

**NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT**

20050021177-01

**TO: Market Regulation Department
NASD**

**RE: Merrill Lynch, Pierce, Fenner & Smith, Inc., Respondent
Broker-Dealer
CRD No. 7691**

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

The firm understands that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Market Regulation and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
3. If accepted:
 - a. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against the firm;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about the firm's disciplinary record;
 - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and
 - d. The firm may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying,

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REGISTRATION & DISCLOSURE

directly or indirectly, any allegation in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects the firm's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

The firm also understands that its experience in the securities industry and disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and history are as follows:

The firm has been a member of NASD since January 26, 1937 and its registration remains effective. The firm has the following relevant disciplinary history:

- On April 28, 2003, an AWC became final in which the firm was censured and fined \$10,000, consisting of a fine of \$5,000 for violations of SEC Rule 15c2-11, NASD Marketplace Rule 6740 and NASD Conduct Rule 2110, and \$5,000 for violations of NASD Conduct Rules 2110 and 3010.

I.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under NASD'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 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 Rule 9143 or the separation of functions prohibitions of 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.

II.

ACCEPTANCE AND CONSENT

In connection with Market Regulation Review 20050021177, the Market Regulation Department staff conducted a review of the firm's quote activity on July 18, 2005 for compliance with SEC Rule 15c2-11, NASD Marketplace Rule 6740 and NASD Conduct Rules 2110 and 3010.

A. The firm hereby accepts and consents, without admitting or denying the allegations or findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD 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 NASD:

1. On July 18, 2005, the firm published fifteen quotations in eight OTC equity securities or, directly or indirectly submitted such quotations for publication in a quotation medium, and: (i) did not have in its records the documentation required by SEC Rule 15c2-11(a) ("Paragraph (a) information"); (ii) did not have a reasonable basis under the circumstances for believing that the Paragraph (a) information was accurate in all material respects; and (iii) did not have a reasonable basis under the circumstances for believing that the sources of the Paragraph (a) information were reliable. The quotations did not represent a customer's indication of unsolicited interest. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 15c2-11 and NASD Conduct Rule 2110.
2. For each quotation described above, the firm failed to file a Form 211 with NASD at least three business days before the firm's quotations were published or displayed in a quotation medium. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6740 and NASD Conduct Rule 2110.
3. During the review period the firm failed to enforce its written supervisory procedures which specified that, prior to quoting any non-Nasdaq OTC security, the firm's traders were required to request permission to quote the security from a supervisor and further, that the supervisor and trader discuss any trading or quoting restrictions

relating to the security. The procedures also required the supervisor to document such requests, along with the name of the security and resolution of the request, on a supervisory checklist. The conduct described in this paragraph constitutes a violation of NASD Conduct Rules 2110 and 3010.

- B. The firm also consents to the imposition, at a maximum, of the following sanctions:

A censure and a fine of \$15,000 (composed of a \$10,000 fine for violations of SEC Rule 15c2-11 and NASD Marketplace Rule 6740 and \$5,000 for violation of NASD Conduct Rules 2110 and 3010).

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

III.

OTHER MATTERS

- A. The firm understands that 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 the firm 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 NASD, nor does it reflect the views of NASD or its staff.
- B. The firm agrees to pay any monetary sanctions imposed on the firm upon notice that this AWC has been accepted and that such payments are due and payable and has attached an Election of Payment form showing the method by which the firm proposes to pay any fine imposed.
- C. The firm specifically and voluntarily waives any right to claim that the firm is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.



Christopher J. Chatfield
Vice President
Global Regulatory Affairs

Office of General Counsel

222 Broadway
16th Floor
New York, New York 10038

May 16, 2007

VIA FAX & UPS

Confidential Treatment Requested

Laurie A. Doherty, Esq.
Counsel
NASD
9509 Key West Avenue
Rockville, MD 20850-3329

Re: **Letter of Acceptance, Waiver and Consent (20050021177)**

Dear Ms. Doherty:

In my letter to you dated May 15, 2006, I neglected to include the legend required by the NASD for Corrective Action Statements. The Firm's Corrective Action Statement in the above captioned matter with the required NASD legend follows:

The Firm has updated their operating compliance and supervisory manuals to address the issues raised in the AWC. The Firm has implemented an unsolicited quote review currently done by Equity Product Compliance on a weekly basis. This review is designed to monitor for the review of the unsolicited quotation exception that is available under rule 15c2-11. Sector heads of the Firm's Cash desk also conduct reviews to ensure compliance with rule 15c2-11, and document such review on their master supervisory checklist. The Firm has also made this a topic as part of their annual compliance meetings held annually.

This Corrective Action Statement is submitted by the Respondent. It does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD, or its staff.

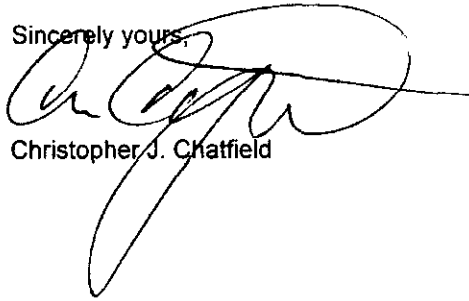
Information and documents being submitted in response to your letter are solely for the NASD's use with the understanding that Merrill Lynch believes that business confidentiality pertains to each page. The material and the information contained therein are considered to be confidential or private internal documents that are commercially valuable and, as such, constitute or contain trade secrets. Merrill Lynch requests that you give it prompt notice and the opportunity to object before disclosure of this information is made to any person or entity outside the NASD.

In the event that any of the documents or information provided by Merrill Lynch in this investigation may be produced to the Securities and Exchange Commission ("SEC"), Merrill Lynch further requests that you inform such agency that Merrill Lynch requests of it that the documents and information receive confidential treatment pursuant to Section 24(b) of the Securities Exchange Act, 15 U.S.C. §78x(b) and SEC Rule 25b-2 thereunder, 17 CFR §240.24(b)-2, or similar regulations applicable to the agency; the Freedom of Information Act, 5 U.S.C. §552(b) and the regulations thereunder, including without limitation, 17 CFR §§220.80 and 200.83; the Right to Financial Privacy Act of 1978, 12 U.S.C. §3401 et seq.; and the Trade

Laurie A. Doherty, Esq.
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Secrets Act, 18 U.S.C. §1905 et seq. Merrill Lynch hereby further requests an opportunity to substantiate its request for confidential treatment in accordance with the procedures set forth in 17 CFR §200.83(d) or like regulations, and an opportunity to oppose disclosure in accordance with 17 CFR §200.83(e) - (h) and otherwise.

Sincerely yours,


Christopher J. Chatfield