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STATE OF OHIO
DIVISION OF SECURITIES

APR 11 2011

OHIO DIVISION
SECURITIES

1 In the matter of

2
3 MERRILL LYNCH, PIERCE, FENNER
4 & SMITH INCORPORATED,

5 Respondent.

) Order No. 11- 018

) **ADMINISTRATIVE CONSENT ORDER**

6
7 WHEREAS, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch")
8 is a broker-dealer registered in the state of Ohio, with a Central Registration Depository ("CRD")
9 number of 7691; and

10 State securities regulators from multiple jurisdictions, representing Ohio, have conducted
11 coordinated investigations into the licensing¹ of Merrill Lynch Client Associates ("CAs") and
12 Merrill Lynch's supervisory system with respect to the licenses of CAs; and

13 Merrill Lynch has cooperated with regulators conducting the investigations by responding
14 to inquiries, providing documentary evidence and other materials, and providing regulators with
15 access to facts relating to the investigations; and

16 Merrill Lynch has advised regulators of its agreement to resolve the investigations pursuant
17 to the terms specified in this Consent Order (the "Order"); and

18 Merrill Lynch agrees to make certain changes in its supervisory system with respect to the
19 licensing of CAs, and to make certain payments in accordance with the terms of this Order; and

20 Merrill Lynch elects to waive permanently any right to a hearing and appeal under of Ohio
21 Revised Code (hereinafter "ORC") Chapter 119 with respect to this Order; and

22 Solely for the purpose of terminating the multi-state investigations, and in settlement of the
23 issues contained in this Order, Merrill Lynch, without admitting or denying the findings of fact or
24 conclusions of law contained in this Order, consents to the entry of this Order.

25
26 ^{1 1} With respect to securities professionals and the entities with which they are associated, the Ohio Securities Act uses the term "licensing" in the same manner other jurisdictions may use the term "registration." For the purposes of this Order, the two terms should be considered synonymous.

1 NOW, THEREFORE, the Commissioner of the Division of Securities, as administrator of
2 the Ohio Securities Act, hereby enters this Order:

3 I.

4 FINDINGS OF FACTS

5 1. Merrill Lynch admits the jurisdiction of the Ohio Division of Securities (the "Division")
6 in this matter.

7 Background on Client Associates

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

12 3. The responsibilities of a CA specifically include:

- 13 a. Handling client requests;
- 14 b. Resolving client inquiries and complaints;
- 15 c. Determining if client issues require escalation to the FA or the branch management
16 team; and
- 17 d. Processing of operational documents such as letters of authorization and client
18 check requests.

19 4. In addition to the responsibilities described above, and of particular significance to this
20 Order, some CAs are permitted to accept unsolicited orders from clients. As discussed below,
21 Merrill Lynch's written policies and procedures require that any CAs accepting client orders first
22 obtain the necessary licenses.

23 5. Notably, FAs might have a "primary CA" and a "secondary CA". As suggested by the
24 designation, the customary practice is that the primary CA would handle the FA's administrative
25 matters and client orders. However, if the primary CA was unavailable, the secondary CA would
26 handle the FA's administrative matters and client orders.

1 6. During the period from 2002 to September, 2009, Merrill Lynch employed
2 approximately 6,200 CAs (average) per year.

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5 Licensing Required

6 7. ORC 1707.16(A) requires that “[e]very salesperson of securities must be licensed by
7 the division ...” and ORC 1707.44(A)(1) states that “ ... no salesperson shall sell securities in this
8 state without being licensed pursuant to section 1707.16(A) of the Revised Code.”

9 8. Pursuant to the general prohibition under ORC 1707.16(A) and 1707.44(A)(1), a person
10 cannot accept unsolicited orders in Ohio without being licensed in Ohio.

11 9. Pursuant to ORC 1707.19, a dealer’s license may be suspended, revoked or both for
12 allowing unlicensed salespersons to sell securities in Ohio.

13 Merrill Lynch Requires Registration of Client Associates

14 10. In order for a CA to accept client orders, Merrill Lynch generally required each CA to
15 pass the series 7 and 63 qualification exams and to register in the appropriate jurisdictions.

16 11. At all times relevant to this Order, Merrill Lynch’s policies and procedures specified
17 that each CA maintain registrations in the same jurisdictions as his or her FA, or broadly required
18 that each CA maintain registrations in all necessary jurisdictions.

19 Regulatory Investigations and Findings

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

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

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

- 5 a. After accepting a client order, CAs accessed the electronic trading system to enter
6 the order;
- 7 b. The CAs did not have to identify themselves during the order entry process.
8 Therefore, there is no electronic record that identifies which orders were accepted
9 by CAs;
- 10 c. Instead, Merrill Lynch maintained a daily report that recorded the identity of the
11 person who accepted and/or entered each order. However, this report was not
12 maintained electronically, and was only maintained at the branch office where the
13 order was entered. Merrill Lynch represented that this daily report was the only
14 record that could identify who accepted a client order.
- 15 d. Merrill Lynch's trading system checked the registration of the FA, but did not check
16 the registration status of the person accepting the order to ensure that the person was
17 registered in the appropriate jurisdiction.

18 15. The **multi**-state investigation found that many CAs supported FAs licensed in Ohio
19 when the CAs were not licensed in Ohio as agents of Merrill Lynch. This difference in licensing
20 status increased the possibility that CAs would engage in unlicensed activity.

21 16. The multi-state investigation found that certain Merrill Lynch CAs engaged in the sale
22 of securities in Ohio at times when the CAs were not appropriately licensed in Ohio.

23 Merrill Lynch's Remedial Measures and Cooperation

24 17. As a result of the inquiries by state regulators, Merrill Lynch conducted a review of its
25 CA registration practices.
26

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

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

7 20. In October 2008, Merrill Lynch amended its registration (licensing) policy to require
8 that each CA mirror the state registrations (licensing) for the FAs that they support.² Merrill
9 Lynch's Registration Compliance personnel participated in calls with branch management to
10 advise the field about this requirement.

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

14 22. Between October 1, 2008 and January 28, 2009, 638 CAs licensed with the Division as
15 agents of Merrill Lynch. Yet, data as of February 28, 2009 indicated that significant gaps remained
16 between the licensing of CAs and their FAs.

17 23. However, Merrill Lynch, as a compliance enhancement, also developed an
18 electronic system that will prevent a person from entering client orders from a state in which the
19 person accepting the order is not licensed. This system, which enhanced Merrill's primary trading
20 systems for bond and equities trading, was fully implemented by December 31, 2009. Further, the
21 firm has engaged in an ongoing assessment of firm processes to determine where additional
22 changes, related to the merger with Bank of America or otherwise, may enhance the firm's
23 registration compliance program.³

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25 ² 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.

26 ³ 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

1 not a party to the Order, this Order does not limit or create any private rights or remedies against
2 Merrill Lynch including, limit or create liability of Merrill Lynch, or limit or create defenses of
3 Merrill Lynch, to any claims.

4 3. Merrill Lynch is hereby ordered to cease and desist from engaging in the sale of
5 securities in Ohio through persons not licensed with the Division as salespersons of Merrill Lynch.

6 4. Merrill Lynch agrees to pay the sum of Five Hundred Eighty Nine Thousand, Fifty
7 Dollars (\$589,050) to the **Ohio Division of Securities Investor Education and Enforcement**
8 **Fund** within ten days of the date of this Order.

9 5. 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. Virgin
12 Islands pursuant to the calculations discussed with the multi-state working group.

13 6. 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 Ohio shall not be affected, and
15 shall remain at Five Hundred Eighty Nine Thousand, Fifty Dollars (\$589,050).

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

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

23 9. This Order and the order of any other State in related proceedings against Merrill
24 Lynch (collectively, the "Orders") shall not disqualify any Covered Person from any business that
25 they otherwise are qualified, licensed or permitted to perform under applicable securities laws of
26 Ohio and any disqualifications from relying upon this state's registration exemptions or safe harbor

1 provisions that arise from the Orders are hereby waived.

2 10. This Order shall be binding upon Merrill Lynch and its successors and assigns as
3 well as to successors and assigns of relevant affiliates with respect to all conduct subject to the
4 provisions above and all future obligations, responsibilities, undertakings, commitments,
5 limitations, restrictions, events, and conditions.

6 Dated this 11th day of April, 2011.

8 BY ORDER OF THE OHIO DIVISION OF SECURITIES

9 BY: Andrea L. Seidt
10 Andrea L. Seidt, Commissioner of Securities

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