

STATE OF ILLINOIS  
SECRETARY OF STATE  
SECURITIES DEPARTMENT

IN THE MATTER OF: JOHN L. ONG

FILE NO. 0900527

CONSENT ORDER OF DISMISSAL

TO THE RESPONDENT :

John L. Ong  
(CRD#: 1232869)

  
New York, New York 10010

John L. Ong (CRD#: 1232869)  
C/o Merrill Lynch, Pierce, Fenner & Smith, Inc.  
101 S. Tryon Street NC1-002-19-44  
Charlotte, North Carolina 28255

John L. Ong  
C/o Daniel C. Zinman Attorney At Law  
Richards Kibbe & Orbe LLP  
One World Financial Center  
New York, New York 10281-1003

WHEREAS, Respondent on the 27<sup>th</sup> day of April 2010 executed a certain Stipulation to Enter Consent Order of Dismissal (the "Stipulation"), which hereby is incorporated by reference herein.

WHEREAS, by means of the Stipulation, Respondent has admitted to the jurisdiction of the Secretary of State and service of the Corrected Notice of Hearing of the Secretary of State, Securities Department, dated February 25, 2010, in this proceeding (the "Corrected Notice") and Respondent has consented to the entry of this Consent Order of Dismissal "Consent Order").

WHEREAS, by means of the Stipulation, the Respondent acknowledged, without admitting or denying the truth thereof, that the following allegations contained in the Notice of Hearing shall be adopted as the Secretary of State's Findings of Fact:

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1. That at all relevant times, the Respondent was registered with the Secretary of State as a salesperson in the State of Illinois pursuant to Section 8 of the Act.
2. That on July 14, 2009 FINRA entered a Letter Of Acceptance, Waiver And Consent (AWC) submitted by the Respondent regarding File No. 2005002254702 Which sanctioned the Respondent as follows:
  - a. 15 business day suspension from association with any FINRA member firm in any capacity; and
  - b. After consideration of the sanctions previously imposed by Merrill on the Respondent of a fine of \$10,000 for the short term sales of CEFs, FINRA has determined to give the Respondent credit for the amount paid by him to Merrill. Accordingly, the fine assessed pursuant to this AWC is deemed paid.
3. That the AWC found:

### FACTS AND VIOLATIVE CONDUCT

Merrill's CEF Program Between March 2003 and August 2006 (the "relevant period"), Merrill underwrote 114 initial public offerings ("IPO") of closed end funds ("CEFs"). CEFs are investment companies that sell a fixed number of shares in an initial public offering, after which the shares typically trade on a secondary market. The sales charges to the customer are built into the offering price of the CEF purchased at the initial public offering. During the relevant period, the CEFs at issue included a sales load of 4.5%, from which the underwriters' fee and sales concession were paid. The proceeds, after the expenses, were then invested by the CEF based on the investment objectives of the CEF.

The CEFs had a "stabilization period," which was the period of time immediately following the IPO in which the lead underwriter (at least in theory) generally supported the price of the fund. The CEFs' prospectus noted that the underwriter may purchase common shares to stabilize the fund's price or to reduce short positions, and that this may cause the price of the common shares to be higher than it might otherwise be. Stabilization periods did not exceed 90 days and were generally shorter in duration.

Following the stabilization period, the price of CEF shares in the secondary market was determined by the market and may have reflected either a premium or a discount of the shares' net asset value ("NAV") excluding the offering expenses. Since expenses to the customer at the time of the IPO were built into the offering price of the CEF, its market price generally declined after the stabilization period. Without trading at a discount or a premium, all other factors being equal, it would have been reasonable to expect the market price of the CEF at the end of the stabilization period to be approximately 4.5% below the initial offering price.

**The Respondent's Unsuitable Recommendations**

From March 2003 through September 2006, the Respondent recommended that certain of his customers purchase CEFs in the initial public offering. Generally, he received a production credit of 3% of the value of the Shares his customers purchased at IPO. These production credits were applied to his commission grid or pay-out percentage such that he typically received a commission equal to approximately .75 - 1.25% of the value of the shares purchased by his clients.

Despite the generally long term nature of these investments, the Respondent consistently recommended his customers sell these CEFs in the short term, less than 120 days after they were purchased in the initial public offering. The Respondent recommended a sale within 120 days of purchasing the CEF in the initial public offering in 18 of the 20 customer accounts to which he recommended an IPO purchase. Approximately 59% of the shares his customers bought in the initial public offering were sold on his recommendation within 120 days of the IPO.

The Respondent made the recommendations to buy the CEFs in the initial public offering and sell them in the short term without a sufficient understanding of the pricing considerations of the investment. During the relevant period, the Respondent did not fully understand how the issuer or Merrill Lynch intended the product to be used when purchased at IPO or the potential risks and rewards of the product. Among other things, the Respondent did not understand the impact of the underwriting fee of closed end funds bought at IPO on the aftermarket price. The Respondent's recommendations to buy the CEFs in the initial public offering and sell them in the short term contributed to his customers losing approximately \$350,000.

Before recommending a transaction, NASD Rule 2310 requires a broker to "have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs." A broker cannot determine whether a recommendation is suitable for a specific customer unless the broker understands the nature of the product, as well as the potential risks and rewards associated with the product. Because the Respondent failed to fully understand the pricing of CEFs and the risks and rewards of the investment, the respondent did not have reasonable grounds for believing that his recommendations that his customers purchase CEFs in the initial public offering and sell them in the short term were suitable.

By engaging in the course of conduct described above, the Respondent violated NASD Conduct Rules 2310 and 2110.

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4. That Section 8.E(1)(j) of the Act provides, *inter alia*, that the registration of a salesperson may be revoked if the Secretary of State finds that such Salesperson has been suspended by any self regulatory organization Registered under the Federal 1934 Act or the Federal 1974 Act arising from Any fraudulent or deceptive act or a practice in violation of any rule, regulation or standard duly promulgated by the self regulatory Organization.
5. That FINRA is a self regulatory organization as specified in Section 8.E(1)(j) of the Act.

WHEREAS, by means of the Stipulation, the Respondent acknowledged and agreed that the Secretary of State made the following additional Finding of Fact:

6. The Respondent voluntarily terminated his registration as a salesperson in the State of Illinois on March 30, 2010.

WHEREAS, by means of the Stipulation Respondent has acknowledged, without admitting or denying the averments, that the following shall be adopted as the Secretary of State's Conclusion of Law:

The Respondent's registration as a salesperson in the State of Illinois is subject to revocation pursuant to Section 8.E(1)(j) of the Act.

WHEREAS, by means of the Stipulation Respondent has acknowledged and agreed that he shall be levied costs incurred during the investigation of this matter in the amount of Seven Hundred Fifty dollars (\$750.00). Said amount is to be paid by certified or cashier's check, made payable to the Office of the Secretary of State, Securities Audit and Enforcement Fund.

WHEREAS, by means of the Stipulation Respondent has acknowledged and agreed that He has submitted with the Stipulation a certified or cashier's check in the Amount of Seven Hundred Fifty Dollars (\$750.00). Said check has been made payable to the Office of the Secretary of State, Securities Audit and Enforcement Fund and represents reimbursement to cover the cost incurred during the investigation of this matter.

WHEREAS, by means of the Stipulation Respondent has acknowledged and agreed that he completed the course "Structured Products" on March 22, 2010.

WHEREAS, by means of the Stipulation Respondent has acknowledged and agreed that in the event that he becomes registered as a salesperson in the State of Illinois he shall be subject to a plan of heightened supervision ("Plan") for one (1) year from the date of registration. The Plan shall focus on my adherence to all rules, regulations, policies and conditions specified in my dealer's compliance manual; all rules, regulations, policies and conditions in the securities industry generally and those promulgated by the Financial Industry Regulatory Authority ("FINRA") the United States Securities and Exchange Commission ("SEC"); and applicable law and rules relating to the securities industry in the State of Illinois.

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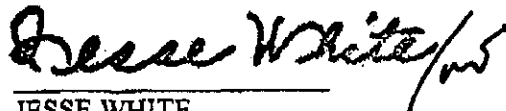
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WHEREAS, the Secretary of State, by and through his duly authorized representative, has determined that the matter related to the aforesaid formal hearing may be dismissed without further proceedings.

NOW THEREFORE IT SHALL BE AND IS HEREBY ORDERED THAT:

1. The Respondent is levied costs of investigation in this matter in the amount of Seven Hundred Fifty dollars (\$750.00), payable to the Office of the Secretary of State, Securities Audit and Enforcement Fund, and on April 30, 2010 has submitted Seven Hundred Fifty dollars (\$750.00) in payment thereof.
2. The Corrected notice of Hearing dated February 25, 2010 is dismissed.
3. That in the event that the Respondent becomes registered as a salesperson in the State of Illinois he shall be subject to a plan of heightened supervision ("Plan") for one (1) year from the date of registration. The Plan shall focus on his adherence to all rules, regulations, policies and conditions specified in his dealer's compliance manual; all rules, regulations, policies and conditions in the securities industry generally and those promulgated by the Financial Industry Regulatory Authority ("FINRA") the United States Securities and Exchange Commission ("SEC"); and applicable law and rules relating to the securities industry in the State of Illinois.
4. The formal hearing scheduled on this matter is hereby dismissed without further proceedings.

ENTERED- This 30<sup>th</sup> day of April 2010.



JESSE WHITE  
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State of Illinois

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