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ARIZONA CORPORATION COMMISSION

September 14, 2007

Via U.S. Mail and email (Christine.Bruenn@bingham.com)

Christine A. Bruenn, Esq.
Bingham McCutchen LLP
Suite 300
85 Exchange Street
Portland, ME 04101-5045

Re: Merrill Lynch Client Transition Program
S-262-NOAC
A.R.S. §§ 44-1842 and 44-3151

Dear Ms. Bruenn:

On the basis of the facts set forth in your letter of August 2, 2007, supplemented August 16 and September 7, and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act or the Investment Management Act of Arizona should the transaction take place as set forth in your letters.

As this position is premised upon the facts set forth in your letters, it should not be relied on for any other set of facts or by any other person. Please also note that this position applies only to the registration and licensure requirements of the acts.

We have attached photocopies of your letters containing the facts upon which this position is based.

Very truly yours,

A handwritten signature in black ink that reads "Matthew J. Neubert". The signature is written in a cursive style.

MATTHEW J. NEUBERT
Director of Securities

Attachment

Christine A. Bruenn
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Direct Fax: 207.780.8298
christine.bruenn@bingham.com

September 7, 2007

Cheryl T. Farson
General Counsel
Securities Division
Arizona Corporation Commission
1300 West Washington, 3d Floor
Phoenix, AZ 85007

Re: Merrill Lynch Client Transition Program

Dear Ms. Farson:

I am replying to your letter dated August 22. You asked that we discuss in more detail how the Merrill Lynch Client Transition Program comports with ARS sections 44-1842 and 44-3151.

Section 44-1842 makes it "unlawful for any dealer to sell or purchase or offer to sell or buy any securities, or for any salesman to sell or offer for sale any securities within or from this state unless the dealer or salesman is registered." As you note in your letter, Arizona law defines the terms "sell" and "offer to sell" in section 44-1801:

"Sale" or "sell" means a sale or any other disposition of a security or interest in a security for value, and includes a contract to make such sale or disposition. A security given or delivered with, or as a bonus on account of, a purchase of securities or other thing shall be conclusively presumed to constitute a part of the subject of the purchase and to have been sold for value.

"Offer to sell" or "offer for sale" means an attempt or offer to dispose of, or solicitation of an order or offer to buy, a security or interest in a security for value or any sale or offer for sale of a warrant or right to subscribe to another security of the same issuer or of another issuer. Any sale or offer for sale of a security which gives the holder thereof a present or future right or privilege to convert such security into another security of the same issuer or of another issuer shall be deemed an offer to sell the security to be acquired pursuant to such right or privilege, but the existence thereof shall not be construed as affecting the registration or exemption under this chapter of the security to which it attaches.

Under these definitions, participants in the Client Transition Program neither "sell" nor "offer to sell" securities. To the contrary, the Program's terms make clear that if a Program participant were to engage in conduct that would constitute a "sale" or "offer to sell," the Program participant would be disqualified from the Program. As I explained in

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my earlier letters, Merrill Lynch has measures to ensure compliance with these requirements.

Section 44-3151 provides, in relevant part, "An investment adviser representative shall not conduct business on behalf of a federal covered adviser unless that investment adviser representative is licensed under this article." Merrill Lynch is a federal covered adviser. However, Client Transition Program participants do not "conduct business" on behalf of Merrill Lynch. In fact, the Program requires that its participants refrain from conducting any securities-related business that would make participants "investment adviser representatives." Section 44-3101 defines that term to mean:

... any partner, officer or director of an investment adviser, any individual who occupies a status or performs functions similar to a partner, officer or director of an investment adviser or any other individual who is employed by or associated with an investment adviser, except clerical or ministerial personnel, and who does any of the following:

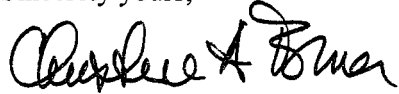
- (a) Makes any recommendations or otherwise renders advice regarding securities.
- (b) Manages accounts or portfolios of clients.
- (c) Determines which recommendation or advice regarding securities should be given to a client if the individual is a member of the investment adviser's investment committee that determines general investment advice to be given to clients or the individual determines general client advice if the investment adviser has no investment committee, except that if an investment adviser has more than five individuals who make recommendations or give advice, only the supervisors of those individuals are investment adviser representatives.
- (d) Solicits, offers or negotiates for the sale of or sells investment advisory services.
- (e) Directly supervises employees who perform any of the acts described in this paragraph.

Client Transition Program participants do not perform any of these five enumerated functions. Indeed, all of these functions fall within the Program's explicit prohibitions against engaging in the securities business. Participants, supervisory personnel, and participants' former clients all are informed that the Program prohibits the kind of activity that would require registration as an "investment adviser representative."

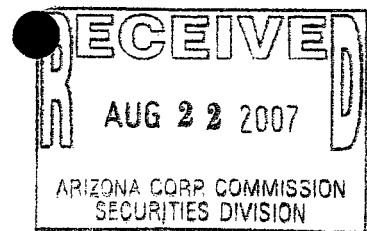
Cheryl T. Farson
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I hope that these answers satisfy the requirements of section 1826 and help you better understand Merrill Lynch's Client Transition Program. If you have additional questions or concerns, please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Christine A. Bruenn".

Christine A. Bruenn



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August 16, 2007

Via email to cfarson@azcc.gov and by first-class mail

Cheryl Farson
 General Counsel
 Securities Division
 Arizona Corporation Commission
 1300 West Washington, Third Floor
 Phoenix, AZ 85007

Re: Merrill Lynch Client Transition Program

Dear Ms. Farson:

Thank you for your August 13 letter. This letter responds to the questions you raised and supplements my letter dated August 2, 2007.

In response to your question about whether "the registrations to which you refer are securities salesman or investment adviser representative registrations," the answer is both. Nearly all Merrill Lynch financial advisors are dually-registered as securities salesmen and investment adviser representatives. Merrill Lynch uses the title "financial advisor" to refer generically to employees who provide securities-related services -- either brokerage or advisory in nature -- to its customers.

I understand from your letter that A.R.S. § 44-1826(B) requires nine elements in conjunction with a no action letter request. Following are those elements, quoted from the statute, and Merrill Lynch's responses.

1) A brief summary of the statutory and regulatory provisions to which the request pertains.

The relevant statutory and regulatory provisions at issue are all provisions dealing with individual registration requirements for securities dealers and salesmen and/or investor advisor representatives. This includes but is not necessarily limited to A.R.S Title 44, Chapter 12, Articles 4, 9 and 10, and Title 44, Chapter 13, Article 4, and regulations promulgated thereunder. A.R.S. §§ 44-1842 and 44-3151 likely are the most pertinent statutory provisions.

2) A detailed statement of the relevant facts.

This information is included in my August 2 letter.

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- 3) A detailed discussion and analysis of the law as it relates to those facts.

This information is included in my August 2 letter.

- 4) A statement of the legal authority for granting the request.

A.R.S § 44-1286(A) allows your division to issue interpretive no action letters. Legal authority supporting Merrill Lynch's position is included in my August 2 letter.

- 5) A statement of the reasons a no-action letter is appropriate.

This information is included in my August 2 letter.

- 6) A statement explaining any adverse or beneficial effect on the public interest resulting from the granting of the request.

This information is included in my August 2 letter.

- 7) A certification that, within the knowledge of the person on whose behalf the request is made, the transaction described is not directly or indirectly the subject of any pending or final judicial, SRO or administrative proceeding.

With the exception of a former employee's possible dispute about his eligibility for the Client Transition Program,¹ Merrill Lynch knows of no such pending or final proceeding.

- 8) A certification that the transaction described has not been commenced or, if the transaction has been commenced, a statement concerning the status.

As described in my August 2 letter, Merrill Lynch certifies that the Client Transition Program is underway, but the Firm's current policy is that all Merrill Lynch financial advisors enrolled in the Program must maintain the appropriate state registrations.

¹ Please let us know if you would like further information.

Cheryl Farson
August 16, 2007
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9) An acknowledgment by the person on whose behalf the request is made that the request, together with any documents or information submitted and any response from the division, is public information that may be released for publication, except as otherwise provided by law.

Merrill Lynch so acknowledges.

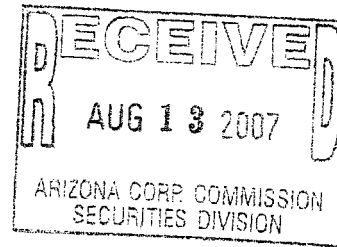
I believe that when this letter and my previous letter are considered together, the requirements of A.R.S. § 44-1826 are satisfied. I hope that the information provided above satisfies your needs. If it does not, or if you have further questions, please contact me, or my associate Jeff Goldman, at any time. Thank you for your ongoing attention to this matter.

Sincerely yours,



Christine A. Bruenn

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 christine.bruenn@bingham.com



August 2, 2007

Cheryl T. Farson
 General Counsel
 Arizona Corporation Commission
 Securities Division
 1300 West Washington St.
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 Phoenix, AZ 85007

Re: Merrill Lynch Client Transition Program

Dear Ms. Farson:

On behalf of our client Merrill Lynch, we write to request that your agency agree to take a no-action position regarding agents in the company's program for eligible departing financial advisors – the Client Transition Program (“the CTP” or “the program”). Some time ago, I spoke with Director Neubert about this request, and he suggested that I contact you directly. According to our research, the Arizona Securities Division has granted a series of no-action positions to broker-dealers for similar programs. Most recently, on June 25, 1998, your agency granted a no-action position to Gruntal & Co., LLC. Based on a review of no-action letters maintained by CCH and Westlaw, we believe that approximately 30 state securities administrators (and the SEC*) have allowed retired brokers to share in the commissions generated by former clients' accounts, without requiring registration or other filings. Since most of these no-action letters date back to the 1990s, Merrill Lynch is seeking no-action positions for its current program.

Merrill Lynch's program is available only to financial advisors in good standing who are at least age 55, who have been at the firm for at least 5 years, and whose combined age and length of service is at least 65. Under the program, participating financial advisors' accounts are transferred to eligible “receiving” financial advisors in accordance with the Firm's Account Redistribution Policy, or to a pre-existing partner of an advisor (the partner receiving the transferred accounts also must be in good standing). After the transfer, the former advisor is eligible to receive a declining percentage of compensation related to his or her former clients – 50% for the first two years after departure, 40% for

* The SEC has issued three no-action letters regarding programs similar to the CTP. See SEC No-Action Letter to Gruntal & Co., LLC, Oct. 14, 1998, 1998 WL 1032627; SEC No-Action Letter to Prudential Securities, Inc., Oct. 11, 1994, 1994 WL 591748; SEC No-Action Letter to Shearson Lehman Bros., Inc., Mar. 25, 1993, 1993 WL 97706.

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the third, and 35% for the fourth. The program also provides a death benefit in certain circumstances.

Merrill Lynch designed the program to comply with NASD Rule IM-2420-2, which allows "payment of compensation to registered representatives after they cease to be employed by a member of the [NASD]," or to their heirs, and to oral guidance from the NYSE. The program offers several important protections modeled on the NYSE and NASD guidance:

- Former financial advisors in the program cannot solicit or conduct any securities-related business.
- Former financial advisors in the program will forfeit all plan benefits if they resume engagement in the securities business, with Merrill Lynch or another firm.
- Merrill Lynch notifies program participants' clients of the change in financial advisor.
- Program participants must maintain the same high ethical standards required of all Merrill Lynch personnel.
- While participants will not generally be required to maintain securities registrations, program payments will terminate if a participant, by reason of criminal conviction or otherwise, engages in activity that would make the participant statutorily ineligible for registration or affiliation with Merrill Lynch.
- Only financial advisors with a low incidence of complaints and arbitrations are eligible for the program.
- Managers from a participant's former office meet annually with the participant to confirm that the participant has comported with the program's requirements.

We have attached a more detailed description of the CTP that Merrill Lynch plans to distribute to financial advisors considering enrollment in the program, if Merrill Lynch obtains no-action relief from most or all states.

To this date, Merrill Lynch has maintained state and SRO registrations for program participants. To avoid the appearance of "parking" registrations, the firm currently requires the departed financial advisors receiving program payments to remain available to consult on the needs of their former clients (but not on their business with Merrill Lynch), to complete required continuing education credits and company compliance training, and to meet with local office management on a yearly or quarterly basis (depending on the former advisor's home state).

August 2, 2007

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Unfortunately, our client has found that other broker-dealers have not adopted this same approach, and that some financial advisors nearing retirement age have left Merrill Lynch to join other members of the industry that promise continued payment upon retirement without the restrictions and continued obligations that Merrill Lynch requires.

Because continuing registration of program participants – with all of the accompanying obligations for our departing financial advisors – puts our client at a competitive disadvantage, Merrill Lynch would like to modify the program to eliminate the requirement that CTP participants continue their registrations and the activities necessary to avoid parking those registrations.

Merrill Lynch sees the program as a sensible way to ensure continuity of client service when a financial advisor leaves the workforce, while also allowing the financial advisor a reasonable level of financial security. Most importantly, the CTP allows clients stability and easy transitioning when their financial advisor retires -- not only do their accounts remain at the same brokerage, they also have the benefit of a carefully-supervised transfer period, during which their longtime financial advisor ensures that the new financial advisor understands their goals and can serve them well. Second, the CTP allows a supervised period of transition for the departing advisor, ensuring that participants understand the new restrictions that come with departure from the industry. Third, we see a parallel with retirement policies in other professional groups. For instance, under ABA Model Rule 5.4, law firms ordinarily cannot split fees with non lawyers, but that rule is relaxed for relationships between a law firm and its retirees or their heirs.

In short, we believe that Arizona citizens are well-served by the CTP and other similar programs, and that formalized registration for CTP participants is not necessary to provide their former clients with meaningful protection. We respectfully request that you grant Merrill Lynch a no-action position, allowing participation in the CTP program without requiring agent registration.

Either my colleague Jeff Goldman or I will contact you soon to follow up on this letter and to respond to any questions you may have. I greatly appreciate your time and attention and look forward to your response.

Sincerely yours,



Christine A. Bruenn

Enclosure