

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE
BUREAU OF SECURITIES REGULATION
CONCORD, NEW HAMPSHIRE**

IN THE MATTER OF:)	
)	
Merrill Lynch, Pierce, Fenner and Smith Incorporated (CRD No. 7691))	I-2022000023
)	
RESPONDENT)	
)	
)	

CONSENT ORDER

- I. For purposes of settling the above-captioned matter, and in lieu of further administrative proceedings, Merrill Lynch, Pierce, Fenner and Smith Incorporated (CRD No. 7691) (hereinafter referred to as "Merrill Lynch" or "the Firm") has submitted an offer of settlement which the State of New Hampshire, Department of State, Bureau of Securities Regulation (hereinafter referred to as the "Bureau") has determined to accept. Accordingly, without admitting or denying the facts or allegations contained herein, Merrill Lynch does hereby consent to the following undertakings and sanctions:

STATEMENT OF FACTS

1. Merrill Lynch is a broker-dealer with its principal place of business at One Bryant Park, New York, New York 10036 with, according to the Central Registration Depository ("CRD"), eighteen (18) branch offices within New Hampshire. As a broker-dealer, Merrill Lynch has been registered with the U.S. Securities and Exchange Commission ("SEC") since March 12, 1959 and has been licensed in New Hampshire since February 2, 1983. Merrill Lynch is also a member of the Financial Industry Regulatory Authority ("FINRA") and is subject to FINRA rules.
2. The Federal Trade Commission (the "FTC") operates the National Do Not Call Registry ("DNCR"). The DNCR allows for consumers to add their phone number to the registry and therefore, barring an applicable exception, make calls from telemarketers unlawful. Since its inception in 2003, more than 246 million

telephone numbers have been added to the registry. New Hampshire itself ranks number one in the nation for the number of active registrations per capita, with more than 1,296,000 active registrants. In 2022 alone, there were 11,340 complaints made to the FTC from New Hampshire residents regarding do-not-call violations.

3. Merrill Lynch and the Bureau entered into a consent order in December 2014 regarding outbound telephone calls to New Hampshire telephone numbers on the DNCR which were not within any exception. At that time, Merrill Lynch agreed to and completed enhancements to its telemarketing policies and procedures, including, but not limited to, the following steps:
 - a. “[R]equiring approval by a branch manager of any scrubbed lead lists prior to utilizing such lead lists to make outbound telephone calls as defined by applicable telemarketing calls;”
 - b. “[R]eviewing, on at least an annual basis, branch manager approval of scrubbed lead lists used by Merrill Lynch agents licensed in New Hampshire;”
 - c. and “[O]utlining what types of activity fall within telemarketing rules in order to inform Merrill Lynch agents licensed in New Hampshire when telemarketing rules may be implicated, including further explaining what constitutes telemarketing[.]”
4. In addition to providing evidence to the Bureau regarding its changes to telemarketing policies and procedures, Merrill Lynch agreed to pay Three Hundred and Fifty Thousand Dollars (\$350,000) in administrative fines, and Fifty Thousand Dollars (\$50,000) for the Bureau’s costs of investigation, for a total of Four Hundred Thousand Dollars (\$400,000).
5. Following the December 2014 consent order with New Hampshire, Merrill Lynch enhanced its telemarketing policies, procedures, and controls. The enhancements applied to employees enrolled in the Firm’s Financial Advisor Development Program (“FADP”) in particular. As registered trainees for full-time Merrill Lynch financial advisory positions, FADPs had business development responsibilities, with some utilizing outbound telephone calls for marketing purposes. Merrill Lynch enhanced policies, training, employee discipline for non-compliance, and technology used by employees to screen potential unsolicited telemarketing calls to numbers on the DNCR or Merrill Lynch’s internal do-not-call list. Merrill Lynch additionally monitored outbound calls by selected FADPs each month for compliance with the Firm’s telemarketing and do-not-call policies and procedures.
6. In 2019, Merrill Lynch began an internal review of calling by the Firm’s FADPs and certain financial advisors for compliance with the Firm’s telemarketing and do-not-call policies and procedures by reference to sample calling data. The

review determined that certain FADPs did not properly employ Firm-provided technology to pre-screen potential unsolicited telemarketing calls and/or did not comply with screening results that identified prohibited numbers on the DNCR or Merrill Lynch's internal do-not-call list.

7. Merrill Lynch disciplined employees identified as failing to comply with the Firm's telemarketing or do-not-call policies through the monitoring and review processes, regardless of whether the calling activity violated statutory or regulatory provisions or was subject to an exception from those provisions.
8. The disciplined employees included individuals who placed one or more calls to a New Hampshire phone number listed on the DNCR and/or Merrill Lynch's internal do-not-call list.
9. Beginning in January 2020, Merrill Lynch implemented enhanced call screening and supervisory review technology, adopted enhanced supervisory procedures, conducted enhanced training, and began monitoring all outgoing FADP calls for compliance with FINRA Rule 3230.

STATEMENTS OF LAW

1. Merrill Lynch is a "person" within the meaning of N.H. RSA 421-B:1-102(39).
2. Merrill Lynch is a "broker-dealer" within the meaning of N.H. RSA 421-B:1-102(6).
3. Pursuant to N.H. RSA 421-B:4-406(k), Merrill Lynch, as a registered broker-dealer in New Hampshire, "shall comply with the applicable rules of the Securities and Exchange Commission, FINRA, any national exchange on which they have securities registered and other applicable self-regulatory organization having jurisdiction over the person so registered." Merrill Lynch is subject to these provisions.
4. FINRA Rule 0160(b)(10) defines the term 'member' as "any individual, partnership, corporation, or other legal entity admitted to membership in FINRA under the provisions of Articles III and IV of the FINRA By-Laws." Merrill Lynch is a member as defined by FINRA rules.
5. FINRA Rule 3230(m)(17) defines 'person' as "any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity." Merrill Lynch is a person as defined by FINRA rules.
6. FINRA Rule 3230(m)(20) defines 'telemarketing' as "consisting of or relating to a plan, program, or campaign involving at least one outbound telephone call, for example cold-calling."
7. FINRA Rule 3230(m)(16) defines 'outbound telephone call' as "a telephone call initiated by a telemarketer to induce the purchase of goods or services[.]"
8. FINRA Rule 3230(a)(2) states that no member "shall initiate any outbound

telephone call to [a]ny person that previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the member[.]” Merrill Lynch is subject to this provision. Telemarketing phone calls placed by Merrill Lynch employees to New Hampshire persons whose telephone numbers appear on Merrill Lynch’s firm-specific do-not-call list are violations of N.H. RSA 421-B:4-406(k).

9. FINRA Rule 3230(a)(3) states that no member “shall initiate any outbound telephone call to [a]ny person who has registered his or her telephone number on the Federal Trade Commission’s national do-not-call registry.” Merrill Lynch is subject to this provision. Telemarketing phone calls placed by Merrill Lynch employees to New Hampshire persons whose telephone numbers are registered on the DNCR, and whose telephone numbers are not subject to one of the three exceptions outlined under FINRA laws, are violations of N.H. RSA 421-B:4-406(k).
10. FINRA Rule 3230(d)(2) and (3) requires that, prior to engaging in telemarketing, a member must institute procedures which meet the following minimum standards, in addition to other minimum standards: “(2) ... Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list” and “(3) ... If a member receives a request from a person not to receive calls from that member, the member must record the requests and place the person’s name, if provided, and telephone number on the firm’s do-not-call list at the time the request is made.” Merrill Lynch is subject to this provision.
11. FINRA Rule 3110(a) provides that “[e]ach member shall establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.” Merrill Lynch is subject to this provision.
12. Pursuant to N.H. RSA 421-B:6-604(a), if the Secretary of State determines that a person has, is, or is about to materially aid in an act, practice, or course of business constituting a violation of this chapter, the Secretary of State may issue an order directing the person to cease and desist from engaging in an act, practice, or course of business or to take other actions necessary or appropriate to comply with this chapter. Merrill Lynch is subject to this provision.
13. Pursuant to N.H. RSA 421-B:6-604(d), in a “final order, the secretary of state may impose a civil penalty up to a maximum \$2,500 for a single violation. In addition, every such person who is subject to such civil penalty, upon hearing, and in addition to any other penalty provided by law, be subject to such suspension, revocation, or denial of any registration or license, or be barred from registration or licensure, including the forfeiture of any application fee.” Merrill Lynch is subject to this provision.
14. Pursuant to N.H. RSA 421-B:6-604(g), in any investigation to determine whether

any person has violated any rule or order under this title, the Secretary of State shall be entitled to recover the costs of the investigation. Merrill Lynch is subject to this provision.

II. In view of the foregoing, Merrill Lynch agrees to the following undertakings and sanctions:

1. Merrill Lynch agrees that it voluntarily consented to the entry of this Consent Order and represents and avers that no employee or representative of the Bureau has made any promise, representation, or threat to induce their signing of this Consent Order.
2. Merrill Lynch agrees to waive its right to administrative hearing and any appeal thereof under this chapter.
3. Merrill Lynch agrees to cease and desist from further violations of N.H. RSA 421-B:4-406(k) through failure reasonably to supervise its registered agents pertaining to telemarketing practices.
4. The Bureau acknowledges that Merrill Lynch, prior to any enforcement action by the New Hampshire Bureau of Securities Regulation, made sweeping substantive compliance changes to its policies and procedures with regard to telemarketing policies, including the adoption of systems which minimize employee circumvention of do-not-call procedures and mandatory retraining measures for all FADPs and their managers.
5. The Bureau also acknowledges that Merrill Lynch performed a comprehensive, substantial internal review of noncompliance with the Firm's unsolicited telemarketing policies and procedures for thousands of employees ahead of any enforcement action by the New Hampshire Bureau of Securities Regulation.
6. Merrill Lynch agrees that this Consent Order is entered into for the purpose of resolving only the matter as described herein. This Consent Order shall have no collateral estoppel effect in any other lawsuit, proceeding, or action not described herein. Likewise, this Consent Order shall not be construed to restrict the Bureau's right to initiate an administrative investigation or proceeding relative to conduct by Merrill Lynch which the Bureau has no knowledge of at the time of the date of final entry of this Consent Order.
7. Merrill Lynch agrees not to take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any allegation in this Consent Order or create the impression that the Consent Order is without factual basis. Nothing in this provision affects Merrill Lynch's testimonial obligations or right to take any legal positions in administrative proceedings or in litigation in which the Bureau is not a party.
8. Merrill Lynch agrees, upon execution of this Consent Order, to pay the Bureau's costs of investigation in the amount of Fifty Thousand Dollars (\$50,000) and an

administrative fine of Six Hundred and Fifty Thousand Dollars (\$650,000).
Merrill Lynch agrees to pay the total amount of Seven Hundred Thousand Dollars (\$700,000) to the State of New Hampshire, which will be applied to settlement of the above-captioned matter. Payment must be made by 1) business check, certified check, or postal money order; 2) made payable to the State of New Hampshire; and 3) mailed to the Bureau of Securities Regulation, Department of State, State House, Room 204, Concord, New Hampshire 03301.

III. Based on the foregoing, the Bureau deems it appropriate and in the public interest to accept and enter into this Consent Order. THEREFORE, IT IS HEREBY ORDERED THAT:

1. Merrill Lynch cease and desist from further violations of the act pursuant to N.H. RSA 421-B through failure reasonably to supervise its registered agents pertaining to telemarketing practices.
2. Merrill Lynch pays the Bureau's costs of investigation in the amount of Fifty Thousand Dollars (\$50,000) and an administrative fine of Six Hundred and Fifty Thousand Dollars (\$650,000).
3. Merrill Lynch comply with all other undertakings and sanctions outlined herein. Pursuant to 17 C.F.R. § 230.506(d)(2)(iii), nothing stated in this Consent Order gives rise to a disqualification under 17 C.F.R. § 230.506(d)(1)(iii) or any other statutory or regulatory disqualification provision.

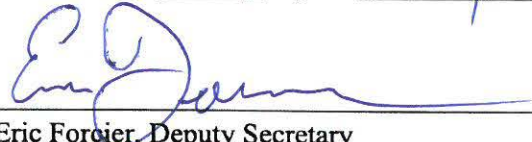
Executed this 28th day of April, 2023.



on behalf of Merrill Lynch
(Please print name below).

Alexander B. White

Executed this 2nd day of May, 2023.



Eric Forcier, Deputy Secretary
New Hampshire Bureau of Securities Regulation