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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

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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

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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.

1 Coulter has been employed by Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”) since
2 January 2000. From July 1998 to January 2000, Coulter was employed by Morgan Stanley DW Inc. as a
3 securities salesperson. Coulter resides in Bremerton, Washington.

4 2. Eleanor T. is a Washington resident, and her late husband Ralph was also a Washington
5 resident. In July 2000, they were 79 years old, and 85 years old, respectively.

6 3. Prior to Coulter joining the firm, Ralph and Eleanor opened an account at Morgan Stanley
7 DW Inc. Coulter inherited their inactive account from their prior broker. On or about October 5, 1999,
8 Ralph and Eleanor presented Coulter with a check for \$225,000 and, at Coulter’s recommendation,
9 placed this money into a money market fund. Coulter left Morgan Stanley DW Inc. for Merrill Lynch in
10 January 2000. Shortly thereafter, Ralph and Eleanor transferred their account to Merrill Lynch. Coulter
11 continued to handle the account.

12 4. In conjunction with the account transfer in January 2000, Coulter filled out and signed a
13 Merrill Lynch “retail account profile” for Ralph and Eleanor’s account. This profile lists Ralph and
14 Eleanor’s investment objective as income and their account risk factor as conservative.

15 5. At the time their account was transferred to Merrill Lynch, Ralph and Eleanor’s annual
16 income was approximately \$37,668, and their net worth (excluding personal items) was approximately
17 \$250,000.

18 6. In July 2000, Coulter recommended that Ralph and Eleanor purchase a Merrill Lynch
19 Retirement Power Variable Annuity (“ML Power VA”) and a Merrill Lynch Retirement Plus Variable
20 Annuity (“ML Plus VA”). As he was a salaried employee at the time, Coulter did not receive a
21 commission on the sales.

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

3 A. In an effort to ensure that he is fully aware of current Merrill Lynch policies and
4 procedures concerning suitability, Coulter shall participate in a one-on-one session with
5 a Merrill Lynch Compliance Officer;

6 B. In an effort to ensure that he is fully aware of issues involved in the sale of variable
7 annuities, Coulter shall participate in a one-on-one session, separate and apart from the
8 session listed in paragraph a. above, with the Merrill Lynch District Annuity Specialist;
9 and

10 C. In an effort to ensure that he is fully aware securities laws and rules and regulatory
11 issues, Coulter shall participate in a one-on-one session, separate and apart from the
12 sessions listed in paragraphs A. and B. above with a member of Merrill Lynch's
13 Regulatory Affairs Department of the Office of General Counsel.

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

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

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

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

6
7 /s/
8 Roger D. Mellem, WSBA No. 14917
9 Attorney for David L. Coulter

10 Approved as to investigative costs only by:

11 OFFICE OF THE GENERAL COUNSEL
12 MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

13 /s/
14 Andrew I. Kandel
15 First Vice President & Assistant General Counsel, Regulatory Affairs

16 Signed by:

17 /s/
18 David L. Coulter

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THIS CONSENT ORDER ENTERED THIS ___29th___ DAY OF APRIL, 2004 BY:

Michael E. Stevenson

MICHAEL E. STEVENSON
Securities Administrator

Presented by:

Chad Standifer

Chad C. Standifer
Staff Attorney