

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2008012391401**

TO: Department of Enforcement ("Enforcement")
Financial Industry Regulatory Authority ("FINRA")¹

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

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated (the "Firm" or "Merrill Lynch") 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 Merrill Lynch alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Merrill Lynch 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

At all times described herein, Merrill Lynch was a Delaware corporation with its principal place of business in New York and a member organization of NYSE Euronext ("NYSE") and FINRA.²

This matter arose from the referral of certain exceptions contained in reports, dated December 1, 2005, (the "2005 Report") and February 21, 2007, (the "2006 Report") of Merrill Lynch prepared by the Sales Practice Review Unit ("SPRU") of the legacy Division of Member Firm Regulation ("MFR") of NYSE Regulation, Inc. ("NYSE Regulation") and certain exceptions in the 2007 Examination Report (the

¹ In July 2007, the NASD, Inc. became FINRA.

² On January 1, 2009, Bank of America Corporation acquired Merrill Lynch, which then became a wholly-owned subsidiary of Bank of America Corporation.

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"2007 Report") that the Member Regulation Department of FINRA prepared and issued on February 5, 2008.

RELEVANT DISCIPLINARY HISTORY

Merrill Lynch has no prior relevant disciplinary history.

OVERVIEW

Enforcement's investigation disclosed that during the period from 2005 to 2006, Merrill Lynch, through several of its employees at the branch office level and employees of an affiliate in the Office of General Counsel ("OGC"), provided inaccurate, and in some cases deceptive, information to NYSE Regulation examiners and Enforcement relating to MFR's examination of the Lakeside Michigan, Clinton Township Branch Office ("the Clinton Township Branch"), which was a part of the Firm's North Metro Complex (the "Complex"). The violations included:

- making misstatements to NYSE Regulation examiners on-site about the Clinton Township Branch's use of non-registered cold-callers;
- instructing employees at the Clinton Township Branch that, if asked, they were to tell the NYSE Regulation examiners that there were no interns working at the branch office, which was an inaccurate statement;
- instructing a former intern who worked at the Clinton Township Branch not to disclose his previous internship when applying for a full-time position at the Firm;
- providing an inaccurate written statement to Enforcement in response to specific questions relating to Enforcement's preliminary and formal investigations of the cold-caller issue at the Clinton Township Branch;
- instructing a registered representative that an unapproved facsimile machine should be hidden or removed from the Clinton Township Branch while NYSE Regulation examiners were on site, and misleading the NYSE Regulation examiners about the number of facsimile machines at that branch; and
- failing to supervise a registered person's use of an inaccurate professional title.

Enforcement's investigation also disclosed certain exceptions related to the Firm's supervisory and sales practice procedures described in the 2005, 2006 and 2007 Reports. Specifically, in certain instances, certain branch offices of the Firm failed to:

- receive and review certain duplicate confirmations and monthly account statements for accounts that employees maintained outside the Firm; approve and/or evidence the approval of such accounts; send certain duplicate statements and confirmations to other firms whose employees had accounts at Merrill Lynch; and to provide letters from outside broker-

dealers, whose employees maintained accounts at Merrill Lynch, confirming that these outside broker-dealers were aware of the existence of such accounts;

- appropriately supervise certain incoming and outgoing written communications/facsimiles and the use of certain facsimile machines;
- appropriately evidence the approval for certain employees to maintain certain computers and software; review, and/or evidence supervisory review of communications sent and received by certain employees with non-Firm issued computers and/or personal laptops; and, in one office, an administrative manager backdated multiple personal computer approval forms;
- place certain accounts on 90-day restriction and appropriately evidence the review, approval and/or supervision of certain order errors and account designation changes; and
- approve and/or timely approve certain seminars that Firm employees conducted and maintain seminar related materials.

FACTS

1. Violations Regarding the Clinton Township Branch

A. Misstatements Relating to the Use of Non-Registered Cold-Callers

During 2005, the Clinton Township Branch employed temporary non-registered interns who typically engaged in cold-calling activities. On or about June 13 through June 17, 2005, while on-site at the Clinton Township Branch, NYSE Regulation examiners inquired as to whether the Clinton Township Branch employed "non-registered cold-callers" who engaged in cold-calling activities. The Complex's Administrative Manager, who handled compliance-related issues, inaccurately stated to NYSE Regulation examiners that Merrill Lynch did not employ any interns at the Clinton Township Branch, and deliberately failed to correct the misstatement.

In addition, the Clinton Township Branch's Financial Advisor in Charge ("FAIC") falsely represented to the NYSE Regulation examiners that no cold-callers were employed at the Clinton Township Branch, even though there were unauthorized interns engaged in cold-calling at the branch. Earlier that week, upon learning that the NYSE Regulation examiners were to conduct a on-site examination, staff at the Clinton Township Branch instructed the unapproved interns not to report for work at the branch office. The FAIC also instructed certain Clinton Township Branch employees that, if asked, they were to tell the NYSE Regulation examiners that the Clinton Township Branch did not employ any unapproved interns.

In practical effect, by saying there were no interns at the Clinton Township Branch, the FAIC denied to the NYSE Regulation examiners that the Clinton Township Branch employed non-registered cold-callers who used cold-calling scripts.

B. Providing An Inaccurate Written Statement to Enforcement Relating to the Use of Non-Registered Cold-Callers In Response to Specific Questions Relating to Enforcement's Preliminary and Formal Investigations

Pursuant to Enforcement's document and information requests, the Firm, by letter dated September 27, 2005, stated that interns at the Clinton Township Branch engaged in cold-calling, used cold-calling scripts and conducted cold-calling competitions. A paralegal in OGC prepared and submitted this letter to Enforcement.

By letter dated March 22, 2006, an attorney in OGC submitted an additional response to a supplemental Enforcement request for documents and information relating to cold-calling, using cold-calling scripts and conducting cold-calling competitions. Contrary to Merrill Lynch's statements in the September 27, 2005 letter, the Firm, in the March 22, 2006 letter, reported that the Clinton Township Branch did not use cold-callers to contact clients or prospective clients.

Enforcement thereafter sought an explanation of the conflicting letters from the Firm. In August 2006, a more senior attorney, without investigating the matter, told the staff to assume that the March 22, 2006 letter was accurate because it had been drafted by an attorney rather than a paralegal. Not until November 2006, following an internal review, did the Firm advise Enforcement that the September 27, 2005 letter accurately described the Interns' cold-calling activities at the Clinton Township Branch, whereas the statements about that subject in the March 22, 2006 letter were inaccurate. At that time, the Firm also advised Enforcement that the attorney who had authored the March 22, 2006 letter had reviewed and approved the September 27, 2005 letter.

C. Instructing an Individual, When Applying for Full-Time Employment at the Firm, Not to Disclose that the Individual Had Previously Been a Temporary Non-Registered Intern in the Clinton Township Branch

During 2005, the FAIC recruited temporary non-registered interns to serve as cold-callers at the Clinton Township Branch. When one such intern later applied for a full-time position at the Firm, he was instructed by a Firm employee not to disclose on his employment application his previous internship at the Clinton Township Branch.

D. Instructing Clinton Township Branch Employees to Hide or Remove an Unapproved Facsimile Machine While NYSE Regulation Examiners Were On-Site and Misleading NYSE Regulation Examiners About the Number of Facsimile Machines at the Clinton Township Branch

A regular component of SPRU examinations has been to inquire of the number of facsimile machines in use at a branch office and determine if they are being supervised properly. In this instance, the NYSE Regulation examiners asked whether there were facsimile machines at the Clinton Township Branch. While the NYSE Regulation examiners were conducting the on-site examination, a member of the Regulatory Exams and Inquiries Group ("REIG") instructed a registered representative to hide or remove an unauthorized facsimile machine from the Clinton Township Branch. Rather than following this instruction, however, the registered representative disconnected the facsimile machine and REIG personnel subsequently misled the NYSE Regulation examiners to believe incorrectly that the Clinton Township Branch had fewer functioning facsimile machines than was actually the case.

2. An Individual's Use of an Attorney Title

In 2005 and 2006, the head of REIG was a registered person at the Firm who had graduated from law school with a juris doctorate degree but had never been licensed to practice law before any state or federal bar. Nevertheless, this individual held himself out as an attorney by using Firm stationery and business cards that identified him as an attorney. For example, on correspondence submitted to the NYSE, his Merrill Lynch letterhead identified him as "Director and Assistant General Counsel."

3. Sales Practice Examination – 2005 Report

On certain occasions during the period from April 2004 through June 2005, the Firm's Charlotte, NC branch office failed to receive duplicate confirmations and monthly account statements for three accounts held by one financial advisor ("FA"), who maintained personal and/or related accounts outside the Firm. Appropriate supervisory personnel failed to review these accounts and there was no evidence that the accounts were approved. This conduct violated NASD Rule 3010 and/or Incorporated Rule 407(b) of the New York Stock Exchange ("NYSE"), and NASD Rule 2110.

On certain occasions during the period from April 2004 through June 2005, the Firm engaged in the following conduct, which violated NASD Rules 3010 and 2110:

- A. The Portland, OR, Charlotte, NC, Clinton Township, MI and Dallas, TX branch offices failed to evidence review of certain outgoing facsimiles. In addition, the Portland, OR branch office could not evidence that all incoming customer facsimiles were reviewed by a qualified supervisor.
- B. For the period April 2004 through June 2005, the Miami, FL branch office was unable to evidence that supervisory reviews were conducted for any of the incoming written communications or incoming facsimile messages.
- C. In the Houston-Westlake, TX branch office there were 40 incoming written letters identified during the period January 2005 through June 2005 that did not contain evidence of supervisory review.
- D. The Charlotte, NC branch office was unable to provide documentation evidencing the appropriate approval to maintain personal desktop or laptop computers and the accompanying software for seven individuals. Three individuals from the Portland, OR branch office and one person from the Dallas, Texas branch office maintained non-Merrill Lynch issued computers with Internet access. Although no communication with clients was identified from these computers, the Firm was unable to provide evidence that the e-mail communications sent or received from these computers were being reviewed.
- E. In the Clinton Township Branch, although the Firm's policy required review of at least 5% - 10% of all branch office incoming and outgoing e-mails each month, the April 2005 Compliance Archive and Retrieval System ("CARS") monthly statistics report for the Clinton Township Branch disclosed that the review covered only 2.5% of the total e-mails. Four facsimiles sent from Clinton Township did not contain any evidence of supervisory review. Furthermore, a review of incoming facsimiles for the period April 1, 2004 through May 31, 2005 at the Clinton Township Branch disclosed nine instances in which facsimiles sent by the FA in charge did not contain appropriate evidence of supervisory review.

4. **Sales Practice Examination – 2006 Report**

- A. When NYSE Regulation examiners were at the Firm's White Plains, NY branch office in August 2006, a review of an FA's form entitled "Merrill Lynch Guidelines for the Use of Non-Proprietary Business

Resources" (the "Personal Computer Form") disclosed no evidence of review or approval by the branch office's Administrative Manager. Upon return to the Firm's headquarters a few weeks later, NYSE Regulation Examiners requested the Personal Computer Forms for a number of FAs from the White Plains, NY branch office, including that for the noted FA. The Examiners' review of the version of the Personal Computer Form that the Firm provided in response to this request reflected that the Administrative Manager had approved and signed the form with a date of March 2006. The Administrative Manager backdated the document. In addition, Enforcement later learned that the Administrative Manager backdated approximately 30 additional Personal Computer Forms. The foregoing conduct violated NASD Rules 3010 and 2110.

- B. On certain occasions during the period from January through August 2006, the Firm engaged in the following conduct relating to account designation changes and order errors, which violated NASD Rules 2520(f)(9) and/or 3010, and 2110 as detailed below :
1. At the Berkeley, CA branch office, a review of account designation changes disclosed that on May 4, 2006, a client was allocated 2,000 shares of an initial public offering ("IPO"). The client never confirmed the order, and therefore the IPO shares should not have been purchased.
 2. At the Boca Raton, FL branch office, a review of account designation changes for the period April to July 2006, disclosed that on July 13, 2006, a client purchased a \$35,000 bond. On July 18, 2006, the client reneged on the trade. While the branch cancelled the trade, it failed to place the account on 90-day restriction.
 3. At the Boston, MA branch office, a review of 55 order errors and 20 account designation changes for the month of July 2006 disclosed no evidence of prior supervisory approval for 13 order errors and three account designation changes.
 4. At the Dallas, TX branch office, a review of 133 account designation changes for April and May 2006 disclosed that 55 of the changes were missing the required approval date.

5. At the Fifth Avenue, NY branch office, a review of order errors and account designation changes for the month of June 2006 disclosed that the branch office failed to place three accounts on 90-day restriction. Each of the accounts had a purchase cancelled for failure to pay.
 6. At the Washington, DC branch office, a review of trade errors disclosed that, the Firm failed to place one account on 90-day restriction that resulted from performing day trades without sufficient available funds.
 7. At the Washington, DC branch office, a review of 69 order errors and 42 account designation changes for the month of June 2006 disclosed that corrections for certain order errors and certain account designation changes were either not dated or dated after the corrections. At the White Plains, NY branch office, a review of 48 account designation changes for June 2006 disclosed that four changes were either not dated or dated after the corrections.
- C. On certain occasions during the period January to August 2006, the Firm engaged in the following conduct relating to the review and approval of outside accounts, which violated NASD Rule 3010 and/or Incorporated NYSE Rules 407(a) and (b), and NASD Rule 2110 as detailed below:
1. At the Atlanta, GA branch office, two FAs maintained outside accounts. The Firm was not aware of, and did not approve these outside accounts. Additionally, the branch office was not receiving duplicate confirmations and statements required for their review.
 2. At the Berkeley, CA branch office, an FA disclosed that she maintained four outside accounts at another firm. Further reviews disclosed that the 407 letter sent to the other firm requested copies of customer confirmations and account statements for only two of the four accounts. The Firm was not aware of, and did not approve, the other two outside accounts. Additionally, the branch office was not receiving the required duplicate confirmations and statements required for their review.

3. At the Boston, MA branch office, two FAs maintained outside accounts. Although the branch office was able to provide copies of account statements for the FAs outside accounts, there was no evidence of supervisory review. Also, the Boston branch office serviced the account of an employee at another firm. The Firm was not sending duplicate statements and confirmations to that firm.
4. At the Melville, NY branch office, two FAs disclosed that they maintained certain outside accounts at another firm. The review disclosed that even though the outside accounts were approved, the branch office was not receiving duplicate confirmations and statements. An additional outside account maintained by one FA was not approved.
5. At the Newport Beach, CA branch office, two FAs disclosed that they maintained a total of 13 outside accounts at another firm. The Firm was not aware of, and did not approve, these outside accounts. Additionally, the branch office was not receiving the required duplicate confirmations and statements required for supervisory review.
6. At the White Plains, NY branch office, three FAs maintained a total of ten outside accounts that the Firm was not aware of and did not approve.
7. A review of customer accounts at the Firm's headquarters disclosed that a customer was a research analyst at another firm. The Firm was unable to provide evidence that duplicate confirmations and statements were being sent to his employer.

D. On certain occasions during the period January 2006 to August 2006, the Firm engaged in the following conduct relating to (a) the use and approval of personal computers; (b) seminars conducted by FAs; and (c) the supervision and control of facsimile machines, which violated NASD Rules 3010 and 2110 as detailed below:

1. At the Berkeley, CA branch office, an FA had maintained and used a personal computer for business purposes from 1997 until September 2006, however, the FA did not attest to or sign Merrill Lynch's personal computer policy until on or about

August 31, 2006. Additional reviews disclosed that three FAs never received approval for the use of their personal computers. Four FAs received approval for their personal computers several months subsequent to their use. A review of one FA's personal computer disclosed that he was able to access an Internet connection via a built-in Wi-Fi connection and was able to access third party e-mail service providers without the knowledge or consent of the branch office.

2. At the Boston, MA branch office, an FA disclosed that he used a personal computer. The Firm was unable to evidence approval of such use. Additionally, five other FAs did not receive prior approval from the organization to use their personal computers.
3. At the Melville, NY branch office, two FAs disclosed that they used personal computers. The Firm was unable to evidence approval for the computers.
4. At the Newport Beach, CA branch office, an FA disclosed that he had approval to use his personal computer to access the Internet to update a website for a non-profit organization in which he was involved. However, he was no longer responsible for the updates to this website and only utilized the Internet to send and receive personal e-mails.
5. At the Washington, DC branch office, an FA disclosed that he used a personal computer that was used to access the Internet. The Firm was unable to evidence approval for the computer.
6. At the White Plains, NY branch office, five FAs disclosed that they maintained personal computers. The Firm was unable to evidence approval for the computers. In addition, seven FAs did not obtain prior approval for use of their personal computers at various times during a time period from 2002 to 2006. Additionally, the Firm was unable to evidence when the branch had last conducted a review of personal computer use.
7. At the Atlanta, GA branch office, an FA disclosed that he conducted four seminars on April 23, May 12, June 16 and June 22, 2006, however, the Firm was not aware of and did not approve these seminars.

8. At the Berkeley, CA branch office, a copy of a seminar's agenda was not included in the seminar file for a seminar conducted by an FA.
9. At the Boston, MA branch office, two FAs disclosed that they conducted seminars on June 13 and June 22, 2006 respectively. The Firm could not evidence the approval of either seminar and could not provide a copy of either FA's seminar agenda.
10. At the Melville, NY branch office, two FAs held a seminar on June 7, 2006 that was not approved until August 3, 2006.
11. At the Washington, DC branch office, an FA disclosed that he conducted four seminars during January 2006 (January 17, 18, 24 and 25). A review of the "Pre-Approval" form for these four seminars disclosed that the request was submitted on January 6, 2006 but was not approved until February 13, 2006.
12. At the White Plains, NY branch office, an FA disclosed that she conducted a retirement seminar on March 29 and March 30, 2006 that was not approved until April 4, 2006.
13. At the Berkeley, CA branch office, Fax-2-Mail correspondence was not reviewed because the management team was under the mistaken impression that these reviews were the responsibility of the Firm's Central Business Review Unit.
14. At the Boston, MA branch office, a review of 30 facsimile machines disclosed that one facsimile machine was located in an FA's office. This FA's facsimiles were not being supervised or reviewed.
15. At the Fifth Avenue, NY branch office the "control" facsimile machine was not located in a secure location.
16. At the White Plains, NY branch office, the Administrative Manager was unable to demonstrate that the branch office had reviewed any Fax-2-Mail correspondence for the period February to August 2006. In addition, an FA faxed correspondence from home including a statement to one of his clients and a

mortgage application to another. Neither of these facsimiles was reviewed, approved, or retained.

5. Sales Practice Examination – 2007 Report

On certain occasions during the period January through June 2007, the Firm engaged in the following conduct which violated NASD Rule 3010 and/or Incorporated NYSE Rules 407(a) and(b), and NASD Rule 2110 as detailed below:

- A. At the Farmington, MI branch office, FAs serviced eight accounts for four individuals who were employees of outside broker-dealers. The Firm was unable to provide letters confirming that their respective employers were aware of these external accounts
- B. At the Fifth Avenue, NY branch office an FA maintained an outside brokerage account at another firm, where he held restricted stock. The branch office was not aware of this account and thus was not receiving duplicate confirmations or statements for this account.

VIOLATIVE CONDUCT BY RESPONDENT

Violations Regarding the Clinton Township Branch

NASD Rule 2110 states that a member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.

Merrill Lynch, through the acts and omissions to act of certain of its employees and the employees of an affiliate, failed to adhere to the principles of good business practice in the conduct of its business affairs in violation of NASD Rule 2110 by: making material misstatements to NYSE Regulation examiners during an on-site branch office examination at the Clinton Township Branch; by providing the NYSE with inaccurate and, in some instances, deceptive information in response to various regulatory examination requests; instructing branch staff that an unapproved facsimile machine should be hidden or removed from the Clinton Township Branch; and by providing an inaccurate written statement in response to requests for information during an ongoing regulatory investigation.

Individual's Use of an Attorney Title

NASD Rule 3010 states that each member shall establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations.

Merrill Lynch violated NASD Rules 3010 and 2110 by failing to properly supervise a registered person with the Firm who held himself out as an attorney by using Firm stationery and business cards that identified him as an attorney, although he was not licensed or admitted to practice before any state or federal bar.

Sales Practice Examination Report – The 2005 Report

Incorporated NYSE Rule 407(b) provides, among other things, that a member firm must approve in writing all securities accounts maintained by its employees at another firm and that the Firm receive and review duplicate confirmations and account statements.

Merrill Lynch violated NASD Rule 3010 and/or Incorporated NYSE Rule 407(b) and NASD Rule 2110 by: failing to receive and review certain duplicate confirmations and monthly account statements for certain accounts maintained outside the Firm by employees and, in some cases, failing to evidence the approval of such accounts.

Merrill Lynch violated NASD Rules 3010 and 2110 by failing to appropriately evidence the review and supervision of incoming and outgoing written communications and facsimiles at certain branch offices; failing to appropriately evidence the approval for certain employees to maintain certain computers and software; and failing to review, appropriately supervise and/or evidence supervisory review of communications sent and received by certain employees with non-Firm issued computers.

Sales Practice Examination – The 2006 Report

Incorporated NYSE Rule 407(a) provides, among other things, that a member firm may not open a securities account or execute any transactions for an employee of another firm without the prior written approval of the other firm and, after the account is opened, duplicate confirmations and account statements must be sent to the other firm.

NASD Rule 2520 (f)(9) provides that an account is subject to a Regulation T 90-day restriction if a customer effects transactions in a cash account where the cost of securities purchased is met by the sale of the same securities.

Merrill Lynch violated NASD Rules 2520 (f)(9) and/or 3010, and 2110 by failing to place certain accounts on 90-day restriction; appropriately evidence the review, approval and/or supervision of certain order errors and certain account designation changes; and date or properly date corrections for certain order errors and certain account designation changes.

Merrill Lynch violated NASD Rule 3010 and/or Incorporated NYSE Rules 407 (a) and (b), and NASD Rule 2110 by: failing to receive and review certain duplicate confirmations and monthly account statements for certain accounts maintained

outside the Firm by employees; failing to approve and/or evidence the approval of such accounts; failing to send duplicate statements and confirmations to other firms whose employees had certain accounts at Merrill Lynch; failing to approve and/or appropriately evidence the approval for certain employees to use and maintain certain personal computers; and failing to review, appropriately supervise and/or evidence supervisory review of communications sent and received by certain employees with certain personal computers.

Merrill Lynch violated NASD Rules 3010 and 2110 by: failing to appropriately evidence the review, approval and/or appropriate supervision of certain Personal Computer Forms that had been backdated at one branch; failing to approve and/or timely approve certain seminars conducted by Firm employees and maintain certain seminar related materials; failing to review, approve and/or retain certain facsimiles, including Fax-2-Mail correspondence and/or evidence the review and approval of Fax-2-Mail correspondence; and failing to maintain its "control" fax machine in a secure location in one branch.

Sales Practice Examination – The 2007 Report

Merrill Lynch violated NASD Rule 3010 and/or Incorporated NYSE Rules 407 (a) and 407(b), and NASD Rule 2110 by: failing to provide letters from outside broker-dealers, whose employees maintained accounts at Merrill Lynch, confirming that these outside broker-dealers were aware of the existence of such accounts; and failing to receive and review certain duplicate confirmations and monthly account statements for an account maintained outside the Firm by an employee and approve and/or evidence the approval of such account.

The Nature of Merrill Lynch's Cooperation

As described above, during the course of a regulatory examination and later during the initial stages of Enforcement's investigation, Merrill Lynch violated NASD Rule 2110 by misleading examiners and providing inaccurate and conflicting information to Enforcement, which delayed Enforcement's investigation. During Enforcement's ongoing investigation, however, evidence of serious employee misconduct became apparent to the Firm. Thereafter, the Firm provided substantial assistance to Enforcement's investigation, including conducting a comprehensive internal investigation, extensively briefing Enforcement staff regarding the results of the internal investigation, providing detailed notes of interviews of Firm employees regarding the facts at issue, and self-reporting additional violations related to the investigation. The Firm's substantial assistance constitutes extraordinary cooperation, which has been taken into consideration in determining the appropriate sanction in this matter.

- B. Respondent also consents to the imposition of the following sanctions:

A Censure and a fine of \$300,000

The sanctions imposed herein shall be effective on a date set by FINRA staff. Merrill Lynch agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable.

Merrill Lynch has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Merrill Lynch 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.

II.

WAIVER OF PROCEDURAL RIGHTS

Merrill Lynch 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, Merrill Lynch 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.

Merrill Lynch 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

Merrill Lynch 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 8313; and
 - 4.** Merrill Lynch 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. Merrill Lynch 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.** Merrill Lynch may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Merrill Lynch 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.

Date 6/11/09

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Merrill Lynch 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 the Firm 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 6/11/09

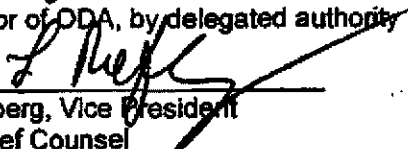
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Incorporated

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


Linda Riefberg, Vice President
and Chief Counsel

Accepted by FINRA:

7/21/09
Date

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