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CONSENT ORDER

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## STATE OF WASHINGTON DEPARTMENT OF FINANCIAL INSTITUTIONS SECURITIES DIVISION

IN THE MATTER OF DETERMINING Whether there has been a violation of the Securities Act of Washington by:

DAVID L. COULTER,

Respondent.

Order No. S-01-064-04-CO01

CONSENT ORDER AND ORDER VACATING S-01-064-03-SC01

## INTRODUCTION

On November 12, 2003, the Securities Division, Department of Financial Institutions, State of Washington (the "Securities Division"), issued a Statement of Charges S-01-064-03-SC01 (the "Statement of Charges") against Respondent David L. Coulter. In the Statement of Charges, the Securities Division made certain allegations and conclusions, set forth under the headings "Tentative Findings of Fact" and "Conclusions of Law." Based upon information that came to the attention of the Securities Administrator after the Statement of Charges was issued, the Securities Division stipulates with Respondent to the agreed facts set forth below, in lieu of the Tentative Findings of Fact. While Respondent does not admit the Conclusions of Law, which are incorporated herein by this reference, he does not object to entry of this Consent Order. Pursuant to the Securities Act of Washington, RCW 21.20, the Securities Division and Respondent David L. Coulter do hereby enter into this Consent Order and Order Vacating S-01-064-03-SC01 in settlement of the above captioned matter.

## AGREED FACTS

1. **DAVID L. COULTER** ("Coulter"), CRD #2587409, has been registered with the State of Washington as a securities salesperson since 1998, and as an investment adviser representative since 2000.

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DEPARTMENT OF FINANCIAL INSTITUTIONS Securities Division PO Box 9033 Olympia, WA 98507-9033 360-902-8760 Coulter has been employed by Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") since January 2000. From July 1998 to January 2000, Coulter was employed by Morgan Stanley DW Inc. as a securities salesperson. Coulter resides in Bremerton, Washington.

- 2. Eleanor T. is a Washington resident, and her late husband Ralph was also a Washington resident. In July 2000, they were 79 years old, and 85 years old, respectively.
- 3. Prior to Coulter joining the firm, Ralph and Eleanor opened an account at Morgan Stanley DW Inc. Coulter inherited their inactive account from their prior broker. On or about October 5, 1999, Ralph and Eleanor presented Coulter with a check for \$225,000 and, at Coulter's recommendation, placed this money into a money market fund. Coulter left Morgan Stanley DW Inc. for Merrill Lynch in January 2000. Shortly thereafter, Ralph and Eleanor transferred their account to Merrill Lynch. Coulter continued to handle the account.
- 4. In conjunction with the account transfer in January 2000, Coulter filled out and signed a Merrill Lynch "retail account profile" for Ralph and Eleanor's account. This profile lists Ralph and Eleanor's investment objective as income and their account risk factor as conservative.
- 5. At the time their account was transferred to Merrill Lynch, Ralph and Eleanor's annual income was approximately \$37,668, and their net worth (excluding personal items) was approximately \$250,000.
- 6. In July 2000, Coulter recommended that Ralph and Eleanor purchase a Merrill Lynch Retirement Power Variable Annuity ("ML Power VA") and a Merrill Lynch Retirement Plus Variable Annuity ("ML Plus VA"). As he was a salaried employee at the time, Coulter did not receive a commission on the sales.

CONSENT ORDER

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- 7. The ML Power Annuity allows annuity holders to withdraw any or all funds at any time without penalty. The ML Plus VA allows annuity holders to withdraw up to 10% of the account value each year without penalty, and thereafter imposed a deferred sales charge for withdrawals made within seven years of the purchase of the variable annuity for amounts in excess of 10% each year. The deferred sales charge is 7% of the amount of the premium withdrawn during the first year after that premium is paid, and decreases by 1% annually to 0% after seven years. Both annuities also include specified benefits for the beneficiary upon the death of the owner.
- 8. On or about July 18, 2000, Eleanor signed an application to purchase a ML Power VA for \$100,000, and a separate application to purchase a ML Plus VA for \$100,000. Ralph did not sign either application, but was subsequently added as a co-owner of both annuities. Ralph and Eleanor's son was listed as the contingent beneficiary of both annuities. At the time of the purchase, the \$200,000 represented 80% of their net worth (excluding personal items).
- 9. During the purchase of the ML Power VA and ML Plus VA, the purchaser may distribute the investment among one or more sub-accounts within the annuity on a percentage or dollar basis. Each sub-account chosen corresponds to a particular mutual fund. The investments here, in both the ML Power VA and the ML Plus VA, included several mutual funds, a number of which had long-term investment objectives.

## CONSENT ORDER

Based upon the foregoing,

IT IS AGREED AND ORDERED that David L. Coulter shall not violate RCW 21.20.702, the section of the Washington State Securities Act dealing with the suitability of recommendations to customers.

CONSENT ORDER 24

IT IS AGREED that David L. Coulter shall, within 120 days of entry of this Consent Order, undergo the following training:

- A. In an effort to ensure that he is fully aware of current Merrill Lynch policies and procedures concerning suitability, Coulter shall participate in a one-on-one session with a Merrill Lynch Compliance Officer;
- B. In an effort to ensure that he is fully aware of issues involved in the sale of variable annuities, Coulter shall participate in a one-on-one session, separate and apart from the session listed in paragraph a. above, with the Merrill Lynch District Annuity Specialist; and
- C. In an effort to ensure that he is fully aware securities laws and rules and regulatory issues, Coulter shall participate in a one-on-one session, separate and apart from the sessions listed in paragraphs A. and B. above with a member of Merrill Lynch's Regulatory Affairs Department of the Office of General Counsel.

IT IS FURTHER AGREED that, after he has notified the Securities Division of his completion of the foregoing training, Coulter will have satisfied that requirement of this Consent Order.

IT IS FURTHER AGREED that, although not a party to this Consent Order, Merrill Lynch has represented that it will pay \$10,000 to help defray the Securities Division's costs incurred in its investigation of this matter and that it will do so within 30 days of being notified of entry of this Consent Order.

IT IS FURTHER AGREED that the Securities Division has jurisdiction to enter this Consent Order.

360-902-8760

1	In consideration of the foregoing, David L. Coulter waives his right to a hearing on this matter
2	and to judicial review of this matter pursuant to RCW 21.20.440 and Chapter 34.05 RCW, and the
3	Securities Division hereby vacates the Statement of Charges.
4	Approved for entry by:
5	FOSTER PEPPER & SHEFELMAN PLLC
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7 8	/s/ Roger D. Mellem, WSBA No. 14917
8	Attorney for David L. Coulter
9	Approved as to investigative costs only by:
10	OFFICE OF THE GENERAL COUNSEL MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED
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13	_/s/ Andrew I. Kandel
14	First Vice President & Assistant General Counsel, Regulatory Affairs
15	Signed by:
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17	/s/
18	David L. Coulter
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1	THIS CONSENT ORDER ENTERED THIS29th DAY OF APRIL, 2004 BY:
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3	midel Z, Stevenson
4	MICHAEL E. STEVENSON
5	Securities Administrator
6	Presented by:
7	Mad Startfer
8	mad Standie
9	Chad C. Standifer Staff Attorney
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