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Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Attn: Investment Advice Regulations and Class Exemption  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210

Re: Comment on Proposed Class Exemption for Investment Advice Provided to  
Participants and Self-Directed Individual Account Plans and IRAs

Dear Sir or Madam,

Merrill Lynch appreciates the opportunity to comment on the significant steps the U.S. Department of Labor (the “Department”) has taken to facilitate the provision of investment advice to plan participants and IRA beneficiaries (collectively, “plan participants”). Plan participants are best served when they are provided meaningful investment advice that consistently takes into account their complete financial picture. The prohibited transaction rules have heretofore created a substantial impediment to that goal. Even in cases where we have been able to construct programs that are in compliance with the prior regime (*e.g.*, SunAmerica-type programs), the coordination of the advice provided through that channel with the advice provided on non-retirement assets was problematic. In other cases where we have used “fee leveling” across the enterprise to comply with many of the prohibited transaction rules, it has been our experience that the benefit of such advice is often negated by other aspects of those rules to the disadvantage of plan participants. Such disadvantages include the restriction of an optimal investment product because of its proprietary nature or the inability to provide best execution for certain trades because of principal trade restrictions.

Therefore, we applaud the Department for its efforts and believe that the proposed class exemption demonstrates that the Department understands that the interests of plan participants can be adequately protected without the *per se* prohibitions of the prohibited transaction rules.

In order to facilitate the implementation of these proposals, we provide below a few comments:

1. Penalties for Noncompliance. Although we will make our best efforts to comply with all of the requirements of the final rules, we cannot guarantee that there may not be innocuous operational errors that arise in such efforts to comply therewith, especially in light of the specific disclosure requirements set forth in the proposal. Given the draconian consequences associated with a prohibited transaction that are imposed on not only us but also plan participants, we believe that it is appropriate for the Department to create either a de minimis rule for minor errors or a program that allows for self-correction. Accordingly, we urge the Department to consider such relief for minor and inadvertent errors.

2. Level Fee Requirement and Incentive Compensation. As you are probably aware, incentive compensation for investment professionals at Merrill Lynch and its competitors is often tied to overall company performance. For example, we sometimes grant our investment professionals shares of restricted stock as compensation. We believe that the relationship between overall company performance (whether it be measured by stock price, earnings per share, EBITDA or any other similar metric) and the proposal's effect on incentive compensation related thereto are tenuous at best. Therefore, we would like the Department to confirm that any variability of incentive compensation based on overall company performance will not violate the "level fee" requirement set forth in the proposal.

3. Conjunction with Securities Law. We are aware that the Department has coordinated with the Securities & Exchange Commission on a variety of projects, most notably its participant-level fee disclosure regulations and a recently announced Memorandum of Understanding on enforcement matters. We recommend that the Department consider expanding such coordination to include the proposed regulations and their supplemental class exemption in order to facilitate the disclosure requirements thereunder. Based on our understanding of the applicable rules, there are a number of instances in which the proposed rules depart from existing securities law disclosure requirements. We believe it is in the best interests of plan participants that such disclosure be as clear and concise as possible so that the participant is not left with any ambiguity. Therefore, we believe it is important that the final rules reconcile with the securities laws rules to the maximum extent possible and appropriate.

4. Effective Date. We question the need for a 90-day delay between the publication of the final rule and the effective date of the rule and see little reason why there should be such a delay. Therefore, we suggest that the final class exemption be effective on the date of its publication.

We appreciate the opportunity to comment on the proposed regulations and their supplemental proposed class exemption and commend you for these proposals, which we believe will prove to

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be invaluable to Merrill Lynch plan participants as well as other plan participants of compliant fiduciary advisors. We encourage the Department to act quickly in finalizing the proposal.

Sincerely,

A handwritten signature in black ink, reading "Michael R. Jiguer". The signature is written in a cursive style with a large, prominent initial "M".