

BEFORE THE DIRECTOR OF THE IDAHO DEPARTMENT OF FINANCE

In the matter of

MERRILL LYNCH, PIERCE, FENNER
& SMITH INCORPORATED,

Respondent.

Docket, No. 2011-7-17

ADMINISTRATIVE CONSENT ORDER

WHEREAS, Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”) is a broker-dealer registered in the state of Idaho, 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 Idaho Code 30-14-604 with respect to this Order; and

Solely for the purpose of terminating the multi-state investigations, 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, the Director ("Director") of the Idaho Department of Finance ("Department"), as administrator of the Idaho Uniform Securities Act ("Act"), hereby enters this Order:

I.

FINDINGS OF FACTS

1. Merrill Lynch admits the jurisdiction of the Department 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.

1 Registration Required

2 7. Idaho Code 30-14-402(a) provides that it is unlawful for a person to transact business in
3 Idaho as an agent unless the person is registered under the Act.

4 8. Pursuant to the general prohibition under Idaho Code 30-14-402(a), a person cannot
5 accept unsolicited orders in Idaho without being registered as an agent of the relevant broker-
6 dealer.

7 9. Pursuant to Idaho Code 30-14-412(c), a broker-dealer may be fined, censured, barred or
8 suspended for selling securities in Idaho through agents other than registered agents.

9 Merrill Lynch Requires Registration of Client Associates

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

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

15 Regulatory Investigations and Findings

16 12. In May 2008, state regulators received a tip alleging that Merrill Lynch was failing to
17 ensure its CAs were in compliance with jurisdictional registration requirements and its own
18 procedures. The tip alleged that Merrill Lynch CAs were registered in two jurisdictions – the CA's
19 home state and one neighboring state – because Merrill Lynch only paid for registrations in two
jurisdictions.

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

22 14. Because Merrill Lynch's relevant trade records were maintained in hard copy and only
23 at branch offices across the country, the multi-state investigation focused on systemic issues with
24 Merrill Lynch CA registrations and related supervisory structure instead of attempting to identify
25 each incidence of unregistered activity. Specifically:
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- 1 a. After accepting a client order, CAs accessed the electronic trading system to enter
2 the order;
- 3 b. The CAs did not have to identify themselves during the order entry process.
4 Therefore, there is no electronic record that identifies which orders were accepted
5 by CAs;
- 6 c. Instead, Merrill Lynch maintained a daily report that recorded the identity of the
7 person who accepted and/or entered each order. However, this report was not
8 maintained electronically, and was only maintained at the branch office where the
9 order was entered. Merrill Lynch represented that this daily report was the only
10 record that could identify who accepted a client order.
- 11 d. Merrill Lynch's trading system checked the registration of the FA, but did not check
12 the registration status of the person accepting the order to ensure that the person was
13 registered in the appropriate jurisdiction.

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

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

19 Merrill Lynch's Remedial Measures and Cooperation

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

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

25 19. Consistent with the fact that many Merrill Lynch CAs were only registered in one or
26 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.

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, 203 CAs registered with the Department 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 licensed. This system, which enhanced Merrill's primary trading systems for bond and equities trading, was fully implemented by December 31, 2009. Further, the firm has engaged in an ongoing assessment of firm processes to determine where additional changes, related to the merger with Bank of America or otherwise, may enhance the firm's registration compliance program.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.

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.

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 was not completed until the third quarter of 2010. BAIS, whose policies have required sales assistants' state registration status to mirror the FAs they serve, continued to use its own order entry system for its existing clients until the integration was completed.

1 CONCLUSIONS OF LAW

2 1. The Department has jurisdiction over this matter pursuant to Idaho Code 30-14-101,
3 et seq.

4 2. Merrill Lynch's failure to establish an adequate system to monitor the registration
5 status of persons accepting client orders constitutes a failure to establish, maintain and enforce
6 written supervisory procedures as required by the Rules Pursuant to the Uniform Securities Act
7 (2004), specifically IDAPA 12.01.08.105.01.

8 3. Merrill Lynch's failure to require its CAs to be registered in the appropriate
9 jurisdictions constitutes a failure to enforce its established written procedures, and is a violation of
10 IDAPA 12.01.08.105.03.

11 4. Pursuant to Idaho Code 30-14-412(c), Merrill Lynch's sales of securities in Idaho
12 through unregistered CAs constitute bases for the issuance of an Order assessing a fine against
13 Merrill Lynch.

14 5. Pursuant to Idaho Code 30-14-604(a)(1), Merrill Lynch's sales of securities in Idaho
15 through agents not registered in Idaho constitute bases to order Merrill Lynch to cease and desist
16 engaging in the sale of securities in Idaho through unregistered agents.

17 6. Pursuant to Idaho Code 30-14-412(c), the violations described above constitute
18 bases for the assessment of an administrative fine against Merrill Lynch.

19 7. The Department finds the following relief appropriate and in the public interest.
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24 III.

25 UNDERTAKINGS
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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 Department, 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.

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 Department and any other action that the Department could commence against Merrill Lynch under applicable Idaho law on behalf of the Department as it relates to unregistered activity in Idaho 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 ordered to cease and desist from engaging in the sale of securities in the State of Idaho through persons not registered with the Department as agents of Merrill Lynch.

4. Merrill Lynch is hereby ordered to pay the sum of three hundred and fifty-two

1 thousand, fifty dollars and no cents (\$352,050.00) to the Department within ten days of the date of
2 this Order.

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

7 6. However, if any state securities regulator determines not to accept Merrill Lynch's
8 settlement offer, the total amount of the payment to the State of Idaho shall not be affected, and
9 shall remain at three hundred and fifty-two thousand, fifty dollars and no cents (\$352,050.00).
10 Merrill Lynch is hereby ordered to comply with the Undertakings contained herein.

11 7. This order is not intended by the Department to subject any Covered Person to any
12 disqualifications under the laws of the United States, any state, the District of Columbia, Puerto
13 Rico, or the U.S. Virgin Islands including, without limitation, any disqualification from relying
14 upon the state or federal registration exemptions or safe harbor provisions. "Covered Person,"
15 means Merrill Lynch or any of its affiliates and their current or former officers or former officers,
16 directors, employees, or other persons that would otherwise be disqualified as a result of the Orders
(as defined below).

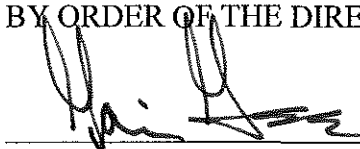
17 8. This Order and the order of any other State in related proceedings against Merrill
18 Lynch (collectively, the "Orders") shall not disqualify any Covered Person from any business that
19 they otherwise are qualified, licensed or permitted to perform under applicable securities laws of
20 the State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

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

5 Dated this 20th day of January, 2012

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7 BY ORDER OF THE DIRECTOR

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9 GAVIN GEE
10 Director of Finance



1 CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY MERRILL LYNCH

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

5 Merrill Lynch admits the jurisdiction of the Idaho Department of Finance, neither admits nor
6 denies the Findings of Facts and Conclusions of Law contained in this Order, and consents to entry of
7 this Order by the Idaho Department of Finance as settlement of the issues contained in this Order.

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

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

13 J. David Montague represents that he is an Associate General Counsel and, as such, has
14 been authorized to enter into this Order for and on behalf of Merrill Lynch.

15 Dated this 29th day of December, 2011.

16 MERRILL LYNCH, PIERCE, FENNER & SMITH
17 INCORPORATED

18 By: 

19 J. David Montague

20 Title: Associate General Counsel
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1 STATE OF NEW YORK)
2)SS.:
3 COUNTY OF NEW YORK)

4 I certify that J. David Montague personally known to me, appeared before me this day and
5 acknowledged the due execution of the foregoing instrument.

6 Witness my hand and official seal, this the 29 day of December 2011.

7 (Official Seal)

Marianne Bretton-Granatoor

Notary Public

My Commission expires: _____

MARIANNE BRETTON-GRANATOOR
NOTARY PUBLIC STATE OF NEW YORK
NO. 02BR4932444
QUALIFIED IN KINGS COUNTY
COMMISSION EXPIRES MAY 02 20 14