

STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCE AND CORPORATE SECURITIES
ENFORCEMENT SECTION
BEFORE THE DIRECTOR OF THE
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

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<p>In the matter of :</p> <p>MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,</p> <p style="padding-left: 40px;">Respondent.</p>	<p>)</p>	<p>Case No. S-09-0059</p> <p style="text-align: center;">ORDER TO CEASE AND DESIST, ORDER ASSESSING CIVIL PENALTY AND CONSENT TO ENTRY OF ORDER</p>
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12 WHEREAS, Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”) is a
13 broker-dealer licensed in Oregon, with a Central Registration Depository (“CRD”) number of
14 7691; and

15 State securities regulators from multiple jurisdictions have conducted coordinated
16 investigations into the licensing of Merrill Lynch Client Associates (“CAs”) and Merrill Lynch’s
17 supervisory system with respect to the licenses of CAs; and

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

21 Merrill Lynch has advised regulators of its agreement to resolve the investigations
22 pursuant to the terms specified in this Consent Order (the “Order”); and

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

26 Merrill Lynch elects to waive permanently any right to a hearing and appeal under ORS

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1 59.295, ORS 59.305 and ORS Chapter 183 with respect to this Order; and

2 Merrill Lynch admits the jurisdiction of the Director in this matter. Solely for the
3 purpose of terminating the multi-state investigations, and in settlement of the issues contained in
4 this Order, Merrill Lynch, without admitting or denying the findings of fact or conclusions of
5 law contained in this Order, consents to the entry of this Order.

6 NOW, THEREFORE, the Director of the Oregon Department of Consumer and Business
7 Services (“the Director”), as administrator of the Oregon Securities Law, ORS Chapter 59 and
8 OAR Chapter 441, hereby enters this Order:

9 **I.**

10 **FINDINGS OF FACTS**

11 Background on Client Associates

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

16 2. The responsibilities of a CA specifically include:

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

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





1 4. 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 5. During the period from 2002 to the present, Merrill Lynch employed approximately
6 6,200 CAs (average) per year.

7 Securities Salesperson License Required¹

8 6. It is unlawful for any person to transact business in Oregon as a securities salesperson
9 unless the person is licensed under the Oregon Securities Law.

10 7. Pursuant to the general prohibition under ORS 59.165(1), a person cannot accept
11 unsolicited orders in Oregon unless the person is licensed pursuant to ORS 59.175.

12 8. Pursuant to ORS 59.165(3) and ORS 59.995(1), a broker-dealer may be subject to a
13 civil penalty for selling securities in Oregon through salespersons other than licensed securities
14 salespersons.

15 Merrill Lynch Requires Licensing of Client Associates

16 9. 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 license in the appropriate jurisdictions.

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

21 Regulatory Investigations and Findings

22 11. In May 2008, state regulators received a tip alleging that Merrill Lynch was failing to
23 ensure its CAs were in compliance with jurisdictional licensing requirements and its own
24

25 ¹ With respect to securities professionals and the entities with which they are associated, the Oregon
26 Securities Law 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 procedures. The tip alleged that Merrill Lynch CAs were licensed in two jurisdictions – the
2 CA’s home state and one neighboring state – because Merrill Lynch only paid for licenses in two
3 jurisdictions.

4 12. After an initial review supported the allegations in the tip, the Director opened an
5 investigation into Merrill Lynch’s practices in connection with CA licenses.

6 13. During the summer of 2008, Merrill Lynch received inquiries regarding CA licenses
7 from a number of state securities regulators.

8 14. Because Merrill Lynch’s relevant trade records were maintained in hard copy and
9 only at branch offices across the country, the multi-state investigation focused on systemic issues
10 with Merrill Lynch CA licenses and related supervisory structure instead of attempting to
11 identify each incidence of unlicensed activity. Specifically:

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

25 15. The multi-state investigation found that many CAs supported FAs licensed in Oregon
26 when the CAs were not licensed in Oregon as securities salespersons of Merrill Lynch. This



1 difference in license status increased the possibility that CAs would engage in unlicensed
2 activity.

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

5 Merrill Lynch's Remedial Measures and Cooperation

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

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

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

14 20. In October 2008, Merrill Lynch amended its licensing policy to require that each CA
15 mirror the state licenses for the FAs that they support.² Merrill Lynch's Registration Compliance
16 personnel participated in calls with branch management to advise the field about this
17 requirement.

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

21 22. Between October 1, 2008 and January 28, 2009, a total of 481CAs were licensed with
22 the Director as securities salespersons of Merrill Lynch. Yet, data as of February 28, 2009
23 indicated that significant gaps remained between the licenses of CAs and their FAs.

24

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26 ² It should be noted that Merrill Lynch's policy required CA/FA license mirroring prior to 2006. In 2006, it amended the relevant policies and procedures to more broadly require that CAs maintain appropriate licenses.



1 23. However, Merrill Lynch, as a compliance enhancement, also developed an electronic
2 system that will prevent a person from entering client orders from a state in which the person
3 accepting the order is not licensed. Merrill Lynch began implementing this new system in June
4 2009 and fully completed implementation by December 31, 2009.³

5 24. Merrill Lynch provided timely responses and substantial cooperation in connection
6 with the regulatory investigations into this issue. Furthermore, as displayed by the corrective
7 actions described above, Merrill Lynch has acknowledged the problems associated with its CA
8 licenses and supervisory system.

9 **II.**

10 **CONCLUSIONS OF LAW**

11 1. The Director has jurisdiction over this matter pursuant to ORS 59.235 and ORS
12 59.245.

13 2. Merrill Lynch's failure to establish an adequate system to monitor the license
14 status of persons accepting client orders constitutes failure to establish, maintain and enforce
15 written procedures, in violation of OAR 441-205-0210(3).

16 3. Merrill Lynch's failure to require its CAs to be licensed in the appropriate
17 jurisdictions constitutes a failure to enforce its established written procedures, and is a violation
18 of OAR 441-205-0210(3).

19 4. Pursuant to ORS 59.165(3), Merrill Lynch's sales of securities in Oregon through
20 unlicensed CAs constitute violations of ORS 59.165(3) by employing unlicensed salespersons to
21 act in Oregon.

22 5. Pursuant to ORS 59.165(3) and ORS 59.245(4), Merrill Lynch's sales of
23 securities in Oregon through securities salespersons not licensed in Oregon constitute bases to

24 _____
25 ³ 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 license 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 order Merrill Lynch to cease and desist engaging in the sale of securities in Oregon through
2 unlicensed securities salespersons.

3 6. Pursuant to ORS 59.995, the violations described above constitute bases for the
4 assessment of an administrative fine against Merrill Lynch.

5 7. The Director finds the following relief appropriate and in the public interest.

6 **III.**

7 **UNDERTAKINGS**

8 1. Merrill Lynch hereby undertakes and agrees to immediately establish and
9 maintain a trade monitoring system that prevents any person from entering client orders that
10 originate from jurisdictions where the person accepting the order is not appropriately licensed.

11 2. Merrill Lynch further undertakes and agrees to file with the Director, within sixty
12 days of the date of this Order, a report describing Merrill Lynch's improvements in its ability to
13 monitor the identity and license status of each person who accepts a client order entered on
14 Merrill Lynch's trading system.

15 3. For the period from the date of this Order through December 31, 2010, Merrill
16 Lynch further undertakes and agrees to notify the Director if it finds that any person associated
17 with Merrill Lynch accepted a client order in Oregon without being licensed or exempt from
18 licensing with the Director as a securities salesperson of Merrill Lynch.

19 **IV.**

20 **ORDER**

21 On the basis of the Findings of Facts, Conclusions of Law, and Merrill Lynch's consent to
22 the entry of this Order,

23 **IT IS HEREBY ORDERED:**

24 1. This Order concludes the investigation by the Director and any other action that the
25 Director could commence against Merrill Lynch under applicable Oregon law on behalf of **Oregon**
26 as it relates to unlicensed activity in Oregon by Merrill Lynch's CAs and Merrill Lynch's

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1 supervision of CA licenses during the period from January 1, 2004 through the date of this Order.

2 2. This Order is entered into solely for the purpose of resolving the referenced multi-
3 state investigation, and is not intended to be used for any other purpose. For any person or entity
4 not a party to the Order, this Order does not limit or create any private rights or remedies against
5 Merrill Lynch including, limit or create liability of Merrill Lynch, or limit or create defenses of
6 Merrill Lynch, to any claims.

7 3. Merrill Lynch is hereby ordered to cease and desist from engaging in the sale of
8 securities in Oregon through persons not licensed with the Director as –securities salespersons of
9 Merrill Lynch.

10 4. Merrill Lynch is hereby ordered to pay the sum of \$505,100 (five hundred five
11 thousand, one hundred dollars) to the Oregon Department of Consumer and Business Services
12 within ten days of the date of this Order. That sum includes a civil penalty of \$479,845 (four
13 hundred seventy-nine thousand, eight hundred forty-five dollars) for the General Fund of the
14 Oregon State Treasury, pursuant to ORS 59.995(1), and \$25,255 (twenty-five thousand, two
15 hundred fifty-five dollars) for the Oregon Department of Consumer and Business Services
16 Investor Education Program Fund.

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

21 6. However, if any state securities regulator determines not to accept Merrill
22 Lynch’s settlement offer, the total amount of the payment to the State of Oregon shall not be
23 affected, and shall remain at \$505,100 (five hundred five thousand, one hundred dollars).

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

25 8. This order is not intended by the Director to subject any Covered Person to any
26 disqualifications under the laws of the United States, any state, the District of Columbia, Puerto

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1 Rico, or the U.S. Virgin Islands including, without limitation, any disqualification from relying
2 upon the state or federal registration exemptions or safe harbor provisions. “Covered Person,”
3 means Merrill Lynch or any of its affiliates and their current or former officers or former
4 officers, directors, employees, or other persons that would otherwise be disqualified as a result of
5 the Orders (as defined below).

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

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

15 Dated this 19th day of May, 2010.

16 CORY STREISINGER, Director
17 Department of Consumer and Business Services

18 /s/ David Tatman
19 David C. Tatman, Administrator
20 Division of Finance and Corporate Securities

21 **CONSENT TO ENTRY OF ORDER BY MERRILL LYNCH**

22 Merrill Lynch hereby acknowledges that it has been served with a copy of this Order to
23 Cease and Desist, Order Assessing Civil Penalty, and Consent to Entry of Order (“Order”), has
24 read the foregoing Order, is aware of its right to a hearing and appeal in this matter, and has waived
25 the same.

26 Merrill Lynch admits the jurisdiction of the Director, neither admits nor denies the Findings
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to Cease and Desist, Order Assessing Civil Penalty, and Consent to Entry of Order; File No.
S-09-0059**

1 of Facts and Conclusions of Law contained in this Order, and consents to entry of this Order by the
2 Director as settlement of the issues contained in this Order.

3 Merrill Lynch agrees that it shall not claim, assert, or apply for a tax deduction or tax
4 credit with regard to any state, federal or local tax for any administrative monetary penalty that
5 Merrill Lynch shall pay pursuant to this Order.

6 Merrill Lynch states that no promise of any kind or nature whatsoever was made to it to
7 induce it to enter into this Order and that it has entered into this Order voluntarily.

8 Joaquin M. Sena represents that he is an Associate General Counsel and, as such, has
9 been authorized to enter into this Order for and on behalf of Merrill Lynch.

10 Dated this 17th day of May, 2010.

11 MERRILL LYNCH, PIERCE, FENNER & SMITH
12 INCORPORATED

13 By: /s/ Joaquin . Sena
14 Joaquin M. Sena
Title: Associate General Counsel

15 STATE OF NEW YORK)
16)SS.:
17 COUNTY OF NEW YORK)

18 I certify that Joaquin M. Sena personally known to me, appeared before me this day and
19 acknowledged the due execution of the foregoing instrument.

20 Witness my hand and official seal, this the 17th day of May, 2010.

21 (Official Seal) /s/ Shawn-Kathleen Campitiello
22 Notary Public
My Commission expires: 3-11-11

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