

**STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION**

**BEFORE THE COMMISSIONER OF THE OFFICE OF FINANCIAL AND
INSURANCE REGULATION**

In the matter of)	
)	
MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,)	ADMINISTRATIVE CONSENT ORDER
)	
Respondent.)	
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WHEREAS, Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”) is a broker-dealer registered in the state of Michigan, 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 waive permanently any right to a hearing and appeal under the Administrative Procedures Act of 1969, 1969 PA 306, as amended, MCL 24.201 *et seq.* and the Michigan Uniform Securities Act of 1964, 1964 PA 265, as amended, MCL 451.501

et seq., and the Rules promulgated thereunder R 451.601.1 – 451.808.8, (the “Act”) with respect to this Order; and

WHEREAS, solely for the purpose of terminating the multi-state investigations, including the investigation by staff of the Michigan Office of Financial and Insurance Regulation (“OFIR”), 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 Commissioner of OFIR, as administrator of the Act, hereby enters this Order:

I.

FINDINGS OF FACTS

1. Merrill Lynch admits the jurisdiction of the OFIR 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. Section 401 of the Act, MCL 451.801, defines an "agent" as "[a]ny individual other than a broker-dealer or issuer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities . . ." Section 201 of the Act, MCL 451.601, state that "[a] person shall not transact business in this state as a broker-dealer or agent unless registered under this act."

8. Pursuant to Section 201(b) of the Act, MCL 451.601(b), a broker-dealer shall not employ an agent unless the agent is registered.

Merrill Lynch Requires Registration of Client Associates

9. 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.

10. 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

11. 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.

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

13. 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 each 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.

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

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

Merrill Lynch's Remedial Measures and Cooperation

16. As a result of the inquiries by the multi-state investigation, Merrill Lynch conducted a review of its CA registration practices.

17. 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.

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

19. 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.

20. 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.

21. Between October 1, 2008 and January 28, 2009, 580 CAs registered with OFIR 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.

22. 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

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.

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

23. 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. OFIR has jurisdiction over this matter pursuant to the Act.
2. Merrill Lynch's failure to establish an adequate system to monitor the registration status of persons accepting client orders constitutes a violation of Section 204 of the Act, MCL 451.604(a)(2) for failure to reasonably supervise agents.
3. Merrill Lynch's failure to require its CAs to be registered in the appropriate jurisdictions constitutes a violation of Section 201(b) of the Act, MCL 451.601(b), for failure of a broker-dealer to employ only agents that are registered.
4. OFIR 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 OFIR, within sixty days of the date of this Order, a report describing Merrill Lynch's improvements in its ability to

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.

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 OFIR if it finds that any person associated with Merrill Lynch accepted a client order in Michigan without being registered, or exempt from registration, with OFIR 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 1 entry of this Order,

IT IS HEREBY ORDERED:

1. This Order concludes the investigation by OFIR and any other action that OFIR could commence against Merrill Lynch under applicable Michigan law on behalf of the State of Michigan as it relates to unregistered activity in Michigan 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 Michigan through persons not registered with OFIR as agents of Merrill Lynch.

4. Merrill Lynch is hereby ordered to pay a monetary settlement of four hundred fifty two thousand, four hundred ninety five dollars (\$452,495.00) to the State of Michigan,

allocated in the following manner: four hundred seven thousand, two hundred forty five dollars and fifty cents (\$407,245.50) to the State of Michigan General Fund, and forty five thousand, two hundred forty nine dollars and fifty cents (\$45,249.50) to the Michigan Investor Protection Trust, within ten days of the date of this Order.

5. 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) as a monetary settlement with 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.

6. 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 Michigan shall not be affected, and shall remain at four hundred fifty two thousand, four hundred ninety five dollars (\$452,495.00).

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

8. This order is not intended by OFIR 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).

9. 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 Michigan and any disqualifications from relying upon this state's registration exemptions or safe harbor provisions that arise from the Orders are hereby waived.

10. 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 12 day of April, 2010.

BY ORDER OF THE COMMISSIONER OF THE
OFFICE OF FINANCIAL AND INSURANCE
REGULATION



Ken Ross, Commissioner
Office of Financial and Insurance Regulation

