

1 Division of Securities
Utah Department of Commerce
2 160 East 300 South
Box 146760
3 Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
4 FAX: (801) 530-6980

5
6 BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
7 OF THE STATE OF UTAH

8
9 IN THE MATTER OF:

**STIPULATION AND CONSENT
ORDER**

10 **MERRILL LYNCH, PIERCE, FENNER &
11 SMITH INCORPORATED, CRD#7691**

Docket No. SD-09-0054

12 Respondent.

13
14 The Utah Division of Securities ("Division"), by and through its Director of Licensing,
15 George Robison, and Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch")
16 hereby stipulate and agree as follows:

17 WHEREAS, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") is a
18 broker-dealer registered in the state of Utah, with a Central Registration Depository ("CRD")
19 number of 7691; and

20
21 State securities regulators from multiple jurisdictions have conducted coordinated
22 investigations into the registration of Merrill Lynch Client Associates ("CAs") and Merrill Lynch's
23 supervisory system with respect to the registrations of CAs; and

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

1 Merrill Lynch has advised regulators of its agreement to resolve the investigations pursuant
2 to the terms specified in this Stipulation and Consent Order (the "Order"); and

3 Merrill Lynch agrees to make certain changes in its supervisory system with respect to the
4 registration of CAs, and to make certain payments in accordance with the terms of this Order; and

5 Merrill Lynch elects to waive permanently any right to a hearing and appeal under the Utah
6 Administrative Procedures Act, Title 63G, Chapter 4 of the Utah Code, with respect to this Order;
7 and

8 Solely for the purpose of terminating the multi-state investigations, and in settlement of the
9 issues contained in this Order, Merrill Lynch, without admitting or denying the findings of fact or
10 conclusions of law contained in this Order, consents to the entry of this Order.

11 NOW, THEREFORE, the Division, as administrator of the Utah Uniform Securities Act
12 ("Act"), hereby enters this Order:

13 **I.**

14 **FINDINGS OF FACT**

- 15 1. Merrill Lynch admits the jurisdiction of the Division in this matter.

16 Background on Client Associates

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

- 20 3. The responsibilities of a CA specifically include:

- 21 a. Handling client requests;
- 22 b. Resolving client inquiries and complaints;
- 23 c. Determining if client issues require escalation to the FA or the branch management
24 team; and
- 25 d. Processing of operational documents such as letters of authorization and client
26 check requests.

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

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

9 6. During the period from 2002 to the present, Merrill Lynch employed approximately
10 6,200 CAs (average) per year.

11 Licensing¹ Required

12 7. Section 61-1-3(1) of the Act provides that it is unlawful for a person to transact
13 securities business in Utah as a broker-dealer or agent unless the person is licensed with the
14 Division. Section 61-1-3(2)(a) further provides that it is unlawful for a broker-dealer to employ or
15 engage an agent unless the agent is licensed.

16 8. Pursuant to the general prohibition under Section 61-1-3(1), a person cannot accept
17 unsolicited orders in Utah without being licensed.

18 9. Pursuant to Section 61-1-6(2)(a)(iii)(J) of the Act, a broker-dealer may be fined for
19 selling securities in Utah through agents other than licensed agents.

20 Merrill Lynch Requires Registration of Client Associates

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

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

26 Regulatory Investigations and Findings

¹ With respect to securities professionals and the entities with which they are associated, the Utah Uniform Securities Act uses the term "licensing" in the same manner other jurisdictions may use the term "registration". For purposes of this Order the two terms should be considered synonymous.

1 12. In May 2008, state regulators received a tip alleging that Merrill Lynch was failing to
2 ensure its CAs were in compliance with jurisdictional registration requirements and its own
3 procedures. The tip alleged that Merrill Lynch CAs were registered in two jurisdictions – the CA’s
4 home state and one neighboring state – because Merrill Lynch only paid for registrations in two
5 jurisdictions.

6 13. During the summer of 2008, Merrill Lynch received inquiries regarding CA
7 registrations from a number of state securities regulators.

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

- 12 a. After accepting a client order, CAs accessed the electronic trading system to enter
13 the order;
- 14 b. The CAs did not have to identify themselves during the order entry process.
15 Therefore, there is no electronic record that identifies which orders were accepted
16 by CAs;
- 17 c. Instead, Merrill Lynch maintained a daily report that recorded the identity of the
18 person who accepted and/or entered each order. However, this report was not
19 maintained electronically, and was only maintained at the branch office where the
20 order was entered. Merrill Lynch represented that this daily report was the only
21 record that could identify who accepted a client order.
- 22 d. Merrill Lynch’s trading system checked the registration of the FA, but did not check
23 the registration status of the person accepting the order to ensure that the person was
24 registered in the appropriate jurisdiction.

25 15. The multi-state investigation found that many CAs supported FAs registered in Utah
26 when the CAs were not registered in Utah as agents of Merrill Lynch. This difference in
registration status increased the possibility that CAs would engage in unregistered activity.

1 16. The multi-state investigation found that certain Merrill Lynch CAs engaged in the sale
2 of securities in Utah at times when the CAs were not appropriately registered in Utah.

3 Merrill Lynch's Remedial Measures and Cooperation

4 17. As a result of the inquiries by state regulators, Merrill Lynch conducted a review of its
5 CA registration practices.

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

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

12 20. In October 2008, Merrill Lynch amended its registration policy to require that each CA
13 mirror the state registrations for the FAs that they support.² Merrill Lynch's Registration
14 Compliance personnel participated in calls with branch management to advise the field about this
15 requirement.

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

19 22. Between October 1, 2008 and January 28, 2009, two hundred eighty-one (281) CAs
20 registered with the Division as agents of Merrill Lynch. Yet, data as of February 28, 2009
21 indicated that significant gaps remained between the registrations of CAs and their FAs.

22 23. However, Merrill Lynch, as a compliance enhancement, also developed an electronic
23 system that will prevent a person from entering client orders from a state in which the person
24 accepting the order is not registered. Merrill Lynch has represented to the Division that the firm
25 began implementing this new system in June 2009 and expects it to be fully implemented by
26 December 31, 2009.

² 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 4. Merrill Lynch is hereby ordered to cease and desist from engaging in the sale of
2 securities in the Utah through persons not registered with the Division as agents of Merrill Lynch.

3 5. Merrill Lynch is hereby ordered to pay the sum of three hundred ninety-six
4 thousand nine hundred dollars (\$396,900.00) to the Division within ten days of the date of this
5 Order.

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

10 7. However, if any state securities regulator determines not to accept Merrill Lynch's
11 settlement offer, the total amount of the payment to the State of Utah shall not be affected, and
12 shall remain at three hundred ninety-six thousand nine hundred dollars (\$396,900.00).

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

14 9. This order is not intended by the Division to subject any Covered Person to any
15 disqualifications under the laws of the United States, any state, the District of Columbia, Puerto
16 Rico, or the U.S. Virgin Islands including, without limitation, any disqualification from relying
17 upon the state or federal registration exemptions or safe harbor provisions. "Covered Person,"
18 means Merrill Lynch or any of its affiliates and their current or former officers or former officers,
19 directors, employees, or other persons that would otherwise be disqualified as a result of the Orders
20 (as defined below).

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

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

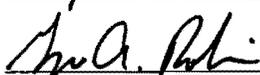
1 limitations, restrictions, events, and conditions.

2 12. Merrill Lynch acknowledges that this Order, upon approval by the Utah Securities
3 Commission ("Commission") shall be the final compromise and settlement of this matter. Merrill
4 Lynch further acknowledges that if the Commission does not accept the terms of the Order, it shall be
5 deemed null and void and without any force or effect whatsoever.

6 13. This Order constitutes the entire agreement between the parties herein and supersedes
7 and cancels any and all prior negotiations, representations, understandings, or agreements between the
8 parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this
9 Order in any way.

10 Utah Division of Securities

11 Date: 11/18/2009

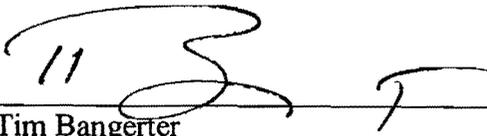
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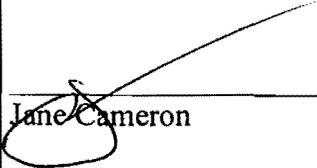
13 George Robison
14 Director of Licensing

1 **BY THE UTAH SECURITIES COMMISSION:**

2 The foregoing Stipulation and Consent Order is hereby accepted, confirmed, and entered
3 by the Utah Securities Commission.

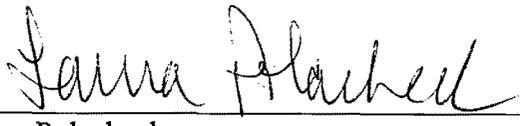
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5 DATED this 18th day of NOVEMBER, 2009.

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8 _____
9 Tim Bangert

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11 _____
12 Jane Cameron

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14 _____
15 Erik Christiansen

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17 Michael O'Brien

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19 _____
20 Laura Polacheck

Certificate of Service

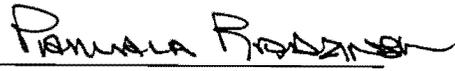
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I, Pam Radzinski, certify that on the 19th day of NOVEMBER, 2009, I served the

foregoing Stipulation and Consent Order by mailing a copy to:

J. David Montague
First Vice President - Legal
Merrill Lynch, Pierce, Fenner & Smith, Inc.
222 Broadway, 16th Floor
New York, NY 10038

via e-mail: david_montague@ml.com


Executive Secretary