

WHEREAS, the Bureau has conducted an investigation into certain supervisory procedures of Merrill Lynch; and

WHEREAS, Merrill Lynch and the Bureau Chief wish to resolve these issues without the expense and delay that formal administrative proceedings would involve; and

WHEREAS, Merrill Lynch consents to the form and entry on this Consent Order without admitting or denying the allegations set forth herein. Accordingly, Merrill Lynch waives the following rights:

- a. To be afforded an opportunity for hearing on the Bureau Chief's findings and conclusions of law in this Consent Order 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 validity of this Consent Order; and

WHEREAS, Merrill Lynch agrees that for the purposes of settling this matter, or any future proceedings by the Bureau, 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 Chief and any civil or administrative action that could be commenced, pursuant to the Securities Law, on behalf of the Bureau Chief, as it relates to seeking civil monetary penalties or other relief against Merrill Lynch for the specific conduct described herein.

FINDINGS OF FACT

The Bureau Chief makes the following findings of fact:

1. Banc of America Investment Services, Inc. was a broker-dealer incorporated in Florida and headquartered in Boston, Massachusetts (“BAI”). BAI had been registered as a broker-dealer with the Bureau from December 1991 to November 2009.
2. In November 2009, after the events at issue in this investigation, BAI merged its operations into and under the broker-dealer registration of Merrill, Lynch, Pierce, Fenner & Smith, Incorporated (“Merrill Lynch”).
3. Michael Stern (CRD #2258778) (“Stern”) has been registered with the Bureau as an agent since 1994. Stern was registered with BAI as an agent and investment adviser representative from October 2004 to October 2009.
4. Client A is New Jersey corporation which began a banking relationship with Bank of America, N.A. (“BofA”) in July 2006 when the company opened an operating and payroll account.
5. In or around October 2006, Client A was introduced to Stern by a banking representative for BofA after Client A had expressed an interest in investing excess cash it did not immediately require to operate its business.
6. Over the next year, Stern developed a portfolio of various agency and other government backed securities for Client A.
7. By the summer of 2007, BofA’s banking division learned that the founder of Client A had a criminal history, including two felony securities fraud convictions in the United States and abroad.
8. On September 18, 2007, BofA’s Global Wealth Investment Management Event Management Group (“GWIM Events”) sent an email to Stern’s branch manager with BofA’s

Anti-Money Laundering Group (“AML”) recommendation that BAI close Client A’s account. The email cited “previous convictions and unusual activities” as reasons for AML’s recommendation.

9. On September 19, 2007, a BAI Market Administrative Manager replied to GWIM Events and agreed with the recommendation to close Client A’s account. The email asked GWIM Events to “...coordinate sending a 60 [d]ay [t]ermination/closure letter to the client, and restricting the brokerage account(s).” Both Stern and his branch manager were copied on this email reply.

10. In accordance with their policies and procedures, AML’s practice for closing accounts was to exit the entire client relationship for all lines of business concurrently, including the delivery of customer closure notices. BofA sent Client A notices about the closure of its checking accounts and credit card account on October 22 and 25, 2007, respectively.

11. On October 24, 2007, a GWIM Events Compliance Officer emailed a BAI Operations (“BAI Ops”) employee with instruction to send a termination letter to Client A and inform GWIM Events when the letter was mailed.

12. The brokerage account termination letter (“Termination Letter”) was sent to Client A on October 24, 2007. Stern did not receive a copy of the Termination Letter.

13. The Termination Letter to Client A stated, “[e]ffective immediately, you are not permitted to make any opening transactions (e.g.-securities purchases), nor will you be permitted to journal/transfer existing assets to other accounts within BAI. You will be allowed to make closing or liquidating transactions (e.g., sales of long positions).”

14. In accordance with their policies and procedures, BAI Ops’ uniform practice was to enter a restriction on the brokerage account of a client within a day or two of sending the Termination Letter. That restriction would appear on a system to which BAI and its clearing

firm, National Financial Services (“NFS”), both had access. If a client were to attempt to place a securities purchase, the restriction would prevent NFS from clearing the transaction.

15. Despite sending the Termination Letter, BAI Ops failed to place the restriction on Client A’s BAI account identified for closure.

16. On November 15, 2007, Client A’s BAI account received the proceeds of \$20,000,000.00 for two bonds (one maturing and one redeemed) held in its account.

17. On November 20, 2007, Client A’s Vice President spoke with Stern about its BAI account. Stern recommended the purchase of two new securities intended to earn higher interest rates than the money market account where the bond proceeds were held. Client A authorized these purchases.

18. The two purchases, with a par value of \$20,000,000.00, were successfully executed on November 20, 2007, as no restriction had been placed on Client A’s BAI account.

19. The BAI trade tickets for the November 20, 2007 purchases by Client A reflect the transactions as unsolicited. According to Stern, these transactions with Client A were in fact solicited.

20. On November 27, 2007, Client A instructed Stern to transfer its account to a new broker-dealer.

21. On December 19, 2007, Client A’s account was received by the new broker-dealer.

CONCLUSIONS OF LAW

Solely for the purpose of this Consent Order, and without admitting or denying the Findings of Fact and Conclusions of Law, Merrill Lynch Pierce Fenner & Smith Incorporated consents to the Bureau Chief making the following Conclusions of Law:

1. By (i) failing to follow its own procedures with respect to placing account restrictions and (ii) failing to have an adequate system to ensure agents and their supervisors were informed of the restriction, Banc of America Investment Services, Inc. failed to reasonably supervise its agents and is subject to sanctions under N.J.S.A. 49:3-58(a)(2)(xi).

2. By marking certain purchases of securities by Client A as “unsolicited” when in fact the transactions were solicited, Banc of America Investment Services, Inc. did not make and keep accurate books and records, in violation of N.J.S.A. 49:3-59(b).

3. The activities set forth herein are grounds, pursuant to N.J.S.A. 49:3-58(a)(1), N.J.S.A. 49:3-58(a)(2)(xi), and N.J.S.A. 49:3-59(b) for the initiation of administrative proceedings; and further, pursuant to N.J.S.A. 49:3-70.1, to assess a civil monetary penalty.

REMEDIAL MEASURES

1. Merrill Lynch updated and revised its procedures with respect to account closure recommendations to, among other things, (i) require the placement of account restrictions at the branch level and (ii) provide additional notification of account closures and restriction to the agent(s) assigned to the client.

2. Merrill Lynch created a quick reference card to provide proper guidance for office management handling account closings.

ORDER

NOW THEREFORE, it is on this 4th day of November 2011,

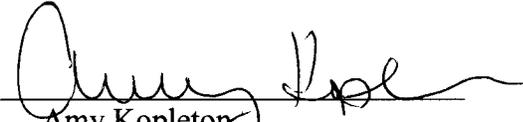
ORDERED that, Merrill Lynch Pierce Fenner & Smith Incorporated will comply with the Securities Law; and it is

FURTHER ORDERED that, pursuant to N.J.S.A. 49:3-70.1, Merrill Lynch Pierce Fenner & Smith Incorporated is assessed and shall pay a civil monetary penalty in the amount of \$35,000.00, due and payable by check or wire transfer within ten days of the entry of this Consent Order to "State of New Jersey, Bureau of Securities," 153 Halsey Street, 6th Floor, Newark, New Jersey 07102, or to be received at "Bureau of Securities," P.O. Box 47029, Newark, New Jersey 07101. The civil monetary penalty payment shall be deposited in the Securities Enforcement Fund, pursuant to N.J.S.A. 49:3-66.1.

This Consent Order as entered into by the Bureau waives any disqualification contained in the laws of New Jersey, or rules or regulations thereunder, including any disqualifications from relying upon the registration exemptions or safe harbor provisions that Merrill Lynch or any of its affiliates may be subject to as a result of the findings contained in this Consent Order. This Consent Order is also not intended to subject Merrill Lynch or any of its affiliates to any disqualifications contained in the federal securities laws, the rules and regulations thereunder, the rules and regulations of self regulatory organizations, or various state's or U.S. Territories' securities laws, including without limitation, any disqualifications from relying upon the registration exemptions or safe harbor provisions. In addition, this Consent Order is not intended to form the basis for any such disqualifications.

Merrill Lynch Pierce Fenner & Smith Incorporated hereby consents to the form and entry of this Consent Order without admitting or denying the Findings of Fact and Conclusions of Law set forth herein.

NEW JERSEY BUREAU OF SECURITIES

By: 
Amy Kopleton
Deputy Chief, Bureau of Securities

DATED: 11/4/11

MERRILL LYNCH PIERCE FENNER
& SMITH INCORPORATED

By: 
Name: J. David Montague
Title: Associate General Counsel

DATED: October 26, 2011