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Former Merrill Lynch Brokers Win $1.167 Million Arbitration Award - Merrill Lynch Change of Control Triggers Stock Vesting for Employees

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SARASOTA, FL – Two former Merrill Lynch brokers were successful in recovering their deferred compensation and stock awards that vested due to the change in control of Merrill Lynch. T he team resigned to join Morgan Stanley after the announcement of the Bank of America acquisition of Merrill Lynch.

During September 2008, Bank of America negotiated a deal over the weekend to acquire Merrill Lynch. The companies announced the deal the next day, September 15, 2008, shocking Merrill brokers. Merrill Lynch had long touted its independent wirehouse status and the fact that it had never been acquired or merged.

In the rush to complete the weekend deal, Merrill Lynch realized that the impending merger triggered "change of control" clauses that would affect shares of Merrill Lynch (MER) stock held in brokers' FACAAP and other equity compensation plans. Pursuant to the FACAAP, LTICP, Growth Award, Wealthbuilder and other deferred plans, if a broker resigned for "Good Reason," as defined in the plans, Merrill Lynch must immediately vest and pay the awards to its departed brokers in cash.

This was a major change from Merrill's longtime interpretation of the stock plans. Previously, if a broker left for the competition, such awards would be cancelled and revert back to Merrill Lynch. However, due to the announcement of the merger, any broker who voluntarily resigned for "Good Reason" after September 15, 2008 would receive their awards payable in cash.

Valuation of the awards is key. Pursuant to the plan documents, such awards must vest around $37 per share even though MER stock was trading much lower on the September 15, 2008 announcement of the change in control of Merrill Lynch.

Merrill Lynch and Bank of America realized this was a major problem. The firms attempted to limit their risk by making brokers waive any rights to "Good Reason" resignation following a change of control in the Retention Agreement that was offered to many Merrill brokers during November 2008.

Brokers were placed in a very difficult position during this time. If they agreed to the Retention, brokers would waive their right to "Good Reason" vesting following the change of control. If they did not agree to the Retention, they would be removed from the highly-beneficial account redistribution list. Making the decision more difficult to brokers, Merrill Lynch delayed the release of the new 2009 compensation plan, which was detrimental to most brokers producing revenue less than $600,000 per year, until after the deadline for signing the Retention.

Based upon the activity undertaken by Merrill Lynch managers to force brokers to sign the Retention Agreement and waive their rights to "Good Reason" vesting, including threats of removal from the account redistribution list if the Retention Agreement was not executed, even brokers who signed the Retention Agreement may have a cause of action for vesting under the plans. Pursuant to the plan documents, there is no "cut off" for claiming "Good Reason" resignation. A Merrill Lynch broker resigning today for "Good Reason" would be entitled to vesting under the FACAAP and other plans following the change in control of Merrill Lynch.

Many brokers resigned for "Good Reason" following the announcement of the change in control of Merrill Lynch on September 15, 2008 due to some detrimental impact to their status, position, compensation, benefits or fringe benefits. However, Merrill Lynch cancelled each broker's deferred holdings and refused to pay out any funds for "Good Reason" resignation. Estimates of the value of MER stock and cash that have been retained by Merrill Lynch that should have vested to brokers resigning for "Good Reason" range from $100 to $300 million and were a windfall to Merrill Lynch and Bank of America.

Michael Taaffe, Esq. with Shumaker, Loop & Kendrick, LLP was retained by a team of brokers who resigned from Merrill Lynch on December 19, 2008 to join Morgan Stanley's Ft. Lauderdale office. Mr. Taaffe, board-certified in business litigation and head of the Brokerage Litigation Division at Shumaker, Loop & Kendrick, is a highly-regarded brokerage industry trial attorney specializing in disputes between firms and departed brokers. The team requested "Good Reason" vesting and which was denied by Merrill Lynch General Counsel. The team brought an action in FINRA arbitration seeking recovery of stock and cash wrongfully retained by Merrill Lynch.

Final arbitration hearings were held during October 4 – 8, 2010 at FINRA Florida headquarters in Boca Raton. After approximately one week of hearings, Mr. Taaffe and Michael Bressan, Esq. of Shumaker, Loop & Kendrick, successfully recovered $1,167,346 for the team of brokers. The FINRA arbitration panel ruled that Merrill Lynch was in breach of contract with regard to the deferred compensation plans.

Nationally, this was the first case requesting FACAAP and deferred compensation vesting due to the change in control of Merrill Lynch to go through final arbitration.

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Founded in 1925, Shumaker, Loop & Kendrick, LLP is a full service law firm with 215 attorneys practicing in Toledo and Columbus, Ohio; Tampa and Sarasota, Florida; and Charlotte, North Carolina.

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- *Dow Jones Newswire* article

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