STATE OF ILLINOIS
SECRETARY OF STATE
SECURITIES DEPARTMENT

In the matter of	)	
	)	
MERRILL LYNCH, PIERCE, FENNER	)	
& SMITH INCORPORATED,	)	File #: 08-00256
(CRD# 7691),	)	
	)	
Respondent.	)	
	)	

NOTICE OF HEARING

TO THE RESPONDENT: Merrill, Lynch Incorporated (CRD # 7691)
One Bryant Park
New York, NY 10036

You are hereby notified that, pursuant to Section 11.F of the Illinois Securities Law of 1953 [815 ILCS 5] (the "Act") and 14 Ill. Adm. Code 130, Subpart K (the "Rules"), a public hearing will be held at 69 West Washington Street, Suite 1220, Chicago, Illinois 60602, on the 11^{th} day of August , 2010, at the hour of 10:00 a.m., or as soon thereafter as counsel may be heard, before James L. Kopecky, or another duly designated Hearing Officer of the Secretary of State.

This hearing will be held to determine whether an Order shall be entered against the Respondent in the State of Illinois and/or grant such other relief as may be authorized under the Act including but not limited to imposition of a monetary fine in the maximum amount pursuant to Section 11.E(4) of the Act, payable within ten (10) business days of the entry of the Order.

The grounds for such proposed action are as follows:

FACTS

1. Merrill, Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") is a broker-dealer registered in the state of Illinois, with a Central Registration Depository ("CRD") number of 7691; and

2. Coordinated investigations into Merrill Lynch's activities in connection with its marketing and sale of financial instruments known as auction rate securities ("ARS") to retail and other customers have been conducted by a multistate task force; and

3. Merrill Lynch has cooperated with regulators conducting the investigations by responding to inquiries, providing documentary evidence and other materials, and providing regulators with access to facts relating to the investigations.

Background Mechanics of Auction Rate Securities

5. ARS as a general term refers to long-term debt or equity instruments tied to short-term interest rates that are reset periodically through an auction process.

6. At auction, ARS always trade at par, with the yield of the instruments being adjusted by the movements of interest rates set by the Dutch auction.

7. In the Dutch auction, a security holder had three options, the holder could: (1) hold; (2) purchase or sell; or (3) purchase and hold at rate.

8. Investors looking to acquire ARS bid into the auction at the rate and quantity that they were willing to hold the securities.

9. Orders for the available quantity of ARS are then filled, starting with the lowest bid rate up until all the shares offered for sale in the auction are allocated.

10. The rate at which the final share from the auction is allocated is the clearing rate, and sets the rate to be paid for the entire issue until the next auction.

11. If there are not enough purchasers the auction fails, no shares change hands, and the rate resets to a rate that is prescribed in the instrument's offering documents.

Merrill Lynch Marketed And Sold Auction Rate Securities As Safe, Liquid Short-Term Investments.

1. Merrill Lynch Marketed Auction Rate Securities as Safe, Liquid Investments.

12. Merrill Lynch marketed and sold ARS as money market like instruments, which were safe and liquid.

13. Merrill Lynch additionally used research pieces to market ARS to customers.

14. Financial advisers ("FAs") would often forward Merrill Lynch marketing pieces to customers to reassure them of the safety and value of the instruments.

15. FAs who sold ARS were not required to provide customers with disclosures, instead customers would receive customer's trade confirmations directing customers to where they could access Merrill Lynch's "Auction Rate Practices and Procedures."

16. On March 15, 2006, Merrill Lynch ended its practice of sending ARS purchasers a "Master Purchasers Letter." The Master Purchasers Letter was a disclosure document that all purchasers of ARS had been required to sign and return to Merrill Lynch.

17. Merrill Lynch's policies and procedures did disclose some important elements of its ARS program, including that Merrill Lynch plays multiple roles in the ARS market, that Merrill Lynch's interest may differ from those of its clients who purchased ARS, that Merrill Lynch is permitted but not obligated to submit orders for its own account and routinely does, and that a purchaser's ability to sell the purchaser's ARS may be limited.

18. Yet, since Merrill Lynch FAs were not required to affirmatively disclose these practices prior to selling a client ARS, purchasers were largely unaware of Merrill Lynch's practices in supporting its ARS program.

19. Merrill Lynch did not undertake any analysis of whether any customers actually went to the website discussing its practices and procedures to review them.

2. <u>Merrill Used Triple-A Rating as a Selling Point for Auction Rate Securities Even After it had Allowed Certain Triple-A Rated Auction Rate Securities to Fail.</u>

20. The fact that its ARS carried a AAA rating was an important marketing point for Merrill Lynch. The AAA rating on ARS was routinely touted in marketing materials, as well as research pieces that discussed ARS and their safety.

21. Marketing materials produced by the ARS desk promoted ARS as follows:

- **Auction Market Securities provide many advantages for investors**
  - Large and liquid market with over $306 billion currently outstanding
  - High quality credits with over 92% of the market rated AAA
  - Incremental yield to comparable securities such as commercial paper and money market funds
  - Taxable, tax advantaged and tax exempt investment options

22. A triple-A rating is a long term credit rating.

23. The AAA rating on Merrill Lynch's ARS do not speak to an investor's ability to liquidate the instrument through auction at par.

24. A number of the collateralized debt obligations and other auction rate securities underwritten and offered by Merrill Lynch carried the AAA rating from major rating agencies.

25. In August 2007, as described below, Merrill ceased supporting the auctions of a number of its triple-A rated action rate securities.

26. Those securities became illiquid and subsequently lost most of their market value.

27. Despite the fact that Merrill had failed a number of triple-A auction-rate securities in August 2007, subsequent to August 2007, Merrill continued to use the AAA rating as a selling point for auction rate securities.

28. Merrill Lynch was aware—yet did not disclose to investors--that certain auction rate securities retained their triple-A rating after their auctions had failed.

29. Merrill Lynch was aware—yet did not disclose to investors--that the triple-A rating did not provide protection against Merrill deciding to no longer support its auction program.

30. Nonetheless, Merrill Lynch relied heavily on the triple-A rating to convince investors that the auction rate securities it was selling were safe and principal protected.

Merrill Lynch's Auction Rate Securities Program Stands in Contrast to its Representations to Customers.

1. Merrill Lynch's Auction Rate Program Provided Issuers with Inexpensive Financing and Generated Substantial Fees for Merrill Lynch.

31. Merrill Lynch's ARS program was funded by issuers of ARS, who paid Merrill Lynch fees to underwrite securities and remarket them.

32. The ARS market allowed issuers to achieve long-term financing at short-term rates.

33. The Merrill Lynch ARS program had four branches, an investment bank that underwrote ARS, the ARS desk that acted as a remarketing agent for the securities, a sales force that sold ARS to retail and other clients, and a research division that assisted the ARS desk in placing ARS.

34. The ARS that Merrill Lynch underwrote then sold to its clients consisted of auction preferred shares ("APS"), with perpetual maturity, with dividends that reset every 7 to 35 days at auction, or long-term debt instruments, issued by municipalities and student loan organizations with maturities of 20-40 years with interest rates that reset through the same process.

35. Due to the upward sloping yield curve, issuers of long-term instruments would typically have to pay higher interest rates.

36. By supporting the auction mechanism, both in its role as a remarketing agent and by purchasing ARS at auction to avoid failures, Merrill Lynch allowed issuers to have long-term financing at short-term rates.

37. Purchasers of ARS were willing to accept short-term rates because they believed they would have access to their principal on short-term notice at the next auction, and they would get a slightly higher rate than a money market fund because they would have to wait until the next auction to access their money.

38. This belief was cultivated by Merrill Lynch and other broker-dealers who used their own capital to ensure auctions did not fail, and generally touted the 20-year track record of very rare failures, and creating the impression with investors that there was a deep liquid market for the securities.

39. Due to the practice of Merrill Lynch and other broker-dealers of placing support bids, for the 20 years prior to August of 2007 there had been only a handful of failed auctions that prevented investors from accessing their principal.

2. Merrill Lynch Generated Significant Fees by Underwriting Auction Rate Securities with Constrictive Maximum Rates and Selling them to Clients.

a. Merrill Lynch Generated Significant Fees Underwriting Auction Rate Securities and Distributing Them To Clients.

40. The investment bank at Merrill Lynch generated significant fees from underwriting new issuances of ARS. From 2001 through 2008 Merrill Lynch underwrote approximately $13 billion of APS, earning $130 million of underwriting fees.

41. In order to help move new issues Merrill Lynch awarded FAs who placed new ARS issues with a placement credits.

b. Merrill Lynch Underwrote Auction Rate Securities With Restrictive Maximum Rates, Which Allowed The Securities To Achieve AAA Ratings.

42. Upon information and belief 92% of the auction rate securities that Merrill Lynch underwrote received a AAA rating from rating agencies such as Fitch and Moodys, and 97% had ratings of AA or better.

43. AAA ratings from agencies such as Fitch and Moodys signify the rating agencies' assessment that there is a high likelihood that the security will pay interest or dividends as well as principal when due in a timely manner.

44. Maximum rate provisions place a ceiling on the rate of interest at which an auction can clear, and additionally provide the rate the issuer must pay should auctions fail.

45. When evaluating whether an issuer could make payments as due on its ARS, rating agencies would look at the terms of the instrument to determine how much interest it may be obligated to pay. The maximum rate places an absolute cap on the interest or dividend the instrument will pay, restricting its potential obligations, therefore making it easier for the instrument to achieve a AAA rating.

46. Once Merrill Lynch stopped placing support bids in the auctions for which it was the lead broker-dealer, there were auction failures across its program.

47. When auctions fail the rate resets to the maximum rate.

48. The ARS with high maximum rates, typically municipal auction rate certificates ("ARCS") with maximum rates in the range of 12-15%, have drawn investor interest and have cleared without Merrill Lynch's support.

49. The ARS with low maximum rates, typically taxable and tax-exempt APS with maximum rates in the range of 3-5%, have not drawn investor interest and without Merrill Lynch's support have continued to fail, leaving investors with illiquid instruments.

c. Merrill Lynch Additionally Received Fees To Remarket The Auction Rate Securities It Underwrote.

50. When Merrill Lynch underwrote an issue of ARS, it typically served as the broker-dealer or remarketing agent for the issue.

51. Merrill Lynch would typically receive a fee of 25 basis points of the value of the ARS for which it acted as remarketing agent.

52. Merrill Lynch would share a portion of this fee with FAs in order to incentivize them to place clients into ARS.

53. Prior to every auction for which Merrill Lynch was the sole or lead broker-dealer, Merrill Lynch would provide "price talk," a range of bids provided to FAs indicating where Merrill Lynch expected auctions to clear.

54. All ARS for which Merrill Lynch acted as sole broker-dealer were placed through Merrill Lynch FAs.

55. Under Merrill Lynch's ARS program, as remarketing agent, the ARS desk had the option but not the obligation to bid in auctions.

56. Until August of 2007 Merrill Lynch had a policy of placing support bids into every auction for which it was sole or lead broker-dealer.

57. In August of 2007 Merrill Lynch withdrew its support for certain CDO-backed ARS.

58. When placing a support bid, Merrill Lynch would bid for the entire notional value

of the issue being auctioned, regardless of the size or volume of buy, sell, or hold orders Merrill Lynch had received.

59. By placing support bids for the entire notional value of the issue being auctioned, Merrill Lynch ensured that no auctions in its ARS program would fail.

60. Merrill Lynch often set the rate at which the auctions would clear with its support bids.

61. For the period of January 3, 2006, through May 27, 2008, 5892 auctions for which Merrill Lynch was the sole lead dealer would have failed but for Merrill Lynch's support bid.

62. Investors were not provided with information about the volume of shares that moved at auction.

63. Investors were not provided with information about the level of support from Merrill Lynch that was required to clear the auction.

64. Investors were not informed of how many ARS Merrill Lynch was carrying on its own inventory as a result of supporting auctions.

Auction Rate Securities Inventory Concerns At Merrill Lynch

1. Weakness in the Credit Markets Initiated Inventory Concerns In the Summer Of 2007.

65. Beginning in late July 2007, certain negative market influences surrounding collateralized debt obligations ("CDOs") and collateralized loan obligations ("CLOs") and a credit crunch began to negatively impact Merrill Lynch's auction market business.

66. As investors began selling these ARS due to concerns about their credit quality (despite the fact that many were triple-A rated), Merrill Lynch purchased ARS into its own inventory to make sure those auctions did not fail.

67. At a certain point, Merrill Lynch decided to limit the amount of inventory of these instruments it was taking on and ceased submitting support bids, thus allowing the auctions to fail.

68. Merrill Lynch FAs began to seek answers to questions concerning ARS as early as August 7, 2007.

69. FAs from all over the United States sent emails and made telephone calls to request information from the Global Markets & Investment Banking staff managing the Merrill Lynch Auction Trading Desk.

70. The Auction Desk and the Financial Products Group, along with several of the supposedly independent research analysts for closed-end funds and Fixed Income/Cash, organized and participated in Sales Calls during the second and third week of August 2007 in an effort to clear auctions, reduce the rates of important issuers, and maintain a strong interest in ARS among the Merrill Lynch FAs all over the country.

2. Communications With Issuers And Others Expressing Concern About The Auction Markets.

71. As early as August 3, 2007, senior management of Merrill Lynch was requesting a sample term sheet for AMPS to understand the liquidity and downgrade risk.

72. In August 2007, representatives from major issuers in the closed-end fund investment world were also trying to get a sense of the risks and demand reductions for their preferred shares.

73. None of these growing risks concerning weak demand in the ARS market were disclosed to Merrill Lynch clients during the third quarter of 2007.

74. Upon information and belief, Merrill Lynch began, in late 2007, discussing with issuers, concerns with the auction markets.

3. Merrill Lynch Surpasses Its Inventory Limit In September 2007, As ARS Market Conditions Worsened.

75. In late September, inventory levels rose significantly and the Auction Desk was fast approaching its limit of $1 billion dollars.

76. In addition, Merrill Lynch had certain lenders that provided financing for its inventory of auction rate securities.

77. Those lenders had previously accepted auction rate securities as collateral for the loans.

78. In the Fall of 2007, certain of these lenders became uncomfortable with the liquidity of auction rate securities and ceased accepting them as collateral.

79. Merrill did not inform its retail and other customers, to whom it was marketing auction rate securities as principal protected cash-like instruments, that entities that financed its inventory no longer accepted certain auction rate securities (even some rated AAA) as collateral.

Merrill Lynch's Consolidated Effort to Reduce Inventory – A Three Pronged Approach.

1. Calming Fears, Providing Assurances And Motivating Additional Sales Of Auction Rate Securities Through Sales Calls with FAs.

80. Just after the first hint of investor concern with the auction market, the Auction Desk and Sales and Trading immediately mobilized to stem the tide of negative news. Managers moved quickly to set up sales calls to provide assurances to FAs and to motivate future sales of ARS.

81. In late November and early December, with inventory backing up and reaching new highs at Merrill Lynch, a decision was made to do another national sales call. The formula would be similar to the successful call made previously in August. Auction Desk personnel would be joined by a member or members of the Research Department to reassure and motivate FAs to concentrate on selling Auction Desk inventory.

82. During the call, there was no discussion regarding the risk of any type of auction failure, or the likelihood or possibility that any market dislocation could result in retail customers' cash becoming illiquid.

83. Moreover, there was no discussion about the possibility that Merrill Lynch could decide at any time to stop its support of the auction market or to otherwise withdraw from supporting the auctions that it sole managed or co-managed.

84. There was no mention of the fact that with the pressures that existed in the credit market since August 2007, any auction failure by any auction dealer could spread contagion to the rest of the market.

2. FA Incentives - Increased Production Credits Sales Drive.

85. At various times during the second half of 2007, Merrill Lynch provided incentives in the form of enhanced production credits as a means of motivating FAs to sell ARS to customers and reduce Merrill Lynch's inventory. Typically, FAs earned 12.5 bps on an annualized basis for investments in ARS. FAs would then earn a percentage of the 12.5 bps according to a payout grid.

86. During periods where enhanced credits were awarded, FAs could earn as much as 8 times that amount (or 100 bps) for sales of ARS. Other enhanced payouts could include payouts of 25 bps, or 50 bps. Similar to regular production credits earned, FAs enhanced production credits would be applied to the grid resulting in FAs being paid a certain predetermined percentage of the enhanced production credit.

3. Coordination with Research

a. Proactive Involvement From The Supposedly Independent Research Department To Aid In Sales Efforts.

87. Merrill Lynch's Research Department played a pivotal role in assisting sales of Auction Rate Securities.

88. On at least two occasions during the Fall of 2007, Sales and Trading and the Auction Desk made direct and specific requests for the Research Department to draft favorable research pieces regarding the auction market to assist in Sales.

b. Improper Information Sharing –Between Research and Sales and Trading.

89. The task force's investigation revealed frequent communications among research, sales, and trading staff.

90. Merrill Lynch Policy & Procedures Manual (the "Policies Manual") employs a so-called "Chinese Wall," which is designed to prevent "the misuse of material non-public information" and to prevent "even the appearance of impropriety."

91. The "Chinese Wall" is designed to "restrict and monitor the flow of information between the various areas of [Merrill Lynch] such as Global Research, Sales [and] Trading," among others "to avoid the misuse of such information and the appearance of impropriety as well as to manage potential conflicts of interest…"

92. Among those departments that constitute the "Private Side of the Wall" include: "Investment Banking, including Global Capital Markets and Financing (Equity Capital Markets and Debt Capital Markets)," and "other departments or individuals that regularly receive inside information," while the Research Division is on the "Public Side of the Wall."

93. Among the categories of information that cannot be discussed between Sales or Trading and Research are the levels or amounts of inventory that Merrill Lynch maintained for its own account.

94. Such information was discussed.

Improper Influence And Pressure Over Supposedly Independent Research Personnel

95. Merrill Lynch permitted its Sales and Trading and Auction Desk personnel to have undue influence over its Research Department regarding its coverage of the auction market.

96. In addition to the direct requests of Sales and Trading and the Auction Desk to Research for positive published material related to the auction market, undue influence was also exercised over the content of the published research reports.

97. Other times, Auction Desk Personnel attempted to directly influence how Research responded to FA questions during sales calls.

Events Leading To Merrill Lynch's Decision To Stop Broadly Supporting Its Auction Program.

98. Concerns surrounding the auction market grew more ominous going into the new year and Merrill Lynch's Auction Desk personnel began to brace for the worst.

99. Likewise, Inventory concerns at Merrill Lynch continued.

100. On January 23, 2008, word began circulating among broker-dealers that Lehman Brothers had a number of auctions fail the previous day.

101. Concerns were not shared with FAs or retail customers.

102. Between the dates February 1, 2008 and February 8, 2008, staff wrote or contributed to approximately three published research pieces, including: Fixed Income Digest, "Preserve Income Lock in Yields"; Fixed Income Digest Supplement, "Auction Market Securities" and Auction Market Value Sheet, "Back to Basics In The Auction Market." Each of these publications continued to recommend that investors should feel confident about the auction market.

103. On or about February 1, 2008, Merrill Lynch's Research Department published a volume of its Fixed Income Digest, entitled "Preserve Income Lock in Yields." The cover page included a section entitled "Preserve Income." The last sentence

of the section provided: "For funds that investors need to keep liquid, we continue to find the best value in auction market securities." Inside the research piece, there was a subheading: "For Cash Holdings: auction market securities," which recommended, [n]aturally, most investors need to keep some portion of their portfolios in liquid cash-like instruments. We find auction market securities (AMS) to be better alternative than money funds for these purposes for investors with larger amounts to invest." The section was followed immediately by another section dedicated to: "Answering Your Questions About Auction Market Securities" which responded to common questions relating to the auction markets at the time.

104. On February 4, 2008, the Research Department re-published the "Answering Questions" piece on its own as a supplement to the Fixed Income Digest in part, because of questions the Research Department was getting from calls and that FAs were likely having a problem locating the information in the otherwise lengthy February 1, 2008 publication.

105. On the evening of February 12, 2008, Merrill Lynch executives decided to cease supporting its auction rate securities program and intentionally allowed the vast majority of their auctions to fail the following day.

106. Merrill Lynch's decision to stop broadly supporting its auction program was made without any real consideration or analysis of its effect on retail and other investors holding the securities.

Merrill Lynch Has Marked Down Its Own Inventory of Auction Rate Securities, But Still has Not Marked Down The Estimated Value Of The Auction Rate Securities On Its Clients' Account Statements.

107. Merrill Lynch has marked down the value of its own inventory of auction rate securities, yet has not marked down the value of those same auction rate securities in its client statements.

108. According to client statements received by the task force, auction rate securities listed on client statements have not been marked down to reflect their illiquidity. Their "estimated market value" is still listed as 100 percent of par. Certain of the exact same instruments held by Merrill Lynch in its inventory have been marked down from par.

ALLEGATIONS OF LAW

109. Illinois has jurisdiction over this matter pursuant to the Illinois Securities Law of 1953 [815 ILCS 5] (the "Act").

110. Merrill Lynch employed unethical practices in the offer and sale of auction rate securities, subjecting Merrill Lynch to sanctions under 8E.(1)(b) of the Act.

111. Merrill Lynch failed to reasonably supervise its agents or employees, in violation of Section 8.E (1)(e)(iv) of the Act.

You are further notified that you are required pursuant to Section 130.1104 of the Rules and Regulations (14 Ill. Adm. Code 130)(the "Rules"), to file an answer, special appearance, or other responsive pleadings to the allegations above within thirty (30) days of the receipt of this Notice. A failure to file an answer within the prescribed time shall be construed as an admission of the allegations contained in the Notice of Hearing.

Furthermore, you may be represented by legal counsel; may present evidence; may cross-examine witnesses and otherwise participate. A failure to appear shall constitute a default by you.

A copy of the Rules and Regulations promulgated under the Illinois Securities Law and pertaining to hearings held by the Office of the Secretary of State, Illinois Securities Department, are available at http://www.ilga.gov/commission/jcar/admincode/014/01400130sections.html, or upon request.

Delivery of Notice to the designated representative of the Respondent constitutes service upon such Respondent.

Dated: This 30th day of April, 2010.

Jesse White
Secretary of State
State of Illinois

Attorney for the Secretary of State:

Angela P. Angelakos
Office of the Secretary of State
Illinois Securities Department
69 West Washington, Suite 1220
Chicago, Illinois 60602
(312) 793-3595

Hearing Officer:

James L. Kopecky
190 S. LaSalle St., Suite 850-A
Chicago, IL 60603