

STATE OF WISCONSIN  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF SECURITIES

In the matter of )  
MERRILL LYNCH, PIERCE, FENNER )  
& SMITH INCORPORATED, ) **ADMINISTRATIVE CONSENT ORDER**  
Respondent. ) **File No. S-09154(LX)**

WHEREAS, Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”) is a broker-dealer registered in the state of Wisconsin, with a Central Registration Depository (“CRD”) number of 7691; and

State securities regulators from multiple jurisdictions have conducted coordinated investigations (“multi-state 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 secs. 551.604 and 551.609, Wis. Stats., (and predecessor statutes for purposes of activities prior to January 1, 2009) 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 Wisconsin Securities Administrator, as administrator of the Wisconsin Uniform Securities Law and predecessor Law, hereby enters this Order:

I.

**FINDINGS OF FACTS**

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3 1. Merrill Lynch admits the jurisdiction of the Division of Securities (“Division”) of the  
4 Wisconsin Department of Financial Institutions in this matter.

5 Background on Client Associates

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

10 3. The responsibilities of a CA specifically include:

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

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

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

25 6. During the period from 2002 to the present, Merrill Lynch employed approximately  
26 6,200 CAs (average) per year.

1  
2 Registration Required

3 7. Under sec. 551.402(1), Wis. Stats, and its predecessor statute, it is unlawful for an  
4 individual to transact business in this state as a securities agent unless the individual is registered as  
5 an agent in Wisconsin, or is exempt from registration.

6 8. Pursuant to the general prohibition under sec. 551.402(1), Wis. Stats, and its  
7 predecessor statute, a person cannot accept unsolicited orders in Wisconsin without being  
8 registered as a securities agent in Wisconsin, or exempt from registration.

9 9. Pursuant to sec. 551.412(4)(p), Wis. Stats., and its predecessor statute, the Division  
10 Administrator may censure, impose a bar, or impose a civil penalty on a registered broker-dealer  
11 for offering or selling securities in Wisconsin through any unlicensed agent.

12 Merrill Lynch Requires Registration of Client Associates

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

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

18 Regulatory Investigations and Findings

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

24 13. During the summer of 2008, Merrill Lynch received inquiries regarding CA  
25 registrations from a number of state securities regulators, resulting in a multi-state investigation.

26 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

1 Merrill Lynch CA registrations and related supervisory structure instead of attempting to identify  
2 each incidence of unregistered activity. Specifically:

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

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

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

#### 22 Merrill Lynch's Remedial Measures and Cooperation

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

25 18. Merrill Lynch's review found that as of June 30, 2008, the firm had 3,780 registered  
26 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.

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

4 20. In October 2008, Merrill Lynch amended its registration policy to require that each CA  
5 mirror the state registrations for the FAs that they support.<sup>1</sup> Merrill Lynch's Registration  
6 Compliance personnel participated in calls with branch management to advise the field about this  
7 requirement.

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

11 22. Between October 1, 2008 and January 28, 2009, 423 CAs were registered with the  
12 Wisconsin Division of Securities as agents of Merrill Lynch. Yet, data as of February 28, 2009  
13 indicated that significant gaps remained between the registrations of CAs and their FAs.

14 23. However, Merrill Lynch, as a compliance enhancement, also developed an electronic  
15 system that will prevent a person from entering client orders from a state in which the person  
16 accepting the order is not registered. Merrill Lynch began implementing this new system in June,  
17 2009 and completed implementation by December 31, 2009.<sup>2</sup>

18 24. Merrill Lynch provided timely responses and substantial cooperation in connection with  
19 the regulatory investigations into this issue. Furthermore, as displayed by the corrective actions  
20 described above, Merrill Lynch has acknowledged the problems associated with its CA  
21 registrations and supervisory system.

## 22 II.

### 23 CONCLUSIONS OF LAW

24 <sup>1</sup> 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.

25 <sup>2</sup> Note that in late October, 2009, Banc of America Investment Services, Inc. ("BAIS") migrated on the  
26 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  
to mirror the FAs they serve, will continue to use its own order entry system for their existing clients until the  
integration is completed.





1 Merrill Lynch, to any claims.

2 3. Merrill Lynch is hereby censured.

3 4. Merrill Lynch is hereby ordered to cease and desist from engaging in the sale of  
4 securities in the state of Wisconsin through persons not registered with the Division as agents of  
5 Merrill Lynch.

6 5. Merrill Lynch is hereby ordered to pay within 10 days of the signing and issuance  
7 of this Order by the Administrator, an administrative assessment in the amount of Three hundred  
8 twenty-seven thousand forty dollars (\$327,040) in the form of a check payable to the Wisconsin  
9 Department of Financial Institutions, to be deposited in the Gifts, Grants, Settlements and  
10 Publications appropriation in sec. 20.144(1)(h), Wis. Stats.

11 6. Merrill Lynch shall pay up to a total of Twenty six million, five hundred sixty three  
12 thousand, ninety four dollars and fifty cents (\$26,563,094.50) in fines, penalties and any other  
13 monetary sanctions among the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin  
14 Islands pursuant to the calculations discussed with the multi-state working group.

15 7. However, if any state securities regulator determines not to accept Merrill Lynch's  
16 settlement offer, the total amount of the payment to the State of Wisconsin shall not be affected,  
17 and shall remain at Three hundred twenty-seven thousand forty dollars (\$ 327,040).

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

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

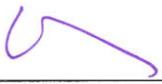
25 10. This Order and the order of any other State in related proceedings against Merrill  
26 Lynch (collectively, the "Orders") shall not disqualify any Covered Person from any business that

1 they otherwise are qualified, licensed or permitted to perform under applicable securities laws of  
2 the state of Wisconsin and any disqualifications from relying upon this state's registration  
3 exemptions or safe harbor provisions that arise from the Orders are hereby waived.

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

8 Dated this 27<sup>th</sup> day of April, 2010.

10  
11 BY ORDER OF  
12 WISCONSIN DEPARTMENT OF FINANCIAL INSTITUTIONS  
13 DIVISION OF SECURITIES

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15 Patricia D. Struck, Wisconsin Securities Administrator  
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**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 Division of Securities of the Wisconsin Department of Financial Institutions, 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 Division 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.

Joaquin M. Sena 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 6th day of April, 2010.

MERRILL LYNCH, PIERCE, FENNER & SMITH  
INCORPORATED

By: Joaquin M. Sena  
Joaquin M. Sena  
Title: Associate General Counsel

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

I certify that Joaquin M. Sena 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 6 day of April, 2010.

(Official Seal)

Marianne Bretton Granatoor  
Notary Public  
My Commission expires: \_\_\_\_\_

10 MARIANNE BRETTON-GRANATOOR  
NOTARY PUBLIC STATE OF NEW YORK  
NO. 02BR4932444  
QUALIFIED IN KINGS COUNTY  
COMMISSION EXPIRES MAY 02 20