
Merrill Lynch overcharged 41,000 small business retirement plans: FINRA

By Editorial Staff *Fri, Jun 20, 2014*

Merrill Lynch learned in 2006 that its small business retirement plan customers were overpaying, but continued to sell them more costly shares and failed to report the issue to FINRA for more than five years, FINRA said.

The Financial Industry Regulatory Authority (FINRA) has fined Merrill Lynch \$8 million for failing to waive mutual fund sales charges for certain charities and retirement accounts.

FINRA also ordered Merrill Lynch to pay \$24.4 million in restitution to affected customers, in addition to \$64.8 million the firm has already repaid to harmed investors.

Mutual funds offer several classes of shares, each with different sales charges and fees. Typically, Class A shares have lower fees than Class B and C shares, but charge customers an initial sales charge. Many mutual funds waive their upfront sales charges for retirement accounts and some waive these charges for charities.

Most of the mutual funds available on Merrill Lynch's retail platform offered such waivers to retirement plan accounts and disclosed those waivers in their prospectuses. However, at various times since at least January 2006, Merrill Lynch did not waive the sales charges for affected customers when it offered Class A shares.

As a result, approximately 41,000 small business retirement plans, and approximately 6,800 charities and 403(b) retirement plan accounts available to ministers and employees of public schools, either paid sales charges when purchasing Class A shares, or purchased other share classes that unnecessarily subjected them to higher ongoing fees and expenses.

Merrill Lynch learned in 2006 that its small business retirement plan customers were overpaying, but continued to sell them more costly shares and failed to report the issue to FINRA for more than five years.

Merrill Lynch's written supervisory procedures provided little information or guidance on mutual fund sales charge waivers. Even after the firm learned that it was not providing sales charge waivers to eligible accounts, Merrill Lynch relied on its financial advisors to waive the charges, but failed to adequately supervise the sale of these products or properly train or notify its financial advisors about lower-cost alternatives.

In concluding this settlement, Merrill Lynch neither admitted nor denied the charges, but consented to the entry of FINRA's findings.