Press Release

Merrill Lynch Admits to Misleading Customers about Trading Venues

Will Pay $42 Million Penalty to Settle Charges

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Washington D.C., June 19, 2018 — The Securities and Exchange Commission today charged Merrill Lynch, Pierce, Fenner & Smith with misleading customers about how it handled their orders. Merrill Lynch agreed to settle the charges, admit wrongdoing, and pay a $42 million penalty.

According to the SEC's order, Merrill Lynch falsely informed customers that it had executed millions of orders internally when it actually had routed them for execution at other broker-dealers, including proprietary trading firms and wholesale market makers. Merrill Lynch called this practice "masking." Masking entailed reprogramming Merrill Lynch's systems to falsely report execution venues, altering records and reports, and providing misleading responses to customer inquiries. By masking the broker-dealers who had executed customers' orders, Merrill Lynch made itself appear to be a more active trading center and reduced access fees it typically paid to exchanges.

After Merrill Lynch stopped masking in May 2013, it did not inform customers about its past practices, but instead took additional steps to hide its misconduct. Altogether, the SEC's order found that Merrill Lynch falsely told customers that it executed more than 15 million "child" orders (portions of larger orders), comprising more than five billion shares, that actually were executed at third-party broker-dealers.

"By misleading customers about where their trades were executed, Merrill Lynch deprived them of the ability to make informed decisions regarding their orders and broker-dealer relationships," said Stephanie Avakian, Co-Director of the SEC's Enforcement Division. "Merrill Lynch, which admitted that it took steps to ensure that customers did not learn about this misconduct, fell far short of the standards expected of broker-dealers in our markets."

"Institutional traders often make careful choices about how and where their orders are sent out of a concern for information leakage," said Joseph Sansone, Chief of the Enforcement Division's Market Abuse Unit. "Because of masking, customers who had instructed Merrill Lynch not to route their orders to third-party broker-dealers did not know that Merrill Lynch had disregarded their instructions."

The SEC's order censures Merrill Lynch and requires it to pay a $42 million civil penalty.

The SEC's investigation was conducted by Marc E. Johnson, Colby A. Steele, Ainsley Kerr, and Carolyn M. Welshhans of the SEC Enforcement Division's Market Abuse and Cyber Units, and Cheryl Crumpton, Supervisory Trial Attorney. The case was supervised by Robert A. Cohen, Chief of the Cyber Unit, and Mr. Sansone.

The SEC appreciates the assistance of the Office of the New York Attorney General.

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Related Materials

- SEC Order