

**COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE SECRETARY OF THE COMMONWEALTH
SECURITIES DIVISION
ONE ASHBURTON PLACE, ROOM 1701
BOSTON, MASSACHUSETTS 02108**

	)	
IN THE MATTER OF:	)	
	)	
MERRILL LYNCH, PIERCE, FENNER &	)	
SMITH INCORPORATED – RETAIL	)	
MINIMUM COMMISSIONS,	)	
	)	
RESPONDENT.	)	Docket No. 2026-2135
	)	

CONSENT ORDER

I. PRELIMINARY STATEMENT

This Consent Order (the “Order”) is entered into by the Securities Division of the Office of the Secretary of the Commonwealth of Massachusetts (the “Division”) and Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill”) with respect to an investigation by the Enforcement Section of the Division into whether Merrill’s acts and practices constituted violations of the Massachusetts Uniform Securities Act, Mass. Gen. Laws c. 110A (the “Act”), and the regulations promulgated thereunder at 950 Code Mass. Regs. 10.00-14.413 (the “Regulations”). As the result of a coordinated multi-state investigation, with the Division serving as a lead state, the Division concluded that Merrill charged unreasonable commissions to retail customers in excess of five percent (5%) on certain small principal equity transactions. Nationwide, Merrill charged unreasonable commissions on approximately 28,162 equity transactions over a five-year period totaling \$548,709.11 which included 450 residents of Massachusetts who were charged commissions in excess of 5% totaling \$17,516.78.

On September 25, 2026, Merrill submitted an Offer of Settlement (the “Offer”) to the Division. Merrill neither admits nor denies the facts set forth in Section V and the Violations of Law set forth in Section VI below, and consents to the entry of this Order by the Division, consistent with the language and terms of the Offer, settling the above-captioned matter (E-2026-2136)¹ with prejudice. Pursuant to M.G.L. c. 110A, § 412(b), this 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].”

II. JURISDICTION AND AUTHORITY

1. The Division has jurisdiction over matters related to securities pursuant to the Act and Regulations.
2. This Offer is made in accordance with the Act and Section 10.10 of the Regulations.
3. The acts and practices that are the subject of the Division’s investigations occurred while Merrill was registered as broker-dealer in Massachusetts.

III. RELEVANT TIME PERIOD

4. Except as otherwise expressly stated, the conduct described herein occurred during the approximate time period of September 30, 2020 to October 1, 2025 (the “Relevant Time Period”).

IV. RESPONDENT

5. Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill”) is a broker-dealer registered in Massachusetts with a main address of One Bryant Park, New York, New York 10036.

¹ The above captioned docket number reflects the conclusion of previously captioned investigation 2023-0061, solely as it pertains to Merrill. INV-2023-0061 remains an ongoing investigation into registered broker-dealer commission practices.

Merrill is identified by Financial Industry Regulatory Authority (“FINRA”) CRD No. 283942. Merrill maintains 14 branch offices in Massachusetts.

V. STATEMENT OF FACTS

A. Merrill’s Minimum Commission Practices for Equity Transactions Failed to Ensure Transactions Were Executed at a Fair and Reasonable Price.

6. During the Relevant Time Period, Merrill charged unreasonable commissions to thousands of retail brokerage customers on equity transactions that exceeded 5% of the principal amount of the transaction.

7. For equity transactions executed during the Relevant Time Period, Merrill charged retail brokerage customers according to the account service level selected by the customer.

8. From July 31, 2020 to December 31, 2023², Merrill charged a fixed commission for customers of the firm’s “Merrill Edge” self-directed line of business who placed equity trades with the assistance of a broker rather than online.

9. From July 31, 2020 to November 2021, customers of the firm’s “Merrill [Edge] Advisory Center” line of business could be charged the greater of 5% or \$75 on equity trades with a principal amount of \$1,500 or less.

10. During the Relevant Time Period, Merrill’s policies and procedures noted that while certain factors may justify commissions at the higher end of the 0-5% range, these factors “do not necessarily allow [e]mployees to exceed the FINRA Rule 2121 5% markup/markdown or commission guideline.”

² Merrill’s principal line of business is Merrill Wealth Management, through which customer accounts are serviced by designated financial advisors. Merrill Wealth Management established a systemic commissions cap of 5% for equity trades prior to the Relevant Time Period. Merrill established a systemic commissions cap of 5% for all firm lines of business effective on December 31, 2023.

11. The Act and Regulations prohibit Merrill from charging unreasonable commissions for services performed.
12. FINRA Rule 2121 Supplementary Material .01 (Rule 2121.01) provides a guideline of five percent for determining whether a commission is unfair or unreasonable. However, the “5% Policy” is a guide, not a rule. A commission pattern of five percent or even less may be considered unfair or unreasonable under the 5% Policy.
13. In Massachusetts, Merrill executed 864 equity transactions for which the principal trade amount was \$2,500 or less that included an unreasonable commission for services performed (*i.e.* in excess of 5% of the principal trade amount) totaling \$17,516.78 during the Relevant Time Period.
14. Certain equity transactions executed by Merrill included a commission well in excess of 5% of the principal value of the transaction.

B. Merrill Did Not Reasonably Supervise Application of Equity Commissions

15. Merrill did not reasonably supervise the application of commissions on equity transactions for which the principal trade amount was \$2,500 or less to ensure that Merrill charged its customers a reasonable commission.
16. The commissions described above were “hard-coded” into Merrill’s Trade Processing System.
17. Merrill did not have in place surveillance sufficient to supervise small principal equity transactions where the commission charged was in excess of 5%.
18. Merrill’s surveillance systems failed to reasonably detect and correct unreasonable commission charges. As a result, Merrill failed to adequately supervise small principal equity transactions where the commission was in excess of 5%.

VI. VIOLATION OF LAW

Count I – Violation of M.G.L. c. 110A, § 204(a)(2)(J)

19. Section 204 of the Act provides:

The secretary may by order deny, suspend, or revoke any registration if he finds (1) that the order is in the public interest and (2) that the applicant or registrant

...

(J) has failed reasonably to supervise agents, investment adviser representatives or other employees to assure compliance with this chapter[.]

M.G.L. c. 110A, § 204(a)(2)(J).

20. Merrill's acts and practices, as described above, constitute a violation of M.G.L. c. 110A, § 204(a)(2)(J).

VII. ORDER

IT IS HEREBY ORDERED:

A. Merrill shall permanently cease and desist from conduct in violation of the Act and Regulations;

B. Merrill is censured by the Division;

C. Merrill shall provide restitution in an amount of no less than \$17,516.78, providing the amount of commissions on certain small principal equity transactions for which the principal trade amount was \$2,500 or less that exceed five percent (5%) of the principal trade amount during the Relevant Time Period to the affected Massachusetts customers, plus interest in the amount of 6% from the date of the transaction to the date of the Offer. Merrill agrees to provide restitution within one hundred and twenty (120) days of execution of any Order issued pursuant to this Order:

- i. Merrill shall provide restitution in the form of a credit to current customer accounts, or a check to former customers who no longer hold active accounts or involving an individual retirement account;

- ii. Merrill shall provide a notice of restitution to customers on terms not unacceptable to Massachusetts, Montana, Missouri, Alabama, Washington, Texas, and Iowa (the “Multi-state Group”) ("Notice"). The Notice shall be sent with the distribution of any restitution. Within forty-five (45) days of the transmission of the Notice, Merrill shall provide the Division with a list of all Massachusetts residents for whom Merrill receives a Notice as returned to sender ("Undeliverable Massachusetts Residents"). To the extent the Division has access to different address information, Merrill shall send a second Notice to each Massachusetts resident within thirty (30) days of the Division providing such different address; and
- iii. Within two hundred (200) days of the distribution of any restitution pursuant to paragraph VII(C), above, Merrill shall prepare, and submit to the Division, a report detailing the restitution paid pursuant to this Order, which shall include:
 - a. Identification of all payments made; and
 - b. Dates, amounts, and methods of the transfer of funds for all restitution payments.

D. Merrill shall pay an administrative fine in the amount of \$7,500 to Massachusetts within thirty (30) days following the date of entry of this Order. Payment shall be: (1) made by United States postal money order, certified check, bank cashier's check, bank money order, or wire; (2) made payable to the Commonwealth of Massachusetts; (3) either hand- delivered, mailed to One Ashburton Place, Room 1701, Boston Massachusetts 02108; or wired per the Division instructions; and (4) submitted under cover letter or other documentation that identifies payment by Merrill and the docket number of the proceeding;

E. Merrill shall certify that Merrill's policies and procedures have been changed and enhanced to ensure that all commissions are fair and reasonable. At a minimum, Merrill shall certify that its policies and procedures include the following:

- i. Compliance and Operational systems to prevent the imposition of unreasonable or unfair commissions;
- ii. Incorporation of all equity securities transactions, regardless of the principal amount of the transaction, into any systems used to identify and review potentially excessive commissions; and
- iii. Revisions to its policies and procedures sufficient to ensure the adequate implementation of the above.

F. Merrill shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any amounts that Merrill shall pay pursuant to this Order;

G. Merrill shall not seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to, any payments made pursuant to any insurance policy, with regard to any amount that Merrill shall pay pursuant to this Order;

H. If Merrill is the subject of a voluntary or involuntary bankruptcy petition under Title 11 of the United States Code within three hundred sixty-five (365) days of the entry of this Order, Merrill agrees to provide written notice to the Division within five (5) days of the date of the petition;

I. Any fine, penalty, and/or money that Merrill shall pay in accordance with this Order is intended by Merrill and the Division to be a contemporaneous exchange for new value given to Merrill pursuant to 11 U.S.C. § 547(c)(1)(A) and is, in fact, a substantially contemporaneous exchange pursuant to 11 U.S.C. § 547(c)(1)(B);

J. If Merrill fails to comply with any of the terms set forth in this Order, the Division may institute an action to have this agreement declared null and void. After notice and an opportunity for hearing, and the issuance of an order finding that Merrill has not complied with this Order, the Division may move to have this Order declared null and void, in whole or in part, and re-institute the associated proceeding that had been brought against Merrill; and

K. For good cause shown, the Division may agree to extend any of the procedural dates set forth above. Merrill agrees to make any requests for extensions of the dates set forth above in writing to the Division.

VIII. NO DISQUALIFICATION

This Order waives any disqualification in the laws of Massachusetts, or rules or regulations thereunder, including any disqualification from relying upon the registration exemptions or safe harbor provisions to which Merrill may be subject. This Order is not intended to be a final order based upon violations of the Act that prohibit fraudulent, manipulative, or deceptive conduct. This Order is not intended to form the basis of any disqualifications under Section 3(a)(39) of the Securities Exchange Act of 1934; or Rules 504(b)(3) and 506(d)(1) of Regulation D, Rule 262(a) of Regulation A and Rule 503(a) of Regulation CF under the Securities Act of 1933. This Order is not intended to form the basis of disqualification under the FINRA rules prohibiting continuance in membership absent the filing of a MC-400A application or disqualification under SRO rules prohibiting continuance in membership. This Order is not intended to form a basis of a disqualification under 204(a)(2) of the Uniform Securities Act of 1956 or Section 412(d) of the Uniform Securities Act of 2002. Except in an action by the Division to enforce the obligations of this Order, any acts performed or documents executed in furtherance of this Order: (a) may not be deemed or used as an admission of, or evidence of, the validity of any alleged wrongdoing,

liability, or lack of any wrongdoing or liability; or (b) may not be deemed or used as an admission of; or evidence of, any such alleged fault or omission of Merrill in any civil, criminal, arbitration, or administrative proceeding in any court, administrative agency, or tribunal.

**WILLIAM FRANCIS GALVIN
SECRETARY OF THE COMMONWEALTH**



Anthony R. Leone
Director
Securities Division
Office of the Secretary of the Commonwealth
John W. McCormack Building, 17th Floor
One Ashburton Place
Boston, MA 02108

Dated: 10/15/26