UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 60071 / June 8, 2009

INVESTMENT ADVISERS ACT OF 1940
Release No. 2889 / June 8, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13356

In the Matter of Michael A. Callaway, Respondent.	ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS PURSUANT TO SECTION 15(b)(6) OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940 AND IMPOSING A CEASE-AND-DESIST ORDER

I.

On January 30, 2009, the Securities and Exchange Commission ("Commission") instituted public administrative and cease-and-desist proceedings pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 ("Exchange Act") and Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Respondent Michael A. Callaway ("Callaway" or "Respondent").

II.

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 him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Making Findings and Imposing Remedial Sanctions Pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 and Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

A. SUMMARY

From at least 2000 through 2005 (the "relevant period"), Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch"), through its pension consulting services advisory program, breached its fiduciary duty to certain of the firm's pension fund clients and prospective clients by omitting to disclose material information. During this time period, Respondent was an investment adviser representative for Merrill Lynch, and in that capacity owed a fiduciary duty to the firm's pension fund clients to whom Respondent provided advice. Those clients included public pension funds seeking advice in developing appropriate investment strategies and in selecting investment managers to manage the assets entrusted to their care. In providing such advice, Respondent omitted to disclose to some of the firm's pension consulting clients that certain managers included in search results had not been vetted and approved in advance by Merrill Lynch Consulting Services in New Jersey. Respondent also failed to disclose material facts involving a conflict of interest inherent in clients' use of Merrill Lynch's transition management group. In addition, up to and including 2003, Respondent failed to disclose fully when entering into an arrangement for directed brokerage the facts creating a material conflict of interest inherent in recommending the use of directed brokerage to pay hard dollar fees. Respondent's fee disclosure policies were consistent with those of Merrill Lynch and Merrill Lynch Consulting Services at the time and, after 2003, in some instances exceeded those policies. Moreover, Respondent's conduct described herein was known to Merrill Lynch and to Merrill Lynch Consulting Services, which never directed Respondent to make further disclosures. However, by omitting to disclose the aforesaid facts to his clients, Respondent aided and abetted and caused Merrill Lynch's violation of Section 206(2) of the Advisers Act.

B. RESPONDENT AND OTHER RELEVANT ENTITIES

Michael A. Callaway, age 57, of Ponte Vedra, Florida, during the relevant period was a Senior Vice President and Financial Advisor at Merrill Lynch, an investment adviser representative, and head of Merrill Lynch's Ponte Vedra, Florida office. Callaway was employed by Merrill Lynch from 1976 until his retirement in September of 2008. During the relevant period, Callaway and a team of approximately ten Merrill Lynch employees, including three other investment adviser representatives in Merrill Lynch's Ponte Vedra, Florida office (the "Ponte Vedra office"), provided advisory services to close to 100 public pension fund clients in Florida. During the relevant time period, Callaway was licensed with FINRA and was a registered representative associated with Merrill Lynch's broker-dealer as well as an associated person of Merrill Lynch's investment adviser.

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[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.

Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch") is the wholly-owned principal operating subsidiary of the holding company, Merrill Lynch & Co. Merrill Lynch has been registered with the Commission as a broker-dealer since March 12, 1959, and as an investment adviser since December 8, 1978.

Merrill Lynch Consulting Services is an advisory program offered under the auspices of Merrill Lynch's Global Wealth Management Group, and provides advisory services to high net worth and institutional clients, including public pension funds.

C. FACTS

From at least 2000 through 2005, Merrill Lynch, through its Consulting Services program, provided advisory services to high net worth and institutional clients, including public pension funds. As an integral part of these services, it assisted clients in developing appropriate investment policies and in identifying asset allocations to meet their individual needs. Merrill Lynch also monitored clients' existing money managers to provide information to clients on whether the managers' performances remained consistent with the clients' investment objectives. It also helped clients to identify and evaluate new money managers so that the clients could select one or more such managers for the discretionary management of their accounts.

During the relevant period, Respondent, as part of the Merrill Lynch Consulting Services program, worked with a team of approximately ten Merrill Lynch employees that provided advisory services to close to 100 public pension fund clients in Florida, including many municipal employees, police and firefighters' pension funds. The headquarters for Merrill Lynch Consulting Services was located in Jersey City, New Jersey, and provided support to this office and to other investment adviser representatives throughout the country who provided advisory services. During the relevant period, Respondent breached his fiduciary duty to the firm's pension fund clients and prospective clients by failing to disclose the material information described below.

The Manager Identification Process

During the relevant period, Respondent failed to inform some clients that certain managers included in search results given to clients were not vetted and approved in advance by Merrill Lynch Consulting Services in New Jersey.

Written and oral communications that Respondent provided to his clients, taken together with various Merrill Lynch documents of which Respondent was or should have been aware, described the typical procedure for identifying new money managers for Respondent's clients as based upon extensive research by a team of experienced researchers at Merrill Lynch Consulting Services headquarters in New Jersey. Respondent's clients were further informed that these researchers would identify suitable money managers for the client based upon the client's specific investment objectives and risk tolerance for the portfolio intended to be managed by the new manager. Respondent further represented to clients that managers presented to them in search results had been fully vetted by Merrill Lynch Consulting Services in New Jersey. The documents provided by Merrill Lynch Consulting Services to Respondent's clients regarding this service repeatedly referred to Merrill Lynch's large research staff and capabilities, giving the impression that those resources were deployed for every client's money manager search.

The Ponte Vedra office's procedures for performing manager searches, however, deviated from these descriptions with respect to some clients. Contrary to Merrill Lynch's disclosures, certain money managers were included in search results provided to some clients of Respondent's office even though they were not vetted and approved in advance by Merrill Lynch Consulting Services. Respondent was responsible for placing these managers on the Ponte Vedra list, thereby allowing them to be included in search results presented to those clients. Merrill Lynch Consulting Services was aware that Respondent recommended real estate managers who had not been vetted, because Merrill Lynch did not offer its research service for real estate managers. On occasion, Respondent and other consultants in his office also recommended some money managers without Merrill Lynch's written prior approval. In both types of recommendations, Respondent's identification process deviated from disclosures clients received about that process.

Based on the above, Respondent, at a minimum, recklessly omitted to disclose relevant information to some Merrill Lynch Consulting Services clients.

Transition Management

During the relevant period, Respondent also failed to inform clients that Merrill Lynch Consulting Services, and consequently, Respondent, received compensation from their use of Merrill Lynch's transition management desk. Transition management was a service offered by Merrill Lynch's Transition Management group, a separate unit of Merrill Lynch, to clients in the process of terminating one money manager and hiring another. Without the services of a transition manager, the money manager being terminated would sell the shares held by the fund that the new money manager did not want in its portfolio and transfer the proceeds from those sales to the client's account. The new money manager would then use these proceeds to purchase securities for its portfolio on behalf of the client. Merrill Lynch's transition management desk represented that it could manage a transition more efficiently and cost-effectively by offering cross trades and reduced commission costs. Merrill Lynch was engaged to provide transition management services to approximately ten clients of Respondent between July 2000 and the end of 2005.

Respondent failed to disclose, however, that Merrill Lynch Consulting Services and thus he received a portion of the commissions for the transitioned shares. Because prior to November 2005 they were not explicitly made aware that Merrill Lynch Consulting Services and Respondent received a portion of these commissions, clients were unable to evaluate whether Respondent's recommendation of Merrill Lynch's transition management services was disinterested.

Based on the above, Respondent negligently failed to ensure that the conflicts of interest inherent in the recommendation of transition management were disclosed to the Consulting Services clients he served.

Directed Brokerage

During the relevant period, Merrill Lynch Consulting Services charged for its services on a fixed fee basis, with the amount charged to each client set forth in a written agreement. Clients could pay in cash (referred to as "hard dollars") or through "directed brokerage." Directed brokerage was a contractual arrangement whereby the clients directed money managers to execute trades through Merrill Lynch's institutional trading desk, consistent with the money managers' best execution obligations. In return, these clients received credit for a portion of the commissions generated by these trades against the hard dollar fee owed to Merrill Lynch Consulting Services. Portions of the commissions generated by such trades were paid to Merrill Lynch Consulting Services and, therefore, to Respondent.

Under Merrill Lynch's standard directed brokerage relationship, Merrill Lynch Consulting Services and Respondent potentially could receive and, in fact, often did receive significantly more revenues from the directed brokerage commissions than the fees they would have received if clients had elected to pay only with hard dollars. Portions of the commissions generated by such trades were received by Merrill Lynch Consulting Services, and, consequently, increased Respondent's own compensation. Up to and including 2003, Respondent failed fully to disclose when entering into an arrangement for directed brokerage the fact that Merrill Lynch Consulting Services, and therefore, Respondent himself would receive a financial benefit if his clients entered into a directed brokerage relationship. In some circumstances, Respondent brought to a client's attention compensation to Merrill Lynch Consulting Services over and above the hard dollar fee, and offered to renegotiate fees with the client, even though Merrill Lynch Consulting Services did not require that he do so. However, he failed to make such disclosures on a routine basis at the outset of a directed brokerage arrangement. Beginning in 2004, Respondent voluntarily initiated disclosure of the amount of each client's hard dollar fee and the amount of directed brokerage commissions generated by the client on a quarterly basis, even though Merrill Lynch Consulting Services did not require these disclosures.

Based on the above, Respondent negligently failed to ensure that the conflicts of interest inherent in the recommendation of directed brokerage were routinely disclosed to the Consulting Services clients he served.

D. DISCUSSION

By making materially misleading misrepresentations and failing to disclose material facts to some of the firm's pension consulting clients, as discussed above, Merrill Lynch violated Section 206(2) of the Advisers Act, which provides that "[i]t shall be unlawful for any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly . . . to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client."[2] As a result of the conduct described above, principally constituting non-disclosures, Respondent willfully[3] aided and abetted and caused Merrill Lynch's violation of Section 206(2) of the Advisers Act.

IV.

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

Accordingly, pursuant to Sections 203(f) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent Callaway cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act;

B. Respondent is hereby censured; and

C. Respondent shall, within 90 days of the entry of this Order, pay a civil money penalty in the amount of $20,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (A) made by United States postal money order, certified check, bank cashiers check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Michael A. Callaway as a Respondent in these proceedings, the file number of these

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2 Proof of scienter is not required to establish a violation of Section 206(2) of the Advisers Act. SEC v. Capital Gains Research Bureau, 375 U.S. 180, 195 (1963).

3 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)).

proceedings, a copy of which cover letter and money order or check shall be sent to Laura B. Josephs, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

By the Commission.

Elizabeth M. Murphy
Secretary