

Securities Regulation Daily Wrap Up, TOP STORY—Merrill Lynch to pay over \$10.9 million to end Reg SHO matter eyeing trading systems, (Jun. 1, 2015)

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By Mark S. Nelson, J.D.

The SEC announced that Merrill Lynch, Pierce, Fenner & Smith Incorporated (Merrill Lynch) and Merrill Lynch Professional Clearing Corporation will pay more than \$10.9 million to settle administrative charges brought by the SEC targeting how Merrill Lynch's systems handled short sales. The settlement includes a censure, a \$9 million civil money penalty, \$1.9 million in disgorgement and prejudgment interest, plus Merrill Lynch's admission of key facts (*In the Matter of Merrill Lynch, Fenner & Smith Incorporated and Merrill Lynch Professional Clearing Corporation*, June 1, 2015).

The SEC charged that Merrill Lynch violated the "locate" requirement of Rule 203(b) of Regulation SHO, the set of federal rules governing short sales. Specifically, Merrill Lynch accepted short sales even when securities on its easy-to-borrow (ETB) list had been watch-listed. Merrill Lynch's systems also let stale data contaminate the ETB list.

According to the order, Merrill Lynch engaged in numerous violations of Regulation SHO, including during the height of the Great Recession. In that instance, Merrill Lynch's systems continued to execute short sales of 1.358 million shares in one security despite warnings from its traders that no one could be found who was willing to lend stock.

Andrew M. Calamari, Director of the SEC's New York Regional Office, emphasized the need for trading firms to maintain current information in their systems. "When firm personnel determine that a security should no longer be considered easy to borrow, the firm's systems need to incorporate that knowledge immediately."

Merrill Lynch, registered with the SEC as both a broker-dealer and an investment adviser, is a subsidiary of Bank of America, which acquired the trading firm during the Great Recession. The SEC's order noted that its terms applied to Merrill Lynch's broker-dealer business only. The clearing firm involved in the matter is a registered broker-dealer and is a wholly-owned subsidiary of Merrill Lynch.

The release is No. 34-75083.

Companies: Merrill Lynch, Pierce, Fenner & Smith Inc.; Merrill Lynch Professional Clearing Corp.

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