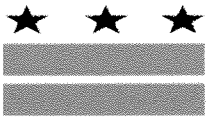
Government of the District of Columbia
Department of Insurance, Securities and Banking



William P. White
Commissioner

In the matter of MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, Respondent.	)	ADMINISTRATIVE CONSENT ORDER ORDER NO. SB-CO-09-11

WHEREAS, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") is a broker-dealer registered with the Department of Insurance, Securities and Banking ("Department") in the District of Columbia ("District"), with a Central Registration Depository ("CRD") number of 7691; and

WHEREAS, state securities regulators from multiple jurisdictions have conducted coordinated investigations into Merrill Lynch Client Associate ("CA") registrations 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 ("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 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 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"), with respect to this Order; and

WHEREAS, 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 Commissioner of the Department ("Commissioner"), pursuant to D.C. Official Code § 31-5607.01 hereby enters this Order:

I.

FINDINGS OF FACT

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

Background on Client Associates

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

3. 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 CA accepting client orders must first obtain the necessary licenses and registrations.

4. 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.

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

Registration Required

6. D.C. Official Code § 31-5602.01(a) provides that no person shall transact business in the District as a broker-dealer or agent unless the person is licensed or exempt from licensure under the Act.

7. Pursuant to the general prohibition under D.C. Official Code § 31-5602.01(a), a person cannot accept unsolicited orders in the District without being registered as a broker-dealer or agent.

8. Additionally, pursuant to D.C. Official Code § 31-5602.01(b), no broker-dealer or issuer shall employ an agent to represent the broker-dealer or issuer unless the agent is licensed or exempt from licensure under the Act.

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 Merrill Lynch's 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's CA registrations and related supervisory structure instead of attempting to identify each incidence of unregistered activity. The multi-state investigation found the following systemic issues with Merrill Lynch's CA registrations:

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.

c. Therefore, there is no electronic record that identifies which orders were accepted by CAs.

d. 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.

e. 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 the District of Columbia when the CAs were not registered in the District of Columbia 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 the District of Columbia at times when the CAs were not appropriately registered in the District, in violation of D.C. Official Code § 31-5602.01(a).

Merrill Lynch's Remedial Measures and Cooperation

16. As a result of the inquiries by state regulators, 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 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 were only registered in one or two jurisdictions, Merrill Lynch's review found incidences of trading by CAs who were not properly registered in the jurisdiction in which they were trading.

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 FA's the CA supported.

[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 CA's maintain appropriate registrations.

21. Between October 1, 2008 and January 28, 2009, 384 CAs registered with the Department as agents of Merrill Lynch. However, 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 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]

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

2. Merrill Lynch's failure to establish an adequate system to monitor the registration status of persons accepting client orders constitutes a failure to properly supervise in violation of D.C. Official Code § 31-5602.07(a)(12).

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[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.

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 a basis for the issuance of an Order assessing a fine against Merrill Lynch.

4. Merrill Lynch employed agents who were not licensed or exempt from licensure in the District of Columbia, in violation of D.C. Official Code § 31-5602.01(b).

5. The sale of securities in District of Columbia by Merrill Lynch through agents who were not licensed in District of Columbia constitutes a violation of D.C. Official Code § 31-5602.01(a).

6. The violations as described in paragraphs 2 through 5 above, constitute the basis for an assessment of a civil penalty against Merrill Lynch, pursuant to D.C. Official Code § 31-5606.02(b)(4).

7. The Department 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 a person from entering client orders that originate from a jurisdiction in which the person accepting the order is not licensed.

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 Respondent'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 the Act on behalf of the District of Columbia as it relates to unlicensed activity in the District of Columbia 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 this 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 reprimanded for its failure to properly supervise in violation of D.C. Official Code § 31-560207(a)(12) and for employing agents who were not licensed or exempt from licensure in the District of Columbia, in violation of D.C. Official Code § 31-5602.01(b).

4. Merrill Lynch shall CEASE AND DESIST from violating D. C. Official Code §§ 31-5602.01(a) and (b), 31-5602.07(a)(9), and 31-5606.02(b)(4), and shall CEASE AND DESIST from engaging in the sale of securities in the District of Columbia through persons not registered with the Department as agents of Merrill Lynch.

5. Merrill Lynch is hereby ordered to pay the sum of FOUR HUNDRED THIRTY FOUR THOUSAND, TWO HUNDRED FIFTEEN DOLLARS AND ZERO CENTS ($434,215.00) to the Department, within ten days of the date of this Order.

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 District of Columbia shall not be affected, and shall remain at FOUR HUNDRED THOUSAND, TWO HUNDRED FIFTEEN DOLLARS AND ZERO CENTS ($434,215.00).

8. Merrill Lynch is hereby ordered to comply with the Undertakings contained in this Order.

9. This Order is not intended by the Department 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. For the purposes of this Order, "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 issued to resolve the multi-state investigation of 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 District of Columbia and any disqualifications from relying upon the District'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 this Order and all future obligations, responsibilities, undertakings, commitments, limitations, restrictions, events, and conditions provided by this Order.

Dated this 24th day of October, 2011

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of this Department in the District of Columbia, this 24th day of October, 2011.

William P. White
Commissioner

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 its right to a hearing and appeal in this matter.

Merrill Lynch admits the jurisdiction of the Department, 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 Department 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 represents 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.

J. David Montague 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 this19th day of October, 2011.

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

By: J. David Montague

J. David Montague
Title: Associate General Counsel

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

I certify that J. David Montague 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 19th day of October 2011.

(Official Seal)

Marianne Bretton Granatoor

Notary Public
My Commission expires: May 2 2014

MARIANNE BRETTON-GRANATOOR
NOTARY PUBLIC STATE OF NEW YORK
NO. 02BR4932444
QUALIFIED IN KINGS COUNTY
COMMISSION EXPIRES MAY 02 2014