

Government of the District of Columbia
Department of Insurance, Securities and Banking



William P. White
Commissioner

In the matter of)
)
MERRILL LYNCH, PIERCE, FENNER)
& SMITH INCORPORATED) NO.: SB-05-13
Respondent.)
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ADMINISTRATIVE SETTLEMENT AGREEMENT

WHEREAS, Merrill, Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”) is a broker-dealer registered in the District of Columbia (“CRD# 7691”), with its home office at One Bryant Park, New York, New York 10036; and

WHEREAS, the Department of Insurance, Securities and Banking (“Department”) conducted an investigation into Merrill Lynch’s actions as a broker-dealer in connection with a transaction between a Merrill Lynch registered representative (“Agent”) with a customer (“Complainant”); and

WHEREAS, Merrill Lynch has cooperated with the Department by responding to inquiries, providing documentary evidence and other materials, and providing the Department with access to facts relating to the underlying complaint; and

WHEREAS, Merrill Lynch has advised the Department of its agreement to resolve the Department’s investigation relating to activities of Merrill Lynch and its Agent as outlined in this Administrative Settlement Agreement (“Agreement”); and

WHEREAS, Merrill Lynch has since enhanced its procedures regarding the servicing of

reassigned accounts.

WHEREAS, Merrill Lynch agrees to make certain payments in accordance with the terms of this Agreement; and

WHEREAS, Merrill Lynch elects to permanently waive any right to a hearing and appeal under the District of Columbia Administrative Procedure Act, D.C. Official Code §§ 2-509(a) and 2-510(a) (2001); the Rules of Practice and Procedures for Hearings in the District of Columbia, 26 DCMR §§ B300 *et seq.*; and sections 602(b) and 803(a) of the Securities Act of 2000, effective September 29, 2000 (D.C. Law 13-203, D.C. Official Code § 31-5601.01 *et seq.* (2001)) ("Act"), D.C. Official Code §§ 31-5606.02(b) and 31-5608.03(a) with respect to this Agreement; and

WHEREAS, solely for the purposes of settlement of the issues, Merrill Lynch, consents to this Settlement Agreement.

NOW, THEREFORE, the Commissioner of the Department ("Commissioner"), as administrator of the Act pursuant to D.C. Official Code § 31-5607.01 hereby enters this Agreement:

I. STATEMENT OF FACTS

1. In early 2005, a Merrill Lynch Agent was assigned to the account of Complainant after Complainant's former financial advisor left employment with Merrill Lynch.
2. On or about March 1, 2007, the Complainant wrote to the Agent of her intention to redeem a private placement fund that had been purchased by her deceased husband. Complainant noted that the redemption was not to take place until the fund had been held a full seven years. The Complainant requested the Agent to advise as to any documentation necessary to effect the redemption.
3. Upon receiving the letter, the Agent called Complainant to inform her that the private placement fund would be eligible for redemption on or about October 1, 2007.

4. On September 26, 2007, Complainant sent an email to Agent reiterating her desire to redeem the private placement fund. Thereafter, Agent informed the Complainant that additional documentation was required to effect the redemption.

5. The Complainant was not able to process the redemption request in a timely manner and suffered losses stemming from the delay. Merrill Lynch ultimately reimbursed Complainant for the losses.

6. Had additional compliance measures been in place, the Complainant would have received the information regarding the documentation needed to effect the redemption at the time of her initial correspondence on March 7, 2007.

II. DEPARTMENT'S CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to D.C. Official Code § 31-5606.01(a)(1).

2. The Merrill Lynch Agent failed to furnish upon reasonable request, material information that was reasonably available and that Complainant was entitled to in response to a written request in violation of 26 DCMR B 119.2 (u).

3. As a result of the Agent's conduct, Merrill Lynch violated just and equitable standards of conduct (FINRA Rule 2010), in violation of 26 DCMR B 119.2 (bb) and shall CEASE AND DESIST from violating 26 DCMR B 119.2 (bb).

III. AGREEMENT

On the basis of the Statement of Facts and Conclusions of Law, Respondent, after waiving its right to a hearing and neither admitting or denying any violations, consents to the entry of this Agreement,

IT IS HEREBY ORDERED:

1. This Agreement concludes the investigation by the Department and any other action



that the Department could commence under applicable Act on behalf of the Department as it relates to the servicing of Complainant's account by the Agent and Merrill Lynch,

2. This Agreement is entered into solely for the purpose of resolving this matter, and is not intended to be used for any other purpose.

3. Respondent shall pay the amount of \$15,000 to the Department to be deposited in the District of Columbia's GENERAL FUND, made payable to the D.C. Treasurer, pursuant to D.C. Official Code § 1-204.50. The monies received by the Department pursuant to this paragraph may be used, in accordance with District of Columbia law, to reimburse the Department for costs incurred during the investigation of this matter, for securities and investor education, and/or for other securities and investor protection purposes, at the sole discretion of the Commissioner.

DEPARTMENT OF INSURANCE, SECURITIES AND BANKING

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of this Department in the District of Columbia, this 10th day of September, 2013.

William P. White, Commissioner

AGREED AND CONSENTED TO:

Merrill Lynch hereby acknowledges that it has been served with a copy of this Settlement Agreement ("Agreement"), has read the foregoing Agreement, 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 Department; neither admits nor denies the Statement of Facts and Conclusions of Law contained in this Agreement; and consents to entry of this Agreement by the Department as settlement of the issues contained in this Agreement.

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 payment made by Merrill Lynch pursuant to this Agreement.

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

Russel D. Francisco represents that he is an Assistant General Counsel and, as such, has been authorized to enter into this Agreement for and on behalf of Merrill Lynch.

Dated this 3RD day of SEPT., 2013.

MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED

By: 

Russel D. Francisco

Director - Assistant General Counsel

I certify that Russel Francisco 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 3rd day of Sept., 2013.


Notary Public

My Commission expires: 8/14/2014

LEONORE E. McKEAN
Notary Public, State of New York
No. 01MC6046526
Qualified in Suffolk County
Commission Expires 08/14/2014