

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
MUMBAI**

CONSENT ORDER

On the application submitted by

MERRILL LYNCH CAPITAL MARKETS ESPANA, S.A., S.V

SEBI REGISTRATION NO. INSPFA064300

(CONSENT APPLICATION NO. 1630/2009)

1. Due to the significant market movements in the Indian securities market on May 17, 2004, Securities and Exchange Board of India (hereinafter referred to as 'SEBI') investigated into the dealings in securities by various entities on May 17, 2004. It was noted that, the majority of trades in the Cash and F& O segment during May, 2004 were executed by Merrill Lynch Capital Markets Espana S.A., S.V., (hereinafter referred to as 'the applicant') a SEBI registered Foreign Institutional Investor on behalf of its clients, which were mostly Hedge Funds, and that they had also executed trades in their proprietary account.
2. In view of the same, during the course of investigation, SEBI interalia sought information from the applicant as regards the names of the major shareholders/directors/fund managers /investors/limited partners in respect of the major clients of the applicant. However, the applicant had failed to furnish complete details of the information sought by SEBI even after repeated requests from SEBI. The information with respect to certain institutional investors was furnished only after repeated follow ups, resulting in delay in investigations. The applicant cited reasons such as confidentiality provisions in the client agreement for their refusal to furnish the above said information.

3. Based on the above said findings of the investigations, the applicant was alleged to have violated Regulations 20 and 20 A of SEBI (Foreign Institutional Investors) Regulations, 1995 (hereinafter referred to as “FII Regulations”), Clauses 1, 2, 5 and 6 of Code of Conduct as specified in Regulation 7A of FII Regulations read with the “Know your Client” (KYC) requirements as specified in Regulation 15A of FII Regulations read with Circular No. IMD/CUST/8/2003 dated August 8, 2003.
4. Hence, a notice dated 16/02/2005 (**IVD/ID-6/RM/33881/2005**) was issued by SEBI under the provisions of Sections 11(4) and 11B of the SEBI Act, 1992, calling upon the applicant to show cause as to why directions under Section 11(4) and 11B of the SEBI Act, 1992 including directions to prohibit the applicant from dealings in securities on behalf of its clients in respect of whom it had not provided information on their underlying investors, should not be issued against the applicant for the afore- mentioned violations.
5. Similarly, another notice dated 20/05/2005 (**IVD/ID-6/RM/41015/2005**) was issued by the Enquiry Officer under Regulation 6(1) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, calling upon the applicant to show cause as to why appropriate recommendations should not be made against the applicant under Regulation 13 of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, for the same violations.
6. While the above proceedings were in progress, in terms of SEBI Circular No. EFD/ED/Cir- 1/2007 dated April 20, 2007, the applicant vide application dated 04/11/2009 proposed settlement of the above said proceedings through a consent order and thereafter proposed revised consent terms vide letter dated 28/09/2010, whereby it undertook to pay ₹Rs.60,00,000/- (Rupees Sixty Lakhs) towards settlement charges. As the settlement terms proposed by the applicant were found to be on similar lines with the settlement terms arrived at by SEBI for settling

similar charges in a consent application filed by another entity, the consent terms proposed by this applicant were agreed upon and placed before the High Powered Advisory Committee (hereinafter referred to as 'HPAC') constituted by SEBI for its consideration. After deliberations and considering other similar consent applications settled on almost similar terms proposed by this applicant, the HPAC recommended that this aforesaid pending proceeding may also be settled on similar terms i.e. ₹Rs. 60,00,000/- (Rupees Sixty Lakhs). SEBI accepted the said recommendations and communicated the same to the applicant vide letter dated 15/04/2011.

7. For the sole purpose of settling the matter on hand and without admission or denial of guilt on the part of the applicant, the applicant have remitted a sum of ₹ 60,00,000/- (Rupees Sixty Lakhs) vide Paylink check No. "777651" dated 21/04/2010 drawn on Citibank.
8. In view of the above, it is hereby ordered that this consent order disposes of the afore- mentioned 11B proceedings as well as the enquiry proceedings initiated against the applicant vide show cause notices dated 16/02/2005 (**IVD/ID-6/RM/33881/2005**) and 20/05/2005 (**IVD/ID-6/RM/41015/2005**) respectively.
9. This order is without prejudice to the right of SEBI to initiate enforcement actions, including commencing or reopening of the proceedings pending against the applicant, if:
 - a) any representation made by the applicant in this consent proceeding is subsequently discovered to be untrue; or
 - b) the applicant breaches any of the consent terms or undertakings filed in this consent proceeding.
- 10) This consent order is passed on this day, the 13th of May 2011 and shall come into force with immediate effect.

K.M. ABRAHAM
WHOLE TIME MEMBER

PRASHANT SARAN
WHOLE TIME MEMBER