

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 16-cv-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARIEL QUIROS,
WILLIAM STENGER,
JAY PEAK, INC.,
Q RESORTS, INC.,
JAY PEAK HOTEL SUITES L.P.,
JAY PEAK HOTEL SUITES PHASE II. L.P.,
JAY PEAK MANAGEMENT, INC.,
JAY PEAK PENTHOUSE SUITES, L.P.,
JAY PEAK GP SERVICES, INC.,
JAY PEAK GOLF AND MOUNTAIN SUITES L.P.,
JAY PEAK GP SERVICES GOLF, INC.,
JAY PEAK LODGE AND TOWNHOUSES L.P.,
JAY PEAK GP SERVICES LODGE, INC.,
JAY PEAK HOTEL SUITES STATESIDE L.P.,
JAY PEAK GP SERVICES STATESIDE, INC.,
JAY PEAK BIOMEDICAL RESEARCH PARK L.P.,
AnC BIO VERMONT GP SERVICES, LLC,

Defendants,

JAY CONSTRUCTION MANAGEMENT, INC.,
GSI OF DADE COUNTY, INC.,
NORTH EAST CONTRACT SERVICES, INC.,
Q BURKE MOUNTAIN RESORT, LLC,

Relief Defendants, and

Q BURKE MOUNTAIN RESORT, HOTEL AND
CONFERENCE CENTER, L.P.,
Q BURKE MOUNTAIN RESORT GP SERVICES, LLC

Additional Defendants

**NOTICE OF PROCEEDINGS TO APPROVE SETTLEMENT
AMONG RECEIVER, MERRILL LYNCH, PIERCE, FENNER
& SMITH INCORPORATED, AND THE STATE OF VERMONT
DEPARTMENT OF FINANCIAL REGULATION AND BAR ORDER**

PLEASE TAKE NOTICE that Michael I. Goldberg, as the Court-appointed receiver (the “Receiver”) of the entities (the “Receivership Entities”) in the above-captioned civil enforcement

action (the “SEC Action”), has filed a request for approval of a proposed settlement between: Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill”); the Receiver; and the State of Vermont Department of Financial Regulation (“Vermont DFR”). The proposed settlement settles all claims that were and could have been asserted against Merrill by the Vermont DFR or the Receiver; such settlement is **expressly conditioned** on the Court approving the Settlement Agreement and including in the order approving such Settlement Agreement a provision permanently barring, restraining and enjoining any person or entity from pursuing claims, **including claims you may possess**, against any of the Merrill Released Parties relating to the SEC Action or any of the other EB-5 Actions, including but not limited to claims by on behalf of any Investor, by the Receiver, by the Receivership Entities (including their past and present general partners, owners, shareholders, officers, and directors), by any Defendant in the SEC Action, or in any action now pending or which may hereafter be brought in connection with the Barred Claims; any party to the EB-5 Actions; or by any other person or entity (other than federal or state governmental bodies or agencies, with the exception of actions by the State of Vermont relating to Merrill’s Activities and/or the EB-5 Actions) with respect to facts and claims that were, or could have been, asserted in the EB-5 Actions, or otherwise relating in any way to any of the Receivership Entities, or which arise directly or indirectly from Merrill’s Activities in connection with the Receivership Entities, Jay Peak Resort, AnC Bio, or the Burke Mountain Hotel (the “Bar Order”).¹

PLEASE TAKE FURTHER NOTICE that the material terms of the Settlement Agreement are that Merrill will pay Four Million Five Hundred Thousand Dollars (\$4,500,000.00) in exchange for broad releases from the Receiver, and Receivership Entities, Vermont DFR, and the Bar Order; Four Million Dollars (\$4,000,000.00) relates to the Receiver’s potential claims and Five Hundred Thousand Dollars (\$500,000.00) relates to the Vermont DFR’s potential claims.

PLEASE TAKE FURTHER NOTICE that copies of the Settlement Agreement; the Motion for (i) Approval of Settlement between Receiver, Merrill Lynch, Pierce, Fenner & Smith Incorporated, and the State of Vermont Department of Financial Regulation; (ii) Approval of Form, Content, and Manner of Notice of Settlement and Bar Order; (iii) Entry of Bar Order; and (iv) Scheduling a Hearing; with Incorporated Memorandum of Law [D.E. 710] (the “Motion”); the proposed Bar Order; and other supporting and related papers, may be obtained from the Court’s docket in the SEC Action or from the website created by the Receiver (www.JayPeakReceivership.com). Copies of the Motion may also be obtained by email request to Kimberly Smiley at kimberly.smiley@akerman.com or by telephone by calling Ms. Smiley at 954-759-8929.

PLEASE TAKE FURTHER NOTICE that the final hearing on the Motion, at which time the Court will consider approval of the Settlement Agreement including the grant of the releases and the issuance of the Bar Order, is set by Zoom before the Honorable Darrin P. Gayles, the United States Courthouse, 400 North Miami Avenue, Miami, Florida 33128, in Courtroom 11-1, at **10:00 A.M. on March 11, 2022** (the “Final Approval Hearing”). The link for the Zoom hearing will be circulated before the Final Approval Hearing.

Any objection to the Settlement Agreement, the Motion or any related matter, including, without limitation, entry of the Bar Order, must be filed, in writing, with the Court in the SEC

¹ Defined terms used but not defined in this Notice are more fully defined in the Settlement Agreement.

Action, and served by email and regular mail, on: (1) Michael I. Goldberg, Esq., Akerman LLP, The Main Las Olas, 201 East Las Olas Boulevard, Suite 1800, Fort Lauderdale, FL 33301, Email: michael.goldberg@akerman.com; (2) Jeffrey C. Schneider, Esq., Levine Kellogg Lehman Schneider + Grossman, LLP, 201 S. Biscayne Blvd., 22nd Floor, Miami, FL 33131, Email: jcs@lklsg.com; (3) Timothy P. Burke, Esq. and Jeff Goldman, Esq., Morgan, Lewis & Bockius LLP, One Federal Street, Boston, MA 02110-1726, Emails: timothy.burke@morganlewis.com and jeff.goldman@morganlewis.com; and (4) Jennifer Rood, Esq., Assistant General Counsel, Vermont Department of Financial Regulation, 89 Main Street, Montpelier, VT 05620-3101, Email: jennifer.rood@vermont.gov, **no later than February 9, 2022 (the “Objection Deadline”)**, and such objection must be made in accordance with the Court’s Order (I) preliminarily approving settlement between Receiver, Merrill Lynch, Pierce, Fenner & Smith Incorporated, and the State of Vermont Department of Financial Regulation; (II) approving form and content of notice, and manner and method of service and publication; (III) setting deadline to object to approval of settlement and entry of bar order; and (IV) scheduling a hearing [D.E. 711] (the “Preliminary Approval Order”).

PLEASE TAKE FURTHER NOTICE that any person or entity failing to file an objection on or before the Objection Deadline and in the manner required by the Preliminary Approval Order shall not be heard by the Court. Those wishing to appear and present objections at the Final Approval Hearing must give notice in their written objection that they intend to appear at the Final Approval Hearing. **If no objections are timely filed, the Court may cancel the Final Approval Hearing without further notice.**

This matter may affect your rights. You may wish to consult an attorney.

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