

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT**

NO. 20050000367-01

**TO: Department of Market Regulation
Financial Industry Regulatory Authority ("FINRA")**

**RE: Merrill Lynch, Pierce, Fenner & Smith Incorporated, Respondent
Broker-Dealer
CRD Number 7691**

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REGISTRATION & DISCLOSURE

Pursuant to NASD Rule 9216 of the FINRA Code of Procedure, Merrill Lynch, Pierce, Fenner & Smith Incorporated (the "firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. The firm hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

The firm has been a member of FINRA (formerly NASD) since January 26, 1937 and its registration remains effective (See Exhibit 1 for the firm's relevant disciplinary history).

FACTS

In 20050000367/MRD200448729, FINRA's Department of Market Regulation ("the staff") conducted a review of the firm's compliance with FINRA rules applicable to best execution of transactions in Nasdaq securities during the period July 1, 2004 through September 30, 2004.

In 20050006120, the staff conducted a review of the firm's compliance with FINRA rules applicable to the Order Audit Trail System ("OATS") reporting requirements during the period October 1, 2004 through December 31, 2004.

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In 20050007216, the staff conducted a review of the firm's compliance with FINRA rules applicable to the Trade Reporting and Compliance Engine ("TRACE") during the period October 1, 2004 through December 31, 2004.

In 20050015916, the staff conducted a review of the firm's compliance with FINRA rules applicable to limit order protection during the period January 1, 2005 through March 31, 2005.

In 20050020953, from August 29, 2005 through September 2, 2005, the Trading and Market Making Surveillance staff conducted an examination of the firm of varying scope and duration as set forth in Exhibit 2. This matter is a result of that examination.

In 20050024746, the staff conducted a review of the firm's compliance with FINRA rules applicable to best execution of transactions in corporate debt securities during the period January 1, 2005 through March 31, 2005.

In 20060041494, the staff conducted a review of the firm's compliance with FINRA rules applicable to trade reporting during the period September 1, 2005 through December 31, 2005.

In 20060052009, the staff conducted a review of the firm's compliance with the Municipal Securities Rulemaking Board's ("MSRB") rules applicable to trade reporting in municipal bonds during the period January 1, 2006 through March 31, 2006.

In 20060055242, the staff conducted a review of the firm's compliance with FINRA rules applicable to OATS reporting requirements during the period May 1, 2005 through September 30, 2005.

In 20060055356, the staff conducted a review of the firm's compliance with FINRA rules applicable to OATS reporting requirements during the period October 1, 2005 through December 31, 2005.

In 20060055665, the staff conducted a review of the firm's compliance with FINRA rules applicable to TRACE during the period October 1, 2005 through December 31, 2005.

In 20060061811, from September 25, 2006 through September 29, 2006, the Trading and Market Making Surveillance staff conducted an examination of the firm of varying scope and duration as set forth in Exhibit 3. This matter is a result of that examination.

In 20070093156, from July 30, 2007 through August 3, 2007, the Trading and Market Making Surveillance staff conducted an examination of the firm of varying scope and duration as set forth in Exhibit 4. This matter is a result of that examination.

20050000367/MRD200448729 (Review Period: July 1, 2004 through September 30, 2004)

1. In 47 transactions for or with a customer, the firm failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions, as reflected on Exhibit 5, which is attached hereto and incorporated herein by reference. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rules 2110 and 2320.

20050006120 (Review Period: October 1, 2004 through December 31, 2004)

2. During the review period, the firm reported to OATS 12,167 Route or Combined Order/Route Reports that the OATS system was unable to link to the related order routed to the SuperMontage or SelectNet due to inaccurate, incomplete or improperly formatted data. These unmatched Route Reports represented approximately 20 percent of all match-eligible Route or Combined Order/Route Reports (61,084) submitted by the firm to OATS during the review period. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).
3. During the review period, the firm submitted to OATS 102,479 Reportable Order Events ("ROEs") that were rejected by OATS for context or syntax errors. These rejected ROEs represented approximately one percent of all ROEs (10,782,372) transmitted by the firm to OATS during the review period. The firm did not repair any of the rejected ROEs. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).

20050007216 (Review Period: October 1, 2004 through December 31, 2004)

4. The firm failed to report to TRACE the correct contra-party identifier for 164 transactions in TRACE-eligible securities. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6230(c)(6).
5. The firm reported to TRACE 417 transactions in TRACE-eligible securities that it was not required to report. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6230(e).
6. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the Rules of NASD, concerning TRACE. Specifically, the firm's supervisory system did not include written supervisory procedures providing for: (1) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented. The conduct described in this paragraph constitutes a violation of NASD Rules 2110 and 3010.

20050015916 (Review Period: January 1, 2005 through March 31, 2005)

7. On 39 occasions during the period January 1, 2005 through March 31, 2005, the firm failed to contemporaneously or partially execute 28 customer limit orders in 26 Nasdaq securities after it traded each subject security for its own market-making account at a price that would have satisfied each customer's limit order, as reflected on Exhibit 6, which is attached hereto and incorporated herein by reference. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 2110 and IM-2110-2.

20050020953 (Review Period: June 23, 2005, unless noted otherwise in Exhibit 2)

8. The firm failed to report to the Nasdaq Market Center ("NMC") the cancellation of three trades previously submitted to Nasdaq. The firm also incorrectly reported to the NMC the second leg of three "riskless" principal transactions in designated securities and it incorrectly designated the capacity of such transactions as "principal". The firm also failed to timely report to the NMC the cancellation of one trade previously submitted to Nasdaq. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 4632.
9. The firm failed to report to the NMC the correct symbol indicating whether the firm executed 354 transactions in Reportable Securities in a principal or agency capacity. The firm also failed to report to the NMC the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt or cross for 85 transactions in Reportable Securities. The firm also failed to report to the NMC the correct execution time for two transactions in Reportable Securities. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6130.
10. The firm failed to report to the OTC Reporting Facility the cancellation of one trade previously submitted to the OTC Reporting Facility. The firm also failed to timely report to the OTC Reporting Facility the cancellation of one trade previously submitted to the OTC Reporting Facility. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6620(f).
11. During the review period, the firm transmitted to OATS 12 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, the reports contained inaccurate capacity or exception codes. These inaccurate and/or incomplete reports represented 24 percent of the sample of reports reviewed in the TMMS examination that the firm transmitted during the review period. During the review period, the firm also submitted to OATS one Route or Combined Order/Route Report that the OATS system was unable to link to the corresponding new order submitted by the destination member firm due to inaccurate, incomplete or improperly formatted data. This Route or Combined Order/Route Report represented two percent of the sample of match-eligible Route or Combined Order/Route Reports reviewed in the TMMS examination that the firm transmitted during the review period. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).

12. The firm failed on 18 occasions to provide written notification disclosing to its customers that the transaction was executed at an average price. The firm failed on one occasion to provide written notification disclosing to its customer its executing capacity in the transaction. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 10b-10.
13. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to certain applicable securities laws and regulations, and/or the Rules of NASD. At a minimum, adequate written supervisory procedures addressing quality of markets topics should describe the following:
 - (a) specific identification of the individual(s) responsible for supervision;
 - (b) the supervisory steps and reviews to be taken by the appropriate supervisor;
 - (c) the frequency of such reviews; and
 - (d) how such reviews shall be documented.

The firm's written supervisory procedures failed to provide for one or more of the four above-cited minimum requirements for adequate written supervisory procedures, in the following subject areas: transaction reporting, including riskless principal transaction reporting and compliance with the rules applicable to short sales [(b), (c) and (d)]. The conduct described in this paragraph constitutes a violation of NASD Rules 2110 and 3010.

20050024746 (Review Period: January 1, 2005 through March 31, 2005)

14. In seven transactions for or with a customer, the firm failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions, as reflected on Exhibit 7 attached hereto and incorporated herein by reference. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rules 2110 and 2320.

20060041494 (Review Period: September 1, 2005 through December 31, 2005)

15. The firm failed, within 90 seconds after execution, to transmit to the NMC 7,959 last sale reports of transactions in designated securities. These transactions constitute approximately seven percent of the transactions reviewed that the firm was required to report to the NMC during the review period. The conduct described in this paragraph constitutes a pattern or practice of late reporting without exceptional circumstances in violation of NASD Rule 2110 and separate and distinct violations of NASD Rule 4632(a).

20060052009 (Review Period: January 1, 2006 through March 31, 2006)

16. During the review period, the firm failed to report information regarding 381 purchase and sale transactions effected in municipal securities to the Real-time Transaction Reporting System ("RTRS") in the manner prescribed by Rule G-14 RTRS Procedures and the RTRS Users Manual. Specifically, the firm failed to report

information about such transactions within 15 minutes of Time of Trade to an RTRS Portal. The conduct described in this paragraph constitutes separate and distinct violations of MSRB Rule G-14.

17. In 79 instances, the firm improperly reported information to the Real-time Transaction Reporting System ("RTRS") that it should not have. Specifically, the firm improperly reported 79 "purchase and sale transactions effected in municipal securities" to the RTRS, when the inter-dealer deliveries were "step outs" and thus, were not *inter-dealer transactions* reportable to the RTRS. The conduct described in this paragraph constitutes separate and distinct violations of MSRB Rule G-14.

20060055242 (Review Period: May 1, 2005 through September 30, 2005)

18. During the review period, the firm submitted to OATS 4,633 Route or Combined Order/Route Reports that the OATS system was unable to link to the corresponding new order submitted by the destination member firm due to inaccurate, incomplete or improperly formatted data. These 4,633 Route or Combined Order/Route Reports represented approximately 100 percent of all match-eligible Route or Combined Order/Route Reports (4,633) submitted to OATS by the firm during the review period. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).
19. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the Rules of NASD, concerning a review of the firm's "Receiving Interfirm Route Matching Statistics" for OATS. Specifically, the firm's supervisory system did not include written supervisory procedures providing for: (1) the identification of the person(s) responsible for supervision with respect to the applicable rules; (2) a statement of the supervisory step(s) to be taken by the identified person(s); (3) a statement as to how often such person(s) should take such step(s); and (4) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented. The conduct described in this paragraph constitutes a violation of NASD Rules 2110 and 3010.

20060055356 (Review Period: October 1, 2005 through December 31, 2005)

20. During the review period, the firm submitted to OATS 3,662 Route or Combined Order/Route Reports that the OATS system was unable to link to the corresponding new order submitted by the destination member firm due to inaccurate, incomplete or improperly formatted data. These 3,662 Route or Combined Order/Route Reports represented approximately 82 percent of all match-eligible Route or Combined Order/Route Reports (4,492) submitted to OATS by the firm during the review period. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).

20060055665 (Review Period: October 1, 2005 through December 31, 2005)

21. The firm failed to report to TRACE the correct contra-party identifier for 121 transactions in TRACE-eligible securities. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6230(c)(6).

20060061811 (Review Period: August 3, 2006, unless noted otherwise in Exhibit 3)

22. The firm incorrectly designated as ".PRP" to the NMC three last sale reports of transactions in designated securities. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 4632(a)(7).
23. The firm incorrectly designated as ".PRP" to the NMC three last sale reports of transactions in eligible securities. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 4632(a)(7) [formerly NASD Rule 6420(a)(8)].
24. During the review period, the firm failed to report to the NMC the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt or cross for 217 transactions in Reportable Securities. The firm also failed to report to the NMC the correct symbol indicating whether the firm executed 41 transactions in Reportable Securities in a principal or agency capacity. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6130.
25. During the review period, the firm failed to submit eight reports to OATS. Specifically, in four instances, the firm also failed to submit a separate Desk report to OATS to reflect an internal route; in three instances, the firm also failed to submit a separate Cancel Report to OATS to reflect the partial cancellation of the remaining shares of the order; and in one instance, the firm also failed to submit the order data to OATS for a buy order in a Nasdaq National Market ("NNM") security. The firm also transmitted to OATS one report that contained inaccurate data. Specifically, the report contained an inaccurate timestamp. These nine inaccurate and omitted reports represented 12 percent of the sample of the orders reviewed in the TMMS examination during the review period. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).
26. The firm, on five occasions when it acted as principal for its own account, failed to provide written notification disclosing to its customer the correct reported trade price. The firm also failed on four occasions to provide written notification disclosing to its customer the correct capacity in which the firm acted. The firm also failed on one occasion to provide written notification disclosing to its customer that the transaction was executed at an average price. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 10b-10.
27. The firm failed to show the terms and conditions on the memorandum of 21 brokerage orders. The firm also failed to show the correct execution time on the memorandum of eight brokerage orders. The firm also failed to show the correct account number on the order memorandum of one brokerage order. The conduct

described in this paragraph constitutes separate and distinct violations of SEC Rule 17a-3 and NASD Rule 3110.

28. The firm failed to preserve for a period of not less than three years, the first two in an accessible place, the memorandum of four brokerage orders. The conduct described in this paragraph constitutes a violation of SEC Rule 17a-4 and NASD Rule 3110.
29. During the review period, in 114 transactions, involving 34 short sale orders the firm failed to properly mark the orders as short. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 200(g) of Regulation SHO.
30. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to certain applicable securities laws and regulations, and/or the Rules of NASD. At a minimum, adequate written supervisory procedures addressing quality of markets topics should describe the following:
 - (a) specific identification of the individual(s) responsible for supervision;
 - (b) the supervisory steps and reviews to be taken by the appropriate supervisor;
 - (c) the frequency of such reviews; and
 - (d) how such reviews shall be documented.

The firm's written supervisory procedures for its "Cash Trading Desk" failed to provide for one or more of the four above-cited minimum requirements for adequate written supervisory procedures, in the following subject areas: trade reporting (trades reported for the firm), trading during a trading halt, mixed capacity trading and compliance with the rules applicable to short sales for Bid and Tick Test compliance [(a), (b), (c) and (d)]; compliance with the rules applicable to short sales for order marking requirements [(a), (b) and (c)]; compliance with clock synchronization requirements under OATS [(b) and (d)]; compliance with the safe harbor found in Section 28(e) of the Securities Exchange Act of 1934 and record keeping [(b)]; and compliance with SEC Rule 203(b)(3)(iii), NMC short sale reporting, Limit Order Protection Interpretation, Rule 602 of Regulation NMS (the "One Percent Rule") and NASD Rule 2320(g) (the "Three-Quote Rule") [(d)]. The firm's written supervisory procedures for its "Portfolio Trading Desk" failed to provide for one or more of the four above-cited minimum requirements for adequate written supervisory procedures, in the following subject areas: trading during a trading halt [(a), (b), (c) and (d)]; best execution [(b) and (d)]; trade reporting, compliance with the rules applicable to short sales for order marking requirements, affirmative determination, NMC short sale reporting and Bid & Tick Test compliance, and record keeping [(b)]. The conduct described in this paragraph constitutes a violation of NASD Rules 2110 and 3010.

20070093156 (Review Period: June 4 and 5, 2007, unless noted otherwise in Exhibit 4)

31. The firm incorrectly designated as ".W" to the FINRA/NASDAQ Trade Reporting Facility 12 last sale reports of transactions in designated securities. The firm also incorrectly reported to the FINRA/NASDAQ Trade Reporting Facility the second leg of five "riskless" principal transactions in designated securities because it incorrectly designated the capacity of such transactions as "principal." The firm also failed to

report to the FINRA/NASDAQ Trade Reporting Facility five last sale reports of transactions in designated securities. The firm also incorrectly designated as ".PRP" to the FINRA/NASDAQ Trade Reporting Facility one last sale report of a transaction in a designated security. The firm also failed to report to the FINRA/NASDAQ Trade Reporting Facility the cancellation of one trade previously submitted to the FINRA/NASDAQ Trade Reporting Facility. The firm also failed to report the correct time of execution to the FINRA/NASDAQ Trade Reporting Facility in one last sale report of a transaction in a designated security. The firm also reported to the FINRA/NASDAQ Trade Reporting Facility the cancellation of one last sale report of a transaction in a designated security it was not required to report. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 4632.

32. The firm failed to report to the FINRA/NASDAQ Trade Reporting Facility the correct symbol indicating whether the firm executed 10 transactions in Reportable Securities in a principal or agency capacity. The firm also failed to report to the FINRA/NASDAQ Trade Reporting Facility the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt or cross for six transactions in Reportable Securities. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6130(d).
33. The firm failed to report to the OTC Reporting Facility the cancellation of eight trades previously submitted to the OTC Reporting Facility. The firm also incorrectly reported to the OTC Reporting Facility the second leg of two "riskless" principal transactions in designated securities because it incorrectly designated the capacity of such transactions as "principal". The firm also failed to report the correct time of execution to the OTC Reporting Facility in one late, last sale report of a transaction in an OTC Equity security. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6620.
34. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to certain applicable securities laws and regulations, and/or the Rules of NASD. At a minimum, adequate written supervisory procedures addressing quality of markets topics should describe the following:
 - (a) specific identification of the individual(s) responsible for supervision;
 - (b) the supervisory steps and reviews to be taken by the appropriate supervisor;
 - (c) the frequency of such reviews; and
 - (d) how such reviews shall be documented.

The firm's written supervisory procedures failed to provide for one or more of the four above-cited minimum requirements for adequate written supervisory procedures, in the following subject areas: compliance with the firm's use of its multiple market participant identifiers [(a), (b), (c) and (d)]; third-party trade reporting [(a), (b), (c) and (d) for the firm's Compliance Operating Manual]; compliance with the rules applicable to short sales for affirmative determination and SEC Rule 203(b)(3)(iii) [(a), (b), (c) and (d) for the firm's U.S. Cash Trading Desk Compliance Manual]; trading during a trading halt [(a), (b), (c) and (d) for the firm's U.S. Cash Trading

Desk Supervisory Manual]; and market order protection ("Manning reviews") and Rule 602 of Regulation NMS (the "One Percent Rule")[(d) for the firm's GMI Surveillance Procedures Manual]. The conduct described in this paragraph constitutes a violation of NASD Conduct Rules 2110 and 3010.

B. The firm also consents to the imposition of the following sanctions:

- A censure.
- A total fine of \$242,500 (consisting of \$7,500 for the limit order protection violations; \$47,500 for the best execution violations; \$65,000 for the trade reporting violations; \$12,500 for the TRACE violations; \$38,000 for the OATS violations; \$7,500 for the MSRB violations; \$4,500 for the SEC Rule 10b-10 violations; \$10,000 for the books and records violations; \$5,000 for the Regulation SHO violations; and \$45,000 for the supervision violations).
- **Restitution** by Respondent to the customers listed on Exhibit 5 (\$819.90) and Exhibit 7 (\$10,538.75) hereto in the total amount of **\$11,358.65**, plus interest at the rate set forth in Section 6621(a) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from the date of the violative conduct until the date this Letter of Acceptance, Waiver and Consent is accepted by the National Adjudicatory Council.
- A registered principal of the firm shall submit satisfactory proof of payment of the restitution, or of reasonable and documented efforts undertaken to effect restitution, to the COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850 no later than 120 days after acceptance of this Letter of Acceptance, Waiver and Consent. If for any reason, Respondent cannot locate any customer after reasonable and documented efforts within such period, or such additional period agreed to by the staff, Respondent shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed-property or abandoned-property fund for the state in which the customer last resided.
- The firm also consents to an **undertaking** to revise the firm's written supervisory procedures with respect to the areas described in paragraphs: 6, 13, 19, 30 and 34. Within 30 business days of acceptance of this AWC by the NAC, a registered principal of the Respondent shall submit to the **COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850**, a signed, dated letter, providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its written supervisory procedures to address the deficiencies described in paragraphs: 6, 13, 19, 30 and 34; and, (3) the date the revised procedures were implemented.
- Within 90 days from acceptance of this AWC, the firm's compliance department and trading desks will meet and develop a written plan to: (1) improve the firm's compliance in the areas of trade reporting, OATS reporting, and best execution over the twelve months following the acceptance of this AWC; (2) identify individuals responsible for overseeing supervision in these areas; and (3) identify the resources

needed to improve the firm's compliance in these areas. At the conclusion of the twelve months from the acceptance of this AWC, the firm's Chief Compliance Officer, or his designee and at least one other registered principal from one of the trading desks identified in item (2) above shall meet in Rockville, MD with representatives from FINRA's Market Regulation department to describe the firm's progress in these areas.

The firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. It has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the firm;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the firm specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

The firm further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of NASD Rule 9143 or the separation of functions prohibitions of NASD Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

The firm understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
- C. If accepted:
 - 1. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the firm's disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-3; and
 - 4. The firm may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. The firm may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. The firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

The firm certifies that it has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

July 22, 2008
Date

Respondent
Merrill Lynch, Pierce, Fenner & Smith Incorporated

By: David L. Kornblau

Name: David L. Kornblau

Title: Managing Director and
Head of Global Regulatory Affairs

Reviewed by:

Attorney Name

Accepted by FINRA:

9/23/08
Date

Signed on behalf of the
Director of ODA, by delegated authority

Thomas R. Gira
Thomas R. Gira
Executive Vice President

Exhibit 1

Relevant Disciplinary History

Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLCO")

STAR Number: 20050000367/MRD200448729

(includes: 20050006120, 20050007216, 20050015916, 20050020953, 20050024746, 20060041494, 20060052009, 20060055242, 20060055356, 20060055665, 20060061811 and 20070093156)

- On June 26, 2007, an AWC became final in which the firm was censured and fined a total of \$40,000 for violating NASD Rules 2110, 2320, 6130(d) and 6955.
- On February 6, 2007, an NYSE Decision and Order of Settlement became final in which the firm was censured and fined \$175,000 for violations that included SEC Rules 17a-3 and 17a-4.
- On April 25, 2006, an AWC became final in which the firm was censured and fined \$37,500 for violating NASD Rules 2110, 6130(b) and 6620.
- On March 23, 2006, an AWC became final in which the firm was censured and fined \$45,000 for violating NASD Rules 2110, 3010, 3110, 4632, 6130(d), 6420 and SEC Rules 11Ac1-5, 10b-10 and 17a-3.
- On March 13, 2006, an SEC Cease and Desist Order, became final in which the firm was censured and fined \$2,500,000 for violations that included SEC Rule 17a-4.
- November 11, 2005, an AWC became final in which the firm was censured and fined \$40,000 with restitution of \$2,697.32 for violating NASD Rules 2110 and 2320.
- On July 8, 2005, an NYSE Decision was issued in which the firm was censured and fined \$10,000,000 for violations that included SEC Rule 17a-4.
- On June 3, 2005, an AWC became final in which the firm was censured and fined \$7,500 for violating NASD Rules 2110 and 6955.
- On May 19, 2005, an AWC became final in which the firm was censured and fined \$12,500 for violating NASD Rules 2110 and 6955.
- On March 7, 2005, an NYSE Decision was issued in which the firm was censured and fined \$13,500,000 for violations that included SEC Rules 17a-3 and 17a-4.

Exhibit 1
Relevant Disciplinary History
Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLCO")
STAR Number: 20050000367/MRD200448729
(includes: 20050006120, 20050007216, 20050015916, 20050020953,
20050024746, 20060041494, 20060052009, 20060055242, 20060055356,
20060055665, 20060061811 and 20070093156)

- On November 9, 2004, an AWC became final in which the firm was fined \$5,000 for violating NASD Rule 6230(c)(6).
- On September, 20, 2004, an AWC became final in which the firm was censured and fined \$27,000 for violating NASD Rules 2110, 6420(a) and 6620(a).
- On August 20, 2004, an AWC became final in which the firm was censured and fined \$9,000 for violating NASD Rules 3370 and 6130(d).
- On December 23, 2003, an AWC became final in which the firm was censured and fined \$9,000 for violating NASD Rule 6130(d).
- On June 23, 2003, an AWC became final in which the firm was censured and fined \$12,500 for violating NASD Rules 2110, 2320(g), 3010, 3110 and SEC Rule 11Ac1-4.
- On April 21, 2003, an AWC became final in which the firm was censured and fined \$10,000 for violations of NASD Rules 2110 and 6955.
- On June 13, 2003, an NYSE Decision was issued in which the firm was fined \$900,000 for violations that included SEC Rules 17a-3 and 17a-4.

Exhibit 2
2005 TMMS Exam Samples
Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLCO")
Exam No. 20050020953

<u>Sample Size</u>	<u>Review Area</u>	<u>Sample Source</u>
969	sale transactions, for compliance with SEC Rules 200(g) and/or 203(b),	from trade date June 23, 2005,
798	customer and proprietary sales, for compliance with NASD Rule 6130,	from trade date June 23, 2005,
242	short sales, for compliance with NASD Rule 3350 and SEC Rule 10a-1 (Tick Test),	from trade date June 23, 2005,
49	limit orders executed as principal, for compliance with NASD Rules 2110 (and IM-2110-2), 6440, 6541 and 2320, and SEC Rules 11Ac1-1 and 11Ac1-4,	from trade date June 23, 2005,
51	limit and market orders executed in a principal or riskless principal capacity, for compliance with capacity reporting under NASD Trade Reporting and ACT rules,	from trade date June 23, 2005,
36	cancelled transactions for compliance with the requirement to cancel trade reports within ninety seconds of cancellation from books and records,	from trade date June 23, 2005,
5	marketable orders received while holding "non-displayed" limit orders in the same security, for compliance with NASD Rule 2320,	from trade date June 23, 2005,
5	open buy limit orders and stop sell limit orders in securities traded ex-dividend, for compliance with NASD Rule 3220,	from trade date June 23, 2005,
29	not held institutional orders for compliance with NASD Rule 2320 and NASD Rule IM-2110-3	from trade date June 23, 2005,
25	trades reported in an apparent mixed capacity and/or modified through a mixed capacity regulatory report, for compliance with NASD Rule 6130,	from trade date June 23, 2005,
30	orders for securities in soft dollar accounts for compliance with trade reporting rules and the safe harbor limitations of SEC section 28(e),	from trade date June 23, 2005,
25	orders in securities for which the firm was a market center, for compliance with the order size/type classification requirements of SEC Rule 605,	from trade date June 23, 2005,

Exhibit 2
2005 TMMS Exam Samples
Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLCO")
Exam No. 20050020953

<u>Sample Size</u>	<u>Review Area</u>	<u>Sample Source</u>
28 orders (4 order type categories)	security/size/order data statistics published on the firm's monthly order execution report, for compliance with SEC Rule 605,	from the report for May 2005,
N/A	data published on the firm's quarterly order routing report, for compliance with SEC Rule 606,	from the 2 nd Quarter, 2005,
25	customer transactions in OTCBB and OTC equity securities, for compliance with NASD Rules 3110(b) and 2320,	from trade date June 23, 2005,
10	persons engaged in the firm's trading and market making activities, for compliance with NASD Registration rules,	from trading staff in May 2005,
1421	order/trade records prepared and maintained in connection with the above samples, for general compliance with NASD Rule 3110 and SEC Rules 17a-3 and 17a-4,	from trade date June 23, 2005,
1149	trades reported to ACT or TRACS in connection with the above samples, for general compliance with NASD Trade Reporting and ACT rules,	from trade date June 23, 2005,
115	customer trade confirmations reviewed in connection with the above samples, for compliance with SEC Rule 10b-10,	from trade date June 23, 2005,
N/A	the firm's establishment and implementation of "regular & rigorous" reviews of the execution quality of orders sent to other market centers or internalized, for compliance with NASD Rules 2320 and 3010,	based on WSPs in effect during June 2005,
N/A	the firm's establishment and implementation of a supervisory system and written supervisory procedures, for compliance with NASD Rule 3010,	based on WSPs in effect during June 2005.

Exhibit 3
2006 TMMS Exam Samples
Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLCO")
Exam No. 20060061811

<u>Sample Size</u>	<u>Review Area</u>	<u>Sample Source</u>
145	customer and proprietary sale transactions, for compliance with SEC Rules 200(g) and/or 203(b),	from trade date August 3, 2006.
392	customer and proprietary sales, for compliance with NASD Rule 6130,	from trade date August 3, 2006.
26	cancelled trades for compliance with NASD Rules 4632(g), 4642(g), 4652(g), 6130(f), 6420(f), and 6620(f),	from trade date August 3, 2006.
100	limit and market orders executed as principal and riskless principal, for compliance with NASD Rules 2110 (and IM-2110-2), 2111, 6541 and 2320, and SEC Rules 602 and 604,	from trade date August 3, 2006.
17	"non displayed" limit orders and 0 marketable orders in the same securities received while holding the "non-displayed" orders, for compliance with NASD Rule 2320,	from trade date August 3, 2006.
10	not held customer market orders, for compliance with NASD Rule 2320,	from trade date August 3, 2006.
190	trades executed in a principal or riskless principal capacity, for compliance with capacity reporting under NASD Trade Reporting and ACT rules,	from trade date August 3, 2006.
15	orders for Nasdaq securities in soft dollar accounts and 58 related executions, for compliance with trade reporting rules and the safe harbor limitations of SEC section 28(e),	from trade date August 3, 2006.
2	open buy limit orders and stop sell limit orders in securities traded ex-dividend, for compliance with NASD Rule 3220,	from trade date August 3, 2006.
25	trades reported and modified through a mixed capacity regulatory report, for compliance with NASD Rule 6130,	from trade date August 3, 2006.
6	trades in NNM or CQS securities reported with a .PRP modifier, for compliance with NASD Rules 4632, 6420, and 2320,	from trade dates August 3 and 4, 2006.
25	orders in securities for which the firm was a market center, for compliance with the order size/type classification requirements of SEC Rule 605,	from trade date August 3, 2006.

Exhibit 3
2006 TMMS Exam Samples
Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLCO")
Exam No. 20060061811

<u>Sample Size</u>	<u>Review Area</u>	<u>Sample Source</u>
28 orders (4 order type categories)	security/size/order data statistics published on the firm's monthly order execution report, for compliance with SEC Rule 605,	from the month of June, 2006.
N/A	data published on the firm's quarterly order routing report, for compliance with SEC Rule 606,	from the report including July through September 2006.
25	customer transactions in OTCBB and OTC equity securities, for compliance with NASD Rules 3110(b) and 2320,	from trade date August 3, 2006.
20	persons engaged in the firm's trading and market making activities, for compliance with NASD Registration rules,	from trading staff in August 2006.
75	orders in NNM or SC securities submitted to OATS, for compliance with NASD Rule 6955,	from trade date August 3, 2006.
364	order/trade records prepared and maintained in connection with the above samples, for general compliance with NASD Rule 3110 and SEC Rules 17a-3 and 17a-4,	from trade dates August 3 and 4, 2006 and various trade dates in June 2006.
390	trades reported to ACT or TRACS in connection with the above samples, for general compliance with NASD Trade Reporting and ACT rules,	from trade dates August 3 and 4, 2006.
138	customer trade confirmations reviewed in connection with the above samples, for compliance with SEC Rule 10b-10,	from trade date August 3, 2006.
N/A	the firm's establishment and implementation of "regular & rigorous" reviews of the execution quality of orders sent to other market centers and internalized, for compliance with NASD Rules 2320 and 3010,	based on WSPs in effect during August 2006.
N/A	the firm's establishment and implementation of a supervisory system and written supervisory procedures, for compliance with NASD Rule 3010,	based on WSPs in effect during August 2006.

Exhibit 4
2007 TMMS Exam Samples
Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLCO")
Exam No. 20070093156

<u>Sample Size:</u>	<u>Review Area:</u>	<u>Sample Source:</u>
25	customer sales, reviewed for compliance with SEC Rule 200(g) long/short/exempt sale recording requirements,	From trade dates June 4 and 5, 2007
40	customer and proprietary sales reported to a TRF or OTCRF, for compliance with NASD Rules 6130, 4632 and 6620 sale indicator reporting requirements,	From trade dates June 4 and 5, 2007
N/A	short sales in Nasdaq Global Market securities executed otherwise than on an exchange, for compliance with NASD Rule 5100 bid test requirements,	From trade dates June 4 and 5, 2007
N/A	short sales in exchange-listed securities executed otherwise than on an exchange, for compliance with SEC Rule 10a-1 tick test requirements,	From trade dates June 4 and 5, 2007
76	customer and proprietary sales entered into the Nasdaq Exchange execution systems, for compliance with Nasdaq Rule 4755 long/short/exempt sale indicator entry requirements,	From trade dates June 4 and 5, 2007
60	cancellations of trades reported to a TRF or OTCRF, for compliance with NASD Rules 4632(g), 6420(f), 6620(f) and 6130(f) trade report cancellation requirements,	From trade dates June 4 and 5, 2007
20	limit and market orders executed as principal, for compliance with the order protection and best execution requirements of NASD Rules 2110, IM-2110-2, 2111, 6541 and 2320, and Nasdaq Rules 2110, IM-2110-2, 2111 and 2320,	From trade dates June 4 and 5, 2007
25	market orders with "not held" terms or from institutional customers, for compliance with NASD Rule 2320 and Nasdaq Rule 2320 best execution requirements,	From trade dates June 4 and 5, 2007
5	order memoranda for net trades effected by non-institutional and institutional customers, for compliance with NASD Rule 2441 documentation requirements,	From trade dates June 4 and 5, 2007
4	trade executions effected otherwise than on an exchange for 5 orders in Nasdaq-listed or exchange listed securities, received from customers with accounts subject to a soft dollar agreement, for compliance with the SEC '34 Act section 28(e) safe harbor which limits the accrual of soft dollar credits for riskless principal transactions to those reporting in compliance with NASD Rules 4632 and 6420,	From trade dates June 4 and 5, 2007
1	trades reported to a TRF or OTCRF with a .PRP modifier, for compliance with NASD Rules 4632, 6420, 6620 and 2320,	From trade dates June 4 and 5, 2007

Exhibit 4
2007 TMMS Exam Samples
Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLCO")
Exam No. 20070093156

<u>Sample Size:</u>	<u>Review Area:</u>	<u>Sample Source:</u>
25	orders for NMS stocks in which the firm acts as a market center, for compliance with SEC Rule 605 order classification requirements,	Orders underlying the datasets reviewed for April 2007.
28	datasets published for on the monthly order execution report, for compliance with SEC Rule 605 requirement to publish accurate data. (A "dataset" is all required statistical data for a single order category, with each category representing a single unique combination of a security, order type and order size, as described in Rule 605.),	Report published for April, 2007.
1	quarterly order routing report, for compliance with SEC Rule 606 requirements,	Report published for the 2 nd quarter of 2007.
25	customer orders in OTC equity securities, for compliance with NASD Rules 2320(g) and 3110(b) requirements to ascertain and document the best interdealer market for transactions in such securities,	From trade dates June 4 and 5, 2007
50	orders in securities required to be submitted to OATS, for compliance with NASD Rules 6954 and 6955, and Nasdaq Rules 6954 and 6955 requirement to submit OATS information,	From trade dates June 4 and 5, 2007
N/A	ADF orders and/or quotes which were accessed by others, for compliance with NASD Rule 4300A requirements to submit Order and Order Response reports,	From trade dates June 4 and 5, 2007
226	order/trade records prepared and maintained in connection with the above samples, for general compliance with requirements of NASD Rule 3110 and SEC Rules 17a-3 and 17a-4,	From trade dates June 4 and 5, 2007
238	trades reported to a TRF, OTCRF or ADF/TRACS in connection with the above samples, for general compliance with requirements of NASD Trade Reporting and ADF rules,	From trade dates June 4 and 5, 2007
179	customer confirmations prepared and maintained in connection with the above samples, for compliance with SEC Rule 10b-10 disclosure requirements,	From trade dates June 4 and 5, 2007
12	CRD registration records for persons conducting and/or supervising the member's trading and market making activities, for compliance with NASD Rule Series 1020, 1030 and 1040, and Nasdaq Rule Series 1020, 1030 and 1040,	List of trading personnel for trade dates June 4 and 5, 2007 and supervisory personnel for trade dates June 4 and 5, 2007.

Exhibit 4
2007 TMMS Exam Samples
Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLCO")
Exam No. 20070093156

<u>Sample Size:</u>	<u>Review Area:</u>	<u>Sample Source:</u>
All, as provided by the member	the member's supervisory system, written supervisory procedures ("WSPs") and documents evidencing the implementation of the WSPs, for compliance with NASD Rule 3010 requirements to establish an implement a system that is reasonably designed to prevent and detect violations of applicable securities rules,	WSPs provided by the member as those in effect during June 2007, and documentation of supervisory reviews conducted for June 2007.
All, as provided by the member	the member's "Regular & Rigorous" review procedures (for assessing the execution quality of orders sent to other trading centers and/or internalized, for compliance with NASD Rules 2320 and 3010, and	Procedures provided by the member as those in effect during June 2007.
N/A	Trading halts declared during the on-site portion of the examination, for which NASD staff observed the operation of the ATS.	No Halts From trade dates June 4 and 5, 2007.

Order Information										Trade Information										Response		
Seq.	Block ID	Date	Time	Order ID	Quantity	Time Received	Initial Fill %	Initial Fill of	Order ID	MFID	Capacity	SLC	Execution	Price	Report Time	Execution Time	Initial Fill at Execution	Initial Fill at Execution	Capacity	MF Seq	Adjustment Price	Calculated Adjustment
1	19110001	11/11/04	09:00	CSOB	100	10:30:29	25.41	21.42	19110001	MLCO	R	H	100	33.35	10:31:25	10:33:08	25.38	25.4	100	19110001	25.41	21.42
2	19110002	11/11/04	09:00	CSOB	200	10:30:29	26.30	24.77	19110002	MLCO	R	H	200	33.34	10:31:25	10:33:08	26.34	26.35	200	19110002	26.34	24.76
3	19110003	11/11/04	09:00	CSOB	300	10:30:29	27.2	25.73	19110003	MLCO	R	H	300	33.33	10:31:25	10:33:08	27.24	27.25	300	19110003	27.24	25.74
4	19110004	11/11/04	09:00	CSOB	400	10:30:29	28.1	26.66	19110004	MLCO	R	H	400	33.32	10:31:25	10:33:08	28.18	28.19	400	19110004	28.18	26.65
5	19110005	11/11/04	09:00	CSOB	500	10:30:29	29.0	27.19	19110005	MLCO	R	H	500	33.31	10:31:25	10:33:08	29.02	29.03	500	19110005	29.02	27.18
6	19110006	11/11/04	09:00	CSOB	600	10:30:29	29.9	27.72	19110006	MLCO	R	H	600	33.30	10:31:25	10:33:08	29.96	29.97	600	19110006	29.96	27.71
7	19110007	11/11/04	09:00	CSOB	700	10:30:29	30.8	28.25	19110007	MLCO	R	H	700	33.29	10:31:25	10:33:08	30.90	30.91	700	19110007	30.90	28.24
8	19110008	11/11/04	09:00	CSOB	800	10:30:29	31.7	28.78	19110008	MLCO	R	H	800	33.28	10:31:25	10:33:08	31.84	31.85	800	19110008	31.84	28.75
9	19110009	11/11/04	09:00	CSOB	900	10:30:29	32.6	29.31	19110009	MLCO	R	H	900	33.27	10:31:25	10:33:08	32.78	32.79	900	19110009	32.78	29.30
10	19110010	11/11/04	09:00	CSOB	1000	10:30:29	33.5	29.84	19110010	MLCO	R	H	1000	33.26	10:31:25	10:33:08	33.72	33.73	1000	19110010	33.72	29.81
11	19110011	11/11/04	09:00	CSOB	1100	10:30:29	34.4	30.37	19110011	MLCO	R	H	1100	33.25	10:31:25	10:33:08	34.66	34.67	1100	19110011	34.66	30.36
12	19110012	11/11/04	09:00	CSOB	1200	10:30:29	35.3	30.90	19110012	MLCO	R	H	1200	33.24	10:31:25	10:33:08	35.60	35.61	1200	19110012	35.60	30.91
13	19110013	11/11/04	09:00	CSOB	1300	10:30:29	36.2	31.43	19110013	MLCO	R	H	1300	33.23	10:31:25	10:33:08	36.54	36.55	1300	19110013	36.54	31.42
14	19110014	11/11/04	09:00	CSOB	1400	10:30:29	37.1	31.96	19110014	MLCO	R	H	1400	33.22	10:31:25	10:33:08	37.48	37.49	1400	19110014	37.48	31.95
15	19110015	11/11/04	09:00	CSOB	1500	10:30:29	38.0	32.49	19110015	MLCO	R	H	1500	33.21	10:31:25	10:33:08	38.42	38.43	1500	19110015	38.42	32.48
16	19110016	11/11/04	09:00	CSOB	1600	10:30:29	38.9	33.02	19110016	MLCO	R	H	1600	33.20	10:31:25	10:33:08	39.36	39.37	1600	19110016	39.36	33.01
17	19110017	11/11/04	09:00	CSOB	1700	10:30:29	39.8	33.55	19110017	MLCO	R	H	1700	33.19	10:31:25	10:33:08	40.30	40.31	1700	19110017	40.30	33.54
18	19110018	11/11/04	09:00	CSOB	1800	10:30:29	40.7	34.08	19110018	MLCO	R	H	1800	33.18	10:31:25	10:33:08	41.24	41.25	1800	19110018	41.24	34.07
19	19110019	11/11/04	09:00	CSOB	1900	10:30:29	41.6	34.61	19110019	MLCO	R	H	1900	33.17	10:31:25	10:33:08	42.18	42.19	1900	19110019	42.18	34.60
20	19110020	11/11/04	09:00	CSOB	2000	10:30:29	42.5	35.14	19110020	MLCO	R	H	2000	33.16	10:31:25	10:33:08	43.12	43.13	2000	19110020	43.12	35.13
21	19110021	11/11/04	09:00	CSOB	2100	10:30:29	43.4	35.67	19110021	MLCO	R	H	2100	33.15	10:31:25	10:33:08	44.06	44.07	2100	19110021	44.06	35.66
22	19110022	11/11/04	09:00	CSOB	2200	10:30:29	44.3	36.20	19110022	MLCO	R	H	2200	33.14	10:31:25	10:33:08	45.00	45.01	2200	19110022	45.00	36.19
23	19110023	11/11/04	09:00	CSOB	2300	10:30:29	45.2	36.73	19110023	MLCO	R	H	2300	33.13	10:31:25	10:33:08	45.94	45.95	2300	19110023	45.94	36.72
24	19110024	11/11/04	09:00	CSOB	2400	10:30:29	46.1	37.26	19110024	MLCO	R	H	2400	33.12	10:31:25	10:33:08	46.88	46.89	2400	19110024	46.88	37.25
25	19110025	11/11/04	09:00	CSOB	2500	10:30:29	47.0	37.79	19110025	MLCO	R	H	2500	33.11	10:31:25	10:33:08	47.82	47.83	2500	19110025	47.82	37.78
26	19110026	11/11/04	09:00	CSOB	2600	10:30:29	47.9	38.32	19110026	MLCO	R	H	2600	33.10	10:31:25	10:33:08	48.76	48.77	2600	19110026	48.76	38.31
27	19110027	11/11/04	09:00	CSOB	2700	10:30:29	48.8	38.85	19110027	MLCO	R	H	2700	33.09	10:31:25	10:33:08	49.70	49.71	2700	19110027	49.70	38.84
28	19110028	11/11/04	09:00	CSOB	2800	10:30:29	49.7	39.38	19110028	MLCO	R	H	2800	33.08	10:31:25	10:33:08	50.64	50.65	2800	19110028	50.64	39.37
29	19110029	11/11/04	09:00	CSOB	2900	10:30:29	50.6	39.91	19110029	MLCO	R	H	2900	33.07	10:31:25	10:33:08	51.58	51.59	2900	19110029	51.58	39.90
30	19110030	11/11/04	09:00	CSOB	3000	10:30:29	51.5	40.44	19110030	MLCO	R	H	3000	33.06	10:31:25	10:33:08	52.52	52.53	3000	19110030	52.52	40.43
31	19110031	11/11/04	09:00	CSOB	3100	10:30:29	52.4	40.97	19110031	MLCO	R	H	3100	33.05	10:31:25	10:33:08	53.46	53.47	3100	19110031	53.46	40.96
32	19110032	11/11/04	09:00	CSOB	3200	10:30:29	53.3	41.50	19110032	MLCO	R	H	3200	33.04	10:31:25	10:33:08	54.40	54.41	3200	19110032	54.40	41.49
33	19110033	11/11/04	09:00	CSOB	3300	10:30:29	54.2	42.03	19110033	MLCO	R	H	3300	33.03	10:31:25	10:33:08	55.34	55.35	3300	19110033	55.34	42.02
34	19110034	11/11/04	09:00	CSOB	3400	10:30:29	55.1	42.56	19110034	MLCO	R	H	3400	33.02	10:31:25	10:33:08	56.28	56.29	3400	19110034	56.28	42.55
35	19110035	11/11/04	09:00	CSOB	3500	10:30:29	56.0	43.09	19110035	MLCO	R	H	3500	33.01	10:31:25	10:33:08	57.22	57.23	3500	19110035	57.22	43.04
36	19110036	11/11/04	09:00	CSOB	3600	10:30:29	56.9	43.62	19110036	MLCO	R	H	3600	33.00	10:31:25	10:33:08	58.16	58.17	3600	19110036	58.16	43.57
37	19110037	11/11/04	09:00	CSOB	3700	10:30:29	57.8	44.15	19110037	MLCO	R	H	3700	32.99	10:31:25	10:33:08	59.10	59.11	3700	19110037	59.10	44.10
38	19110038	11/11/04	09:00	CSOB	3800	10:30:29	58.7	44.68	19110038	MLCO	R	H	3800	32.98	10:31:25	10:33:08	60.04	60.05	3800	19110038	60.04	44.63
39	19110039	11/11/04	09:00	CSOB	3900	10:30:29	59.6	45.21	19110039	MLCO	R	H	3900	32.97	10:31:25	10:33:08	60.98	60.99	3900	19110039	60.98	45.16
40	19110040	11/11/04	09:00	CSOB	4000	10:30:29	60.5	45.74	19110040	MLCO	R	H	4000	32.96	10:31:25	10:33:08	61.92	61.93	4000	19110040	61.92	45.69
41	19110041	11/11/04	09:00	CSOB	4100	10:30:29	61.4	46.27	19110041	MLCO	R	H	4100	32.95	10:31:25	10:33:08	62.86	62.87	4100	19110041	62.86	46.22
42	19110042	11/11/04	09:00	CSOB	4200	10:30:29	62.3	46.80	19110042	MLCO	R	H	4200	32.94	10:31:25	10:33:08	63.80	63.81	4200	19110042	63.80	46.75
43	19110043	11/11/04	09:00	CSOB	4300	10:30:29	63.2	47.33	19110043	MLCO	R	H	4300	32.93	10:31:25	10:33:08	64.74	64.75	4300	19110043	64.74	47.28
44	19110044	11/11/04	09:00	CSOB	4400	10:30:29	64.1	47.86	19110044	MLCO	R	H	4400	32.92	10:31:25	10:33:08	65.68	65.69	4400	19110044	65.68	47.81
45	19110045	11/11/04	09:00	CSOB	4500	10:30:29	65.0	48.39	19110045	MLCO	R	H	4500	32.91	10:31:25	10:33:08	66.62	66.63	4500	19110045	66.62	48.34
46	19110046	11/11/04																				

Unique Trigger Trade Count	Original Exhibit ID	Exposition Date	Assessed Exposition Time	Report Time	Exposition Exhibition Type	Reporting Side Capacity	Reporting Side Capacity	Quoted Exposition Type	Quoted Exposition Capacity	Quoted Exposition Capacity	Price	Volume	Unique Quotation Order Count	Original Quotation Order #	Order Reached Date and Time	Firm Order ID	Customer Order to Buy/Sell	Customer Unit Price	Order Quantity	CAT2 Reportable Order Event ID	Special Handling Code	Original Exhibit Item	Unique Trigger Trade Count	
1	B	1/24/2005	8:30:01	9:30:07	MLOO	P	B	NITE	P	DRAD	7.74	100	1	B	12/30/2004 13:53	MLOO	T0025395	B	7.75	500	75358485832		B	1
2	B	1/25/2005	10:40:46	10:40:46	MLOO	P	B	SGAS	A	NSTO	14.75	100	2	B	1/3/2005 10:47	MLOO	T0016379	SL	14.75	1000	75371382007		B	2
3	11	1/11/2005	12:43:42	12:43:42	MLOO	P	B	CHBO	P	CESE	7	100	3	11	1/10/2005 3:42	MLOO	T0001240	B	7	100	75235571544		11	3
4	12	1/10/2005	8:34:17	8:34:18	MLOO	P	B	LHWA	P	OUFE	5.82	200	4	12	1/10/2005 8:33	MLOO	T0004824	SL	5.82	2000	75235571544		12	4
5	13	1/11/2005	12:52:08	12:52:08	MLOO	P	B	NITE	P	PHST	3.88	100	5	13	1/10/2005 12:40	MLOO	T00044161	B	3.86	100	75235571544		13	5
6	14	1/11/2005	8:47:20	8:47:20	MLOO	P	B	INOA	A	ALVA	13	100	6	14	1/11/2005 8:45	MLOO	T1001734	B	13	1000	75358485832		14	6
7	15	1/11/2005	13:08:32	13:08:32	MLOO	P	B	INOA	A	LNCE	18.12	137	7	15	1/11/2005 11:46	MLOO	T1018028	B	18.12	137	75358485832		15	7
8	17a	1/11/2005	13:01:59	13:01:59	MLOO	P	B	INOA	A	OSUR	5.03	500	8	17	1/11/2005 12:30	MLOO	T1023558	B	5.03	1300	75358485832		17a	8
9	17b	1/11/2005	13:02:13	13:02:13	MLOO	P	B	SGAS	A	OSUR	5.03	100	9	17	1/11/2005 12:30	MLOO	T1023558	B	5.03	1300	75358485832		17b	9
10	17c	1/11/2005	13:02:43	13:02:43	MLOO	P	B	ARRB	A	OSUR	5.03	300	10	17	1/11/2005 12:30	MLOO	T1023558	B	5.03	1300	75358485832		17c	10
11	18	1/11/2005	13:00:39	13:00:39	MLOO	P	B	ARRB	A	UTPR	4.15	100	11	18	1/11/2005 12:37	MLOO	T1024042	B	4.15	100	75358485832		18	11
12	19	1/11/2005	12:49:09	12:49:09	MLOO	P	B	INOA	A	ITRA	0.94	5000	12	19	1/11/2005 12:41	MLOO	T1024042	B	0.94	5000	75358485832		19	12
13	20	1/11/2005	12:48:31	12:48:31	MLOO	P	B	CRWN	P	BIFY	5.44	500	13	20	1/11/2005 12:47	MLOO	T1024042	B	5.44	500	75358485832		20	13
14	21a	1/11/2005	12:49:30	12:49:30	MLOO	P	B	ARRB	A	MAFI	13.45	100	14	21	1/11/2005 12:47	MLOO	T1024042	B	13.45	2000	75358485832		21a	14
15	21b	1/11/2005	12:49:32	12:49:32	MLOO	P	B	ARRB	A	MAFI	13.45	300	15	21	1/11/2005 12:47	MLOO	T1024042	B	13.45	2000	75358485832		21b	15
16	22	1/11/2005	12:58:26	12:58:26	MLOO	P	B	ARRB	A	QASY	17.01	100	16	22	1/11/2005 12:57	MLOO	T1035400	B	17.01	300	75358485832		22	16
17	24	1/12/2005	12:39:30	12:39:30	MLOO	P	B	BRUT	P	OPDA	3.54	300	17	24	1/12/2005 12:30	MLOO	T0204190	B	3.54	300	75358485832		24	17
18	25a	1/14/2005	11:15:48	11:15:48	BRUT	A	S	MLOO	P	QMLS	14.07	100	18	25	1/14/2005 11:15	MLOO	T4013750	B	14.07	1000	75726175537		25a	18
19	25b	1/14/2005	11:17:06	11:17:06	MLOO	P	B	SGAS	A	QMLS	14.07	100	19	25	1/14/2005 11:15	MLOO	T4013750	B	14.07	1000	75726175537		25b	19
20	28	1/18/2005	9:30:31	9:30:31	FACT	P	B	FACT	P	EXAC	18.5	100	20	28	1/14/2005 14:34	MLOO	T4027548	SL	18.5	100	75728223898		28	20
21	29	1/18/2005	13:03:22	13:03:22	MLOO	P	S	SCHB	P	GNOM	10.35	700	21	29	1/18/2005 12:36	MLOO	T9028176	SL	10.35	1250	758981129836		29	21
22	30a	1/18/2005	12:52:26	12:52:26	MLOO	P	B	MAOF	P	DNOW	5.83	170	22	30	1/18/2005 12:46	MLOO	T9028176	B	5.86	5000	75931127373		30a	22
23	30b	1/18/2005	12:55:30	12:55:30	MLOO	P	B	BRUT	P	DNOW	5.83	100	23	30	1/18/2005 12:46	MLOO	T9028176	B	5.86	5000	75931127373		30b	23
24	33	1/25/2005	8:30:05	8:30:06	MLOO	P	B	SCHB	P	OSUB	21.49	100	24	33	1/24/2005 14:38	MLOO	T4038115	B	21.49	200	77250883302		33	24
25	34	1/25/2005	8:30:01	8:30:04	MLOO	P	B	GNRC	P	NABE	12	100	25	34	1/25/2005 8:28	MLOO	T3002386	B	12.01	1000	77595634037		34	25
26	38	2/1/2005	11:51:08	11:51:08	BRUT	A	B	MLOO	P	OEVA	8.3	100	26	38	2/1/2005 11:49	MLOO	T1017555	SL	8.3	521	77844871112		38	26
27	39	2/10/2005	13:29:52	13:29:52	NITE	P	B	MLOO	P	MESG	18.11	100	27	39	2/10/2005 13:29	MLOO	T0027612	SL	18.11	300	7557045952		39	27
28	39a	2/10/2005	13:11:20	13:11:20	MLOO	P	S	SWST	P	MESG	18.04	500	28	39	2/10/2005 14:39	MLOO	T0033001	SL	18.04	600	78870468153		39a	28
29	39b	2/10/2005	13:11:21	13:11:21	MLOO	P	S	SWST	P	MESG	18.04	100	29	39	2/10/2005 14:39	MLOO	T0033001	SL	18.04	600	78870468153		39b	29

Unique Trigger Trade Count	Original Exhibit Item #	Special Handling Code	Original Exhibit Item	Unique Trigger Trade Count			
30	42	9/14/2005 10:11	MALCO T4010865	B 1.6 1975 79108602864	42	30	
31	45a	2/25/2005	14:47:22	MALCO P S	GHCO P	PHRM 34.1	500
32	45b	2/25/2005	14:47:22	MALCO P S	GHON A	PHRM 34.1	100
33	45c	2/26/2005	14:47:22	MALCO P S	GHON A	PHRM 34.1	100
34	49	3/11/2005	10:35:05	MALCO P	B	BEST P	GGAL 8.45 1760
35	50a	3/21/2005	10:34:05	MALCO P	B	BLUT P	CHCO 31.8 100
36	50b	3/21/2005	10:35:38	MALCO P	B	GHCO P	CHCO 31.8 100
37	50c	3/21/2005	14:03:43	MALCO P	B	INCA A	CHCO 31.8 100
38	52a	3/21/2005	11:01:47	MALCO P	B	CHCO P	DFIB 1.18 1774
39	52b	3/21/2005	11:01:58	MALCO P	B	CHCO P	DFIB 1.18 225

Exhibit 7
Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLCO")
STAR No. 20050024746
Review Period: January 1, 2005 through March 31, 2005

Item	Date	Cusip ID	Firm1	Firm2	Buy/Sell	Quantity	Trade Time	Trade Price	Restitution to Customer
1	1/13/05	905581AQ7	MLCO	Customer	S	50	13:14:56	105.50	\$1,750.00
2	1/20/05	88731EAF7	MLCO	Customer	S	335	15:05:46	133.463	*\$16,750
3	1/27/05	345220AB3	MLCO	Customer	B	10	16:03:32	102.989	*\$926.10
4	2/17/05	905581AR5	MLCO	Customer	S	45	12:25:42	110.636	\$2,164.95
5	3/4/05	718154CF2	MLCO	Customer	S	50	12:41:47	121.494	\$1,117.00
6	3/4/05	037388AE5	MLCO	Customer	S	50	14:04:24	123.278	\$1,499.00
7	3/28/05	345370CA6	MLCO	Customer	S	145	13:53:48	95.137	\$4,007.80

Total restitution to be paid to customers = \$10,538.75

*The firm has previously provided restitution in the amount stated to its customers in each transaction.