

STATE OF COLORADO

**Division of Securities
Department of Regulatory Agencies**

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Fred J. Joseph
Securities Commissioner



Bill Ritter, Jr.
Governor

D. Rico Munn
Executive Director

September 12, 2007

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

**RE: Merrill Lynch Client Transition Program
Our File No. B-08-003**

Dear Ms. Bruenn:

The staff of the Division of Securities ("Staff") is in receipt of your letter dated August 7, 2007, with attachments, regarding the above-referenced matter. In your letter, you request, on behalf of Merrill Lynch (the "Firm"), that the Securities Commissioner agree to take a no-action position as to Merrill Lynch's Client Transition Program ("CTP") which allows retired sales representatives to share in the commissions generated by former clients' accounts without requiring registration or other filings.

You indicate that CTP 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 CTP, participant's accounts are transferred to eligible receiving financial advisors. After the transfer, the former advisor is eligible to receive a declining percentage of compensation related to his or her former clients. The CTP is designed to comply with NASD Rule IM-2420-2, and offers important protections modeled after NASD and NYSE guidance, including that participants in the program "cannot solicit or conduct securities-related business."

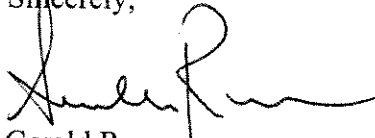
You correctly point out that the Staff has previously addressed this issue in an interpretive letter to Prudential Securities on April 18, 1995. Prudential Securities presented a similar program as to the CTP, and requested a no-action letter from the Staff. In its response to Prudential, the Staff elected not to take a formal position on the question, and neither approved nor disallowed the proposed arrangement. The Staff declined to take a formal position because it appeared that participants in the program as described would not meet the definition of sales representative as provided in §11-51-201(14), C.R.S. That section defines a sales representative as "an individual, other than a

broker-dealer, either authorized to act and acting for a broker-dealer in effecting or attempting to effect purchases or sales of securities.” Subsection 201(2) defines a broker-dealer as a “person engaged in the business of effecting purchases or sales of securities for the accounts of others.” As you note, the CTP prohibits departing advisors from selling or soliciting sales in securities, or otherwise engaging in the securities business after the departure date. To the extent this prohibition actually prevents the departing advisors from “effecting, or attempting to effect purchases or sales of securities,” then it is unnecessary for the departing advisor to be licensed in Colorado. Additionally, Colorado does not have any statutory provision or rule which specifically prohibits the sharing of commissions with unlicensed individuals. As long as the departing advisor is not otherwise engaged in unlicensed activity, the sharing of commissions with the departing advisor is not specifically prohibited.

Consistent with the Staff’s position in its interpretive letter to Prudential Securities dated April 18, 1995, the Staff will not take a formal position on Merrill Lynch’s Client Transition Program, and we will neither approve nor disallow the proposed program.

If there are any questions, please contact the undersigned at (303) 894-2320.

Sincerely,

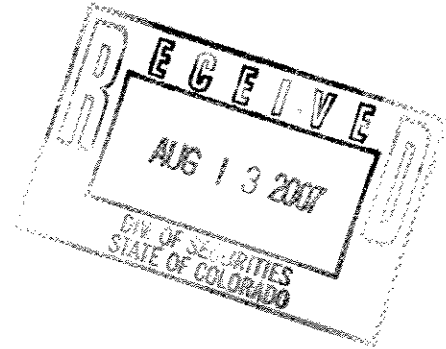
A handwritten signature in black ink, appearing to read 'Gerald Rome', written in a cursive style.

Gerald Rome
Deputy Securities Commissioner

Christine A. Bruenn
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August 7, 2007

Fred J. Joseph
Securities Commissioner
Colorado Division of Securities
1560 Broadway, Suite 900
Denver, CO 80202



Re: Merrill Lynch Client Transition Program

Dear Mr. Joseph:

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”). 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. According to our research, the Colorado Securities Division, in a interpretive letter to Prudential Securities on April 18, 1995, declined to take a no action position on a similar program, because the Division did not believe that a retired financial advisor effectively could be restrained from engaging in the securities business if allowed to have contact with former clients. We hope that the facts set forth below will give you good reason to reconsider that position.

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

* 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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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).

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

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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 Colorado 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

Enclosures

Merrill Lynch
Client Transition Program Guide
[For FAs/PWAs domiciled in all US states except California]

* * *

Merrill Lynch Client Transition Program Description

The Merrill Lynch Client Transition Program (MLCTP) represents a vital part of the Firm's commitment to providing outstanding and uninterrupted service to clients when their Advisory Division Financial Advisor (FA) or Private Banking and Investments Group (PBIG) Private Wealth Advisor (PWA) voluntarily elects to leave production with Merrill Lynch. Under the MLCTP, an eligible Departing FA/PWA will receive payments over a four year period of time, funded by a percentage of the production generated in the Eligible Households by Receiving FA(s)/PWA(s). Payments are made in exchange for consulting services (providing advice and guidance) provided to Merrill Lynch management and Receiving FA(s)/PWA(s) for the purpose of maintaining client relationships with Merrill Lynch.

Overview of MLCTP

Eligibility Criteria

Only FAs/PWAs are eligible to participate in the MLCTP. Institutional Advisory Division (IAD) FAs, Investment Associates (IAs) and CAs are not eligible.

Departing FA/PWA:

- Must be in good compliance standing with Merrill Lynch on his/her departure date and have a low incidence of complaints and arbitrations;
- Must have a minimum LOS of 5 consecutive years as a Merrill Lynch FA/PWA and be a minimum of 55 years old –together LOS and age must equal at least 65;
- Must execute the MLCTP Agreement provided by Merrill Lynch;
- Upon execution of the MLCTP Agreement, must not engage in the securities business, including but not limited to providing investment advice or soliciting trades, during the period of this agreement.

Receiving FA/PWA:

- Must be eligible to receive accounts under the Merrill Lynch Account Redistribution Policy or a valid Team Agreement.
- Must execute the MLCTP Agreement provided by Merrill Lynch.

Eligible Households:

- All households (and accounts therein) in Departing FA's/PWA's book that are \$100K or higher (for Domestic Advisory), or \$1M or higher (for PBIG), are eligible for redistribution to Receiving FAs/PWAs.
- Any household that currently is exempt from the Small Household policy, which includes Employee Stock Option and Institutional accounts.
- In accordance with the Payments section outlined in this document:

- Additional business developed in existing households that are part of the existing MLCTP agreement will generate incremental payment to Departing FA/PWA.
- New accounts opened by Receiving FAs/PWAs in eligible households that are part of the existing MLCTP agreement will generate payment to Departing FA/PWA.
- Referrals from Departing FA/PWA that result in accounts opened by Receiving FAs/PWAs will generate payment to Departing FA/PWA if the accounts are opened in eligible households that are part of the existing MLCTP agreements. Nothing in this paragraph detracts from the requirement that Departing FA/PWA may not sell or solicit sales in securities, or otherwise engage in the securities business, after the departure date.
- Referrals from Departing FA/PWA that result in accounts opened by Receiving FAs/PWA(s) that are **not** opened in households that are part of the existing MLCTP agreements will **not** generate payment to Departing FA/PWA.

Enrollment and Termination Process (to be completed by the Manager)

There are three critical steps to the enrollment and termination process of Departing FA/PWA (covered in detail in the MLCTP Manager Enrollment and Termination Guide). They include:

1. Entry of the Intended Departure Date in the MLCTP Enrollment Application
2. Termination of Departing FA/PWA through the Manage Workforce System
3. Redistribution of all Eligible Households to Receiving FAs/PWA(s)

The dates associated with the three steps outlined above must be the same to assure that Departing FA/PWA is paid accurately.

Additionally, managers must enter the Intended Departure Date of Departing FA/PWA in the MLCTP Enrollment Application **a minimum of six weeks prior to their intended departure date**. The MLCTP Enrollment Application is located on the Advisory Division website, Business Reporting Section under “all” reports, Client Transition Program link. The enrollment of Departing FA/PWA **and recording of their Intended Departure Date** allows all Eligible Households to be properly identified as MLCTP households and the payment structure to be set up for Receiving and Departing FAs/PWA(s). If the enrollment procedures are not followed within the six week time frame, then Eligible Households may not be properly identified and payments to Receiving and Departing FAs/PWA(s) may not be accurate. **Eligible Households are determined by taking a snapshot of Departing FA’s/PWA’s book of business as of the General Ledger Month End prior to the month in which the departure will take place.**

For example:

- If the intended departure date is January 2, 2006, the snapshot of Departing FA’s/PWA’s book is taken on 11/30/05.
- If the intended departure date is February 24, 2006, the snapshot of Departing FA’s/PWA’s book is taken on 2/3/06.

For detailed enrollment instructions, please see the “Managers’ Guide to Enrollment.”

Client Redistribution Process

Prior to the departure date, the manager and Departing FA/PWA should review the Eligible Households and plan for the orderly distribution to Receiving FAs/PWAs. Receiving FAs/PWA(s) will be determined via the latest available Account Redistribution Ranking Report, except where exceptions are warranted under the Account Distribution Policy then in effect for specific client needs for product specializations or language skills.

Once Receiving FAs/PWAs are determined, but before the Departure Date, Departing FA/PWA will discuss the relationships with Receiving FAs/PWAs for the purpose of making every effort to ensure that Receiving FAs/PWAs understand the needs of the clients and retaining those clients at Merrill Lynch.

Actual redistributions to Receiving FAs/PWAs should *not* be processed until *after* Departing FA's/PWA's departure date. Managers will follow the same process for redistributing MLCTP accounts as they do for redistributing accounts associated with "terminations of production numbers for any reason" (i.e. The Account Redistribution Policy).

Three Examples of Redistributions:

1. Account Distribution for an Individual Departing FA/PWA not on a Team

On her departure date, her book of business is distributed per the Account Redistribution Policy. In order to receive an Eligible Household each Receiving FA/PWA must execute the MLCTP Agreement. In the event that Receiving FA/PWA does not wish to execute the MLCTP Agreement, the associated Eligible Household (and accounts therein) will be given to the next eligible FA/PWA according to the Account Redistribution Ranking Report.

2. Account Distribution for a Departing FA/PWA within a Team that has LOS of less than 3 years

On his Departure Date, his portion of the book of business will be distributed to the other individuals on his team and other eligible FAs/PWAs in the office in accordance with the Team Dissolution Clause of the Account Redistribution Policy. The team members, as well as individuals outside the team, will execute the MLCTP Agreement in order to keep and/or receive the Eligible Households. In the event that Receiving FA/PWA does not wish to execute the MLCTP Agreement, the associated Households (and accounts therein) will be given to the next eligible FA/PWA, by the manager according to the Account Redistribution Ranking Report.

3. Account Distribution for a Departing FA/PWA within a Team that has LOS of more than 3 years

On his Departure Date, his portion of the book of business will be kept entirely by the remaining team members in accordance with the Team Maturity terms of the Account Redistribution Policy. Each of the remaining team members will be required to execute the MLCTP Agreement.

Obligations of Departing FA/PWA - Checklist

- Must cease all securities business, including but not limited to sales and financial advising, by the departure date, and must continue to abstain from participation in the securities business throughout the period of program participation, with the understanding that engaging in any work that would require securities registration with a state or self-regulatory organization will terminate the departing FA's eligibility for the program.
- Must not contact former clients, directly or indirectly, for the purposes of soliciting them to maintain their accounts at Merrill Lynch or to conduct any securities transactions.
- Must not discuss securities transactions with former clients.
- Must understand that Merrill Lynch may, at its own discretion, contact clients to confirm that the departing FA has not violated the foregoing conditions of the program.
- Must maintain the same high ethical standards required of all Merrill Lynch personnel.
- Must understand that, while participants will not generally be required to maintain securities registrations, MLCTP 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.
- Must meet once a year with local office management to affirm compliance with program requirements.

- Must be available to consult with management and the Receiving FA(s) from time to time on general practices in regard to client retention.
- Must not “pre-position,” “pre-sell” or otherwise “transfer” any portion of their book outside of this policy and / or on their own. If Households (and accounts therein) are transferred prior to Departing FA’s/PWA’s termination date, they will not be tracked nor eligible for payment to Departing FA/PWA. Further, if Departing FA/PWA is found to be pre-positioning his or her book such that Eligible Households are distributed to certain FAs/PWAs, rather than through the Account Redistribution Policy, Departing FA/PWA will be considered in violation of this agreement and not permitted to enroll in this program, or if already enrolled, will cease receiving payments and will be obligated to return to Merrill Lynch all payments that Departing FA/PWA received under this program.
- Must execute a Covenant Not To Compete provided by Merrill Lynch

Obligations of Receiving FA/PWA

- Must execute and sign the MLCTP Agreement. The Agreement prohibits Receiving FAs/PWAs from soliciting the clients that he or she receives as part of MLCTP should the FA/PWA leave Merrill Lynch and go to another firm.

Payments to Departing FA/PWA

Under the terms of the MLCTP Agreement, Departing FA/PWA will receive payments over a four-year period based on actual production in the accounts of Eligible Households as follows:

Year 1	50%
Year 2	50%
Year 3	40%
Year 4	35%

Payment to Departing FA/PWA will be paid on the first Monday following General Ledger Month-end. Such payments will be made in accordance with Departing FA’s/PWA’s Effective Compensation Payout Range (ECPR) as of Departing FA’s/PWA’s departure date.

Departing FA’s/PWA’s ECPR will be calculated as follows:

- If the departure date is between January and June, the ECPR will be based on annual production as of the **Prior year-end**
- If the departure date is between July and December, the ECPR will be based on **Current year annualized** production

The terms of payment are subject to compensation plan changes, at which time the payment rate could be re-evaluated to reflect the revised compensation plan. Payments will be reported on a **Form W-2 and are subject to applicable federal and state tax withholding.**

Premature Termination

If Departing FA/PWA passes away after his or her departure date, and before receipt of all payments owed under the MLCTP, a one time payment based on the trailing 12 months of payments will be paid to Departing FA’s/PWA’s estate as a complete satisfaction of all amounts owed under the MLCTP. After all amounts have been paid to Departing FA/PWA under the MLCTP, no further MLCTP payments will be made to any person or estate.

For Example:

- Departing FA/PWA passes away in early July of year three of the agreement.
- He had received \$120K in payments (cumulative) over the last 12 months.
- The \$120K in payments was based on six months of production generated at 50% (\$70K; June through December of the prior year), and six months of production generated at 40% (\$50K; January through June of the current year).

To determine the payment for the balance of years three and four, we take the \$70K and gross it up based on year two's percentage (50%), which equals \$140K. We take the \$50K and gross it up based on year three's percentage (40%), which equals \$125K. The two amounts are then added together to get a trailing 12 months gross production amount of \$265K.

The \$265K is divided in half since there are 6 months left in year three and equals \$132.5K. Multiply by year three's rate of 40% and the remaining owed in year three is \$53K. For year four take the full trailing 12 months gross production of \$265K multiplied by year four's rate of 35% to calculate the remaining owed in year four of \$92.75K.

The one time payment (\$145.75K), representing 6 months owed in year three and 12 months owed in year four is the sum of the balance of year three (\$53K) and year four (\$92.75K).

Payments to Receiving FA/PWA

Each Receiving FA/PWA will be paid out at Receiving FA's/PWA's applicable grid rate at the time of payment, over a four year period for production in the accounts of Eligible Households as follows:

Year 1	50%
Year 2	50%
Year 3	60%
Year 4	65%

The premature termination of the Departing FA/PWA will have no affect on Receiving FA's schedule of payments.

Payments under this Program are subject to the terms and conditions of the Program and are contingent on compliance with Merrill Lynch policies. If, in the sole discretion of management, it is determined at any time that a participant in this Program violated the terms of this Program or Merrill Lynch policies, any future payments will cease and Departing FA/PWA will be required to return any payments already received.

* * *