

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10465 / March 8, 2018

SECURITIES EXCHANGE ACT OF 1934
Release No. 82826 / March 8, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18392

In the Matter of

**Merrill Lynch, Pierce, Fenner & Smith
Incorporated**

Respondent

**ORDER INSTITUTING
ADMINISTRATIVE AND
CEASE-AND-DESIST
PROCEEDINGS, PURSUANT
TO SECTION 8A OF THE
SECURITIES ACT OF 1933
AND SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT
OF 1934, MAKING FINDINGS,
AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) against Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Respondent” or “Merrill”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

A. Summary

From January 24, 2011 to August 18, 2011 Merrill violated the registration provisions of the federal securities laws by effecting unregistered sales of almost 3 million shares of Longtop Financial Technologies Limited's ("Longtop") securities for a customer. Longtop's securities were trading in the United States as American Depositary Shares ("ADSs"). Longtop's Chairman had obtained the 3 million unregistered shares from Longtop as one of its founders. In the summer of 2010, the Chairman purported to gift Longtop ordinary shares through a trust to existing and ex-employees of Longtop, who were the purported beneficiaries of that trust. The related ADSs were then sold in about 68 transactions through an account at Merrill's Singapore branch office held in the name of the trust's nominee ("Nominee").

Section 5 of the Securities Act generally requires registration of securities offerings, or an available exemption from registration, including for resales such as the sales through the Nominee account at Merrill. Although brokers frequently rely on an exemption under Section 4(a)(4) of the Securities Act, known as the brokers' transaction exemption, this exemption was not available to Merrill for any of the Longtop ADS sales through the Nominee account. For this exemption to be available, Merrill was required, before selling securities on its customers' behalf, to engage in a reasonable inquiry into the facts surrounding the customers' proposed sales to determine if the customers were engaging in an unlawful distribution of securities. The amount of inquiry a broker must conduct as part of this reasonable inquiry varies with the facts and circumstances of each transaction. The requirement that a broker conduct a reasonable inquiry is not limited to penny stock transactions.

Here, the Merrill team evaluating the proposed sales engaged in some inquiry before the first sales that revealed red flags that Longtop, its management, and the Chairman maintained control of the securities, thus indicating the purported gifts were not bona fide and the sales could be part of an unlawful unregistered distribution by Longtop and its affiliates. Nevertheless, Merrill did not properly investigate, failed to inquire about the identities of the purported sellers and whether they were affiliates of Longtop, and instead allowed the sales to go forward.

In January 2011, Merrill cleared a block of almost 1 million Longtop ADSs for future sales through the Nominee account by unknown sellers. Merrill did not conduct any subsequent reviews when these ADSs were sold between January 24, 2011 and May 4, 2011. During this time, Merrill was presented with additional red flags that should have prompted the firm to conduct further inquiry and consider whether an exemption from securities offering registration was available. For instance, Merrill failed to perform any inquiry after an April 2011 online report accused Longtop of financial fraud and questioned the legitimacy of the Chairman's gift of shares.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Likewise, in early May 2011, when nearly 2 million more Longtop unregistered securities were deposited into the Nominee account, Merrill failed to conduct any inquiry before effecting additional sales of the Longtop ADSs. Even after learning of more red flags, including that Longtop's auditor resigned in late May 2011, citing the Chairman's admissions of fraud, and Longtop's securities were delisted by the NYSE in August 2011, Merrill still made no inquiry to determine whether the ADSs could be sold without registration.

Accordingly, Merrill did not perform a reasonable inquiry and was not entitled to rely on the brokers' transaction exemption. Merrill engaged in an unregistered distribution through the Nominee account, generating approximately \$38 million in proceeds for the benefit of Longtop and its affiliates. Merrill wired the proceeds from the Nominee account to a Hong Kong bank account in the name of a different entity. This entity also was controlled by Longtop management. Merrill received over \$127,000 in commissions and fees during the relevant period. By virtue of its conduct, Merrill willfully violated Sections 5(a) and 5(c) of the Securities Act.²

B. Respondent

1. Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill") is a registered broker-dealer and investment adviser and wholly-owned subsidiary of Bank of America Corporation. The 2011 sales transactions of Longtop ADSs occurred in a brokerage account that was opened at a Merrill branch office in Singapore and executed by traders in Merrill's New York City office at the direction of Merrill's Singapore registered representatives. In 2013, Merrill sold its Singapore branch office and the branch employees handling the Nominee account ceased their association with Merrill.

C. Related Entity

2. Longtop, a Cayman Islands corporation had, during the relevant period, principal offices in Hong Kong and Xiamen, China, and provided software, consulting and support services for the financial services industry in the People's Republic of China ("PRC"). Longtop was a foreign private issuer required to file annual reports on Form 20-F with the Commission; and Longtop's class of ordinary shares was registered pursuant to Section 12(b) of the Exchange Act. Longtop's ADSs, representing the ordinary shares, were listed and began trading on the NYSE on October 24, 2007, under the symbol LFT. The NYSE halted trading in the company's ADSs on May 17, 2011, and filed a Form 25 on August 17, 2011, delisting LFT as of August 29, 2011. On August 17, 2011, Longtop ADSs were quoted in the U.S. over-the-counter market ("OTC") under the symbol "LGFTY." The Commission, pursuant to Section 12(j) of the Securities Act of 1934, revoked Longtop's securities registration, by default, on December 14, 2011. *See* Exch. Act Rel. No. 65948 (December 14, 2011), AP File No. 3-14622.

² A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

D. Facts

The Public Distribution

3. Longtop's Chairman, who was based in the PRC, and entities he controlled owned a total of almost 40% of Longtop's shares as of December 31, 2010, including the Longtop ADSs deposited and sold through the Nominee account at Merrill. The Chairman created and used a series of trusts and trust agreements in the summer of 2010 to purportedly gift 3 million unregistered ordinary shares that he had acquired as a founder of the company to certain individuals, including current and former Longtop employees. According to Longtop's annual report on Form 20-F filed July 16, 2010, for the fiscal year ending March 31, 2010, the shares were to be gifted "from time to time to our previous and existing employees and consultants who are or become beneficiaries of the trust."

4. The 3 million ordinary shares were converted to ADSs, and transferred to a Merrill Singapore account in the name of the Nominee in two tranches – one million ADSs in January 2011 and the remaining 2 million ADSs in May 2011, and over 2.9 million Longtop ADSs were sold through this account from January to August 2011.

5. The ADSs remained under the control of Longtop, its Chairman, and its management. In addition, proceeds from the sales were not transferred to the purported giftees but instead were transferred to a Hong Kong bank account of a different entity that was controlled by Longtop management (the "Hong Kong Bank Account"). Unknown to Merrill, the majority of the proceeds were then transferred from the Hong Kong Bank Account to one or more affiliates of Longtop, including Longtop's CEO and a Director.

6. The sales of Longtop securities did not qualify for an exemption from registration and constituted an unregistered public distribution in violation of Section 5 of the Securities Act.

Merrill's Only Inquiry Was Not Reasonable

7. In January 2011, Merrill's Executive and Equity Services department ("EES"), the group that performed due diligence for the sale of restricted and control securities, received a request from Merrill's Singapore branch employees who were handling the Nominee account, to approve anticipated sales of 1 million restricted Longtop ADSs. Merrill's Singapore branch employees told EES that the sales would be by multiple Longtop employees who had received ordinary shares as gifts from the Chairman.

8. EES undertook a limited inquiry to analyze whether the sales complied with Section 5 and Rule 144. EES reviewed Longtop's public filings, and determined that Longtop's ADSs were listed on the NYSE, Longtop was current with its SEC filings as of January 2011, its independent auditor was a well-known firm in China, and its U.S. based outside counsel was not on a list of known securities law offenders. EES also gathered information from the Singapore branch concerning Longtop and the Nominee, and had discussions with Longtop's U.S.-based outside counsel.

Merrill Had Information Indicating the Chairman and Longtop Retained Control of the Shares and the Purported Beneficiaries May be Affiliates

9. Merrill, however, had information indicating that the anticipated sales may constitute an offering by Longtop and its affiliates, and not resales by unaffiliated beneficiaries. For instance, EES reviewed several Longtop filings with the Commission indicating that the Chairman retained control over the shares, thus undermining the legitimacy of the gift. Specifically, Longtop's July 2010 Form 20-F stated that the directors of the Nominee consisted of three of Longtop's employees who administered the trust "at the direction of the Company's Chairman." In addition, a Schedule 13G filed on June 9, 2010 indicated that a trust controlled by the Chairman retained voting power over the shares transferred to beneficiaries until the shares were sold. The extent of the Chairman's control was inconsistent with the purported gift to the beneficiaries.

10. Additionally, in September 2010, the Chairman and the three Nominee directors opened an account at Merrill's Singapore branch in the name of the Nominee. The Chairman was identified on Merrill's account opening documents as the sole beneficial owner of the account. The account opening documents defined beneficial owner as "the person who contributes to or exercises control over the account." These account opening materials were in Merrill's possession but were not requested or reviewed by EES.

11. Furthermore, the Form 20-F for fiscal year 2010 stated that the shares were to be gifted from time to time to employees who are or become beneficiaries of the trust. Gifting shares to company employees should have raised questions about whether any of those employees were affiliates. Moreover, the fact that the trust contemplated people being added in the future led to a heightened risk that affiliates might be added to the class of beneficiaries.

Merrill Failed to Determine the Identities of the Purported Beneficiary Sellers

12. All of this information should have raised questions about the identity of the beneficiaries and their relationship to the issuer and its affiliates. Yet, at no point did anyone in Merrill's EES ever seek to ascertain the actual identity of the purported beneficiary sellers and their connection to Longtop or any of its affiliates including its Chairman. For instance, Merrill's EES never requested or obtained the list of purported sellers from the Singapore branch.

13. The EES employees conducting due diligence on the proposed Nominee sales knew that approving the sales of shares out of one omnibus account on behalf of multiple sellers – not to mention unknown foreign sellers – was highly unusual. The EES employees consulted Merrill in-house counsel and flagged the issues, yet they permitted the sales to go forward without conducting a reasonable inquiry.

Certain Trust Provisions Designed to Ensure a Bona Fide Gift to Beneficiaries were not Followed

14. Certain trust provisions that were designed to ensure a bona fide gift of Longtop securities to the beneficiaries were not followed. For instance, the trust required that a written sell order form be signed by each beneficiary directing the Nominee to sell some or all of the shares after 6 months

and the net proceeds of sales were to be put into an account in the name of each beneficiary. Merrill's Singapore branch employees were familiar with the trust provisions and knew these directives were not followed.

15. Merrill knew that purported giftees had not executed signed, written sell order forms, as required by the trust. In lieu of the written sell order forms, Merrill received emails from a Longtop supervisor with instructions for the sale of Longtop securities by purported giftees who had supposedly placed orders through an internal system at Longtop. Accordingly, Merrill knew it could not verify that sell orders were actually being placed by purported giftees. In fact, Merrill received some sell orders where no purported giftees were identified.

16. Furthermore, Merrill failed to pay sales proceeds into accounts in the name of each purported seller, which was contrary to provisions of the trust. Merrill did not open accounts for each purported beneficiary so the sales proceeds were deposited into the Nominee account. The Nominee account documents in Merrill's possession showed a Longtop Vice President (of business operations) had sole authority to wire funds out of the Nominee account. In fact, at this Longtop Vice President's direction, Merrill wired all of the sales proceeds from the Nominee account to the Hong Kong Bank Account, which was in the name of a different entity. Merrill therefore had no confirmation that the purported beneficiaries ever received proceeds for their purported sales of Longtop ADSs. In fact, the Hong Kong Bank Account was under the control of this same Longtop Vice President.

Merrill Failed to Determine whether the Purported Beneficiaries were Affiliates

17. Merrill failed to determine whether the purported beneficiary sellers were affiliates. Instead, Merrill sought a letter from the Nominee stating that it was not an affiliate of Longtop.

18. Merrill's EES employee also spoke to Longtop's U.S.-based outside counsel. While Longtop's U.S.-based outside counsel told Merrill that he had no issue with a representation from the Nominee that it was not an affiliate, he said he had not independently verified that representation and did not know who two of the Nominee directors were. He also did not know how many beneficiaries would be selling through the Nominee account. He suggested that EES get additional information about the Nominee directors and the sellers, but EES did not adequately follow-up on either issue.

19. Merrill had access to information raising questions about the Nominee's purported non-affiliate status. For example, EES had reviewed Longtop's filings with the Commission suggesting that the Nominee was under common control with Longtop's Chairman. Specifically, a Form 20-F noted that the three Longtop employee directors of the Nominee administered the trust at the direction of the Chairman. In addition, Merrill's account opening forms and other account documentation for the Nominee account, which EES did not review, identified the three directors of the Nominee as high level managers of Longtop.

20. Rather than taking steps to determine if any of the purported beneficiaries were affiliates of Longtop, Merrill relied solely on Longtop to identify its affiliates on the list of purported beneficiaries. Longtop identified only one affiliate, a Longtop Board Director, and a separate

Merrill account was opened for the Director's 69,429 ADSs. Even though this Board Director's shares were transferred out of the Nominee account and were never sold from her account, unknown to Merrill, she ultimately received more than \$1.8 million of the proceeds of the sales through the Nominee account after they were transferred to the Hong Kong Bank Account.

21. Despite red flags indicating the sales might be an unregistered distribution on behalf of Longtop and its management rather than the purported giftees, Merrill's EES conveyed to the Singapore financial advisor that the entire first block of restricted Longtop ADSs (953,714) could be sold through the Nominee account without approving any actual transactions, and without knowing who was really selling the securities and who was receiving the proceeds.

22. Accordingly, Merrill failed to conduct the reasonable inquiry necessary for it to be able to rely on the "brokers' transaction" exemption with respect to resales of Longtop ADSs through the Nominee account at Merrill.

Merrill Failed to Conduct Any Further Inquiry Before Executing the Nominee's Sales of Longtop ADSs

23. EES closed its inquiry on January 24, 2011 and thereafter did not engage in *any* further inquiry in connection with the sales of unregistered Longtop ADSs through the Nominee account. Even when 2 million more unregistered Longtop ADSs were deposited into the Nominee account on May 3, 2011, EES was not contacted about the proposed sale of these additional 2 million ADSs and no further review was conducted by anyone at Merrill before effecting sales of the securities over a period of months.

24. Merrill failed to consider changes in facts and circumstances that should have prompted additional inquiry to determine whether the sales were exempt from registration.

25. Between January 24, 2011, when Merrill approved the future sale of the first block of ADSs, and April 26, 2011, when an online report alleged a financial fraud at Longtop, Merrill effected sales of roughly 287,000 Longtop ADSs in the Nominee account in about 39 transactions, generating about \$9 million in sales proceeds, which were wired to the Hong Kong Bank Account.

Merrill Learned About Allegations of Fraud at Longtop and Suspicions about the Chairman's Gift of Shares

26. On April 26, 2011, an online research report accused Longtop of engaging in financial fraud, challenged the legitimacy of the Chairman's gift of shares, and questioned whether the transaction "generated[d] an undisclosed benefit to [the Chairman]." Merrill's Singapore branch was aware of the online report and denied a request from the Chairman to open a new account until the company released its year-end financial results on May 23, 2011 and addressed the fraud allegations.

27. Notwithstanding the fraud allegations in the online report, Merrill continued effecting sales of the unregistered ADSs out of the Nominee account.

28. After the April 26, 2011 online report, but before trading in Longtop ADSs was halted on May 17, 2011, sales requests were escalated and Merrill effected sales of an additional 1,320,000 unregistered Longtop ADSs in the Nominee account in about 28 transactions, generating more than \$27 million in sales proceeds, which were wired to the Hong Kong Bank Account.

Merrill Learned that Trading in Longtop was Halted, Longtop's Auditor Resigned, and the Chairman Admitted Management was Involved in the Fraud

29. On May 17, 2011, the NYSE halted all trading in Longtop securities.

30. Merrill knew that on May 23, 2011, Longtop announced that its independent auditor resigned after finding evidence of financial fraud. The auditor warned that continued reliance should no longer be placed on its audit reports on Longtop's financial statements previously filed with the Commission. The auditor's resignation letter further disclosed that the Chairman admitted that the company had fake sales and had recorded fake revenue, and that senior management was involved. Factors that Merrill's EES had relied on to approve the trades – that Longtop was current in its filings, which included financial statements audited by a well-known auditor firm – were no longer true and should have raised concerns about whether an exemption from securities offering registration was available..

Longtop Securities Resumed Trading in the OTC Market

31. On August 17, 2011, the NYSE delisted Longtop securities based in part on information in the auditor's resignation letter. Subsequently, Longtop securities began trading in the OTC market as a penny stock.

32. Without conducting any further inquiry, Merrill effected sales of the remaining 1,262,576 Longtop ADSs in the Nominee account on about August 18, 2011. These sales generated about \$613,964 in proceeds which were wired to the Hong Kong Bank Account.

The Section 4(a)(4) Brokers' Exemption Is Not Available to Merrill Lynch Because It Did Not Engage in a Reasonable Inquiry

33. Sections 5(a) and 5(c) of the Securities Act prohibit the offer and sale of securities through interstate commerce or the mails, unless a registration statement is filed with the Commission and is in effect. 15 U.S.C. § 77e(a) and (c).

34. No registration statement was filed or in effect as to Longtop ADSs sold out of the Nominee account. Longtop and Merrill used instrumentalities of interstate commerce to effect the unregistered sales of Longtop securities into the marketplace. For instance, the Internet was used to effect trades on the NYSE and OTC markets, faxes were used to communicate with the depository bank to convert ordinary shares to ADSs, and Merrill used telephones to communicate with Longtop's outside counsel. In addition, no exemption was available for the sales.

35. Section 4(a)(4) of the Securities Act exempts from the registration requirements "brokers' transactions executed upon customers' orders on any exchange or in the over-the-counter market

but not the solicitation of such orders.” 15 U.S.C. § 77d(a)(4). Section 4(a)(4) of the Securities Act is unavailable, for example, when a broker-dealer “knows or has reasonable grounds to believe that the selling customer’s part of the transaction is not exempt from Section 5 of the Securities Act.” *In the Matter of John A. Carley*, Exchange Act Rel. No. 57,246, 2008 WL 268598, *8 (Jan. 31, 2008) (Commission opinion). To rely on this exemption, the broker must, among other things, engage in a “reasonable inquiry” prior to the transaction, and after such inquiry it must not be “aware of circumstances indicating that the person for whose account the securities are sold is an underwriter with respect to the securities or that the transaction is a part of a distribution of the securities of the issuer.” 15 U.S.C. § 77d(a)(4); 17 CFR § 230.144(g)(4). Section 2(a)(11) of the Securities Act defines an underwriter as “any person who has purchased from an issuer, with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking.” 15 U.S.C. § 77b(a)(11). Whether a broker’s inquiry qualifies as “reasonable” depends upon the facts and circumstances surrounding the transaction. *See World Trade Financial Corp. v SEC*, 739 F. 3d 1243, 1248 (9th Cir. 2014); *Wonsover v SEC*, 205 F.3d 408, 415 (D.C. Cir. 2000).

36. Given the facts and red flags present, Merrill’s sole inquiry in January 2011 was not reasonable. At the time, Merrill had significant indicia that transactions in the Nominee account could be part of an unregistered public distribution by Longtop and its management. The red flags included:

- a. Longtop’s filings with the Commission indicated that the Chairman retained control of the shares, thus undermining the purported gift.
- b. Merrill’s account opening documents for the Nominee account identified the Chairman as the sole beneficial owner of the account, which similarly undermined the purported gift.
- c. Longtop’s filings with the Commission disclosed that the class of beneficiaries included company employees and could be expanded in the future, which posed a risk that beneficiaries may be affiliates.
- d. Although Merrill’s EES staff recognized that the proposed structure for future transactions from one omnibus account for unknown sellers was highly unusual, Merrill never took steps to ascertain the identity of the purported beneficiary sellers, their connection to Longtop, or their connection to Longtop affiliates including the company’s Chairman.
- e. Merrill obtained a letter from the Nominee stating it was not an affiliate of Longtop. However, Merrill had access to information raising questions about the Nominee’s purported non-affiliate status.

37. In view of these circumstances, Merrill’s inquiry was not reasonable. When conducting a reasonable inquiry into whether the transaction would violate Section 5, “it is not sufficient for [the broker-dealer] merely to accept ‘self-serving statements of his sellers and their counsel without reasonably exploring the possibility of contrary facts.’” *See Distribution by Broker-Dealers of Unregistered Securities, Securities Act Release No. 4445 (Feb. 2, 1962) (Commission interpretative release)*; *see also World Trade Financial Corp. v. SEC*, 739 F. 3d at 1249 (9th Cir.

2014) (“[B]rokers rely on third-parties at their own peril, and will not avoid liability through that reliance when the duty of reasonable inquiry rests with the brokers.”) Here, Merrill accepted self-serving statements by the issuer and its counsel, without reasonably exploring contrary facts that came to its attention.

38. Notwithstanding Merrill’s failure to conduct a reasonable inquiry, the firm agreed to clear a large block of restricted Longtop ADSs (953,714) for future sales through the Nominee account. Merrill did no further inquiry prior to effecting the sales of close to another 2 million Longtop ADSs that were deposited in May 2011 and sold out of the Nominee account even after Merrill became aware of additional red flags.

39. The additional red flags included:

- a. Merrill received sell orders without an identified beneficiary.
- b. Merrill was on notice that Longtop management directed that the sales proceeds be transferred from the Nominee account to a foreign bank account in the name of a different entity, not to the purported beneficiaries.
- c. An online report alleged a financial fraud at Longtop and challenged the validity of the chairman’s gift of shares.
- d. The NYSE halted and then delisted Longtop’s ADSs.
- e. Longtop’s auditor resigned due to evidence of financial fraud, stating that its audit opinions should not be relied upon.

40. Merrill’s failure to conduct any further inquiry was unreasonable. *See Owen V. Kane*, Exchange Act Release No. 23827, 1986 WL 626043, at *4 (Nov. 20, 1986) (finding that the broker had “no reasonable basis” for believing a stock was exempt from registration without making an investigation); *Evans & Co.*, Exchange Act Release No. 21696, 1985 WL 548642, at *5–6 (Jan. 30, 1986) (“A broker-dealer ... relying on Section 4(4) cannot act as a mere order-taker. It must make whatever inquiries are necessary under the circumstances to ensure that its customer is not an underwriter.”).

41. Accordingly, Merrill cannot rely on the Section 4(a)(4) brokers’ exemption for any of the sales.

E. Violations

As a result of the conduct described above, Merrill willfully violated Section 5(a) of the Securities Act which prohibits the sale of securities through interstate commerce or the mails, unless a registration statement is in effect; and willfully violated Section 5(c) of the Act which prohibits the offer to sell any security through interstate commerce or the mails, unless a registration statement has been filed as to such security with the Commission. 15 U.S.C. § 77e(a) and (c).

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Section 8A of the Securities Act and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 5(a) and 5(c) of the Securities Act.

B. Respondent is censured.

C. Respondent shall, within 15 days of the entry of this Order, pay disgorgement of \$127,545 and prejudgment interest of \$27,340 to the Securities and Exchange Commission for transfer to the United States Treasury in accordance with Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

D. Respondent shall, within 15 days of the entry of this Order, pay a civil money penalty in the amount of \$1.25 million to the Securities and Exchange Commission for transfer to the United States Treasury in accordance with Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

E. The foregoing payments must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Merrill Lynch, Pierce, Fenner & Smith Incorporated as Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Antonia Chion, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

By the Commission.

Brent J. Fields
Secretary