in a principal capacity in connection with the transaction and the client authorized the transaction; and (b) sold the security to, or bought the security from, the client for its own account.

7. The investment adviser will send to the client, no less frequently than annually, written disclosure containing a list of all transactions that were executed in the client's account in reliance upon this Order, and the date and price of each such transaction.

8. The investment adviser is a broker-dealer registered under Section 15 of the Exchange Act and each account for which the investment adviser relies on this Order is a brokerage account subject to the Exchange Act, and the rules thereunder, and the rules of the self-regulatory organization(s) of which it is a member.

9. Each written disclosure required as a condition to this Order will include a conspicuous, plain English statement that the client may revoke the written consent referred to in

Condition 4 above without penalty at any time by written notice to the investment adviser in accordance with reasonable procedures established by the investment adviser, but in all cases such revocation must be given effect within 5 business days of the investment adviser's receipt thereof.

10. The investment adviser will maintain records sufficient to enable verification of compliance with the conditions of this Order. Such records will include, without limitation: (a) documentation sufficient to demonstrate compliance with each disclosure and consent requirement under this Order; (b) in particular, documentation sufficient to demonstrate that, prior to the execution of each transaction in reliance on this Order, the adviser informed the advisory client of the capacity in which it may act with respect to the transaction and that it received the advisory client's consent (if the investment adviser informs the client orally of the capacity in which it may act with respect to such transaction or obtains oral consent, such records may, for example, include recordings of telephone conversations or contemporaneous written notations); and (c) documentation sufficient to enable assessment of compliance by the investment adviser with Sections 206(1) and (2) of the Advisers Act in connection with its reliance on this Order.[14] In each case, such records will be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in an appropriate office of the investment adviser, and be available for inspection by the staff of the Commission.

11. The investment adviser will adopt written compliance policies and procedures reasonably designed to ensure, and the investment adviser's chief compliance officer will monitor, the investment adviser's compliance with the conditions of this Order. The investment adviser's chief compliance officer will, on at least a quarterly basis, conduct testing reasonably sufficient to verify such compliance. Such written policies and procedures, monitoring and testing will address, *without limitation:* (a) compliance by the investment adviser with its disclosure and consent requirements under this Order; (b) the integrity and operation of electronic systems employed by the investment adviser in connection with its reliance on this Order; (c) compliance by the investment adviser with its recordkeeping obligations under this Order; and (d) whether there is any evidence of the investment adviser engaging in "dumping" in connection with its reliance on this Order.[15] The investment adviser's chief compliance officer will document the frequency and results of such monitoring and testing, and the investment adviser will maintain and preserve such documentation in an easily accessible place for a period of not less than five years, the first two years in an appropriate office of the investment adviser, and be available for inspection by the staff of the Commission.

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[14] For example, under sections 206(1) and (2), an adviser may not engage in any transaction on a principal basis with a client that is not consistent with the best interests of the client or that subrogates the client's interests to the adviser's own. *Cf.* Investment Advisers Act Release No. 2106 (Jan. 31, 2003) (adopting Rule 206(4)-6)).

[15] *See* Report of the Securities and Exchange Commission, Investment Trusts and Investment Companies, H.R. Doc. No. 279, 76th Cong., 2d Sess., pt. 3, at 2581, 2589 (1939); Hearings on S.3580 Before a Subcommittee of the Commission on Banking and Currency, 76th Cong., 3d Sess. 209, 212-23 (1940); and Hearings on S. 3580 Before the Subcomm. of the Comm. on Banking and Currency, 76th Cong., 3d Sess. 322 (1940).

Representation:

The Applicant acknowledges that the Order, if granted, would not be construed as relieving in any way the Applicant from acting in the best interests of an advisory client, including fulfilling the duty to seek the best execution for the particular transaction for the advisory client; nor shall it relieve the Applicant from any obligation that may be imposed by Section 206(1) or (2) of the Advisers Act or by other applicable provisions of the federal securities laws.

V. PROCEDURAL MATTERS

Pursuant to Rule 0-4(f) under the Advisers Act, the Applicant states that its address is indicated on the first page of this Application. The Applicant further states that all written or oral communications concerning this Application should be directed to:

Mackenzie E. Crane, Esq.	James E. Anderson, Esq.
Bank of America	Kimberly B. Saunders, Esq.
100 Federal Street	Willkie Farr & Gallagher LLP
MA5-100-05-11	1875 K Street, NW
Boston, MA 02110	Washington, DC 20006
(617) 434-9080	(202) 303-1114

All requirements for the execution and filing of this Application on behalf of Merrill Lynch have been complied and are in accordance with its By Laws, and the undersigned officer is fully authorized to execute this Application. Merrill Lynch has adopted the Resolution attached as Exhibit A authorizing the filing of the application. The Verification required by Rule 0-4(d) under the Advisers Act is attached as Exhibit B and the Proposed Notice of the proceeding initiated by the filing of this application, required by Rule 0-4(g) under the Advisers Act, is attached as Exhibit C.

AUTHORIZATION AND SIGNATURE

All requirements of the By Laws of Merrill Lynch have been complied with in connection with the execution and filing of this Application. The aforesaid, by resolutions duly adopted by its Board of Directors as of November 22, 2016, (copies of such resolutions are attached as Exhibit A to this Application), has authorized the making of this Application. Such resolutions continue to be in force and have not been revoked through the date hereof.

Merrill Lynch has caused the undersigned person to sign this Application on its behalf in the County of New York, State of New York on this 22nd day of November 2016.

Merrill Lynch

By: _____
NAME: Andrew M. Sieg
TITLE: Managing Director

Attest: _____

VERIFICATION

STATE OF NEW YORK) ss
COUNTY OF NEW YORK)

The undersigned being duly sworn, deposes and says that he has duly executed the attached Application ("Application") dated November 22, 2016, for and on behalf of Merrill Lynch; that he is the Managing Director of Merrill Lynch; and that all actions by the Board of Directors and other bodies necessary to authorize deponent to execute and file such Application have been taken. Deponent further says that he is familiar with the instrument and the contents thereof and that the facts set forth therein are true to the best of his knowledge, information, and belief.

Merrill Lynch, Pierce, Fenner & Smith Incorporated

By: _____
NAME: Andrew M. Sieg
TITLE: Managing Director

Subscribed and sworn to before me a _____ this 22 day of November, 2016.

_____
Official Seal

My Commission expires _____

WANDA C. ARTIS
Notary Public - State of New York
No. 01AR6079729
Qualified in Westchester County
My Commission Expires Sept. 3, 2018

LIST OF EXHIBITS

Exhibit A	Resolutions of the Board of Directors of Merrill Lynch, Pierce, Fenner & Smith Incorporated
Exhibit B	Proposed Form of Notice

EXHIBIT A

RESOLUTIONS OF THE BOARD OF DIRECTORS OF MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED ADOPTED BY UNANIMOUS WRITTEN CONSENT ON NOVEMBER 22, 2016

The undersigned, being all of the directors of Merrill Lynch, Pierce, Fenner & Smith Incorporated (the "Corporation"), acting without a meeting, the call, notice and holding of which are expressly waived, hereby approve and adopt the following resolutions as evidenced by their signatures affixed below and hereby consent to the approval and adoption of said resolutions to the same extent and to have the same force and effect as if adopted at a meeting of the Board of Directors duly called and held for the purpose of acting upon the proposal to adopt such resolutions:

NOW, THEREFORE, IT IS HEREBY

RESOLVED, that the officers of the Corporation be, and each of them hereby is, authorized in the name and on behalf of the Corporation to execute and cause to be filed with the Securities and Exchange Commission an Application for Exemption under Section 206A of the Advisers Act (the "Application"), substantially in the form as attached hereto as Exhibit A and incorporated by reference herein, with respect to engaging in principal transactions with advisory clients.

FURTHER RESOLVED, that the officers of the Corporation be, and each of them hereby is, authorized to execute and cause to be filed any and all amendments to such Application as the officers executing the same may approve as necessary or desirable, such approval to be conclusively evidenced by his, her, or their execution thereof;

FURTHER RESOLVED, that the officers of the Corporation be, and each of them hereby is, authorized to take such other action, including the preparation and publication of a notice relating to such Application for Exemption and the representation of the Corporation, in any matters relating to such Application or amendment thereof as they deem necessary or desirable.

[SIGNATURE PAGES FOLLOW]

In witness whereof, the undersigned have executed this written consent effective on the date first above written. This consent may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

_____
Thomas Kell Montag

_____
Fabrizio Gallo

_____
Andrew M. Sieg

_____
John W. Thiel

EXHIBIT B – PROPOSED FORM OF NOTICE

SECURITIES AND EXCHANGE COMMISSION

Release No. IA-_____; File No. 803-____

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

DATE, 2016

Agency: Securities and Exchange Commission ("Commission")

Action: Notice of application for an exemptive order under Section 206A of the Investment Advisers Act of 1940 ("Advisers Act") from certain provisions of Section 206(3).

Applicant: Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Applicant").

Relevant Advisers Act Sections: Exemption requested under Section 206A from certain provisions of Section 206(3).

Summary of Application: Applicant requests that the Commission issue an order under Section 206A exempting it and future Applicants from the provisions of Section 206(3) with respect to principal transactions with nondiscretionary advisory clients.

Filing Dates: The application was filed on November 23, 2016.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on _____ _____, 2016, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of writer's interest, the reason for the request, and the issues contested. Persons may request notification by writing to the Commission's Secretary.

Addresses: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, D.C. 20549-1090. Applicant, Mackenzie E. Crane, Esq., Bank of America, 100 Federal Street, MA5-100-05-11, Boston, MA 02110; or James E. Anderson, Esq., Kimberly B. Saunders, Esq., Willkie Farr & Gallagher LLP, 1875 K Street, NW, Washington, DC 20006, (202) 303-1114.

For Further Information Contact: Melissa Roverts Harke or Robert H. Shapiro, Senior Counsel, at (202) 551-7758 (Office of Investment Adviser Regulation, Division of Investment Management).

Supplementary Information: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 100 F Street, NE, Washington, D.C. 20549-0102 (telephone (202) 551-5850)).

Applicant's Representations

1. The Applicant is registered as an investment adviser with the SEC and is a registered broker-dealer. The Applicant is a subsidiary of Bank of America Corporation, a diversified financial services company with operations around the world. The Applicant offers a number of advisory programs, including the Merrill Lynch Personal Advisor ("MLPA") Program, a nondiscretionary advisory program, and the Merrill Lynch Investment Advisory Program ("MLIAP"), a recently created investment advisory program. While Merrill Lynch offers both discretionary and nondiscretionary advisory services under MLIAP, the relief sought by the Applicant in this Application is limited to client accounts enrolled in nondiscretionary strategies in MLIAP.

2. Merrill Lynch created MLPA in 2006. In 2007, many of Merrill Lynch's fee-based brokerage accounts were converted to nondiscretionary advisory accounts in MLPA following the invalidation of former Rule 202(a)(11)-1 under the Advisers Act.[16] When these accounts had been fee-based brokerage accounts, Merrill Lynch, in its capacity as a broker-dealer, engaged in principal transactions with its customers, in accordance with applicable law.

3. In 2013, Merrill Lynch created MLIAP. Also that year, Merrill Lynch began transitioning its investment advisory clients from five legacy investment advisory programs, including MLPA, to MLIAP. Clients enrolled in MLIAP can select from a number of different strategy types, including strategies which Merrill Lynch manages on a nondiscretionary basis.[17] MLPA currently has 3,329 client accounts remaining in the program, and it is expected that these remaining clients will either transition to MLIAP or terminate their investment advisory relationship with Merrill Lynch, at which point the MLPA will be retired.

4. Merrill Lynch currently relies on Rule 206(3)-3T under the Advisers Act (the "Rule") to engage in principal transactions with its client accounts in MLPA and MLIAP. The securities involved in these principal trades include government agency debt, municipal securities, corporate debt securities, preferred securities, U.S. Treasury securities and brokered certificates of deposit.

5. The Applicant currently has approximately 3,329 client accounts in MLPA. Those accounts have approximately $5.5 billion in assets under management as of June 30, 2016. In the period January 1, 2015 through December 31, 2015, there were approximately 675,000 trades in MLPA, involving approximately $13 billion in securities. In the period January 1, 2015 through December 31, 2015, 11,400 trades were effected in reliance on the Rule in 2,857 unique MLPA accounts, representing an approximate average of 4 such trades per account. Approximately 70 percent of the trades done in reliance on the Rule in this period were purchases by client accounts; the average purchase was approximately $77,600. Approximately 30 percent of the trades done in reliance on the Rule in this period were sales from client accounts; the average sale was approximately $77,517.

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[16] In 2007, a portion of the fee-based brokerage accounts were converted to the International Asset Power Program, another nondiscretionary investment advisory program. This program was closed to clients in 2011.

[17] As noted above, the relief sought by the Applicant in this Order is limited to client accounts enrolled in nondiscretionary strategies in MLIAP and the remaining client accounts in MLPA.

6. The Applicant currently has approximately 393,535 client accounts in MLIAP. Those accounts have approximately $157 billion in assets under management as of June 30, 2016. In the period January 1, 2015 through December 31, 20015, there were approximately 53.9 million trades in MLIAP, involving approximately $79.1 billion in securities. In the period January 1, 2015 through December 31, 2015, 25,114 trades were effected in reliance on the Rule in 5,978 unique MLIAP accounts, representing an approximate average of 4.2 such trades per account.[18] Approximately 70 percent of the trades done in reliance on the Rule in this period were purchases by client accounts; the average purchase was approximately $55,850. Approximately 30 percent of the trades done in reliance on the Rule in this period were sales from client accounts; the average sale was approximately $41.405.

7. From January 1, 2015 to December 31, 2015, Merrill Lynch did not rely on the Rule for any principal trades in securities it underwrote. Any principal transactions that are underwritten by Merrill Lynch are effected in accordance with Section 206-(3) of the Advisers Act.

8. The Applicant acknowledges that the Order, if granted, would not be construed as relieving in any way the Applicant from acting in the best interests of an advisory client, including fulfilling the duty to seek the best execution for the particular transaction for the advisory client; nor shall it relieve the Applicant from any obligation that may be imposed by Sections 206(1) or (2) of the Advisers Act or by other applicable provisions of the federal securities laws or applicable FINRA Rules.

Applicant's Legal Analysis

1. Section 206(3) provides that it is unlawful for any investment adviser, directly or indirectly, acting as principal for its own account, knowingly to sell any security to or purchase any security from a client, without disclosing to the client in writing before the completion of the transaction the capacity in which the adviser is acting and obtaining the client's consent to the transaction. Rule 206(3)-3T deems an investment adviser to be in compliance with the provisions of Section 206(3) of the Advisers Act when the investment adviser, or a person controlling, controlled by, or under common control with the investment adviser, acting as principal for its own account, sells to or purchases from an advisory client any security, provided that the investment adviser complies with the conditions of the Rule.

2. Rule 206(3)-3T requires, among other things, that the investment adviser obtain a client's written, revocable consent prospectively authorizing the adviser, directly or indirectly, acting as principal for its own account, to sell any security to or purchase any security from the client. The consent must be obtained after the adviser provides the client with written disclosure about: (i) the circumstances under which the investment adviser may engage in principal transactions with the client; (ii) the nature and significance of the conflicts the investment adviser has with its

[18] While only 5,978 accounts effected trades in reliance on the rule in 2015, this represents only a portion of the accounts for which the client has prospectively consented to principal trades.

client's interests as a result of those transactions; and (iii) how the investment adviser addresses those conflicts. The investment adviser also must provide trade-by-trade disclosure to the client, before the execution of each principal transaction, of the capacity in which the adviser may act with respect to the transaction, and obtain the client's consent (which may be written or oral) to the transaction. The Rule is available only to nondiscretionary advisory accounts that also are brokerage accounts. Rule 206(3)-3T is not available for principal transactions if the investment adviser or a person who controls, is controlled by, or is under common control with the adviser ("control person") is the issuer or is an underwriter of the security, except that an adviser may rely on the Rule for trades in which the adviser or a control person is an underwriter of non-convertible investment-grade debt securities.

3. The investment adviser also must provide to the client a trade confirmation that, in addition to the requirements of Rule 10b-10 under the Securities Exchange Act of 1934 ("Exchange Act"), includes a conspicuous, plain English statement informing the client that the investment adviser disclosed to the client before the execution of the transaction that the investment adviser may act as principal in connection with the transaction, that the client authorized the transaction, and that the investment adviser sold the security to or bought the security from the client for its own account. The investment adviser also must deliver to the client, at least annually, a written statement listing all transactions that were executed in the account in reliance on Rule 206(3)-3T, including the date and price of each transactions.

4. Rule 206(3)-3T is available only to an investment adviser that is also a broker-dealer registered under Section 15 of the Exchange Act and may only be relied upon with respect to a nondiscretionary account that is a brokerage account subject to the Exchange Act, and the rules thereunder, and the rules of the self-regulatory organization(s) of which it is a member. Rule 206(3)-3T is scheduled to expire on December 31, 2016. Upon expiration, the Applicant would be forced to provide trade-by-trade written disclosure to each nondiscretionary advisory client with whom the Applicant sought to engage in a principal transaction. The Applicant submits that its nondiscretionary clients, through the Applicant's reliance on the Rule, have had access to the Applicant's inventory through principal transactions with the Applicant for a number of years, and expect to continue to have such access in the future. The Applicant believes that engaging in principal transactions with its clients provides certain benefits to its clients, including access to securities of limited availability, such as municipal bonds. The written disclosure requirement of Section 206(3) acts as an operational barrier to its ability to engage in principal trades with its clients, especially when the transaction involves securities of limited availability.

5. Unless the Applicant is provided an exemption from Section 206(3), it will be unable to provide the same range of services and access to the same types of securities to its nondiscretionary advisory clients as it currently is able to provide to clients under the Rule.

6. The Applicant will remain subject to the fiduciary duties that are generally enforceable under Sections 206(1) and 206(2) of the Advisers Act. In general terms, an investment adviser's fiduciary duty requires an adviser to: (i) disclose material facts about the advisory relationship to its clients; (ii) treat each client fairly; and (iii) act only in the best interests of its client, disclosing conflicts of interest when present and obtaining client consent to such arrangements. More specifically, an adviser's fiduciary duty has been interpreted to require a duty of care in providing investment advice, requiring the exercise of due care throughout the process of

recommending securities rather than to the eventual success or failure of its recommendations.19 In addition, the SEC has recognized that an investment adviser has an obligation to recommend only those securities that are suitable for a particular client's stated investment objectives and circumstances. The antifraud provisions of the Advisers Act impose a duty of best execution, which requires an adviser to seek the most favorable terms reasonably available under the circumstances for the execution of clients' securities transactions.[20] Fiduciary duties under the Advisers Act also direct an adviser's obligations with respect to allocation of trades. When adviser multiple accounts with substantially similar investment objectives and restrictions, the adviser has a duty to treat each account fairly and may not give preference to one client (or its proprietary account) over others. These obligations combine to protect a client's interests against improper dumping of undesirable securities in a client account and unfair fees and pricing structures.

7. The Applicant will remain subject to rules and regulations in its capacity as a broker-dealer that afford protections to clients that choose to engage in principal transactions with the Applicant. Specifically, under the antifraud provisions of the Exchange Act, a broker-dealer has a duty of fair dealing, which includes, among other things, the requirement that a broker-dealer only charge prices reasonably related to the prevailing market,[21] and has a duty of best execution, which requires a broker-dealer to seek to obtain the most favorable terms available under the circumstances for its customer orders.[22] FINRA rules also impose a duty of best execution.[23] For example, FINRA members must use "reasonable diligence" to determine the best market for a security and buy or sell the security in that market, so that the price to the customer is as favorable as possible under prevailing market conditions. The Applicant also will remain subject to FINRA rules governing the broker-dealer's activities related to mark-ups,[24] which prohibits a broker-dealer from entering into "transactions with a customer in any security at any price not reasonably related to the current market price of the security or to charge a commission which is not reasonable."[25]

8. The Applicant also will remain, in its capacity as a broker-dealer, subject to a specific set of suitability requirements that serve to protect against "dumping" securities in a client account. FINRA Rule 2111 requires, in part, that a broker-dealer or associated person "have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the [firm] or associated person to ascertain the customer's investment profile." Under suitability requirements, a broker-dealer must have an "adequate and reasonable basis" for any recommendation that it makes. Reasonable basis suitability, or the reasonable basis test, relates to the particular security or strategy recommended. Therefore, the broker-dealer has an

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[19] *See, e.g.,* Jones Memorial Trust v. Tsai Inv. Services, Inc., 3676 F.Supp. 491 , 497 (S.D.N.Y. 1973).
[20] *See In re* Arleen W. Hughes, Exchange Act Release No. 4048 (Feb. 18, 1948) *aff'd sub nom.,* Hughes v. SEC, 174 F.2d 969 (D.C. Cir. 1949).
[21] U.S. SEC Study on Investment Advisers and Broker Dealers, at 51 (January 2011), available at: https://www.sec.gov/news/studies/2011/913studyfinal.pdf, citing *Report of the Special Study of Securities Markets of the Securities and Exchange Commission*, H.R. Doc. No. 88-95, at 238 (1st Sess. 1963).
[22] *Id. at* 69, citing *Newton v. Merrill, Lynch, Pierce, Fenner & Smith, Inc.*, 135 F.3d 266, 269-270 (3d Cir.), *cert. denied*, 525 U.S. 811 (1998). This duty applies whether the broker-dealer is acting as agent or as principal.
[23] FINRA Rule 5310; *see also, Best Execution: Guidance on Best Execution Obligations in Equity, Options and Fixed Income Markets*, FINRA Regulatory Notice 15-46 (Nov. 2015).
[24] E.g., FINRA Rules 2010 and 2121.
[25] *Mark-Up Policy,* FINRA Rule 2121 Supplementary Material .01

obligation to investigate and obtain adequate information about the security it is recommending. FINRA Rule 2111 also requires a broker-dealer to determine customer-specific suitability. In effect, this requires a broker-dealer to make recommendations based on a customer's particular financial situation, needs, and other security holdings. An attempt to execute a principal transaction that would place a security that is inconsistent with the customer's investment objectives would be unsuitable, and is prohibited by FINRA Rule 2111.

9. The Applicant also will be required, under FINRA Rule 2110, "to observe high standards of commercial honor and just and equitable principles of trade." This manifests as a requirement that a broker-dealer must not use its ability to execute trades as principal to improperly impose excessive charges or place securities in a customer's account that it would not otherwise recommend.

10. The Applicant requests that the Commission issue it an Order pursuant to Section 206A from certain provisions of Section 206(3) only with respect to client accounts enrolled in nondiscretionary strategies in MLIAP, or clients enrolled in MLPA and any similar nondiscretionary program to be created in the future. The Applicant also requests that the Commission's Order apply to future investment advisers controlling, controlled by, or under common control with the Applicant ("Future Advisers"). Any Future Adviser relying on any Order granted pursuant to this Application will comply with the terms and conditions stated in this Application.[26]

Applicant's Conditions:

The Applicant agrees that any Order granting the requested relief will be subject to the following conditions:

1. The investment adviser will exercise no "investment discretion" (as such term is defined in Section 3(a)(35) of the Exchange Act, except investment discretion granted by the advisory client on a temporary or limited basis,[27] with respect to the client's account.

2. The investment adviser will not trade in reliance on this Order any security for which the investment adviser or any person controlling, controlled by, or under common control with the investment adviser is the issuer, or, at the time of the sale, an underwriter (as defined in Section 202(a)(20) of the Advisers Act.

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[26] The only entity that currently intends to rely on any order granted pursuant to this Application is named as the Applicant.

[27] Discretion is considered to be temporary or limited for purposes of this condition when the investment adviser is given discretion: (i) as to the price at which or the time to execute an order given by a client for the purchase or sale of a definite amount or quantity of a specified security; (ii) on an isolated or infrequent basis, to purchase or sell a security or type of security when a client is unavailable for a limited period of time not to exceed a few months; (iii) as to cash management, such as to exchange a position in a money market fund for another money market fund or cash equivalent; (iv) to purchase or sell securities to satisfy margin requirements; (v) to sell specific bonds and purchase similar bonds in order to permit a client to take a tax loss on the original position; (vi) to purchase a bond with a specified credit rating and maturity; and (vii) to purchase or sell a security or type of security limited by specific parameters established by the client. *See e.g., Temporary Rule Regarding Principal Trades with Certain Advisory Clients*, Investment Advisers Act Release No. 2653 (Sept. 24, 2007) at n. 31.

3. The investment adviser will not directly or indirectly require the client to consent to principal trading as a condition to opening or maintaining an account with the investment adviser.

4. The advisory client has executed a written revocable consent prospectively authorizing the investment adviser directly or indirectly to act as principal for its own account in selling any security to or purchasing any security from the advisory client. The advisory client's written consent must be obtained through a signature or other positive manifestation of consent that is separate from the signature indicating the client's consent to the advisory agreement. The separate signature line or alternative means of expressing consent must be preceded immediately by prominent, plain English disclosure containing either: (a) an explanation of: (i) the circumstances under which the investment adviser directly or indirectly may engage in principal transactions; (ii) the nature and significance of conflicts with its client's interests as a result of the transactions; and (iii) how the investment adviser addresses those conflicts; or (b) a statement explaining that the client is consenting to principal transactions, followed by a cross-reference to a specific document provided to the client containing the disclosure in (a)(i)-(iii) above and to the specific page or pages on which such disclosure is located; provided, however, that if the Applicant requires time to modify its electronic systems to provide the disclosure in (a)(i)-(iii) above immediately preceding the separate or additional signature line, the Applicant may, while updating such electronic systems, and for no more than 90 days from the date of the Order, instead provide a cross-reference to a specific document provided to the client containing the disclosure in (a)(i)-(iii) above and to the specific section in such document in which such disclosure is located. *Transition provision*: To the extent that the adviser obtained fully-informed written revocable consent from an advisory client for purposes of rule 206(3)-3T(a)(3) prior to the date of this Order, the adviser may rely on this Order with respect to such client without obtaining additional prospective consent from such client.

5. The investment adviser, prior to the execution of each transaction in reliance on this Order, will: (a) inform the advisory client, orally or in writing, of the capacity in which it may act with respect to such transaction; and (b) obtain consent from the advisory client, orally or in writing, to act as principal for its own account with respect to such transaction.

6. The investment adviser will send a written confirmation at or before completion of each such transaction that includes, in addition to the information required by Rule 10b-10 under the Exchange Act, a conspicuous, plain English statement informing the advisory client that the investment adviser: (a) disclosed to the client prior to the execution of the transaction that the adviser may be acting in a principal capacity in connection with the transaction and the client authorized the transaction; and (b) sold the security to, or bought the security from, the client for its own account.

7. The investment adviser will send to the client, no less frequently than annually, written disclosure containing a list of all transactions that were executed in the client's account in reliance upon this Order, and the date and price of each such transaction.

8. The investment adviser is a broker-dealer registered under Section 15 of the Exchange Act and each account for which the investment adviser relies on this Order is a

brokerage account subject to the Exchange Act, and the rules thereunder, and the rules of the self-regulatory organization(s) of which it is a member.

9. Each written disclosure required as a condition to this Order will include a conspicuous, plain English statement that the client may revoke the written consent referred to in Condition 4 above without penalty at any time by written notice to the investment adviser in accordance with reasonable procedures established by the investment adviser, but in all cases such revocation must be given effect within 5 business days of the investment adviser's receipt thereof.

10. The investment adviser will maintain records sufficient to enable verification of compliance with the conditions of this Order. Such records will include, without limitation: (a) documentation sufficient to demonstrate compliance with each disclosure and consent requirement under this Order; (b) in particular, documentation sufficient to demonstrate that, prior to the execution of each transaction in reliance on this Order, the adviser informed the advisory client of the capacity in which it may act with respect to the transaction and that it received the advisory client's consent (if the investment adviser informs the client orally of the capacity in which it may act with respect to such transaction or obtains oral consent, such records may, for example, include recordings of telephone conversations or contemporaneous written notations); and (c) documentation sufficient to enable assessment of compliance by the investment adviser with Sections 206(1) and (2) of the Advisers Act in connection with its reliance on this Order. In each case, such records will be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in an appropriate office of the investment adviser, and be available for inspection by the staff of the Commission.

11. The investment adviser will adopt written compliance policies and procedures reasonably designed to ensure, and the investment adviser's chief compliance officer will monitor, the investment adviser's compliance with the conditions of this Order. The investment adviser's chief compliance officer will, on at least a quarterly basis, conduct testing reasonably sufficient to verify such compliance. Such written policies and procedures, monitoring and testing will address, *without limitation:* (a) compliance by the investment adviser with its disclosure and consent requirements under this Order; (b) the integrity and operation of electronic systems employed by the investment adviser in connection with its reliance on this Order; (c) compliance by the investment adviser with its recordkeeping obligations under this Order; and (d) whether there is any evidence of the investment adviser engaging in "dumping" in connection with its reliance on this Order.[28] The investment adviser's chief compliance officer will document the frequency and results of such monitoring and testing, and the investment adviser will maintain and preserve such documentation in an easily accessible place for a period of not less than five years, the first two years in an appropriate office of the investment adviser, and be available for inspection by the staff of the Commission.

Representation:

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[28] *See* Report of the Securities and Exchange Commission, Investment Trusts and Investment Companies, H.R. Doc. No. 279, 76th Cong., 2d Sess., pt. 3, at 2581, 2589 (1939); Hearings on S.3580 Before a Subcommittee of the Commission on Banking and Currency, 76th Cong., 3d Sess. 209, 212-23 (1940); and Hearings on S. 3580 Before the Subcomm. of the Comm. on Banking and Currency, 76th Cong., 3d Sess. 322 (1940).

The Applicant acknowledges that the Order, if granted, would not be construed as relieving in any way the Applicant from acting in the best interests of an advisory client, including fulfilling the duty to seek the best execution for the particular transaction for the advisory client; nor shall it relieve the Applicant from any obligation that may be imposed by Section 206(1) or (2) of the Advisers Act or by other applicable provisions of the federal securities laws or applicable FINRA Rules.

For the Commission.

Brent J. Fields
Secretary