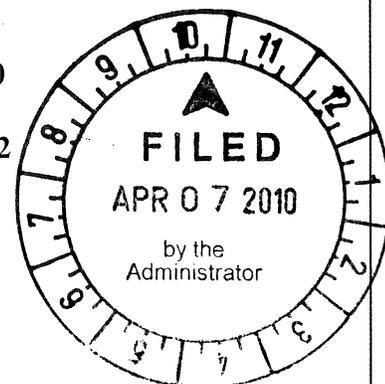


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STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
FIRST NATIONAL CENTER, SUITE 860
120 NORTH ROBINSON
OKLAHOMA CITY, OKLAHOMA 73102



In the Matter of:

Merrill Lynch, Pierce, Fenner & Smith
Incorporated,

Respondent.

ODS File No. 10-047

CONSENT ORDER

WHEREAS, Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”) is a broker-dealer registered under the Oklahoma Uniform Securities Act of 2004 (the “Act”), 71 O.S. §§ 1-101 through 1-701 (Supp. 2003), 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 agrees to certain sanctions in settlement of the issues raised in the investigations; and

WHEREAS, Merrill Lynch elects to waive permanently any right to a hearing and appeal under the Act with respect to this Order; and

1 5. Notably, FAs might have a “primary CA” and a “secondary CA”. As suggested by the
2 designation, the customary practice is that the primary CA would handle the FA’s administrative
3 matters and client orders. However, if the primary CA was unavailable, the secondary CA would
4 handle the FA’s administrative matters and client orders.

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

7 **Registration Required**

8 7. Section 1-402 of the Act provides that an individual must be registered, or exempt from
9 registration, to transact business in this state as an agent of a broker-dealer.

10 8. Pursuant to Section 1-402 of the Act, an individual cannot accept unsolicited orders in
11 the state of Oklahoma without being registered as an agent.

12 9. Pursuant to Section 1-604 of the Act, the Administrator is authorized to issue a cease
13 and desist order and/or to impose a monetary penalty against a broker-dealer for selling securities
14 in the state of Oklahoma through individuals not registered as agents under the Act.

15 **Merrill Lynch Requires Registration of Client Associates**

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

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

21 **Regulatory Investigations and Findings**

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

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

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

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

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

23 16. The multi-state investigation found that certain Merrill Lynch CAs engaged in the sale
24 of securities in the state of Oklahoma at times when the CAs were not appropriately registered
25 under the Act.
26

1 **Merrill Lynch's Remedial Measures and Cooperation**

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

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

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

10 20. In October 2008, Merrill Lynch amended its registration policy to require that each CA
11 mirror the state registrations for the FAs that they support.¹ Merrill Lynch's Registration
12 Compliance personnel participated in calls with branch management to advise the field about this
13 requirement.

14 21. As Merrill Lynch worked on a more permanent solution, it also developed a temporary
15 report intended to identify instances where a CA's registration did not match the FA or FAs the CA
16 supported.

17 22. According to the records of Merrill Lynch, between October 1, 2008 and January 28,
18 2009, three hundred fifteen (315) CAs registered under the Act as agents of Merrill Lynch. Yet,
19 data as of February 28, 2009 indicated that significant gaps remained between the registrations of
20 CAs and their FAs.

21 23. However, Merrill Lynch, as a compliance enhancement, also developed an electronic
22 system that will prevent a person from entering client orders from a state in which the person
23 accepting the order is not registered. Merrill Lynch began implementing this new system in June
24 2009 and completed implementation by December 31, 2009.²

25 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.

26 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

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

4 3. Merrill Lynch is hereby ordered to cease and desist from engaging in the sale of
5 securities in the state of Oklahoma through individuals not registered under the Act as agents of
6 Merrill Lynch.

7 4. Within ten (10) days of the date of this Order, Merrill Lynch is hereby ordered to
8 pay the sum of Three Hundred Ninety-Four Thousand One Hundred Fifty Dollars (\$394,150), to
9 the Oklahoma Department of Securities Investor Education Revolving Fund established pursuant to
10 Section 1-612(F) of the Act.

11 5. Merrill Lynch shall pay up to a total of Twenty-Six Million Five Hundred Sixty-
12 Three Thousand Ninety-Four Dollars and Fifty Cents (\$26,563,094.50) in penalties and other
13 monetary sanctions among the fifty (50) states, the District of Columbia, Puerto Rico, and the U.S.
14 Virgin Islands pursuant to the calculations discussed with the multi-state working group. The sum
15 of Three Hundred Ninety-Four Thousand One Hundred Fifty Dollars (\$394,150) represents
16 Oklahoma's share of the total penalties and other monetary sanctions agreed to by Merrill Lynch.
17 However, if any state securities regulator determines not to accept Merrill Lynch's settlement offer,
18 the total amount of the payment to the state of Oklahoma shall not be affected, and shall remain at
19 Three Hundred Ninety-Four Thousand One Hundred Fifty Dollars (\$394,150).

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

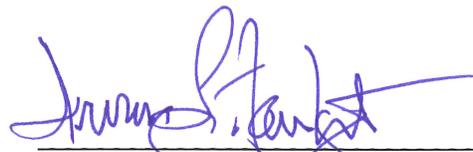
21 7. This Order is not intended by the Administrator to subject any Covered Person to
22 any disqualifications under the laws of the United States, any state, the District of Columbia,
23 Puerto Rico, or the U.S. Virgin Islands including, without limitation, any disqualification from
24 relying upon the state or federal registration exemptions or safe harbor provisions. For purposes of
25 this Order, "Covered Person," means Merrill Lynch or any of its affiliates and their current or
26

1 former officers or former officers, directors, employees, or other persons that would otherwise be
2 disqualified as a result of the Orders (as defined below).

3 8. This Order and the order of any other state in related proceedings against Merrill
4 Lynch (collectively, the "Orders") shall not disqualify any Covered Person from any business that
5 they otherwise are qualified, licensed or permitted to perform under applicable securities laws of
6 the state of Oklahoma and any disqualifications from relying upon this state's registration
7 exemptions or safe harbor provisions that arise from the Orders are hereby waived.

8 9. This Order shall be binding upon Merrill Lynch and its successors and assigns as
9 well as to successors and assigns of relevant affiliates with respect to all conduct subject to the
10 provisions above and all future obligations, responsibilities, undertakings, commitments, limitations,
11 restrictions, events, and conditions.
12

13 WITNESS my Hand and the Official Seal of the Oklahoma Department of Securities this
14 7th day of April, 2010.

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17 _____
18 Irving L. Faught, Administrator of the
19 Oklahoma Department of Securities
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