

STATE OF NEW JERSEY
BUREAU OF SECURITIES
P.O. Box 47029
Newark, New Jersey 07101
(973) 504-3600

In the matter of:)
)
MERRILL LYNCH, PIERCE, FENNER)
& SMITH INCORPORATED,)
)
Respondent.)
)
)
)

ADMINISTRATIVE CONSENT ORDER

WHEREAS, Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”) is a broker-dealer registered in the state of New Jersey, with a Central Registration Depository (“CRD”) number of 7691; and

State securities regulators from multiple jurisdictions have conducted coordinated investigations into the registration of Merrill Lynch Client Associates (“CAs”) and Merrill Lynch’s supervisory system with respect to the registrations of CAs; and

Merrill Lynch has cooperated with regulators conducting the investigations by responding to inquiries, providing documentary evidence and other materials, and providing regulators with access to facts relating to the investigations; and

Merrill Lynch has advised regulators of its agreement to resolve the investigations pursuant to the terms specified in this Consent Order (the “Order”); and

Merrill Lynch agrees to make certain changes in its supervisory system with respect to the registration of CAs, and to make certain payments in accordance with the terms of this Order; and

Merrill Lynch elects to waive permanently any right to a hearing and appeal under N.J.S.A. 52:14B-1 et seq. with respect to this Order; and

Solely for the purpose of terminating the multi-state investigations, including the investigation by the staff of the New Jersey Bureau of Securities (hereinafter “Bureau”), and in settlement of the issues contained in this Order, Merrill Lynch, without admitting or denying the findings of fact or conclusions of law contained in this Order, consents to the entry of this Order.

NOW, THEREFORE, pursuant to the authority granted to the Bureau Chief by the Uniform Securities Law, as amended. L. 1997, c. 276, N.J.S.A. 49:3-47 et seq., (hereinafter, the “Law”), the Bureau Chief, hereby enters this Order:

I.

FINDINGS OF FACTS

1. Merrill Lynch admits the jurisdiction of the Bureau in this matter.

Background on Client Associates

2. The CAs function as sales assistants and typically provide administrative and sales support to one or more of Merrill Lynch’s Financial Advisors (“FAs”). There are different titles within the CA position, including Registered Client Associate and Registered Senior Client Associate.

3. The responsibilities of a CA specifically include:
 - a. Handling client requests;
 - b. Resolving client inquiries and complaints;
 - c. Determining if client issues require escalation to the FA or the branch management team; and
 - d. Processing of operational documents such as letters of authorization and client check requests.

4. In addition to the responsibilities described above, and of particular significance to this Order, some CAs are permitted to accept unsolicited orders from clients. As discussed

below, Merrill Lynch's written policies and procedures require that any CAs accepting client orders first obtain the necessary licenses and registrations.

5. Notably, FAs might have a "primary CA" and a "secondary CA". As suggested by the designation, the customary practice is that the primary CA would handle the FA's administrative matters and client orders. However, if the primary CA was unavailable, the secondary CA would handle the FA's administrative matters and client orders.

6. During the period from 2002 to the present, Merrill Lynch employed approximately 6,200 CAs (average) per year.

Registration Required

7. Pursuant to N.J.S.A. 49:3-56(a), it shall be unlawful for any person to act as an agent ("agent" is defined under N.J.S.A. 49:3-49(b)) in this State unless that person is registered or exempt from registration under this act.

8. Pursuant to the general prohibition under N.J.S.A. 49:3-56(a), a person cannot accept unsolicited orders in New Jersey without being registered in New Jersey or exempt from registration under this act.

9. Pursuant to N.J.S.A. 49:3-56(h), it shall be unlawful for any broker-dealer to employ an agent in this State unless the agent is registered in New Jersey.

10. Pursuant to N.J.S.A. 49:3-70.1, any person who violates any of the provisions of this act or who violates any rule under this act, shall be liable for the first violation to a penalty of not more than \$10,000; for a second violation to a penalty of not more than \$20,000; and for each subsequent violation to a penalty of not more than \$20,000 per violation.

Merrill Lynch Requires Registration of Client Associates

11. In order for a CA to accept client orders, Merrill Lynch generally required each CA to pass the series 7 and 63 qualification exams and to register in the appropriate jurisdictions.

12. At all times relevant to this Order, Merrill Lynch's policies and procedures specified that each CA maintain registrations in the same jurisdictions as his or her FA, or broadly required that each CA maintain registrations in all necessary jurisdictions.

Regulatory Investigations and Findings.

13. During the summer of 2008, Merrill Lynch received inquiries regarding CA registrations from a number of state securities regulators.

14. Because Merrill Lynch's relevant trade records were maintained in hard copy and only at branch offices across the country, the multi-state investigation focused on systemic issues with Merrill Lynch CA registrations and related supervisory structure instead of attempting to identify incidence of unregistered activity. Specifically:

- a. After accepting a client order, CAs accessed the electronic trading system to enter the order;
- b. The CAs did not have to identify themselves during the order entry process. Therefore, there is no electronic record that identifies which orders were accepted by CAs;
- c. Instead, Merrill Lynch maintained a daily report that recorded the identity of the person who accepted and/or entered each order. However, this report was not maintained electronically, and was only maintained at the branch office where the order was entered. Merrill Lynch represented that this daily report was the only record that could identify who accepted a client order;
- d. Merrill Lynch's trading system checked the registration of the FA, but did not check the registration status of the person accepting the order to ensure that the person was registered in the appropriate jurisdiction.

15. The multi-state investigation found that many CAs supported FAs registered in New Jersey when the CAs were not registered in New Jersey as agents of Merrill Lynch. This difference in registration status increased the possibility that CAs would engage in unregistered activity.

16. The multi-state investigation found that certain Merrill Lynch CAs engaged in the sale of securities in New Jersey at times when the CAs were not appropriately registered in New Jersey.

Merrill Lynch's Remedial Measures and Cooperation

17. As a result of the inquiries by state regulators, Merrill Lynch conducted a review of its CA registration practices.

18. Merrill Lynch's review found that as of June 30, 2008, the firm had 3,780 registered CAs. Approximately 2,200, almost 60%, of those registered CAs were only registered in their home state or their home state and one additional state.

19. Consistent with the fact that many Merrill Lynch CAs were only registered in one or two jurisdictions, Merrill Lynch's review found incidences of trading by CAs not properly state registered.

20. In October 2008, Merrill Lynch amended its registration policy to require that each CA mirror the state registrations for the FAs that they support.¹ Merrill Lynch's Registration Compliance personnel participated in calls with branch management to advise the field about this requirement.

¹ It should be noted that Merrill Lynch's policy required CA/FA registration mirroring prior to 2006. In 2006, it amended the relevant policies and procedures to more broadly require that CAs maintain appropriate registrations.

21. As Merrill Lynch worked on a more permanent solution, it also developed a temporary report intended to identify instances where a CA's registration did not match the FA or FAs the CA supported.

22. Between October 1, 2008 and January 28, 2009, 692 CAs registered with the Bureau as agents of Merrill Lynch. Yet, data as of February 28, 2009 indicated that significant gaps remained between the registrations of CAs and their FAs.

23. However, Merrill Lynch, as a compliance enhancement, also developed an electronic system that will prevent a person from entering client orders from a state in which the person accepting the order is not registered. Merrill Lynch began implementing this new system in June 2009 and fully completed implementation by December 31, 2009.²

24. Merrill Lynch provided timely responses and substantial cooperation in connection with the regulatory investigations into this issue. Furthermore, as displayed by the corrective actions described above, Merrill Lynch has acknowledged the problems associated with its CA registrations and supervisory system.

II.

CONCLUSIONS OF LAW

1. The Bureau has jurisdiction over this matter pursuant to the Law.

² Note that in late October, 2009, Banc of America Investment Services, Inc. ("BAIS") migrated on the Central Registration Depository to Merrill Lynch, however, the trading and order entry integration will not be completed until the third quarter of 2010. BAIS, whose policies have required sales assistants' state registration status to mirror the FAs they serve, will continue to use its own order entry system for their existing clients until the integration is completed.

2. Merrill Lynch's failure to establish an adequate system to monitor the registration status of persons accepting client orders constitutes a violation of N.J.S.A. 49:3-58(a)(2)(xi) for a failure to establish a reasonably designed supervisory system and/or failure to establish, maintain and enforce reasonably designed procedures.

3. Merrill Lynch's failure to require its CAs to be registered in the appropriate jurisdictions constitutes a failure to enforce its established written procedures, and is basis for the issuance of an Order assessing a penalty against Merrill Lynch.

4. Pursuant to N.J.S.A. 49:3-56(a), Merrill Lynch's sales of securities in New Jersey through unregistered CAs constitute violations of N.J.S.A. 49:3-56(h) for the employment of unregistered agents and is a basis for the issuance of an Order assessing a penalty against Merrill Lynch.

5. Pursuant to the Law, and the regulations promulgated thereunder in N.J.A.C. 13:47A-3.1 et seq., Merrill Lynch's sales of securities in New Jersey through agents not registered in New Jersey constitute bases to order Merrill Lynch to Cease and Desist from engaging in the sale of securities in New Jersey through unregistered agents.

6. Pursuant to N.J.S.A. 49:3-70.1, the violations described above constitute bases for the assessment of penalties against Merrill Lynch.

7. The Bureau finds the following relief appropriate and in the public interest.

III.

UNDERTAKINGS

1. Merrill Lynch hereby undertakes and agrees to immediately establish and maintain a trade monitoring system that prevents any person from entering client orders that originate from jurisdictions where the person accepting the order is not appropriately registered.

2. Merrill Lynch further undertakes and agrees to file with the Bureau, within sixty days of the date of this Order, a report describing Merrill Lynch's improvements in its ability to monitor the identity and registration status of each person who accepts a client order entered on Merrill Lynch's trading system.

3. For the period from the date of this Order through December 31, 2010, Merrill Lynch further undertakes and agrees to notify the Bureau if it finds that any person associated with Merrill Lynch accepted a client order in New Jersey without being registered, or exempt from registration, with the Bureau as an agent of Merrill Lynch.

IV.

ORDER

On the basis of the Findings of Facts, Conclusions of Law, and Merrill Lynch's consent to the entry of this Order,

IT IS HEREBY ORDERED:

1. This Order concludes the investigation by the New Jersey Bureau of Securities and any other action that the New Jersey Bureau of Securities could commence against Merrill Lynch under applicable New Jersey Securities law on behalf of New Jersey as it relates to unregistered activity in New Jersey by Merrill Lynch's CAs and Merrill Lynch's supervision of CA registrations during the period from January 1, 2004 through the date of this Order.

2. This Order is entered into solely for the purpose of resolving the referenced multi-state investigation, and is not intended to be used for any other purpose. For any person or entity not a party to the Order, this Order does not limit or create any private rights or remedies against Merrill Lynch including, limit or create liability of Merrill Lynch, or limit or create defenses of Merrill Lynch, to any claims.

3. Merrill Lynch is hereby warned.

4. Merrill Lynch is hereby ordered to Cease and Desist from engaging in the sale of securities in the state of New Jersey through persons not registered with the New Jersey Bureau of Securities as agents of Merrill Lynch.

5. Merrill Lynch is hereby ordered to pay, within ten days of the date of this Order, the sum of seven hundred twenty-eight thousand, two hundred sixty dollars (\$728,260.00) to the State of New Jersey, Bureau of Securities, 153 Halsey Street, 6th Floor, Newark, New Jersey 07102. The civil monetary penalty shall be deposited in the Securities Enforcement Fund pursuant to N.J.S.A. 49:3-66.1.

6. Merrill Lynch shall pay up to a total of Twenty six million, five hundred sixty three thousand, ninety four dollars and fifty cents (\$26,563,094.50) in fines, penalties and any other monetary sanctions among the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands pursuant to the calculations discussed with the multi-state working group.

7. However, if any state securities regulator determines not to accept Merrill Lynch's settlement offer, the total amount of the payment to the State of New Jersey shall not be affected, and shall remain at seven hundred twenty-eight thousand, two hundred sixty dollars (\$728,260.00).

8. Merrill Lynch is hereby ordered to comply with the Undertakings contained herein.

9. This order is not intended by the Bureau to subject any Covered Person to any disqualifications under the laws of the United States, any state, the District of Columbia, Puerto Rico, or the U.S. Virgin Islands including, without limitation, any disqualification from relying upon the state or federal registration exemptions or safe harbor provisions. "Covered Person," means Merrill Lynch or any of its affiliates and their current or former officers or former

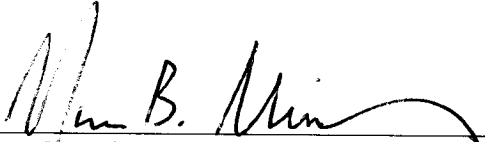
officers, directors, employees, or other persons that would otherwise be disqualified as a result of the Orders (as defined below).

10. This Order and the order of any other State in related proceedings against Merrill Lynch (collectively, the "Orders") shall not disqualify any Covered Person from any business that they otherwise are qualified, licensed or permitted to perform under applicable securities laws of New Jersey and any disqualifications from relying upon this state's registration exemptions or safe harbor provisions that arise from the Orders are hereby waived.

11. This Order shall be binding upon Merrill Lynch and its successors and assigns as well as to successors and assigns of relevant affiliates with respect to all conduct subject to the provisions above and all future obligations, responsibilities, undertakings, commitments, limitations, restrictions, events, and conditions.

Dated this 10th day of August, 2010.

BY ORDER



Marc B. Minor
Chief, New Jersey Bureau of Securities

**CONSENT TO ENTRY OF
ADMINISTRATIVE ORDER BY
MERRILL LYNCH**

Merrill Lynch hereby acknowledges that it has been served with a copy of this Consent Order ("Order"), has read the foregoing Order, is aware of its right to a hearing and appeal in this matter, and has waived the same.

Merrill Lynch admits the jurisdiction of the New Jersey Bureau of Securities, neither admits nor denies the Findings of Facts and Conclusions of Law contained in this Order, and consents to entry of this Order by the New Jersey Bureau of Securities as settlement of the issues contained in this Order.

Merrill Lynch agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any administrative monetary penalty that Merrill Lynch shall pay pursuant to this Order.

Merrill Lynch states that no promise of any kind or nature whatsoever was made to it to induce it to enter into this Order and that it has entered into this Order voluntarily.

Joaquin M. Sena represents that he is an Associate General Counsel and, as such, has been authorized to enter into this Order for and on behalf of Merrill Lynch.

Dated this 9th day of August, 2010.

MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED

By: _____

Joaquin M. Sena

Title: Associate General Counsel

STATE OF NEW YORK)
)SS.:
COUNTY OF NEW YORK)

I certify that Joaquin M. Sena personally known to me, appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the 9 day of August, 2010.

(Official Seal)



Notary Public

My Commission expires: 2/28/14

BRUCE S KAPLAN
Notary Public - State of New York
No. 01KA4513419
Qualified in Kings County
My Commission Expires Feb. 28, 2014