

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20060055266-01**

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FINRA
MARKET REGULATION

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

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

Pursuant to FINRA Rule 9216 of the FINRA Code of 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 in effect.

RELEVANT PRIOR DISCIPLINARY HISTORY

- On March 23, 2006, an AWC became final in which the firm was censured and fined \$45,000 for, among other things, violations of NASD Rule 6955.
- On June 3, 2005, an AWC became final in which the firm was censured and fined \$7,500 for violations of NASD Rule 6955.
- On May 19, 2005, an AWC became final in which the firm was censured and fined \$12,500 for violations of NASD Rule 6955.
- On April 21, 2003, an AWC became final in which the firm was censured and fined \$10,000 for violations of NASD Rule 6955

SUMMARY

In connection with 20060055266, the staff of the Department of Market Regulation (the "staff") reviewed the firm's compliance with Order Audit Trail System ("OATS") reporting requirements for the period October 1, 2005 through December 31, 2005.

In connection with 20060062892, the staff reviewed the firm's compliance with OATS reporting requirements for the period January 1, 2006 through March 31, 2006.

In connection with 20070079755, the staff reviewed the firm's compliance with OATS reporting requirements for the period April 1, 2006 through July 31, 2006.

In connection with 20080123575, the staff reviewed the firm's compliance with OATS reporting requirements for the period January 1, 2007 through April 30, 2007.

FACTS AND VIOLATIVE CONDUCT

20060055266

1. During the period reviewed, the firm transmitted to OATS 18,190 Route or Combined Order/Route Reports that the OATS system was unable to link to the corresponding new order transmitted by the destination member firm due to inaccurate, incomplete or improperly formatted data. These 18,190 Route or Combined Order/Route Reports represented approximately 83 percent of all match-eligible Route or Combined Order/Route Reports (21,955) that the firm transmitted to OATS during the period reviewed. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).

20060062892

2. During the period reviewed, the firm transmitted to OATS 22,479 Route or Combined Order/Route Reports that the OATS system was unable to link to the related order routed to Nasdaq due to inaccurate, incomplete or improperly formatted data. These unmatched Route or Combined Order/Route Reports represented approximately three percent of all match-eligible Route or Combined Order/Route Reports (652,785) that the firm transmitted to OATS during the period reviewed. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).

20070079755

3. During the period reviewed, the firm failed to timely report to OATS 1,645,865 Reportable Order Events ("ROEs"). These late ROEs represented approximately eight percent of all ROEs (21,479,738) that the firm transmitted to OATS during the period reviewed. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).

20080123575

4. During the period reviewed, the firm transmitted to OATS 865,485 Route or Combined Order/Route Reports that the OATS system was unable to link to the corresponding new order transmitted by the destination member firm due to inaccurate, incomplete or improperly formatted data. These 865,485 Route or Combined Order/Route Reports represented approximately five percent of all match-eligible Route or Combined Order/Route Reports (16,277,204) that the firm transmitted to OATS during the period reviewed. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).

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

A censure and a total fine of \$55,000.

The firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable.

The firm 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 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 FINRA Rule 9143 or the separation of functions prohibitions of FINRA 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 FINRA 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 FINRA Rule 8310; 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 undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf 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 its 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.

Date Jan 28, 2010

Respondent

Merrill Lynch, Pierce, Fenner & Smith, Incorporated

By: [Signature]

Print Name: David Futterman

Title: Assoc. General Counsel

Reviewed by:

[Signature]

Attorney Name
Counsel for Respondent

Firm Name: Merrill Lynch

Address: 222 Broadway, New York, NY

Telephone number: 212 470 4000

Accepted by FINRA:

2/23/10
Date

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

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