

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20060051501

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REGISTRATION & DISCLOSURE

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

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

Pursuant to NASD Rule 9216 of FINRA 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 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 since January 26, 1937, and its registration remains effective. The firm does not have any relevant disciplinary history.

FACTS AND VIOLATIVE CONDUCT

In connection with 20060051501, the staff of FINRA's Department of Market Regulation (the "staff") conducted a review of the accuracy of the firm's advertised trade volume in three securities to three service providers, Thomson AutEx BlockDATA ("AutEx"), Bloomberg and Reuters, in August 2006.

1. AutEx, Bloomberg and Reuters are private service providers that allow certain subscribers, including broker-dealers, to advertise intra-day and historical trading volume in a particular security. Participation by member firms in these services is voluntary.
2. A broker-dealer subscriber may send to AutEx, Bloomberg, and Reuters advertisements of the trade volume that it transacted in a given security. The subscribers' advertised trade volume is used by the service providers to compile rankings and other custom-defined reports, including, but not limited to, reports that rank the most active broker-dealers by security.
3. The firm's aggregate trade volume (buy and sell) for three equity securities advertised in AutEx, Bloomberg and Reuters for August 2006 substantially exceeded the firm's executed trade volume for the same three securities. Moreover, the firm did not determine whether the trade volume that it advertised in these services accurately reflected its executed trade volume. The firm's advertised trade volume was published to the subscribers of AutEx, Bloomberg and Reuters. The conduct described in this paragraph constitutes violations of NASD Conduct Rules 2110 and 3310.
4. 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 NASD Conduct Rule 3310. 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 advertised trade volume on these subscriber services and 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. Furthermore, the firm at that time did not supervise the trade volume that it advertised in these systems, as described in paragraph 3 above. 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 \$200,000.

Prior to the resolution of this matter, the firm implemented written supervisory procedures with respect to the areas described in paragraph A.4.

The firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payments 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 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 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.

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 FINRA's Department of Market Regulation and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs, 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. 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 FINRA is not a party.

- D. The firm understands that it 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 issuance of a Complaint, has been made to induce the firm to submit it.

November 28, 2007
Date

David L. Kornblan
Merrill Lynch, Pierce, Fenner &
Smith, Inc.

By: David L. Kornblan
Name:

Title: Managing Director
Head of Regulatory Affairs

Reviewed by:

Bryan R. Hecimovic
Attorney Name
Counsel for Respondent
Firm Name Gibson, Dunn & Crutcher LLP
Address 1050 Connecticut Avenue, NW
City/State/Zip Washington, DC 20036
Phone Number 202-955-8580

Accepted by FINRA:

12/14/07
Date

Thomas R. Gira
Thomas R. Gira
Executive Vice President
Department of Market Regulation

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