

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----  
IN RE MERRILL LYNCH & CO., INC. : Master File No.:  
SECURITIES, DERIVATIVE AND ERISA : 07cv9633 (JSR) (DFE)  
LITIGATION :  
: **CLASS ACTION**  
:  
:  
:  
:  
:  
:  
:  
This Document Relates To: :  
ERISA ACTION : Case No.:  
: 07-CV-10268 (JSR) (DFE)  
:  
:  
-----

**PLAN OF ALLOCATION**

**I. Definitions.**

Capitalized terms used herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement– ERISA Action dated February 27, 2009, or in this Plan of Allocation.

**II. Amount to Be Distributed.**

The total amount to be distributed to the Class Members (the “Distribution Amount”) shall be the Net Settlement Fund as defined in ¶ 3.3 of the Stipulation, minus up to \$350,000 of Plan of Allocation Implementation Expenses, as provided for in ¶ 1.35 of the Stipulation.

**III. Calculation of Each Member’s Share of the Distribution Amount.**

For each Class Member there shall be calculated a Net Loss, which shall be calculated as follows:

1. Each Class Member's Net Loss shall be equal to  $A + B - C - D$ , provided that if  $A + B - C - D$  is less than zero for a Class Member, such Class Member's Net Loss will be zero.

A = eighty-four percent (84%) of the dollar amount of the Class Member's Plan account balance invested in the Merrill Lynch common stock at the beginning of the Class Period.

B = the dollar amount added to the Class Member's Plan account balance invested in Merrill Lynch common stock during the Class Period.

C = the dollar amount credited to the Class Member's Plan account balance resulting from dispositions of Merrill Lynch common stock during the Class Period.

D = the dollar amount of the Class Member's account balance invested in Merrill Lynch common stock Fund immediately after the end of the Class Period.

2. To the extent data is not available to determine the account balances of Class Members at the beginning or end of the Class Period, the foregoing calculations may be performed using data as of the nearest date after the beginning or end of the Class Period that is available.
3. There shall be calculated for each Class Member his or her "Preliminary Net Loss Fractional Share" by dividing each Class Member's Net Loss by the aggregate of all Class Members' Net Losses.

4. There shall then be calculated for each Class Member his “Preliminary Dollar Recovery” by multiplying the Class Member’s Preliminary Net Loss Fractional Share by the Distribution Amount.
5. All Class Members whose Preliminary Dollar Recovery is less than the De Minimis Amount shall receive an allocation of zero, and the Preliminary Dollar Recovery otherwise allocable to such Class Members shall be reallocated among the other Class Members proportionately in accordance with their Preliminary Dollar Recoveries (the “Reallocation”). As used herein, the “De Minimis Amount” shall be ten dollars (\$10.00) in the case of “Current Members” (as defined in Paragraph IV 1 below), and twenty-five dollars (\$25.00) in the case of “Former Members” (as defined in Paragraph IV 2 below).
6. The Preliminary Dollar Recoveries shall then be recalculated to take into account the Reallocation, and such recalculation shall produce the “Final Dollar Recovery” for each Class Member. If there is no Reallocation, the Preliminary Fractional Recoveries shall be the Final Dollar Recoveries. The sum of the Final Dollar Recoveries must equal the Distribution Amount.
7. The Final Dollar Recoveries shall be allocated among the Plans by allocating to each Plan the Final Dollar Recoveries of the Class Members who are (or were) participants or beneficiaries in that Plan. As soon as practicable thereafter, the Final Dollar Recoveries allocable to each Plan shall be deposited in that Plan.

8. All calculations required to implement this Plan of Allocation shall be performed by Merrill Lynch, or by such other person who shall be designated to do so by the Court.

#### **IV. Distribution of the Allocated Amounts.**

1. Class Members who are current Plan participants (“Current Members”). As soon as practicable after the deposit of the Final Dollar Recoveries into the Plans, there shall be deposited into each Current Member’s account his or her Final Dollar Recovery. The deposited amount shall be allocated among the Current Member’s investment options in accordance with the existing investment elections for current contributions into the Plan then in effect and treated thereafter for all purposes under the Plan as assets of the Plan properly credited to that Current Member’s account.

2. Members who are former Plan participants or beneficiaries thereof (“Former Members”). The Plan Administrator for each Plan shall invest each Former Member’s Final Dollar Recovery in a suitable short term investment vehicle, the primary purpose of which is the preservation of assets, pending distribution to the former Member. The deposited amount, plus interest, shall then, as soon as is practical, be distributed to the Former Member in the same manner as a qualified distribution from the Plan pursuant to ERISA and the Internal Revenue Code.

#### **V. Continuing Jurisdiction**

The Court will retain jurisdiction over this Plan of Allocation to the extent necessary to ensure that it is fully and fairly implemented.