
*
IN THE MATTER OF: *
*
MERRILL LYNCH, PIERCE, *
FENNER & SMITH INCORPORATED *
CRD NO. 7691 *

CONSENT ORDER
DOCKET NO. CO-20-8249-S

I. PRELIMINARY STATEMENT

WHEREAS, the Banking Commissioner (“Commissioner”) is charged with the administration of Chapter 672a of the General Statutes of Connecticut, the Connecticut Uniform Securities Act (“Act”), and Sections 36b-31-2 to 36b-31-33, inclusive, of the Regulations of Connecticut State Agencies (“Regulations”) promulgated under the Act;

WHEREAS, Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill”) is a registered broker-dealer in Connecticut. Merrill has also been an investment adviser registered with the Securities and Exchange Commission (SEC No. 801-14235) since December 8, 1978, and has filed with the Division the notice required by Section 36b-6(e) of the Act since August 19, 1997;

WHEREAS, the Commissioner, through the Securities and Business Investments Division (“Division”) of the Department of Banking, conducted an investigation of Merrill pursuant to Section 36b-26(a) of the Act and a related examination of Merrill pursuant to Section 36b-14(d) of the Act and Section 36b-31-14f of the Regulations to determine whether Merrill had violated, was violating or was about to violate provisions of the Act or Regulations or any order thereunder;

WHEREAS, during an onsite exam conducted by Division examiners (“Examiners”) in 2017, Examiners requested to view records and documents held on site and were not provided access to certain records and documents until a subsequent phone call from the Division Director;

WHEREAS, as a result of the investigation the Division alleges that a former supervisor (“Former Supervisor”) at Merrill failed to supervise a former Connecticut based agent (“Former Agent”) at certain times prior to the Former Agent’s registration with Merrill being terminated in 2015;

WHEREAS, the Former Agent utilized the Former Agent’s Merrill email in connection with an unapproved private securities transaction, messaging with a customer via the Former Agent’s personal phone, and unauthorized trading which resulted in financial harm to certain customers;

WHEREAS, as part of the Former Agent’s efforts to circumvent Merrill’s supervisory systems, the Former Agent incorrectly marked trade tickets to identify certain trades as unsolicited when in fact the trades were solicited, which resulted in such records being rendered inaccurate;

WHEREAS, as a result of the investigation, the Division alleges that the trade tickets modified by the Former Agent resulted in Merrill maintaining inaccurate books and records;

WHEREAS, the registrations and associations of the Former Agent and the Former Supervisor with Merrill were terminated in 2015 and 2017, respectively;

WHEREAS, in 2015, during the course of an investigation into alleged unauthorized trading, the Financial Industry Regulatory Authority (FINRA) barred the Former Agent from associating with any FINRA members;

WHEREAS, the violations alleged herein would support the initiation of administrative proceedings by the Commissioner pursuant to Sections 36b-15(a), 36b-27(a) and 36b-27(d) of the Act;

WHEREAS, Section 36b-31(a) of the Act provides, in relevant part, that “[t]he commissioner may from time to time make . . . such . . . orders as are necessary to carry out the provisions of sections 36b-2 to 36b-34, inclusive”;

WHEREAS, Section 36b-31(b) of the Act provides, in relevant part, that “[n]o . . . order may be made . . . unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of sections 36b-2 to 36b-34, inclusive”;

WHEREAS, an administrative proceeding initiated under Sections 36b-15 and 36b-27 of the Act would constitute a “contested case” within the meaning of Section 4-166(2) of the General Statutes of Connecticut;

WHEREAS, Section 4-177(c) of the General Statutes of Connecticut and Section 36a-1-55(a) of the Regulations of Connecticut State Agencies provide that a contested case may be resolved by consent order, unless precluded by law;

WHEREAS, without holding a hearing and without trial or adjudication of any issue of fact or law, and prior to the initiation of any formal proceeding, the Commissioner and Merrill reached an agreement, the terms of which are reflected in this Consent Order, in full and final resolution of the matters described herein;

WHEREAS, Merrill, without admitting or denying any of the Commissioner’s allegations or findings, expressly consents to the Commissioner’s jurisdiction under the Act and to the terms of this Consent Order;

WHEREAS, the issuance of this Consent Order is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Act;

WHEREAS, in 2015 Merrill had paid the Connecticut resident who suffered financial harm due to the actions of the Former Agent restitution in the amount of four hundred and fifty thousand dollars (\$450,000);

AND WHEREAS, Merrill, through its execution of this Consent Order, specifically assures the Commissioner that none of the violations alleged in this Consent Order shall occur in the future.

II. CONSENT TO WAIVER OF PROCEDURAL RIGHTS

WHEREAS, Merrill, through its execution of this Consent Order, voluntarily waives the following rights:

1. To be afforded notice and an opportunity for a hearing within the meaning of Sections 36b-15(f) and 36b-27 of the Act and Section 4-177(a) of the General Statutes of Connecticut;
2. To present evidence and argument and to otherwise avail itself of Sections 36b-15(f) and 36b-27 of the Act and Section 4-177c(a) of the General Statutes of Connecticut;
3. To present its position in a hearing in which it is represented by counsel;
4. To have a written record of the hearing made and a written decision issued by a hearing officer; and
5. To seek judicial review of, or otherwise challenge or contest, the matters described herein, including the validity of this Consent Order.

III. ACKNOWLEDGEMENT OF THE COMMISSIONER'S ALLEGATIONS

WHEREAS, Merrill, through its execution of this Consent Order, acknowledges, without admitting or denying, the following allegations of the Commissioner:

1. Merrill violated Section 36b-14 of the Act by maintaining inaccurate books and records; and
2. Merrill violated Section 36b-31-6f of the Regulations by failing to enforce its established procedures for supervising the activities of its agents, investment adviser agents and Connecticut office operations that was reasonably designed to achieve compliance with applicable securities laws and regulations.

WHEREAS, the Commissioner would have the authority to enter findings of fact and conclusions of law after granting Merrill an opportunity for a hearing;

AND WHEREAS, Merrill acknowledges the possible consequences of an administrative hearing and voluntarily agrees to consent to the entry of the sanctions described below.

IV. CONSENT TO ENTRY OF SANCTIONS

WHEREAS, Merrill, through its execution of this Consent Order, consents to the Commissioner's entry of an order imposing on it the following sanctions:

1. Merrill shall cease and desist from violating Section 36b-14 of the Act and 36b-31-6f of the Regulations, and shall comply with the Act, its regulations and any order under the Act;

2. Within thirty (30) days from the date this Consent Order is entered by the Commissioner, Merrill shall remit to the department by cashier's check, certified check or money order made payable to "Treasurer, State of Connecticut" the sum of one hundred fifty thousand dollars (\$150,000) as an administrative fine; and
3. Within thirty (30) days from the date this Consent Order is entered by the Commissioner, Merrill shall pay by cashier's check, certified check or money order made payable to "Treasurer, State of Connecticut" an additional two hundred fifty thousand dollars (\$250,000) to be utilized, at the discretion of the Commissioner, for investor education, staff training and education material.

V. CONSENT ORDER

NOW THEREFORE, the Commissioner enters the following:

1. The Sanctions set forth above be and are hereby entered;
2. Entry of this Consent Order by the Commissioner is without prejudice to the right of the Commissioner to take enforcement action against Merrill based upon a violation of this Consent Order or the matters underlying its entry if the Commissioner determines that compliance with the terms herein is not being observed or if any representation made by Merrill and set forth herein is subsequently determined to be untrue;
3. Nothing in this Consent Order shall be construed as limiting the Commissioner's ability to take enforcement action against Merrill based upon evidence of which the Division was unaware on the date hereof relating to a violation of the Act or any regulation or order under the Act;
4. Merrill shall 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 referenced in this Consent Order or create the impression that this Consent Order is without factual basis;
5. Merrill shall not take any position in any proceeding brought by or on behalf of the Commissioner, or to which the Commissioner is a party, that is inconsistent with any part of this Consent Order. However, nothing in this Consent Order affects Merrill's testimonial obligations or right to take any legal or factual position in litigation, arbitration, or other legal proceedings in which the Commissioner is not a party; and
6. This Consent Order shall become final when entered.

So ordered at Hartford, Connecticut,
this 23rd day of June 2020.

_____/s/_____
Jorge L. Perez
Banking Commissioner

CONSENT TO ENTRY OF ORDER

I, Mark L. Keene, state on behalf of Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill”) that I have read the foregoing Consent Order; that I know and fully understand its contents; that I am authorized to execute this Consent Order on behalf of Merrill; that Merrill agrees freely and without threat or coercion of any kind to comply with the terms and conditions stated herein; and that Merrill consents to the entry of this Consent Order.

Merrill Lynch, Pierce, Fenner & Smith Incorporated

By: _____/s/_____
Mark L. Keene
Associate General Counsel

Date: June 15, 2020