

ADMINISTRATIVE PROCEEDING

BEFORE THE

SECURITIES COMMISSIONER OF SOUTH CAROLINA

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

ADMINISTRATIVE CONSENT ORDER

File Number 09084

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

WHEREAS, 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

WHEREAS, 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

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

WHEREAS, 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

WHEREAS, Merrill Lynch elects to permanently waive any right to a hearing and appeal under S.C. Code Ann. §§ 35-1-604 and 35-1-609 (Supp. 2009) with respect to this Order; and

WHEREAS, solely for the purposes of terminating the multistate task force investigations, including the investigation by the staff of the Securities Division of the State of South Carolina (the “Staff”), and in settlement of the issues contained in this Order, Merrill Lynch, without

**S.C. ATTORNEY
GENERAL'S OFFICE**

DEC 11 2009

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 S.C. Code Ann. § 35-1-402(a), it is unlawful for an individual to transact business in this State as an agent unless the individual is registered or exempt from registration as an agent under the Act.

8. Pursuant to the general prohibition under S.C. Code Ann. § 35-1-402(a), a person cannot accept unsolicited orders in South Carolina without being registered, as required by the Act.

9. Pursuant to S.C. Code Ann. § 35-1-604(d), in a final order, the Securities Commissioner may impose a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) for each violation of the Act.

Merrill Lynch Requires Registration of Client Associates

10. 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.

11. 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

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

13. After an initial review supported the allegations in the tip, an investigation was opened into Merrill Lynch's practices in connection with CA registrations.

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

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

5 a. After accepting a client order, CAs accessed the electronic trading system
6 to enter the order;

7 b. The CAs did not have to identify themselves during the order entry
8 process. Therefore, there is no electronic record that identifies which orders
9 were accepted by CAs;

10 c. Instead, Merrill Lynch maintained a daily report that recorded the identity
11 of the person who accepted and/or entered each order. However, this report
12 was not maintained electronically, and was only maintained at the branch
13 office where the order was entered. Merrill Lynch represented that this
14 daily report was the only record that could identify who accepted a client
15 order;

16 d. Merrill Lynch's trading system checked the registration of the FA, but did
17 not check the registration status of the person accepting the order to ensure
18 that the person was registered in the appropriate jurisdiction.

19 16. The investigation found that many CAs supported FAs registered in South
20 Carolina when the CAs were not registered in South Carolina as agents of Merrill Lynch. This
21 difference in registration status increased the possibility that CAs would engage in unregistered
22 activity.

23 17. The investigation found that certain Merrill Lynch CAs engaged in the sale of
24 securities in South Carolina at times when the CAs were not appropriately registered in South
25 Carolina.
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Merrill Lynch's Remedial Measures and Cooperation

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

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

5 20. Consistent with the fact that many Merrill Lynch CAs were only registered in one
6 or two jurisdictions, Merrill Lynch's review found incidences of trading by CAs in states in
7 which they were not properly registered.

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

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

15 23. Between October 1, 2008 and January 28, 2009, five hundred ninety-one (591)
16 CAs registered with the State of South Carolina as agents of Merrill Lynch. Yet, data as of
17 February 28, 2009, indicated that significant gaps remained between the registrations of CAs and
18 their FAs.

19 24. However, Merrill Lynch, as a compliance enhancement, also developed an
20 electronic system that will prevent any person from entering client orders from a state in which
21 the person accepting the order is not registered. Merrill Lynch has represented to the Staff that the
22 firm began implementing this new system in June 2009, and expects it to be fully implemented by
23 December 31, 2009.

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

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25. 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 Securities Commissioner has jurisdiction over this matter pursuant to S.C. Code §35-1-604 (Supp. 2009).

2. Merrill Lynch's failure to establish an adequate system to monitor the registration status of persons accepting client orders constitutes a failure to establish a reasonably designed supervisory system, in violation of S.C. Code of Regulations 13-501(A)(21).

3. Merrill Lynch's employment of CAs who transacted business in South Carolina without appropriate registration constitutes a failure to enforce its established written procedures, and is a violation of S.C. Code of Regulations 13-501(A)(21).

4. Pursuant to S.C. Code Ann. § 35-1-402(d), Merrill Lynch's sales of securities in South Carolina through agents not registered in the State of South Carolina constitute violations of the Act, which prohibits broker-dealers from employing agents to transact business in the State of South Carolina unless the agent is properly registered or exempt from registration, a status which has not been claimed by Merrill Lynch in the present matter.

5. Pursuant to S.C. Code Ann. § 35-1-604(a), Merrill Lynch's sales of securities in South Carolina through agents not registered in this State constitute grounds to order Merrill Lynch to cease and desist engaging in the sale of securities in South Carolina through unregistered agents.

6. Pursuant to S.C. Code Ann. § 35-1-604(d), the violations described above constitute grounds for the assessment of an administrative fine against Merrill Lynch.

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

III.
UNDERTAKINGS

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

4 2. Merrill Lynch further undertakes and agrees to file with the Staff, within sixty (60)
5 days of the date of this Order, a report describing Merrill Lynch's improvements in its ability to
6 monitor the identity and registration status of each person who accepts a client order entered on
7 Merrill Lynch's trading system.

8 3. For the period from the date of this Order through December 31, 2010, Merrill
9 Lynch further undertakes and agrees to notify the Staff if it finds that any person associated with
10 Merrill Lynch accepted a client order in the State of South Carolina without being registered, or
11 exempt from registration, under the Act as an agent of Merrill Lynch.

IV.
ORDER

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

16 IT IS HEREBY ORDERED:

17 1. This Order concludes the investigation by the Staff and any other action that the
18 Staff or the Securities Commissioner could commence against Merrill Lynch under applicable
19 South Carolina law on behalf of the State of South Carolina as it relates to unregistered activity in
20 the State of South Carolina by Merrill Lynch's CAs and Merrill Lynch's supervision of CA
21 registrations during the period from January 1, 2004, through the date of this Order.

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

3. Merrill Lynch is hereby reprimanded.

1 4. Merrill Lynch is hereby ordered to cease and desist from engaging in the sale of
2 securities in the State of South Carolina through persons not registered under the Act as agents of
3 Merrill Lynch.

4 5. Merrill Lynch is hereby ordered to pay the sum of one million, ninety-two
5 thousand, nine hundred seventy dollars (\$1,092,970.00) to the Securities Commissioner, such
6 sum to be paid as follows: four hundred forty-five thousand (\$445,000.00) within ten (10) days of
7 the date of this Order and the remaining amount of six hundred forty-seven thousand, nine
8 hundred seventy dollars (\$647,970.00) on or before September 1, 2010.

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

13 7. However, if any state securities regulator determines not to accept Merrill Lynch's
14 settlement offer, the total amount of the payment to the State of South Carolina shall not be
15 affected, and shall remain at one million, ninety-two thousand, nine hundred seventy dollars
16 (\$1,092,970.00).

17 8. Merrill Lynch is hereby ordered to comply with the Undertakings contained in
18 Section III of this Order.

19 9. This order is not intended by the Staff or the Securities Commissioner to subject
20 any Covered Person to any disqualifications under the laws of the United States, any state, the
21 District of Columbia, Puerto Rico, or the U.S. Virgin Islands including, without limitation, any
22 disqualification from relying upon the state or federal registration exemptions or safe harbor
23 provisions. "Covered Person," means Merrill Lynch or any of its affiliates and their current or
24 former officers, directors, employees, or other persons that would otherwise be disqualified as a
25 result of the Orders (as defined below).
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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 the State of South Carolina, 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 16 day of December, 2009.

BY ORDER OF THE SECURITIES COMMISSIONER



HENRY D. McMASTER
SECURITIES COMMISSIONER
STATE OF SOUTH CAROLINA

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

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

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

8 Merrill Lynch agrees that it shall not claim, assert, or apply for a tax deduction or tax
9 credit with regard to any state, federal, or local tax for any administrative monetary penalty that
10 Merrill 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
12 induce it to enter into this Order and that it has entered into this Order voluntarily.

13 Teresa M. Brenner represents that she is Associate General Counsel of Merrill Lynch and
14 that, as such, has been authorized by Merrill Lynch to enter into this Order for and on behalf of
15 Merrill Lynch.

16 Dated this 9th day of December, 2009.

MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED

17 By: *Teresa M. Brenner*
18 Title: Associate General Counsel

19 STATE OF NORTH CAROLINA)
20) SS.:
COUNTY OF MECKLENBURG)

21 I certify that Teresa M. Brenner personally known to me, appeared before me this day and
22 acknowledged the due execution of the foregoing instrument.

23 Witness my hand and official seal, this the 9th day of December, 2009.

24 (Official Seal)



25 *James E. Dwiggins*
26 James E. Dwiggins, Notary Public
My Commission Expires: May 2nd, 2010.