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STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
NEW JERSEY BUREAU OF SECURITIES

In the Matter of MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED	Administrative Action **CONSENT ORDER**

Pursuant to the authority granted to the Chief of the New Jersey Bureau of Securities (the "Bureau Chief") by the Uniform Securities Law (1997), N.J.S.A. 49:3-47 et seq. (the "Securities Law"), and after investigation and review and due consideration of the facts set forth below, the Bureau Chief has determined that civil monetary penalties be assessed for violations of the Securities Law. Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch" or the "Firm"), through counsel (Andrew Kandel, Esquire of Merrill Lynch), now desire to resolve this matter, without recourse to formal judicial and/or administrative proceedings and expense, and consent to the form and entry of this Administrative Consent Order.

WHEREAS, Merrill Lynch is a broker-dealer registered in the State of New Jersey; and

WHEREAS, the New Jersey Bureau of Securities (the "Bureau") in the Office of the Attorney General, Department of Law and Public Safety, has conducted an investigation into the supervision of certain Merrill Lynch financial advisors located in New Jersey servicing one client; and

WHEREAS, the Bureau is the state agency with responsibility to administer the Securities Law; and

WHEREAS, N.J.S.A. 49:3-67 authorizes the Bureau Chief from time to time to issue such Orders as are reasonably necessary to carry out the provisions of the Securities Law; and

WHEREAS, the Bureau alleges as follows:

1. In June 1999, Merrill Lynch adopted an internal policy prohibiting market timing transactions in mutual funds in client accounts at Merrill Lynch;

2. In January 2002, a group of three financial advisors joined a Merrill Lynch office in the State of New Jersey. During the hiring and recruiting process, these financial advisors failed to fully and accurately disclose the precise nature and scope of their previous business activity. Specifically, they failed to disclose that they were engaged in market timing activity on behalf of their principal client, Millennium Partners ("Millennium"), a hedge fund, at their former firm. Merrill Lynch's due diligence process failed to uncover the true nature and scope of these financial advisors' previous activity;

3. In December 2001 and January 2002, Millennium became a retail client of the Firm through these three financial advisors and through another financial advisor (together, "the FAs") in two offices located in the State of New Jersey (the "Offices");

4. These client relationships were maintained until September 2003;

5. During the course of these relationships, Millennium opened accounts in the Offices serviced by the FAs and engaged in the purchasing, exchanging and/or selling of mutual fund positions;

6. In addition, Millennium entered into variable annuity contracts and certain other variable life insurance contracts with certain non-proprietary insurance carriers through the FAs to engage in short term trading in the investment sub-accounts of these products. The investment choices of these variable products mirror mutual funds. Millennium's reallocation instructions were relayed through the FAs to the insurance companies. Merrill Lynch gave no specific instruction to the FAs concerning the reallocation of the underlying sub-accounts of variable products;

7. Starting in February 2002, certain of the FAs were instructed by Merrill Lynch that Millennium's short-term trading of mutual funds violated the internal policy of Merrill Lynch which prohibited market timing transactions in mutual funds;

8. Merrill Lynch, however, did not take sufficient action to enforce its internal policy prohibiting market timing, and mutual fund trading continued;

9. In April 2002, Merrill Lynch repeated the instruction to certain of the FAs that the continuing trading activity conflicted with Merrill Lynch's internal policy and that Millennium must cease short-term trading of mutual funds. In May 2002, the National Sales Manager repeated prior instructions to the Regional Managing Director and others that Millennium's mutual fund trading activity that violated the Firm's anti-market timing policy was to cease;

10. Thereafter, a Complex Managing Director charged with supervising certain of the FAs advised those FAs that Millennium could purchase mutual fund positions at Merrill Lynch, but instructed them that any short-term trading of mutual fund positions must be done directly by Millennium in accounts maintained by Millennium at the mutual fund companies. However, Merrill Lynch failed to implement procedures necessary to supervise this activity;

11. Thereafter, certain of the FAs assisted Millennium in executing transactions in mutual fund positions in accounts maintained by Millennium outside of Merrill Lynch at mutual fund companies and in investment sub-accounts of variable contracts maintained by Millennium outside of Merrill Lynch at insurance companies;

12. Merrill Lynch failed to detect that certain of the FAs and certain of their client associates were improperly authorized by Millennium to execute transactions in accounts maintained by Millennium outside of Merrill Lynch at mutual fund companies, that the FAs and their client associates subsequently used this authorization to execute transactions in accounts maintained by Millennium outside of Merrill Lynch, and that in doing so, certain of the client associates failed to properly identify themselves as employees of Merrill Lynch. Instead, the client associates misrepresented themselves as employees of Millennium;

13. Moreover, a Resident Manager in one of the offices allowed certain of the FAs access to a facsimile machine and did not enforce or implement adequate procedures to review their incoming and outgoing facsimile transmissions and other written correspondence;

14. In or around April 2003, Merrill Lynch began an internal review concerning these matters. During the internal review, the Firm learned, inter alia, the true nature of certain activity which had been previously concealed by the FAs from Merrill Lynch;

15. In October 2003, Merrill Lynch terminated three of the FAs from one of the Offices;

16. Merrill Lynch subsequently fined a Complex Managing Director, a Regional Managing Director and a Regional Administrative Director for failing to adequately supervise certain activities in connection with the conduct described above. Merrill Lynch promptly advised regulatory bodies of this matter;

17. Pursuant to N.J.A.C. 13:47A-1.10, all broker dealers are required to maintain and keep open to inspection all books and records required to be kept by the Securities and Exchange Commission ("SEC");

18. The Securities Exchange Act of 1934 and the rules promulgated pursuant thereto required Merrill Lynch to maintain certain books and records including memoranda of each order in connection with instructions received by the FAs for the execution of trades in accounts maintained by Millennium directly at certain mutual funds, and facsimile communications in connection with the purchase, sale and exchange of mutual funds;

19. Merrill Lynch did not adequately maintain such records. The failure of Merrill Lynch to maintain such books and records constitutes a violation of N.J.A.C. 13:47A-1.10 and N.J.S.A. 49:3-59(b);

20. Merrill Lynch was also required to maintain memoranda of orders by Millennium to reallocate the underlying sub-accounts of variable products where those requests were relayed through the FAs. Merrill Lynch did not maintain such memoranda;

21. Each violation of N.J.A.C. 13:47A-1.10 and N.J.S.A. 49:3-59(b) is a separate violation and cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1, or suspension or revocation of Merrill Lynch's registration with the Bureau pursuant to N.J.S.A. 49:3-58;

22. Merrill Lynch failed to reasonably supervise the FAs in that Merrill Lynch failed to: (a) adequately enforce its established policy prohibiting market timing; (b) detect and stop activity of the FAs in connection with accounts maintained by the client directly at the mutual funds; (c) adequately establish and enforce policies and procedures regarding record keeping, trading and supervision of this activity; (d) adequately enforce policies regarding the review and retention of communications between the clients and the FAs relating to its business; (e) adequately react to red flags; and (f) timely discipline the FAs at times when they were discovered to be in apparent breach of Merrill Lynch's policies;

23. The failure of Merrill Lynch to reasonably supervise its employees is cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1, or for denial, suspension or revocation of Merrill Lynch's broker dealer registration by the Bureau Chief pursuant to N.J.S.A. 49:3-58;

WHEREAS, Merrill Lynch has fully cooperated with the Bureau in conducting this investigation, and the continuing investigation into the activities of the FAs and others, by responding to inquiries, providing documentary evidence and other materials, and providing the Bureau with access to facts relating to the investigation, books and records, and personnel; and

WHEREAS, Merrill Lynch and the Bureau are desirous of resolving the issues raised as a result of the investigation, without the expense and delay that other proceedings would involve; and

WHEREAS, Merrill Lynch has agreed to implement certain changes with respect to its supervisory practices and books and records practices; and

WHEREAS, Merrill Lynch consents to the terms and conditions of this Consent Order and both parties agree that the sanctions imposed herein are; in the public interest, for the protection of investors and consistent with the policy and purposes intended by the Securities Laws, as provided in N.J.S.A. 49:3-67(b) thereof; and

WHEREAS, Merrill Lynch admits the jurisdiction of the Bureau, neither admits nor denies the Bureau's allegations, and, solely for the purposes of this proceeding, prior to a hearing and without an adjudication of any issue of law or fact, consents to the entry of this Consent Order and voluntarily waives the following rights for the purposes of this proceeding only:

a. To be afforded an opportunity for hearing after reasonable notice within the meaning of N.J.S.A. 49:3-58(c)(2); and

b. To seek judicial review of, or otherwise challenge or contest, the matters described herein, including the validity of this Consent Order; and

WHEREAS, Merrill Lynch agrees that for purposes of this matter, or any future proceedings before the Bureau to enforce this agreement, this Consent Order shall have the same effect as if proven and ordered after a full hearing held pursuant to N.J.S.A. 52:14B-1 et seq.; and

WHEREAS, this Consent Order concludes the investigation by the Bureau and any civil or administrative action that could be commenced under the Securities Law on behalf of the State of New Jersey as it relates to Merrill Lynch, its current affiliates and its current employees.

IT IS, on this, the 4th day of March, 2005 ORDERED:

1. Pursuant to N.J.S.A. 49:3-70.1, Merrill Lynch is assessed and shall pay a civil monetary penalty in the amount of $10,000,000 (ten million dollars), to be paid within five (5) business days of the filing of this order. Said funds of $10,000,000 shall be payable to the "State of New Jersey, Bureau of Securities" and shall be deposited in the Securities Enforcement Fund established pursuant to N.J.S.A. 49:3-66.1.

2. Merrill Lynch shall continue to fully cooperate in good faith with the Bureau in any investigation or litigation by the Bureau related hereto. Such cooperation will include, but is not limited to, voluntarily making employees available for interviews and/or testimony, producing business and other records within its possession, custody, and/or control in a timely manner as requested by the Bureau, and providing other non-privileged information obtained by Merrill Lynch in connection with its own investigation. All information provided by Merrill Lynch to the Bureau will be maintained as confidential to the extent permitted by applicable law. Merrill Lynch will bear the cost of producing documents, information, and/or witnesses requested by either the Attorney General or the New Jersey Bureau of Securities.

3. Merrill Lynch shall within 30 (thirty) days:

   (a) Send a Global Compliance Alert communication detailing the Firm's policies and procedures with respect to the review and retention of incoming and outgoing correspondence and fax transmissions as set forth in the Compliance Outline and Branch Office Policy Manual. The Global Compliance Alert will also advise financial advisors, supervisors, and compliance personnel that correspondence and fax transmissions concerning a client's reallocation of the underlying sub-accounts of variable products shall be maintained in accordance with these policies and procedures; and

   (b) Implement and enforce a policy and procedure addressing how financial advisors should deal with instructions from Merrill Lynch clients to trade mutual fund positions in accounts held outside of Merrill Lynch.

(c) A copy of all Global Compliance Alerts, instructions, policies, procedures or notices set forth in this paragraph 3 shall be sent to the Chief of Enforcement of the Bureau within 10 (ten) days following their promulgation.

4. Neither Merrill Lynch nor its affiliate, Merrill Lynch Insurance Group Inc. ("MLIG"), makes a record of client requests to relay reallocation instructions to insurance companies regarding the underlying sub-accounts of non-proprietary variable annuity products. However, Merrill Lynch and MLIG shall, within sixty (60) days of the filing of this order, begin to implement a procedure to maintain as a required record under the Securities Law the recording of client reallocation requests regarding the underlying sub-accounts of non-proprietary variable annuity products where such requests are relayed from a client to the insurance carrier through a Merrill Lynch employee. Merrill Lynch will provide an update on the status of the implementation of this procedure within ninety (90) days of the filing of this order.

5. During the course of this investigation, Merrill Lynch's affiliate, Financial Data Services, Inc. ("FDS"), implemented a change in its procedures such that FDS now provides client tax identification numbers to the National Securities Clearing Corporation ("NSCC") when transmitting orders to mutual fund companies on behalf of Merrill Lynch clients to buy or exchange mutual fund positions. FDS has also developed the capability to provide a tax identification number to NSCC when transmitting orders on behalf of Merrill Lynch clients to sell mutual fund positions provided the mutual fund companies elect to receive the tax identification number.

6. In addition to the relief provided in other paragraphs herein, a default by Merrill Lynch shall entitle the Bureau to make an application to the Superior Court for an order directing compliance, and any other relief in aid of litigant's right including the imposition of attorney's fees for said application; or make any other application as provided by law.

7. Merrill Lynch shall comply with the Securities Law and shall not engage in any act or practice in violation of the Securities Law.

8. If, after the signing of this Consent Order, Merrill Lynch engages in any acts or practices which constitute a violation of the Securities Law or this Consent Order, or if any representation made by Merrill Lynch reflected herein, is subsequently discovered to be untrue, Merrill Lynch shall be subject to penalties pursuant to N.J.S.A. 49:3-70.1, without prejudice to their rights to present evidence in opposition in mitigation and affirmative defenses.

9. The parties represent that an authorized representative of each has signed this Consent Order with full knowledge, understanding and acceptance of its terms and that this person has done so with authority to legally bind the respective party.

10. This Consent Order constitutes the entire agreement among the parties with respect to its subject matter. Any addition, deletion or change to this Consent Order must be in writing and signed by all parties to be bound.

11. Nothing contained herein shall bind or affect the rights of any person not a party, hereto, nor the rights of the parties against any person not a party hereto.

12. This Consent Order may be signed in counterparts, each of which shall be deemed original.

13. This Consent Order shall become final when executed by the Bureau Chief.

THE PARTIES CONSENT TO THE FORM, CONTENT, AND ENTRY OF THIS CONSENT ORDER ON THE DATES UNDER THEIR RESPECTIVE SIGNATURES.

OFFICE OF THE ATTORNEY GENERAL
FOR THE DEPARTMENT OF LAW AND PUBLIC SAFETY

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By: _____ 3-4-05
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OFFICE OF THE ATTORNEY GENERAL
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BUREAU OF SECURITIES

By: Order of the Chief of the Bureau of Securities

By: _____
Franklin L. Widmann
Chief, Bureau of Securities March 4, 2005

FOR THE RESPONDENT
MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

By: _____ 3-4-05
Andrew Kandel, Esquire