

**STATE OF VERMONT  
DEPARTMENT OF FINANCIAL REGULATION**

**In Re: MERRILL LYNCH, PIERCE, )                    Docket No. 20-005-S**  
**FENNER & SMITH INCORPORATED )**

**STIPULATION AND CONSENT ORDER**

The Vermont Department of Financial Regulation (the “Department”) and Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill”) hereby enter into this Stipulation and Consent Order (“Order”).

**Introduction and Parties**

1. The Department, through its Commissioner, pursuant to the Vermont Uniform Securities Act, 9 V.S.A. Ch. 150, is charged with enforcing the securities laws of Vermont.

2. Merrill is a broker-dealer registered in Vermont and with the Financial Industry Regulatory Authority (“FINRA”), and an investment adviser registered with the U.S. Securities and Exchange Commission (“SEC”). Merrill maintains its headquarters in New York, New York.

3. Merrill acknowledges and admits the jurisdiction of the Commissioner over the subject matter of this Order.

4. The Department and Merrill enter into this Order to resolve, without further administrative proceedings, the Department’s allegation that Merrill violated 9 V.S.A. § 5412(d)(12) based on a cease and desist order issued by the SEC against Merrill in 2016.

5. Based on the Department’s investigation, the Department makes the Findings of Fact set forth herein.

6. Merrill neither admits nor denies the Findings of Fact set forth herein, except that Merrill admits to entering into an “Order Instituting Cease and Desist Proceedings Pursuant to

Section 8A of the Securities Act of 1933, Making Findings and Imposing a Cease and Desist Order” with the SEC on June 23, 2016 (“SEC Order”).

7. Merrill and the Department desire to avoid the expense and uncertainty of litigation, and accordingly agree to settle this matter on the terms set forth herein.

#### **Findings of Fact**

8. Pursuant to 9 V.S.A. § 5602(a), the Department investigated the conduct of Merrill in connection with the purchase of Strategic Return Notes linked to the Investable Volatility Index (“SRNs”) by Vermont residents.

9. On June 23, 2016, the SEC issued the SEC Order, Release No. 10103, concerning the SRNs. Merrill agreed to the SEC Order by consent and without admitting or denying the findings or alleged violations in the order. The SEC Order states that Merrill violated Section 17(a)(2) of the Securities Act of 1933 in connection with the offering materials for the SRNs. The SEC Order directs that Merrill cease-and-desist from violations of the Securities Act.

10. In its investigation, the Department identified 26 Vermont investors who purchased SRNs (the “Vermont Investors”).

11. The SRN offering materials that were the subject of the SEC Order were the same as those available to the Vermont Investors.

12. The Department has determined that this Order is in the public interest.

#### **Conclusions of Law**

13. The SEC Order represents a cease-and-desist order within the meaning of 9 V.S.A. § 5412(d)(12).

14. Pursuant to 9 V.S.A. § 5412(d)(12), the Commissioner may discipline Merrill for being the subject of the SEC Order.

15. Merrill acknowledges that noncompliance with any of the terms and conditions set forth in this Order may constitute a separate violation of the securities laws of the State of Vermont and may subject it to appropriate sanctions.

### **Consent Order**

16. Merrill shall pay an administrative penalty of \$125,000 to the Department within sixty (60) days of the entry of this Order.

17. Merrill hereby waives its statutory rights under 3 V.S.A. ch. 25 to notice and a hearing before the Commissioner of the Department, or his designated appointee.

18. Merrill acknowledges it has consulted with its attorneys in this matter.

19. Merrill acknowledges that this Order constitutes a valid order duly rendered by the Commissioner and agrees to be fully bound by it.

20. Merrill acknowledges that the Commissioner retains jurisdiction over this matter for the purposes of enforcing this Order.

21. Merrill consents to the entry of this Order and acknowledges that its consent is given freely and voluntarily and that no promise has been made to induce it to consent except as otherwise stated herein.

22. The Order is not intended to subject Merrill, or any of its affiliates, to any disqualification under federal securities laws, or rules and regulations thereunder, the rules and regulations of self-regulatory organizations or various states or U.S. Territories, including any disqualification from relying upon the registration exemptions or safe harbor provisions to which Merrill, or any of its affiliates, may be subject.

23. This Order is not, and shall not be deemed to be, a final order or a decree of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct and is not intended to subject Merrill or its affiliates to any statutory disqualification by FINRA.

24. 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 other tribunal.

25. The terms set forth in this Stipulation and Consent Order represent the complete agreement between the parties as to its subject matter.

April 22, 2020  
Date

Monik L. Keene  
Merrill Lynch, Pierce, Fenner & Smith Incorporated  
by its ASSOCIATE GENERAL COUNSEL

Entered at Montpelier, Vermont this 30th day of April 2020



Michael S. Pieciak, Commissioner  
Vermont Department of Financial Regulation