

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

July 22, 2011

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Policy Committee, having met on April 15, 2011 and June 29, 2011, makes reference to County Communication No. 11-30, from Council Chair Danny A. Mateo, regarding litigation matters.

By correspondence dated April 6, 2011, the Department of the Corporation Counsel requested consideration of a proposed resolution entitled "AUTHORIZING ADDITIONAL COMPENSATION FOR SPECIAL COUNSEL GOODSILL ANDERSON QUINN & STIFEL, A LIMITED LIABILITY LAW PARTNERSHIP LLP, IN MATTERS RELATING TO AUCTION RATE SECURITIES" ("Additional Compensation Resolution"). The purpose of the proposed resolution is to authorize \$150,000 in additional compensation for Goodsill Anderson Quinn & Stifel A Limited Liability Law Partnership LLP ("Goodsill"), as special counsel in matters relating to auction rate securities, for a total compensation of \$437,350. The proposed resolution also requests authorization to adjust the compensation for employment of special counsel under the terms set forth in an executive meeting before your Committee.

Your Committee notes that Goodsill has been retained as special counsel in two actions against Merrill Lynch involving auction rate securities, designated as The County of Maui v. Merrill Lynch, Pierce, Fenner & Smith, Incorporated, Arb. No. 10-00687, Financial Industry Regulatory Authority ("FINRA Claim"); and County of Maui v. Merrill Lynch, Pierce, Fenner & Smith, Incorporated; Merrill Lynch & Co., Inc.; United States District Court, District of Hawaii, Civil No. CV10-00077 LEK ("District Court Action").

Your Committee further notes that on March 16, 2011, the Corporation Counsel and Special Counsel Joachim P. Cox provided a status update on the FINRA Claim. The First Amended Statement of Claim alleges damages arising out of Merrill Lynch's fraudulent scheme, fraudulent and/or negligent misrepresentations, and breach of fiduciary obligations in connection with the sale of student loan auction rate securities to the County.

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According to the FINRA Claim, between August 2007 and February 2008, the County purchased approximately \$44.2 million of student loan auction rate securities from Merrill Lynch. The claim alleges that, in marketing these securities, Merrill Lynch made false and misleading statements to the County concerning the liquidity of the securities, to the County's detriment. Your Committee previously reported on this matter in Policy Committee Report No. 11-35.

Your Committee notes that the Council authorized the employment of Goodsill as special counsel in these matters by Resolution No. 09-118, with total compensation not to exceed \$35,000. The Resolution states that there is a real necessity to retain the firm as special counsel because of the complexity of securities law issues.

Your Committee further notes that, by Resolution No. 10-31, the Council authorized an additional \$252,350 in compensation, for a total compensation of \$287,350.

Your Committee received a revised proposed resolution to authorize \$150,000 in additional compensation for Goodsill, for a total compensation of \$437,350. The revised proposed Additional Compensation Resolution deletes the request for authorization to otherwise adjust the compensation for employment of special counsel under the terms set forth in an executive meeting before your Committee.

By correspondence dated June 20, 2011, the Department of the Corporation Counsel also requested consideration of a proposed resolution entitled "AUTHORIZING SETTLEMENT OF THE COUNTY OF MAUI V. MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED, ARB. NO. 10-00687, BEFORE THE FINANCIAL INDUSTRY REGULATORY AUTHORITY; AND COUNTY OF MAUI V. MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED; MERRILL LYNCH & CO., INC.; BEFORE THE UNITED STATES DISTRICT COURT, DISTRICT OF HAWAII, CIVIL NO. CV10-00077 LEK" ("Settlement Resolution"). The Department also transmitted a copy of the complaint in the District Court Action. The complaint alleges damages arising out of Merrill Lynch's violations of the Exchange Act, fraud, fraudulent and/or negligent misrepresentations, and breach of fiduciary duty in connection with the sale of student loan auction rate securities to the County. The purpose of the proposed Settlement Resolution is to authorize settlement of the FINRA Claim and the District Court Action.

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The Corporation Counsel provided an update on the proceedings and advised your Committee that the County had received a settlement proposal from Merrill Lynch.

Special Counsel Joachim P. Cox described the settlement proposal. He noted that the proposal satisfies the goal of repayment of the County's auction rate securities in full. Under the settlement proposal, Merrill Lynch would repurchase the County's remaining \$32 million in inventory of auction rate securities for their full purchase price within 30 days of the settlement agreement's execution. Merrill Lynch would also compensate the County for its earlier loss of approximately \$44,000 when it sold \$12.2 million of the auction rate securities for less than their par value. Merrill Lynch and the County would bear their own attorneys' fees and costs, although Merrill Lynch would pay any fees and costs assessed by the FINRA panel.

Your Committee noted concerns about how the County's short-term investment decisions are made. Your Committee discussed the need to review the County's short-term investment policies and procedures.

Your Committee voted to convene executive meetings, closed to the public, to consult with legal counsel pursuant to Section 92-5(a)(4), Hawaii Revised Statutes.

Following the executive meetings, your Committee reconvened in regular session. Your Committee noted that the proposed settlement was in the best interests of the County. Your Committee expressed its appreciation to the Corporation Counsel and Special Counsel Joachim P. Cox for their efforts.

Based on the information received and the recommendation of the Department of the Corporation Counsel, your Committee voted 8-0 to recommend adoption of the proposed Settlement Resolution and adoption of the revised proposed Additional Compensation Resolution. Committee Chair Hokama, Vice-Chair Carroll, and members Cochran, Couch, Mateo, Pontanilla, Victorino, and White voted "aye". Committee member Baisa was excused.

Your Committee notes that the proposed Settlement Resolution authorizes settlement under the terms set forth in an executive meeting before your Committee. Because certain terms of the proposed settlement were also discussed in the open meeting, your Committee's Chair requested that the proposed Settlement Resolution be revised to reflect that the terms were set forth in executive and open meetings before your Committee.

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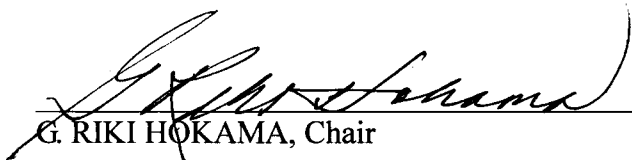
Your Committee is in receipt of a revised proposed Settlement Resolution, approved as to form and legality by the Department of the Corporation Counsel, incorporating these clarifying revisions.

Your Policy Committee RECOMMENDS the following:

1. That Resolution No. _____, attached hereto, entitled “AUTHORIZING SETTLEMENT OF THE COUNTY OF MAUI V. MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED, ARB. NO. 10-00687, BEFORE THE FINANCIAL INDUSTRY REGULATORY AUTHORITY; AND COUNTY OF MAUI V. MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED; MERRILL LYNCH & CO., INC.; BEFORE THE UNITED STATES DISTRICT COURT, DISTRICT OF HAWAII, CIVIL NO. CV10-00077 LEK”, be ADOPTED; and

2. That Resolution No. _____, attached hereto, entitled “AUTHORIZING ADDITIONAL COMPENSATION FOR SPECIAL COUNSEL GOODSILL ANDERSON QUINN & STIFEL, A LIMITED LIABILITY LAW PARTNERSHIP LLP, IN MATTERS RELATING TO AUCTION RATE SECURITIES”, be ADOPTED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



G. RIKI HOKAMA, Chair

Resolution

No. _____

AUTHORIZING SETTLEMENT OF THE COUNTY OF MAUI V. MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED, ARB. NO. 10-00687, BEFORE THE FINANCIAL INDUSTRY REGULATORY AUTHORITY; AND COUNTY OF MAUI V. MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED; MERRILL LYNCH & CO., INC.; BEFORE THE UNITED STATES DISTRICT COURT, DISTRICT OF HAWAII, CIVIL NO. CV10-00077 LEK

WHEREAS, on February 12, 2010, the County of Maui, by its special counsel, filed a Complaint against Merrill Lynch, Pierce, Fenner & Smith, Incorporated and Merrill Lynch Company, Incorporated (Collectively "Merrill Lynch") with the United States District Court for the District of Hawaii, and filed a Statement of Claim against Merrill Lynch with the Financial Industry Regulatory Authority; and

WHEREAS, the Financial Industry Regulatory Authority is anticipated to conduct an arbitration of the County of Maui's claims against Merrill Lynch; and

WHEREAS, the Department of the Corporation Counsel has requested authority to settle these matters under the terms set forth in executive and open meetings before the Policy Committee; and

WHEREAS, the County of Maui, to avoid incurring expenses and the uncertainty of a judicial determination of the parties'

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respective rights and liabilities, will attempt to reach a resolution of these cases by way of a negotiated settlement or Offer of Judgment; and

WHEREAS, having reviewed the facts and circumstances regarding these cases and being advised of attempts to reach resolution of these cases by the Department of the Corporation Counsel, the Council wishes to authorize the settlement; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

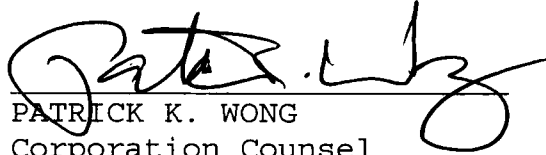
1. That pursuant to Maui County Code Section 3.16.020, it hereby approves settlement of these matters under the terms set forth in the executive and open meetings before the Policy Committee; and

2. That it hereby authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in these matters, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

3. That certified copies of this resolution be transmitted to the Mayor and the Corporation Counsel.

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APPROVED AS TO FORM AND LEGALITY:

A handwritten signature in black ink, appearing to read "Patrick K. Wong", written over a horizontal line.

PATRICK K. WONG
Corporation Counsel
County of Maui

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Resolution

No. _____

AUTHORIZING ADDITIONAL COMPENSATION FOR
SPECIAL COUNSEL GOODSILL ANDERSON QUINN & STIFEL,
A LIMITED LIABILITY LAW PARTNERSHIP LLP,
IN MATTERS RELATING TO AUCTION RATE SECURITIES

WHEREAS, the Council alone is authorized to retain or employ special counsel upon a resolution passed by two-thirds vote; and

WHEREAS, by Resolution No. 09-118, the Council authorized the employment of special counsel GOODSILL ANDERSON QUINN & STIFEL, A LIMITED LIABILITY LAW PARTNERSHIP LLP ("special counsel") to represent the County of Maui in matters relating to auction rate securities, for a total compensation not exceeding \$35,000.00; and

WHEREAS, Resolution No. 09-118 provided that David J. Reber, Esq., Joachim P. Cox, Esq., and Claire E. Goldberg, Esq., of GOODSILL ANDERSON QUINN & STIFEL, shall provide the majority of the legal services in this matter; and

WHEREAS, by Resolution No. 10-31, the Council authorized an increase in compensation for the employment of special counsel by \$252,350.00, for a total compensation not exceeding \$287,350.00; and

WHEREAS, on February 12, 2010, the County of Maui, by its special counsel, filed a Complaint against Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") with the United States District Court for the District of Hawaii, and a Statement

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of Claim against Merrill Lynch with the Financial Industry Regulatory Authority; and

WHEREAS, the Financial Industry Regulatory Authority is anticipated to conduct an arbitration of County of Maui's claims against Merrill Lynch; and

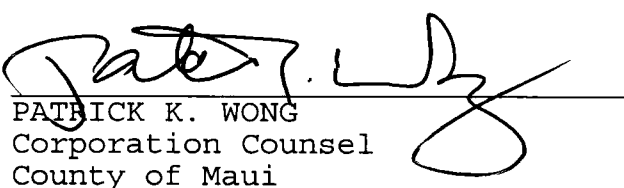
WHEREAS, the Corporation Counsel has requested authorization to raise the compensation limit for the employment of special counsel by an additional \$150,000.00, for a total compensation not exceeding \$437,350.00; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That the Council hereby approves and authorizes an increase in compensation for the employment of special counsel by \$150,000.00 for a total compensation not exceeding \$437,350.00; and

2. That certified copies of this resolution be transmitted to the Mayor, the Corporation Counsel, the Director of Finance, and GOODSILL ANDERSON QUINN & STIFEL, A LIMITED LIABILITY LAW PARTNERSHIP LLP.

APPROVED AS TO FORM
AND LEGALITY:



PATRICK K. WONG
Corporation Counsel
County of Maui