

**The State of New Hampshire  
Bureau of Securities Regulation**

1  
2  
3 In the matter of )  
4 MERRILL LYNCH, PIERCE, FENNER ) INV08-024  
& SMITH INCORPORATED, )  
5 Respondent. ) **ADMINISTRATIVE CONSENT ORDER**  
6 )  
\_\_\_\_\_ )

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

10 State securities regulators from multiple jurisdictions have conducted coordinated investigations  
11 into the registration of Merrill Lynch Client Associates (“CAs”) and Merrill Lynch’s supervisory system  
12 with respect to the registrations of CAs; and

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

16 Merrill Lynch has advised regulators of its agreement to resolve the investigations pursuant to the  
17 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 registration 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 New Hampshire  
21 RSA 421-B:26-a and 421-B:27 with respect to this Order; and

22 Solely for the purpose of terminating the multi-state investigations, including the investigation by  
23 the staff of the Bureau of Securities Regulation (“Bureau”), and in settlement of the issues contained in this  
24 Order, Merrill Lynch, without admitting or denying the findings of fact or conclusions of law contained in  
25 this Order, consents to the entry of this Order.

26 NOW, THEREFORE, the Director, as administrator of the Bureau, hereby enters this Order:

**I.**

**FINDINGS OF FACTS**

1           1. Merrill Lynch admits the jurisdiction of the Bureau in this matter.

2           Background on Client Associates

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

6           3. The responsibilities of a CA specifically include:

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

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

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

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

23  
24           Registration Required

25           7. Pursuant to RSA 421-B:6, it is unlawful for any person to transact business in this state as an  
26 agent unless such person is licensed under 421-B. Further, it is unlawful for any broker-dealer to employ an  
agent unless the agent is licensed.

1 8. Pursuant to the general prohibition under 421-B:6, a person cannot accept unsolicited orders in  
2 New Hampshire without being licensed as a broker-dealer agent.

3 9. Pursuant to 421-B:26, unlicensed activity can be sanctioned up to a \$2,500 fine for each  
4 transaction and the broker-dealer agent and employing broker-dealer can lose licensing privileges by  
5 revocation or suspension.

6 Merrill Lynch Requires Registration of Client Associates

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

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

12 Regulatory Investigations and Findings

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

17 13. After the Bureau's initial review supported the allegations in the tip, the Staff opened an  
18 investigation into Merrill Lynch's practices in connection with CA registrations.

19 14. During the summer of 2008, Merrill Lynch received inquiries regarding CA registrations from a  
20 number of state securities regulators.

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

- 24 a. After accepting a client order, CAs accessed the electronic trading system to enter the order;  
25 b. The CAs did not have to identify themselves during the order entry process. Therefore,  
26 there is no electronic record that identifies which orders were accepted by CAs;

1 c. Instead, Merrill Lynch maintained a daily report that recorded the identity of the person  
2 who accepted and/or entered each order. However, this report was not maintained  
3 electronically, and was only maintained at the branch office where the order was entered.  
4 Merrill Lynch represented that this daily report was the only record that could identify who  
5 accepted a client order.

6 d. Merrill Lynch's trading system checked the registration of the FA, but did not check the  
7 registration status of the person accepting the order to ensure that the person was registered  
8 in the appropriate jurisdiction.

9 16. The multi-state investigation found that many CAs supported FAs licensed in New Hampshire  
10 when the CAs were not licensed in New Hampshire as agents of Merrill Lynch. This difference in license  
11 status increased the possibility that CAs would engage in unlicensed activity.

12 17. The multi-state investigation found that certain Merrill Lynch CAs engaged in the sale of  
13 securities in New Hampshire at times when the CAs were not appropriately licensed in New Hampshire.

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

15 18. As a result of the inquiries by the Bureau and other state regulators, Merrill Lynch conducted a  
16 review of its CA registration practices.

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

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

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

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

---

<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.



1 cease and desist engaging in the sale of securities in New Hampshire through unlicensed agents/sales  
2 representatives.

3 6. Pursuant to 421-B:26, the violations described above constitute basis for the assessment of  
4 an administrative fine against Merrill Lynch.

5 7. The Bureau finds the following relief appropriate and in the public interest.  
6  
7  
8  
9

### 10 III.

#### 11 UNDERTAKINGS

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

15 2. Merrill Lynch further undertakes and agrees to file with the Bureau, within sixty days of the  
16 date of this Order, a report describing Merrill Lynch's improvements in its ability to monitor the identity  
17 and registration status of each person who accepts a client order entered on Merrill Lynch's trading system.

18 3. For the period from the date of this Order through December 31, 2010, Merrill Lynch  
19 further undertakes and agrees to notify the Bureau if it finds that any person associated with Merrill Lynch  
20 accepted a client order in New Hampshire without being licensed, or exempt from licensing, with the  
21 Bureau as an agent of Merrill Lynch.  
22

### 23 IV.

#### 24 ORDER

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

IT IS HEREBY ORDERED:

1           1.       This Order concludes the investigation by the Bureau and any other action that the Bureau  
2 could commence against Merrill Lynch under applicable New Hampshire law on behalf of New Hampshire  
3 as it relates to unlicensed activity in New Hampshire by Merrill Lynch's CAs and Merrill Lynch's  
4 supervision of CA licensure during the period from January 1, 2004 through the date of this Order.

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

9           3.       Merrill Lynch is hereby censured pursuant to RSA 421-B:21,I-a(h).

10          4.       Merrill Lynch is hereby ordered to cease and desist from engaging in the sale of securities  
11 in the State of New Hampshire through persons not registered with the Bureau as agents of Merrill Lynch.

12          5.       Merrill Lynch is hereby ordered to pay the sum of \$660,560.00 consisting of \$100,000.00 in  
13 fines and the remainder past due fees to the State of New Hampshire within ten days of the date of this  
14 Order Said payment shall be made by certified check or money order made payable to the State of New  
15 Hampshire.

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

20          7.       However, if any state securities regulator determines not to accept Merrill Lynch's  
21 settlement offer, the total amount of the payment to the State of New Hampshire shall not be affected, and  
22 shall remain at \$660,560.00.

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

24          9.       This order is not intended by the Bureau to subject any Covered Person to any  
25 disqualifications under the laws of the United States, any state, the District of Columbia, Puerto Rico, or the  
26 U.S. Virgin Islands including, without limitation, any disqualification from relying upon the state or federal  
registration exemptions or safe harbor provisions. "Covered Person," means Merrill Lynch or any of its

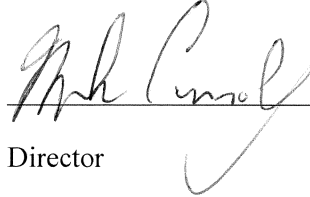
1 affiliates and their current or former officers or former officers, directors, employees, or other persons that  
2 would otherwise be disqualified as a result of the Orders (as defined below).

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

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

12 Dated this 21 day of October, 2009.

13 BY ORDER OF Mark Connolly

14   
15 \_\_\_\_\_  
16 Director



1                                   **CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY MERRILL LYNCH**

2           Merrill Lynch hereby acknowledges that it has been served with a copy of this Consent Order  
3 ("Order"), has read the foregoing Order, is aware of its right to a hearing and appeal in this matter, and has  
4 waived the same.

5           Merrill Lynch admits the jurisdiction of the Bureau, neither admits nor denies the Findings of Facts  
6 and Conclusions of Law contained in this Order, and consents to entry of this Order by the Bureau as  
7 settlement of the issues contained in this Order.

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

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

13           Teresa M. Brenner represents that she is Associate General Counsel of Merrill Lynch and that, as  
14 such, has been authorized by Merrill Lynch to enter into this Order for and on behalf of Merrill Lynch.

15           Dated this 14<sup>th</sup> day of October, 2009.

16                                   MERRILL LYNCH, PIERCE, FENNER & SMITH  
17                                   INCORPORATED

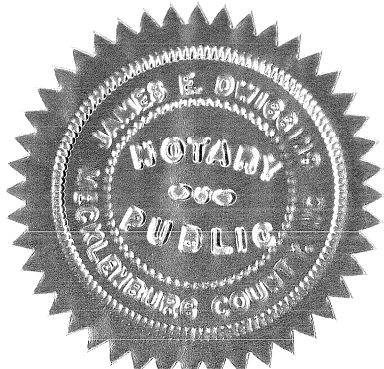
18           By: *Teresa M. Brenner*  
                                  Teresa M. Brenner  
                                  Title: Associate General Counsel

19   STATE OF NORTH CAROLINA  
20   COUNTY OF MECKLENBURG

21  
22   I certify that Teresa M. Brenner personally known to me, appeared before me this day and acknowledged  
23 the due execution of the foregoing instrument.

24   Witness my hand and official seal, this the 14th day of October, 2009.

25   (Official Seal)



26                                   *James E. Dwiggins*  
                                  James E. Dwiggins, Notary Public  
                                  My Commission Expires: May 2nd, 2010.