

Finra orders Merrill Lynch to pay \$7.2 million over mutual fund overcharges

The brokerage reimbursed customers a year ago, earning a break on sanctions for cooperation



June 4, 2020 By Mark Schoeff Jr.

Finra ordered Merrill Lynch to return \$7.2 million to customers who overpaid for mutual fund transactions, the regulator announced Thursday.

THERE'S MORE THAN ONE WAY TO RUN YOUR PRACTICE. We've got you covered.



COMMONWEALTH financial network

The firm reimbursed the customers the amount that the Financial Industry Regulatory Authority Inc. assessed in restitution voluntarily a year ago, according to Merrill. That remedial move earned the brokerage credit for "extraordinary cooperation" that seemed to help it avoid monetary sanctions, **according to the Finra settlement.**

From April 2011 through April 2017, Finra alleged Merrill failed to provide mutual fund sales charge waivers and fee rebates for more than 13,000 accounts in which customers were eligible for reinstatement offered by fund companies.

Merrill failed to establish and maintain a supervisory system that ensured customers received mutual fund discounts, Finra charged. Instead, the firm allegedly relied on its registered representatives to determine whether customers were eligible for the discounts.

But Merrill started addressing the problem before Finra came knocking on its door, according to the settlement. In a section titled, "Credit for Extraordinary Cooperation," Finra said Merrill tapped an outside consulting firm to conduct an investigation of whether customers were harmed, promptly paid restitution and addressed shortcomings in its supervisory system.

Finra issued a censure and imposed restitution but did not levy a monetary penalty. The restitution was comprised of \$6 million for customer harm and \$1.2 million in interest.

THE EFFECTIVE FINANCIAL ADVISOR
A CX Institutional Podcast

We learned what not to do.

[LISTEN NOW](#)

cxinstitutional.com

The \$7.2 million restitution is the most ordered by Finra so far this year, according to a Finra spokesperson. Finra executive vice president and head of enforcement Jessica Hopper has said that **repaying harmed customers** is one of her priorities.

"We are pleased that Merrill has reimbursed the customers affected by its failure to provide [sales charge and fee] waivers," Hopper **said in a statement.** "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."

Merrill did not admit or deny wrongdoing as part of the settlement.

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

The settlement sends a message to other brokerages that may have failed to give appropriate discounts to customers that they should address the problem before Finra steps in, said David Chase, a securities attorney in Ft. Lauderdale, Fla.

"This was mapped out [by Finra] to educate the broker-dealer community," said Chase, a former Securities and Exchange Commission enforcement attorney. "To some extent, this may be a playbook for other firms facing a similar situation to achieve extraordinary cooperation and reap the benefits of lesser sanctions."

THE EFFECTIVE FINANCIAL ADVISOR
A CX Institutional Podcast

We learned what not to do.

[LISTEN NOW](#)

cxinstitutional.com

Mutual fund overcharging is a problem Finra has pursued for the last several years. In 2014, it fined Merrill \$8 million and ordered \$24.2 million in restitution for violations in mutual fund sales to retirement plans and charitable organizations.

Finra launched mutual fund **waiver initiative in 2015**, conducted targeted exams in 2016 and **announced settlements with 56 brokerages** last year.

The SEC **recently wrapped up a two-year initiative** cracking down on advisory firms' failure to disclose that they recommended high-fee mutual fund share classes when less expensive share classes were available in the same fund.

"The SEC and Finra are properly focused on ensuring that customers get the full benefit they're entitled to in these transactions," Chase said.

THE EFFECTIVE FINANCIAL ADVISOR
A CX Institutional Podcast

We learned what not to do.

[LISTEN NOW](#)

cxinstitutional.com

MOST READ



84% of financial professionals expect client discussions around health care planning to increase.

Are you ready for more holistic planning? your relationships?

SPONSORED BY



Download Now

NEWSLETTER

ClearBridge 2020 Impact Report: Improving Outcomes Through Active Company Ownership

Sponsored by ClearBridge Investments

Our annual report focuses on timely issues including carbon emissions and climate change and highlights key examples of successful company engagement. [Learn more at ClearBridge.com/impact](#)