

To: Jonathan G. Katz, Secretary, SEC
From: Gordon E. Jones, CFP
Re: File #S7-25-99
Affiliation: Investment Advisor Representative
Raymond James Advisory Services, Inc.

Mr. Secretary:

I worked for Merrill Lynch as a registered representative from late 1982 until late 1994. I resigned from Merrill Lynch to take a position as an Investment Advisor Representative with Raymond James Financial Services, then known as Investment Management & Research.

While working at Merrill Lynch, I discovered the following practices to be common, customary, and either sanctioned or tolerated by Merrill Management:

- 1) Merrill attempted to create trust in client's minds by creating new titles for us, such as "Financial Advisor", "Financial Consultant", "Trusted Global Advisor", etc. The titles were designed to lead clients to the feeling that we were "advisors" and that we had their best interests at heart, instead of being commissioned salespeople with quotas to meet.
- 2) As an Investment Advisor Representative under the Investment Advisors Act of 1940, I am required to act as a fiduciary, make full disclosure of all disciplinary actions against me, disclose any and all conflicts of interest, all commissions or fees, all reasonable investment alternatives, mutual fund share class options and costs, etc. to all clients and prospects. I keep a current copy of my CRD at my desk for disclosure to prospective clients.
 - (a) At Merrill, discussion of fees or commissions with clients was not practiced, nor did management expect it. Unless a client specifically asked, the subject was never brought up. Prospectuses were seldom delivered. Markups on bonds were strictly not disclosed to clients.
 - (b) However, Merrill brokers try to take the "high road" and proclaim their concern for client well being.
 - (c) There is a sign over the cashier's window reading: "the client's best interest shall always be our first priority". However it was widely known that the client's interests were in reality subordinate to shareholders, corporate interests, officer salaries and bonuses, and broker's commissions.
 - (d) During my career at Merrill Lynch, there was no form available to disclose pertinent facts about mutual fund exchanges. If a broker wanted to be careful, he had the client sign a short hand-written statement on a yellow-pad, which usually disappeared in the broker's file.
 - (e) We were warned internally to avoid becoming a Fiduciary at all costs.
 - (f) During my 12 years at Merrill, approximately 25% of the brokers in my office had received formal complaints and/or been the subject of

arbitrations. Since I left, I believe that number has risen to 50% of all brokers with 10 years' of employment there. Partially because of this proposed rule, NONE OF THAT DISCIPLINARY HISTORY IS REQUIRED TO BE DISCLOSED TO THE PROSPECT OR CLIENT.

- 3) We were trained in the art of “consultative” salesmanship, in which we were trained to empathize with clients, discover where the client was “hurting”, and then sell them financial product to solve that “hurt”. If the solution in fact helped the client financially, that was only a side benefit – the main goal was to derive revenue for the firm.
- 4) For many years, Merrill would not allow the designation “Certified Financial Planner” or “CFP” to be used on business cards or any other communications with the public. However, they designed and promoted their own designation, titled CFM. As I learned later, the CFM was a very poor and limited substitute for the real CFP designation.
- 5) Merrill Introduced canned “financial plans” titled “Financial Foundations” during the early 1990’s.
 - (a) These plans were pushed on the brokers, who were strongly urged to sell them for \$250 (commissionable to the broker) to as many customers as possible.
 - (b) They were portrayed by management and brokers to the clients as being “almost the same as plans prepared by independent financial planners charging thousands of dollars”. This was patently false, as I found out after leaving Merrill.
 - (c) A regional manager at Merrill told me that I was “missing the boat” by not doing financial plans, as statistics showed that those clients who did plans paid 40% more commissions than those that didn’t.
 - (d) The broker completed a questionnaire (supposedly with the client’s cooperation – more later), mailed the questionnaire to New Jersey, and in a month received back a leatherette book for delivery to the client.
 - (e) In fact, they were not financial plans at all, but thinly disguised sales tools. It included a reprint of the questionnaire, about 50 pages of boilerplate common to all plans, a rudimentary balance sheet, and 5-10 pages of very general recommendations. These recommendations generally included phrases such as: “you don’t have enough life insurance – see your Merrill Lynch Life Insurance Agent”, or “you don’t have enough stocks – see your Merrill Lynch broker”, you are paying too much in taxes – see your Merrill Lynch broker about municipal bonds.
 - (f) Nowhere in the plan was any type of risk assessment performed, nor any calculation done of the client’s ability to accomplish goals of any kind - nor was the client ever asked about his goals!
 - (g) Merrill held a contest each year for brokers. As the 1990’s wore on, the Financial Foundation played a greater part in a broker’s contest results, with those who sold more plans being financially rewarded for it. This reward was never disclosed to clients.

- (h) On the other side, Merrill finally placed a requirement that all brokers sell a certain number of plans – or lose their jobs. Of course, this was never disclosed to clients either.
 - (i) In our office, the manager wanted to win so badly that he offered to reimburse the client’s \$250 fee, and that brokers would win trips based on the number of plans sold. Several brokers quietly filled out many questionnaires – usually without the client’s knowledge or participation – and turned them in. When the reports were returned the brokers destroyed the vast majority of plans rather than deliver them to the clients and admit what they had done. Very few clients noticed the \$250 charge to their accounts (or the refund), but those who did were told that it “was a clerical error and had been corrected”. However, as a reward for large numbers of plans “sold”, several brokers were sent to Bermuda for a 3-night vacation, and one spent 7 days in Hawaii – all because they did a large number of plans. I refused to participate in the sham and was threatened by the region manager with being fired if I didn’t participate.
- 6) At one point in my career, I created a marketing brochure in which I made statements about the values I stood for (i.e., fairness, openness, honesty), what services I delivered, and what I expected from clients in return (honesty, open communication). {Note – it contained no inflammatory or promissory statements of performance nor guarantees of any kind}. However, my office manager refused to let me send it, stating as his reason: “some client might actually expect you to deliver!”. When I joined Raymond James, I was introduced to a markedly similar document entitled “Your Rights and Responsibilities as an Investor”, which was delivered by the company to ALL new clients upon opening an account.
- 7) Merrill created a new fee-based account shortly before I left, in which the client was offered “financial planning, advice, consultation, and commission-free trades” (in that order).
- (a) When I left Merrill, I had accumulated about 2000 client names in my book. Of course, there is no way a broker can adequately service 2000 clients, nor even talk to most of them. The “80/20” rule applies well here, as 80% of clients received less than 20% of a broker’s time.
 - (b) It had long been promoted by management and accepted by brokers that having such a large number of clients was the key to being successful – because with a large number of clients, there would always be clients with a financial need every day, so deriving commissions would be a simple matter of answering the phone and selling something to them.
 - (c) However, for the clients that never called, no commissions were generated to the brokers or the firm, but the client had been assured by the broker that “he was watching the account”..
 - (d) With the new fee accounts, the broker now had a way to assure the clients that they were always available for financial planning services,

and that they were entitled them to such consultations and advice – for just a small percentage fee.

- (e) Of course, the broker still didn't have any more time to talk to most of their clients than he did before, but now the broker could earn a percentage fee on dormant assets, dramatically increasing their incomes with no extra work and no extra services delivered to the majority of clients.
 - (f) When the new fee accounts came out, a running joke at our office was “let's tell the client that if they pay us a fee every year, we'll promised NOT to call them – and that the client's account will do better for our neglect”
- 8) As a broker with Merrill, I tried to understand the client's financial situation before making any recommendations. I was criticized by other brokers and management for spending too much time with clients – “see 'em, sell 'em, and move on to the next one” was the advice.
- 9) In my current business, a fairly substantial portion of my new clients are referrals from CPAs and Attorneys whose clients have been neglected, abused, taken advantage of or otherwise treated badly by the large brokerage firms (Merrill Lynch and Morgan Stanley are the primary offenders in this area).
- (a) Many of these new clients should be entitled and able to recover monetary damages for inappropriate actions at their previous firms.
 - (b) However, the reality is that few clients are willing to file a complaint or arbitration by themselves (much less are they capable or have time to take an arbitration through to resolution). Few attorneys that specialize in securities law can afford to take a case unless there is clear evidence of abuse and the probable recovery is at least \$100,000. Therefore, large firm brokers know they have little practical worry from clients with small to mid-size accounts. Defending what little action is taken is considered a “normal cost of doing business”.
 - (c) At Merrill, my region manager announced that he was going to give an award for the “Ethical Broker of the Year”. All the brokers started snickering, recognizing that “gross production less lawsuit payouts” was going to be the yardstick for the award.

I could go on for hours listing the differences between large wirehouse brokers and financial planners. But the point of my story is that:

If a company is going to advertise and brag about their “consultation”, “advice”, and “financial planning services”, and if they charge a fee for such items, then several things should be obvious:

- (a) Such services are obviously NOT incidental to sales activities, but an integral part of their published service offerings.
- (b) Brokers ARE receiving special compensation for promising those services, that are often unrelated to sales activity.

- (c) They should be prepared to deliver such services, but usually aren't trained or equipped intellectually or technically to do so.
- (d) They should have the personal and/or staff capacity to deliver such services to ALL clients who are paying for such services – but don't.
- (e) If they do not submit to registration and regulation, then they should be precluded from advertising, from use of words which indicate that they are.
- (f) Prominent disclosure that the account is a “brokerage account” is meaningless to most clients in determining what is included, so such disclosure is totally inadequate as a consumer protection.
- (g) Fee-based accounts – as most large-firms practice them – do NOT align client interests with brokers or firms any better than a pure commission account.
- (h) Any financial professional or firm offering these services should be licensed and regulated in the same manner and should make the same disclosures as those who actually do deliver such services – WHY SHOULD EXEMPTIONS BE WARRANTED?