

STATE OF NEW HAMPSHIRE  
BUREAU OF SECURITIES REGULATION  
DEPARTMENT OF STATE  
25 CAPITOL STREET  
CONCORD, NH 03301

**CONSENT ORDER**  
**FOR CENSURE**

Merrill Lynch, Pierce, Fenner & Smith Incorporated (CRD # 7691)

C-2010-008

- I. For purposes of settling the above-referenced matter and in lieu of further administrative proceedings, Merrill Lynch, Pierce, Fenner & Smith Incorporated (hereinafter referred to as “Merrill”), have submitted an offer of settlement, which the Bureau of Securities Regulation, Department of State, State of New Hampshire (hereinafter referred to as the “Bureau”) has determined to accept. Accordingly, and without admitting or denying the allegations and findings herein, Merrill does hereby consent to this order of Censure:

**STATEMENT OF FACTS**

1. Merrill has been a licensed broker-dealer in the State of New Hampshire since February 2, 1983. The conduct culminating in this action took place at Merrill’s branch office located at 100 Market Street in Portsmouth, New Hampshire from July 2006 to September 2010 (hereinafter referred to as the “relevant time period”).
2. In August 2010, the Bureau received a complaint from a New Hampshire resident (hereinafter referred to as the “Complainant”) against a Merrill Lynch registered representative alleging excessive and unsuitable trading in his account, among other allegations. The Complainant also filed an arbitration claim against the registered representative and Merrill. That arbitration claim was settled prior to hearing and the Complainant has reported to the Bureau that he has recovered all of his out-of-pocket losses that arose from the alleged improper trading.
3. On September 24, 2010, Merrill placed the registered representative who was managing the Complainant’s account on heightened supervision. This was approximately five months after Merrill received a complaint from the Complainant.
4. Auditors from the Bureau conducted an on-site examination of Merrill’s Portsmouth, New Hampshire branch office in January 2011. During this on-site examination, the auditors reviewed the Complainant’s account and the Merrill registered representative assigned to that account. The auditors further reviewed the supervision of that account by Merrill’s assigned supervisors.

5. The Bureau has alleged that Merrill failed to properly supervise the registered representative that handled the Complainant's account. The examination of Merrill's Portsmouth, New Hampshire branch office and subsequent investigation has led the Bureau to allege that, during the relevant time period, Merrill either ignored or failed to identify certain red flags in the Complainant's account that should have lead Merrill's supervisors to take action against their registered representative sooner than they ultimately did. These red flags include short term trading of mutual funds, switching mutual funds, and excessive and short term trading in structured products.

#### STATEMENT OF LAW

1. Merrill is a "broker-dealer" under RSA 421-B: 2, III and a "person" under RS 421-B:2, XVI.
2. Pursuant to RSA 421-B:8, X, persons licensed under this chapter to conduct securities business shall abide by the rules of the SEC, National Association of Securities Dealers (NASD, now FINRA), national and regional stock exchanges, and other self-regulating organizations which have jurisdiction over the licensee, which set forth standards of conduct in the securities industry. FINRA Rule 3010 provides that every member shall establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules. Merrill is in violation of this provision for failing to adequately supervise the registered representative that handled the Complainant's accounts.
3. Pursuant to RSA 421-B:10, I(a) and (b)(10), the Bureau may by order deny, suspend, or revoke any license or application, or bar any person from licensure if he or she finds that the order is in the public interest, and the person has failed to reasonably supervise his agents if he is a broker dealer. Merrill is in violation of this provision for failing to adequately supervise the registered representative that handled the Complainant's accounts.
4. Pursuant to RSA 421-B:21, I-a(h), the Bureau has the authority to issue letters of censure. Merrill is subject to this provision and should be censured for the conduct described above. The Bureau feels that a censure in this matter is appropriate as Merrill did take corrective action against the registered representative and the Complainant has been made whole of his out of pocket losses.
5. Pursuant to RSA 421-B:22, IV, the Bureau can assess the cost of this investigation. Merrill is subject to this provision
6. Pursuant to RSA 421-B:26, VIII, any person who, either knowingly or negligently, engages in any conduct prohibited by RSA 421-B:10, I(b)(2), (7), (10), (12), or (13)

may, upon hearing, and in addition to any other penalty provided for by law, be subject to an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation. Merrill is subject to this provision.

II. In view of the foregoing, Merrill agrees to the following:

1. Merrill agrees that they have voluntarily consented to the entry of this Order and represent and aver that no employee or representative of the Bureau has made any promise, representation or threat to induce their execution.
2. Merrill agrees to waive their right to an administrative hearing and any appeal therein under this chapter.
3. Merrill agrees that this Order is entered into for the purpose of resolving only the matter described herein. The Order shall have no collateral estoppels, res judicata or evidentiary effect in any other lawsuit, proceeding, or action not described herein. Likewise, the Order shall not be construed to restrict the Bureau's right to initiate an administrative investigation or proceeding relative to conduct by Merrill which the Bureau has no knowledge at the time of the date of final entry of this Order.
4. Merrill may not 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 Order or create the impression that the Order is without factual basis. Nothing in this provision affects Merrill's testimonial obligations or right to take legal positions in litigation in which the State of New Hampshire is not a party.
5. Upon execution of this Order, Merrill will pay a fine of seven thousand, five hundred dollars (\$7,500). A certified check or mail order funds shall be made out to the State of New Hampshire and received by the Bureau within ten days of the execution of this Order.
6. Upon execution of this Order, Merrill agrees to pay the costs of this investigation in the amount of seventy-two thousand, five hundred dollars (\$72,500). A certified check or mail order funds shall be made out to the State of New Hampshire and received by the Bureau within ten days of the execution of this Agreement for Censure Order.

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

1. Merrill is hereby censured.
2. Merrill is hereby ordered to pay a fine in the amount of seven thousand, five hundred dollars (\$7,500).

3. Merrill is hereby ordered to pay the costs of this investigation in the amount of seventy-two thousand, five hundred dollars (\$72,500).
4. Nothing in this Order for Censure shall be deemed to be an order by the Bureau of a violation of any law or regulation that prohibits fraudulent, manipulative or deceptive conduct.
5. Nothing in this Order for Censure is intended in any way to subject Merrill Lynch to any statutory disqualification by FINRA in any way.

Executed this 3<sup>rd</sup> day of June, 2013

Mark L. Keene  
Merrill Lynch, Pierce, Fenner & Smith Incorporated  
Name/Title: **MARK L. KEENE**  
**ASSOCIATE GENERAL COUNSEL**

Executed this 4<sup>th</sup> day of June, 2013

Barry A. Glennon  
Barry Glennon, Director