

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, MAY 26, 2016

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COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

CASE NO. SEC-2015-00060

MERRILL LYNCH, PIERCE, FENNER
& SMITH, INCORPORATED,
Defendant

SETTLEMENT ORDER

The State Corporation Commission's ("Commission") Division of Securities and Retail Franchising ("Division") conducted an investigation of Merrill Lynch, Pierce, Fenner & Smith, Incorporated ("Defendant") pursuant to § 13.1-518 of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia ("Code").

The Defendant is a Delaware corporation with a principal business address in New York, New York. The Defendant is registered by the Commission to transact the business of offering and selling securities as well as act as an investment advisor in the Commonwealth of Virginia ("Virginia").

Based on its investigation, the Division alleges that in February 2011, the Defendant, through its agents, recommended that one of its Virginia clients ("Virginia Investor") sell a fixed annuity to purchase a variable annuity. The Division alleges that the Defendant, through its agents, failed to provide the Virginia Investor a copy of the variable annuity's prospectus prior to or with the initial product illustration, in violation of the Defendant's policies, procedures and supervisory requirements. Additionally, the Division alleges that the offered variable annuity

product was not suitable for the Virginia Investor. Ultimately, the Virginia Investor sold his fixed annuity but did not purchase the offered variable annuity.

Accordingly, based on its investigation, the Division alleges the Defendant violated:

(i) Rule 21 VAC 5-20-260 D by failing to enforce its written policies and procedures; (ii) Rule 21 VAC 5-20-280 A (3) by recommending the purchase of a security without reasonable grounds to believe that the recommendation is suitable for the customer; and (iii) Rule 21 VAC 5-20-260 B by failing to exercise diligent supervision over the securities activities of its agents.

If the provisions of the Act are violated, the Commission is authorized by § 13.1-506 of the Act to revoke a defendant's registration, by § 13.1-519 of the Act to issue temporary or permanent injunctions, by § 13.1-518 A of the Act to impose costs of investigation, by § 13.1-521 A of the Act to impose certain monetary penalties, by § 13.1-521 C of the Act to order a defendant to make rescission and restitution, and by § 12.1-15 of the Code to settle matters within its jurisdiction.

The Defendant neither admits nor denies these allegations but admits to the Commission's jurisdiction and authority to enter this Settlement Order ("Order").

Prior to the entry of this Order, the Defendant offered rescission to the Virginia Investor and it was accepted. The Defendant has submitted to the Division a copy of the settlement with the Virginia Investor and proof of payment. In addition, as a proposal to settle all matters arising from these allegations, the Defendant has made an offer of settlement to the Commission wherein the Defendant will abide by and comply with the following terms:

(1) The Defendant will pay to the Treasurer of Virginia ("Treasurer"), within 14 days of the entry of this Order, the amount of Five Thousand Dollars (\$5,000) in monetary penalties.

(2) The Defendant will pay to the Treasurer, within 14 days of the entry of this Order, the amount of Six Thousand Five Hundred Dollars (\$6,500) to defray the cost of investigation.

(3) The Defendant will not violate the Act in the future.

The Division has recommended that the Commission accept the offer of settlement of the Defendant.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Division, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

(1) The offer of the Defendant in settlement of the matter set forth herein is hereby accepted.

(2) The Defendant shall fully comply with the aforesaid terms of this settlement.

(3) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

Dismissal of this case does not relieve the Defendant from its reporting obligations to any regulatory authority.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:

Mark Keene, Esquire, Merrill Lynch, Pierce, Fenner & Smith, Incorporated, 100 Federal Street, Boston, Massachusetts 02110; and Michael Wolk, Esquire, Sidley Austin, LLP, 1501 K Street, NW, Washington, DC 20005; and a copy shall be delivered to the Commission's Office of General Counsel and Division of Securities and Retail Franchising.

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Defendant

ADMISSION AND CONSENT

Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Defendant"), admits to the jurisdiction of the State Corporation Commission ("Commission") as to the party and subject matter hereof and, neither admitting nor denying the allegations made herein by the Division of Securities and Retail Franchising, hereby consents to the form, substance and entry of the foregoing Settlement Order ("Order").

The Defendant further states that no offer, tender, threat or promise of any kind whatsoever has been made by the Commission or any member, subordinate, employee, agent or representative thereof in consideration of the foregoing Order.

Merrill Lynch, Pierce, Fenner & Smith Incorporated

Date: May 2, 2016

By: Mark L. Keene
Mark Keene
Associate General Counsel and Managing
Director

Seen and Approved By:

Michael Wolk (TBN)
Michael Wolk, Esquire
Sidley Austin, LLP