

**BEFORE THE SECURITIES COMMISSIONER
OF THE STATE OF KANSAS**

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

Docket No. 10 E 010
KSC No. 2010-5667

CONSENT ORDER

WHEREAS, Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”) is a broker-dealer registered in the State of Kansas, 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 the Kansas Administrative Procedure Act, K.S.A. 77-501 et seq., and the Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 et seq., 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 Securities Commissioner hereby enters this Order.

I.

FINDINGS OF FACTS

1. Merrill Lynch admits the jurisdiction of the Office of the Kansas Securities Commissioner 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 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. It is unlawful for an individual to transact business in this state as an agent unless the individual is registered as an agent or is exempt from registration as an agent K.S.A. 17-12a402(a).

8. Pursuant to the general prohibition under K.S.A. 17-12a402(a), a person cannot accept unsolicited orders in Kansas without being registered as agent.

9. Pursuant to K.S.A. 17-12a402(d), it is unlawful for a broker-dealer to employ an agent who transacts business in Kansas unless the agent is registered or exempt from registration.

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

14. 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.

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

16. The multi-state investigation found that certain CAs engaged in the sale of securities in the State of Kansas at times when the CAs were not appropriately registered in the State of Kansas.

Merrill Lynch's Remedial Measures and Cooperation

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

18. 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.

19. 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 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.

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.

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, 267 CAs registered with the Kansas Securities Commissioner 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 registered. Merrill Lynch has represented to the Staff that the firm began implementing this new system in June 2009 and expects it to be fully implemented by December 31, 2009.

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.

CONCLUSIONS OF LAW

1. The Office of the Kansas Securities Commissioner has jurisdiction over this matter pursuant to the Kansas Uniform Securities 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 Kansas Administrative Regulations 81-3-7 and is grounds for discipline under K.S.A. 17-12a412(d)(9) for failure to reasonably supervise.

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 ground for discipline under K.S.A. 17-12a412(d)(9).

4. Pursuant to the Kansas Uniform Securities Act, Merrill Lynch's sales of securities in the State of Kansas through unregistered CAs are in violation of K.S.A. 17-402(d).

5. Pursuant to K.S.A. 17-12a412(c)(6), Merrill Lynch's sales of securities in the State of Kansas through agents not registered in the State of Kansas constitute bases to order Merrill Lynch to cease and desist engaging in the sale of securities in the State of Kansas through unregistered agents.

6. Pursuant to K.S.A. 17-12a412(c)(3), the violations described above constitute bases 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. 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 Office of the Kansas Securities Commissioner, 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.

3. For the period from the date of this Order through December 31, 2010, Merrill Lynch further undertakes and agrees to notify the Office of the Kansas Securities Commissioner if it finds that any person associated with Merrill Lynch accepted a client order in the State of Kansas without being registered, or exempt from registration, with the Office of the Kansas Securities Commissioner 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 entry of this Order,

IT IS HEREBY ORDERED:

1. This Order concludes the investigation by the Office of the Kansas Securities Commissioner and any other action that the Office of the Kansas Securities Commissioner could commence against Merrill Lynch under applicable Kansas law on behalf of State of Kansas as it relates to unregistered activity in State of Kansas 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, limit or create liability of Merrill Lynch, or limit or create defenses of Merrill Lynch, to any claims.

3. Merrill Lynch is hereby CENSURED.

4. Merrill Lynch is hereby ordered to CEASE AND DESIST from engaging in the sale of securities in the State of Kansas through persons not registered with the Office of the Kansas Securities Commissioner as agents of Merrill Lynch.

5. Within ten days of the date of this Order, Merrill Lynch is hereby ordered to pay the sum of \$419,935 to the Office of the Kansas Securities Commissioner, as a CIVIL MONETARY PENALTY pursuant to K.S.A. 17-12a412(c), to be deposited in the Investor Education Fund, K.S.A. 17-12a601(d), which amount constitutes the State of Kansas' proportionate share of the state settlement amount.

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 State of Kansas shall not be affected, and shall remain at \$419,935.

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

9. This order is not intended by the Office of the Kansas Securities Commissioner 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).

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 Kansas 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.

IT IS SO ORDERED BY THE COMMISSIONER.

Entered at Topeka, Kansas, this 14th day of January, 2010.

/s/ Chris Biggs
Chris Biggs
Securities Commissioner
State of Kansas

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 the same.

Merrill Lynch admits the jurisdiction of the Office of the Kansas Securities Commissioner, 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 Office of the Kansas Securities Commissioner 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 states 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.

David Futterman 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 this 5th day of January 2010.

MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED

By: /s/ David Futterman
Title: Associate General Counsel

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

I certify that David Futterman 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 5th day of January, 2010.

(Office Seal)

/s/ Marianne Bretton-Granatooh
Notary Public
My Commission Expires: May 2010