June 4, 2020

Merrill to Pay $7.2 Million for Mutual Fund Overcharges

by Mason Braswell and Jed Horowitz | News | BANK OF AMERICA, FINRA, MERRILL LYNCH |
Comments (3)

SHARE THIS

SUBMIT A TIP

wolterke | stock.adobe.com

Merrill Lynch has agreed to pay $7.2 million to customers for mutual fund sales overcharges on 13,000 accounts over six years, the Financial Industry Regulatory Authority said on Thursday.

From April 2011 through April 2017, Merrill's supervisory systems and procedures failed to ensure that eligible customers received "right of reinstatement" discounts offered by fund companies, including waivers of upfront sales charge waivers and fee rebates in cases where exchanges are made among shares of funds in the same fund family.

Merrill relied on brokers to manually identify the rebates, "an unreasonably designed system given the number of customers involved, the complexity of determining which customers were due sales charge waivers or fee rebates, and difficulty in calculating the amount of the waiver and rebate," the industry self-regulator said.

"The firm's supervisory failures led to customers not receiving millions of dollars in sales charge and fee waivers," Finra's head of enforcement, Jessica Hopper, said in a prepared statement.

The settlement is the latest in a long series of mutual fund sales practice sanctions that Finra and the Securities and Exchange Commission have issued in recent years. Industry trade groups have decried the actions as illegal "regulation by enforcement" in which penalties and/or restitution orders are made without clear rules or guidelines to firms.

They also have attacked the SEC's recently ended share-class disclosure initiative, which absolved Merrill and other firms of having to pay civil monetary penalties if they voluntarily confessed to selling overpriced share classes.

In Thursday's settlement, Finra acknowledged Merrill's "extraordinary cooperation," including its hiring an outside consulting firm to identify affected customers and in making restitution to customers ahead of the settlement order.

"Ensuring that harmed customers receive restitution is our highest priority and we will take a firm's determination to proactively provide restitution into account when assessing sanctions," Finra's head of enforcement, Jessica Hopper, said in a prepared statement.

Merrill Lynch, a subsidiary of Bank of America, agreed to the settlement without admitting or denying the findings.

"We enhanced our procedures in 2017 to ensure clients always receive the appropriate fee waivers and rebates related to mutual fund purchases," Merrill Lynch spokesman William Halldin said in a statement. "We fully reimbursed affected clients a year ago."

In the SEC's April settlement with Merrill, the firm agreed to return $325,000 to investors for allegedly failing to disclose conflicts of interest advisors had in selling more expensive mutual fund shares. In 2014, Merrill agreed to an $8 million Finra fine and over $89 million in restitution for failing to grant sales charge waivers to eligible retirement plans and charitable accounts.

In a closely watched case, the SEC last year filed fraud charges against independent brokerage firm Cetera Advisors for allegedly failing to disclose to customers $11 million of undisclosed commissions and revenue-sharing received from fund companies over four years. Cetera has asked a federal court in Denver to dismiss the case on the grounds that it made "fulsome disclosure."

The Financial Services Institute, a trade group for the independent brokerage industry, attempted to file a brief in support of Cetera that relied heavily on its argument against regulation by enforcement. U.S. Magistrate Judge Michael Hegarty last week denied FSI's bid to file its brief, ruling that it would "not illuminate factors or circumstances which would aid the Court in resolving the matter."