

Press Release

Merrill Lynch Settles SEC Charges of Undisclosed Conflict in Advisory Decision

FOR IMMEDIATE RELEASE

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Washington D.C., Aug. 20, 2018 — The Securities and Exchange Commission today announced that Merrill Lynch, Pierce, Fenner & Smith has agreed to pay approximately \$8.9 million to settle charges that it failed to disclose a conflict of interest arising out of its own business interests in deciding whether to continue to offer clients products managed by an outside third-party advisory firm.

The SEC's order finds that the conflict of interest arose in Merrill Lynch's handling of third-party products managed by a U.S. subsidiary of a foreign multinational bank, in which more than 1,500 of Merrill's retail advisory accounts had invested approximately \$575 million. According to the order, Merrill put new investments into these products on hold due to pending management changes at the third party, and Merrill's governance committee planned to vote on a recommendation to terminate the products and offer alternatives to investors. According to the order, the third-party manager sought to prevent termination and contacted senior Merrill executives, including making an appeal to consider the companies' broader business relationship. Following those communications, and in a break from ordinary practices, the governance committee did not vote and chose to defer action on termination. The governance committee later lifted the hold and opened the third-party products to new Merrill accounts. The SEC's order found that Merrill failed to disclose to its clients the conflicts of interest in Merrill's decision-making process.

"By failing to disclose its own business interests in deciding whether certain products should remain available to investment advisory clients, Merrill Lynch deprived its clients of unbiased financial advice," said Marc P. Berger, Director of the SEC's New York Regional Office. "Retail clients must feel confident that their advisors are eliminating or disclosing such conflicts and fulfilling their fiduciary duties."

Without admitting or denying the findings, Merrill consented to the SEC's order, which finds that the firm was negligent in violating the antifraud and policies and procedures provisions of the Investment Advisers Act of 1940. Merrill agreed to pay more than \$4 million in disgorgement, \$806,981 in prejudgment interest, and a more than \$4 million penalty, and to be censured and to cease and desist from further violations.

The SEC's investigation was conducted in New York by Megan R. Genet, Jennifer K. Vakiener, David Stoelting, and Steven G. Rawlings, and supervised by Lara Shalov Mehraban.

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Related Materials

- [SEC Order](#)