

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
2008014187701**

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

RE: Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch" or the "Firm"),
Respondent
FINRA Regulated Firm
CRD No. 7691

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent 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. Respondent 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

Merrill Lynch is a Delaware corporation with its principal place of business in New York, NY.¹ The Firm is a global investment banking and multi-service brokerage firm that, among other things, provides retail brokerage, corporate and investment banking services, wealth management and commercial lending. It is registered with the Securities and Exchange Commission as a broker-dealer and investment adviser and has been a FINRA regulated firm since January 26, 1937. Merrill Lynch has more than 15,000 registered representatives and approximately \$2.2 trillion in customer assets.

RELEVANT DISCIPLINARY HISTORY

Within the past six years, Merrill Lynch has been the subject of three relevant disciplinary actions.

Between September 2006 and June 2008, Merrill Lynch failed to establish, maintain and enforce

¹ Merrill Lynch is a wholly-owned subsidiary of Bank of America Corporation ("Bank of America"). On or about September 14, 2008, the boards of directors of Bank of America and Merrill Lynch & Co., Inc. unanimously approved the merger of the two entities. On December 5, 2008, Bank of America's shareholders voted to approve the merger and the merger closed on January 1, 2009.

a supervisory system and written supervisory procedures reasonably designed to identify and ensure that customers received appropriate "breakpoints" and "rollover and exchange" discounts ("sales charge discounts") on eligible purchases of unit investment trusts ("UITs") in violation of NASD Rules 3010 and 2110. Merrill Lynch also failed to apply sales charge discounts to customers' eligible UIT purchases in violation of NASD Rule 2110. Merrill Lynch also approved the use of UIT sales literature by its sales force that was inaccurate and misleading in violation of NASD Rule 2210 and 2110. The overcharges totaled approximately \$2 million. In 2010, the Firm consented to a sanction of a censure and a \$500,000 fine.²

In February 2008, the Firm agreed to a sanction of a censure and a \$175,000 fine for violating Rule 10b-10(a) under the Securities Exchange Act of 1934 ("Exchange Act") and NASD Rules 3010(a), 3010(b), 2230 and 2260 for failing to timely and consistently update its records relating to certain investment advisory and fee-based accounts during the period January 2001 until January 2006. This resulted in the Firm's failure to deliver proxy statements and trade confirmations to at least 42,626 customer accounts.³

Also in February 2008, the Firm was censured and fined \$250,000 and required to provide remediation to affected investors who qualified for, but did not receive the benefit of available net asset value ("NAV") transfer programs. Specifically, the Firm consented to supervisory violations relating to the failure to identify certain opportunities for investors to purchase mutual funds at NAV under the NAV transfer programs, and provide eligible investors with the benefit of available NAV transfer programs. In total, the Firm overcharged customers approximately \$15 million.⁴

OVERVIEW

The Firm failed to have an adequate supervisory system to ensure that customers in certain investment advisory programs were billed in accordance with contract and disclosure documents provided to customers by the Firm. The overbilling was generally caused by improper systems coding for the investment programs. As a result of its supervisory failures, from April 2003 to December 2011, the Firm overcharged approximately 94,577 customer accounts unwarranted fees totaling approximately \$32,174,369.

Between July 2006 and April 2008, the Firm failed to send contemporaneous trade confirmations to approximately 65,350 customer accounts for two investment programs that affected approximately 1,971,400 million transactions and approximately \$5.3 billion in assets because of incorrect system coding. In addition, from November 2008 to November 2010, the Firm did not send required trade confirmations to 167,006 customer accounts for 8,675,787 transactions for ten investment programs because of incorrect systems coding for accounts where trade confirmation suppression was changed intra-month. In total, from July 2006 to November 2010, the Firm failed to send approximately 10,647,187 trade confirmations for 232,356 customer accounts.

Between 1992 and June 2011, the Firm did not include or accurately state whether the Firm acted

² Merrill Lynch, Pierce, Fenner & Smith Inc., AWC No. 20080157013 (July 2010).

³ Merrill Lynch, Pierce, Fenner & Smith Inc., AWC No. 2007009456801 (Feb. 2008).

⁴ Merrill Lynch, Pierce, Fenner & Smith Inc., AWC No. EAF040109003 (Feb. 2008).

as an agent or a principal on trade confirmations and account statements relating to certain mutual fund transactions that it sent to at least 526,405 customer accounts for 7,538,005 transactions.

In addition, between 2007 and 2010, with respect to at least 8,983 accounts, Merrill Lynch, either directly or through third-party vendors, failed to deliver proxy materials to customers or to their designated investment advisers. The Firm also failed to have an adequate supervisory system to detect its failure to deliver proxies to customers in each of these cases.

Lastly, between October 2001 and March 31, 2010, the Firm failed to send margin risk disclosure statements to 6,957 customers who opened Cash Management and Working Capital Management accounts. Between August 2004 and June 2010, the Firm also failed to send business continuity plans to 16,711 customers who opened Cash Management and Working Capital Management accounts.

FACTS AND VIOLATIVE CONDUCT

Failure to Accurately Calculate Fees

Billing on Ineligible Securities

International Asset Power ("IAP") program was a non-discretionary investment advisory program for Firm customers. Firm customers were charged an annual, asset-based fee for this service. The Firm executed, cleared and settled trades in securities based on the customers' instructions and all assets were held in a Firm account.

The Firm's Personal Investment Advisory ("PIA") program offers customers discretionary management of their accounts through the Firm's registered representatives. The Firm executes, clears, and settles trades in securities and all assets are held in a Firm account.

Merrill Lynch Personal Advisory ("MLPA") program offers non-discretionary investment advisory and brokerage services to Firm customers. The Firm executes, clears, and settles trades in securities based on the customers' instructions and all assets are held in a Firm account.

Between 2004 and 2011, contrary to applicable customer disclosures or applicable program investment guidelines, the Firm relied on improperly coded data in the Firm's Securities Master Database, which caused the Firm to charge fees on certain ineligible securities. Typically, ineligible securities were securities affiliated with the Firm. As a result, the Firm overcharged 14,592 customers in these programs a total of \$9,460,351. The Firm has completed its remediation with interest to the affected customers.

Fixed Income Fee Schedules

When calculating the above remediation for the IAP, MLPA and PIA programs, the Firm also discovered that the Firm's billing system for IAP and MLPA did not properly identify accounts holding 100% fixed income securities to ensure that the lower fixed income fee schedule was applied. For the PIA program, the fee schedule was determined by the chosen investment strategy at the time of customer enrollment. Firm procedure did not monitor changes in

investment strategy to determine whether the more favorable fixed income fee schedule should apply to PIA accounts that had originally enrolled under the equity fee schedule (or accounts that did not hold the requisite percentage of fixed income securities). Between January 2004 and December 2011, the Firm overcharged 6,677 customers in the IAP, MLPA, and PIA programs \$6,782,576 by not billing at the applicable fixed income fee schedule. The Firm has completed its remediation with interest to the affected customers.

Maximum Tiered Billing Rate Exceeded by Flat Rate

The PIA program offers customers two billing options: (1) a tiered rate set forth in the fee schedule that decreases as the assets increase (similar to a breakpoint discount); and (2) a flat percentage rate that does not change as the assets increase but cannot exceed the maximum tiered rate set forth in the PIA fee schedule. From April 2003 to June 2010, the PIA billing process erroneously allowed for flat rate billing to exceed the maximum tiered fee rate, which was inconsistent with the program's applicable customer disclosures. The Firm overcharged 1,978 customers \$3,486,846. The Firm has completed its remediation with interest to the affected customers.

Rebating of Sub-Accounting Fees in Retirement Accounts

The Firm's Consults program offers customers the opportunity to select one or more investment styles or disciplines or combinations of investment styles and disciplines provided by different investment advisers. The Firm executes, clears, and settles trades and all assets are held in a Firm account.

The Firm's Unified Managed Account ("UMA") program is a discretionary investment advisory service with different levels of discretion exercised by the Firm. The Firm executes, clears and settles trades and all assets are held in a Firm account.

Private Investors ("PI") is an investment advisory service in which a third-party money manager offers a variety of equity, fixed income, and multi-asset investment strategies to separate account customers generally referred by Merrill Lynch registered representatives. For certain Firm customers selecting PI investment advisory services, the Firm executes, clears and settles trades in securities and holds assets in a Firm account.

The Firm offered no-load mutual funds for customer retirement accounts in the following investment programs: UMA, PIA, Consults, MLPA, PI and IAP. The Firm's rebating process did not take into account that load funds and no-load funds were treated differently by the Firm when collecting sub-accounting and 12b-1 fees from the mutual fund companies. From January 2008 to December 2009, the Firm's systems were not properly programmed to rebate sub-accounting fees to customers for no-load fund transactions. As a result, from January 2008 to December 2009, the Firm did not rebate \$1,987,752 in sub-accounting fees on no-load fund transactions for 35,817 customer accounts. The Firm has completed its remediation with interest to the affected customers.

Account Aggregation and Fee Rate Accuracy

In UMA, MLPA, and Consults, the contract and disclosure documents stated that the fee rate

applied will be based on the aggregate value of the assets in all the customer's program accounts. However, if these accounts were accepted in a different order than the order in which they were enrolled at the branch, the Firm did not apply the correct aggregation and fee schedule for certain accounts. In addition, within the UMA and Consults programs, some non-U.S. resident client ("NRC") accounts that did not have social security numbers also did not benefit from aggregation. Moreover, for accounts where the assets were correctly aggregated when first enrolled in the program, the Firm did not always automatically update the accounts' asset values, which sometimes resulted in customers not receiving the appropriate fee discount if assets reached a certain threshold. From October 2006 to December 2011, the Firm overcharged 25,780 customer accounts, resulting in excess fees of \$8,061,426. The Firm has completed its remediation with interest to the affected customers.

PIA Flat Rate Election

The PIA program allowed a new PIA account to be aggregated with an existing group of accounts and have a flat rate apply to the new account based on total asset levels. When this option was selected, the Firm's system erroneously applied the same flat rate to the existing accounts within the new aggregation group regardless of investment strategy. As stated above, for the PIA program, the fee schedule was determined by the chosen investment strategy at the time of customer enrollment. From December 2009 to July 2010, the Firm overcharged 474 customer accounts a total of \$565,372. The Firm has completed its remediation with interest to the affected customers.

MFA Fee Schedule Change

In late 2007, the Mutual Fund Advisor ("MFA") program fee schedule was increased for new customers. Between October 2007 and December 2007, approximately 957 customer accounts were opened using enrollment documents that reflected a lower fee schedule, but were placed on the new higher fee schedule. As a result, the customers were improperly charged \$1,123,386 in higher fees. The Firm has completed its remediation with interest to the affected customers.

Wire Transfer Fees

Disclosure statements for the MLPA program had conflicting language with the client agreement regarding whether accounts would be charged wire transfer fees. In the third quarter of 2011, the conflicting language issue was remedied. Between October 2007 and September 2011, the Firm charged an estimated \$706,660 in wire transfer fees to approximately 8,302 customer accounts, even though certain documents had not adequately disclosed such charges. The Firm has completed its remediation with interest to the affected customers.

Summary of Overcharges

As a result of the above-described supervisory failures, from April 2003 to December 2011, the Firm overcharged approximately 94,577 customer accounts unwarranted fees totaling at least \$32,174,369.

Failure to Deliver Trade Confirmation and Capacity Information

Exchange Act Rule 10b-10(a) provides, in pertinent part, that any broker or dealer who effects a transaction in the account of a customer in any security must provide written notification of the date and time of the transaction and identify the price, and the number of shares of the security. The preliminary note to the rule indicates that this information must be provided to customers "at or before the completion of such transaction."

MFA Selects Program

The MFA Selects program was a non-discretionary investment advisory and brokerage service that is often referred to as a "mutual fund wrap program" or "mutual fund asset allocation program." MFA Selects customers could buy or sell mutual funds in their accounts at any time. These unscheduled securities transactions were not all exempt from the immediate trade confirmation requirements established by Exchange Act Rule 10b-10(a). The Firm was required to send contemporaneous trade confirmations for some of these transactions, but failed to do so between July 2006 and February 2008.

UMA Program

As described above, UMA is a discretionary investment advisory and brokerage service with different levels of discretion. Initially, client assets in UMA accounts were invested in a combination of equities, fixed income securities, and other securities. In October 2007, UMA expanded and began offering mutual funds and exchange traded funds ("ETFs") as separate investment options in Unified Diversified Portfolios ("UDP") and UDP Selects portfolios (in which the customer chose the mutual funds and/or ETFs).

Trade Confirmation Suppression in MFA Selects and UMA-UDP Selects

MFA Selects Program

In 2006, for customers with MFA Selects accounts with Portfolio Allocation & Rebalancing ("PA&R"),⁵ the Firm offered the option to elect delivery of periodic (monthly or quarterly) trade confirmations instead of immediate trade confirmations for scheduled rebalancing transactions. The Firm implemented the coding for this periodic delivery program in June 2006, at which time immediate trade confirmation suppression became available to MFA Selects clients with PA&R. The computer coding used to implement this process, however, resulted in the suppression of immediate trade confirmations for initial purchases and non-scheduled rebalancing transactions in MFA Selects as well as the intended rebalancing transactions.

The Firm estimates that, between July 2006 and February 2008, the Firm failed to send immediate trade confirmations to approximately 65,000 MFA Selects accounts, affecting approximately 1.97 million transactions and approximately \$5.3 billion dollars in assets.

⁵ PA&R was an automatic portfolio rebalancing feature that permitted clients to enter standing instructions to have the mutual funds that they have selected in their accounts automatically rebalanced at scheduled time intervals so that client could maintain their target asset allocation.

UMA Selects Program

Due to suppression coding in UMA that was similar to that used in MFA Selects, the Firm failed to deliver immediate trade confirmations with respect to client selected mutual funds and ETFs in UMA accounts invested in certain UDP Selects portfolios. The Firm estimates that between October 2007 and April 2008, the Firm failed to send immediate trade confirmations to approximately 350 UMA accounts invested in UDP Selects portfolios with mutual funds and/or ETFs selected by the client, affecting approximately 1,400 transactions and \$35 million in assets.

Accounts with Intra-Month Confirmation Delivery Changes

In November 2008, the Firm implemented a systems change in an attempt to eliminate redundant information that appeared on trade confirmations and monthly account statements in nine investment advisory programs.⁶ When a Firm customer who had previously decided to receive periodic delivery of trade confirmations on a monthly basis converted to receiving immediate trade confirmations, the Firm removed the trade confirmation suppression coding from the account. For the month that the trade confirmation suppression coding was changed, certain trade disclosures that should have appeared on the monthly account statement were omitted for any securities transaction executed prior to the account's conversion to contemporaneous confirmation delivery. As a result, the Firm estimates that, between November 2008 and October 2010, it failed to provide required trade confirmation information on monthly statements for approximately 167,006 accounts for approximately 8,675,787 transactions.

Summary of the Failure to Send Trade Confirmations

In total, the Firm estimates that, from July 2006 to November 2010, the Firm failed to deliver the trade confirmations for approximately 10,647,187 transactions to approximately 232,356 customer accounts, as required under Exchange Act Rule 10b-10(a). The Firm failed to send trade confirmations to customers because of coding errors and other deficiencies that were not promptly remedied and lasted over several years.

Capacity Language Errors

Under Exchange Act Rule 10b-10(a)(2), broker-dealers are required to provide customers with written notification at or before the completion of a transaction of whether the broker-dealer is acting as agent for the customer, agent for some other person, agent for the broker and some other person, or as principal for its own account. The Firm is also required to include in its trade confirmations language that identifies whether the Firm acted as an agent or principal in securities transactions ("Capacity Language"). Between 1992 and June 2011, due to incorrect computer coding, the Firm either failed to include Capacity Language on trade confirmations and/or customer account statements, or incorrectly stated the Firm's role in the transactions.

For some investment programs, customers could choose to receive trade confirmation disclosures in monthly account statements in lieu of receiving immediate trade confirmations. Between

⁶ The Firm investment programs that were affected by the coding change included: MFA and MFA Selects, Consults, UMA, Merrill Lynch Advisory Portfolios ("MLAP"), PIA, PI, Managed Account Service ("MAS"), and Strategic Portfolio Advisor ("SPA").

approximately 1995 and June 2011, when clients in various investment advisory programs elected to receive monthly account statements, the Firm did not disclose the capacity in which it acted in mutual fund "purchase" transactions. In calendar year 2009, for example, the Firm did not include the required Capacity Language for 4,449,180 mutual fund purchase transactions in the month-end account statements for approximately 285,080 customer accounts in nine investment programs.⁷

In certain other instances, between approximately 1992 and June 2011, in connection with certain mutual fund purchase transactions, the Firm incorrectly stated on customers' monthly account statements and in trade confirmations that the Firm acted as a principal when in fact the Firm acted as an agent. In calendar year 2009, for example, the Firm provided customers with the wrong capacity information for approximately 160,914 mutual fund purchase transactions in approximately 38,751 customer accounts in six investment programs.⁸

In addition, between approximately October 2007 and April 2010, trade-by-trade confirmations for mutual fund transactions in an investment program incorrectly stated that the Firm acted in a principal capacity, while the trade confirmation correctly identified that the Firm acted as an agent. For calendar year 2009, for example, the Firm provided inconsistent capacity information on confirmations and monthly account statements for approximately 1,242,656 transactions in approximately 151,026 customer accounts.⁹

Furthermore, on trade confirmations for transactions in certain other investment advisory programs, the Firm reported that it had acted as a dual agent, while in monthly account statements, the Firm informed customers that it had acted as the customer's agent. In the calendar year 2009, the Firm provided conflicting capacity information on trade confirmations and in monthly statements on approximately 1,685,255 transactions in approximately 51,548 accounts.¹⁰

Capacity Language Summary

In total, between 1992 and June 2011, the Firm failed to state or inaccurately stated in trade confirmations or account statements that it sent to at least 526,405 customer accounts for at least 7,538,005 transactions, whether the Firm acted as an agent, dual agent, or a principal for the transaction.

Proxy Delivery

NASD Rule 2260(a) and FINRA Rule 2251(a) require member firms to "forward promptly all information . . . regarding a security to the beneficial owner (or the beneficial owner's designated investment adviser) if the member carries the account in which the security is held of the

⁷ The following programs did not have the capacity language on the monthly account statements: PI, Consults, MAS, MFA, MFA Selects, PIA, SPA, UMA, and MLAP.

⁸ Account statements for the following programs provided the incorrect capacity language: PI, Consults, IAP, MAS, SPA, and UMA.

⁹ This issue affected the MLPA program.

¹⁰ This issue affected the MFA and MFA Selects programs.

beneficial owner and the security is registered in a name other than the name of the beneficial owner.”

The Firm's KDI System and Proxy-Related Data

Merrill Lynch's KDI system is used to maintain customers' names and addresses as well as other account record information, including traits that indicate the products and services selected by the customer for each particular account. Certain elements of this information are also stored in separately maintained product customer databases. When an account is enrolled in certain investment advisory or fee-based programs, the trait for the program ("Program Trait") is added to KDI. The Program Trait determines, among other things, whether commissions are charged and what type of monthly account statement or performance measurement reports the customer receives. In addition, depending upon the customer's election, the coding in KDI determines the direction of proxy voting materials, which can be sent to the customer, the customer's designated investment manager, Merrill Lynch, or a selected third-party.

In 2006, the Firm automated the update process by which KDI received changes in customer information and Program Traits. The Firm adopted written supervisory procedures and implemented a daily and weekly reconciliation process designed to identify and correct discrepancies between KDI and other customer information databases as a back-stop where such discrepancies occurred. The process created the "Proxy Mismatch Report," which compared proxy-related information in KDI to information in other customer-information databases.

As designed in August 2006, the Proxy Mismatch Report review procedures were intended as a back-up review to ensure that account information in KDI held the correct Program Traits and that the customers would receive proxies after terminating an account's enrollment in a managed program, or if the customer wanted, that proxies would be directed to another party designated by the customer. The Firm's procedures required a daily run of updates for changes to account information and a weekly report comparing KDI traits with those in the other databases. In March 2008, the Firm enhanced the procedures to provide that the Proxy Mismatch Report would be received daily via email and that the Managed Accounts Processing and Services group ("MAPS") would process the report and, where differences appeared, the information would be corrected in KDI.

Failure to Adhere to Procedures Relating to the Review of the Proxy Mismatch Report

The Firm reported to FINRA in late 2006 that it implemented the above processes in August 2006 and thereafter entered into a settlement agreement with FINRA regarding the Firm's failure to deliver proxy statements to customers as a result of technical issues in the Firm's KDI system.

In June 2010, however, the Firm reported that, from as early as August 2006 through March 2009, it failed to deliver certain proxies and voting materials in accordance with customer directives. These failures persisted because the Firm failed to enforce its procedures requiring the processing of the Proxy Mismatch Report and the correction of information identified in the Proxy Mismatch Report.

Disregard of Proxy Voting Directives

When customers in discretionary investment advisory programs elected not to vote the proxies themselves, Merrill Lynch aggregated the proxy ballots. Depending on the investment program, the Firm sent the aggregated proxy ballots to designated third-party investment managers.

As a result of incorrect aggregation coding in KDI, the Firm did not aggregate certain proxy ballots to be voted in accordance with the investment program directives. Instead, the Firm sent the ballots to Merrill Lynch's third-party proxy research provider, who included the ballots in the Firm's aggregate code and processed the ballots according to Merrill Lynch's proxy voting guidelines. Between August 2006 and March 2009, the Firm improperly aggregated proxies relating to at least 734 accounts.

Failure to Correctly Deliver Proxy Information Through a Third-Party Vendor

Merrill Lynch outsourced some of the tasks relating to proxy-delivery and voting to a third-party vendor ("Vendor") and, with respect to certain accounts in the investment advisory programs, Vendor caused proxies to be misdirected because it relied on outdated and incorrect proxy-delivery designations.

Vendor Override of Correct Proxy-Delivery Information

Merrill Lynch engaged Vendor to perform proxy aggregation-related tasks for its investment advisory programs. As a matter of general practice, Merrill Lynch delivered proxy address information to Vendor and Vendor entered the information in its proxy management system. When a proxy event was announced, Vendor's personnel requested information from the Firm regarding position holders in the issuers involved in the proxy event. Firm personnel gathered the customer information, including any proxy-delivery designations, from the Firm's Stock Record and KDI systems and provided the information to Vendor.

For the period between 2008 and January of 2010, if the account had been enrolled previously in Vendor's proxy management system, Vendor directed the ballot in accordance with delivery-directives in its proxy management system. In certain instances, the information appearing in the proxy management system was different from what appeared in the Firm's KDI system. In those situations, the existing information in Vendor's proxy management system overrode the more current information in the Firm's KDI system, resulting in the proxy being misdirected. A review of the Firm's enrollment in Vendor's proxy management system as of October 23, 2010 identified 2,774 active accounts that maintained a proxy designation that was inconsistent with the Firm's KDI records.

In addition, through a clerical error, Vendor changed the proxy service provider for delivery to the wrong third-party vendor for certain accounts in the program. As a result of this technical error, the Firm misdirected proxies for the time period October 21, 2008 through August 6, 2009, for 972 accounts, affecting 912 customers.

Failure to Deliver Proxies Related to UMA and Consults

Client agreements for the Firm's UMA program between August 2007 and April 2010 and Consults program between November 2008 and April 2010 stated that mutual fund and exchange traded fund ("ETF") proxies were to be sent to and voted by the customer. With respect to certain accounts within these programs, however, the proxies for mutual funds and ETFs were not sent to the customer as disclosed but, rather, directed to a third-party vendor and voted in accordance with the voting policies of Managed Account Advisors LLC ("MAA"), Merrill Lynch's affiliated investment manager for UMA and Consults accounts.

The misdirection of the proxies for these accounts resulted from inadequate security coding in the Firm's Securities Master Database. The Firm identified that, between August 2007 and April 30, 2010, the misdirection affected 177 mutual fund and ETF proxy events, resulting in the misdirection of proxies affecting 6,209 accounts (5,396 customers) in one or more of the events.

Failure to Send Margin Risk Disclosure Statements

In the Merrill Lynch Money Manager Service Platform ("Money Manager Platform"), the Firm provides trading custody and clearing services for customers of third party registered investment advisers. From October 2001 to March 31, 2010, Money Manager Platform customers who opened Cash Management and Working Capital Management accounts did not receive a margin risk disclosure statement upon account opening. Both account types allow customers to trade on margin and the Firm is obligated to send the margin risk disclosure statement to these customers. While the customers used investment advisers outside the Firm, the Firm executed, cleared and settled trades in securities based on the investment advisers' instructions and all assets were held in a Firm account. The Firm identified 6,957 customers with Cash Management and Working Capital Management accounts who did not receive the Firm's margin risk disclosure. The failure to send margin risk disclosure statements was caused by a coding issue that incorrectly blocked the delivery of the Firm's welcome kit to these customers.

Failure to Send Business Continuity Plan Notices

Between August 2004 and June 2010, the Firm identified a maximum of 16,711 customers on the Money Manager Platform who did not receive the Firm's business continuity plan because the welcome kit was suppressed.

Other Factors

In determining the appropriate sanctions, FINRA considered the Firm's internal review through which it self-identified the violations addressed in this AWC, the remedial measures that the Firm took to correct its systems and procedures, and the Firm's efforts to provide remediation to customers.

* * *

For the above described conduct, the Firm committed the following violations:

- Violated NASD Rules 3010 and 2110 and FINRA Rule 2010 by failing to establish and maintain a supervisory system to reasonably supervise: (1) that customers were billed in accordance with stated fees in disclosure documents that were provided to customers by the Firm; (2) the delivery of trade confirmations for certain investment programs; (3) the accurate disclosure of the Firm's role as a principal or agent on trade confirmations and account statements (4) the delivery of proxies to certain customers; and (5) the delivery of margin disclosure statements and business continuity plans to Money Manager Platform customers upon account opening.
- Violated Section 10 of the Exchange Act and Rule 10b-10(a) thereunder, and NASD Rules 2230 and 2110 by failing to deliver trade confirmations to certain customers.
- Violated Section 10 of the Exchange Act and Rule 10b-10(a)(2) and NASD Rules 2230 and 2110 by failing to disclose or incorrectly stating whether the Firm acted as a principal or agent on trade confirmations and account statements.
- Violated NASD Rules 2260(a) and 2110 and FINRA Rules 2251(a) and 2010 by failing to deliver proxy materials to the beneficial owners of relevant securities in accordance with the directives of the beneficial owners.¹¹
- Violated NASD Rules 2341 and 2110 and FINRA Rules 2264 and 2010 by failing to send Money Manager Platform customers margin disclosure statements upon account enrollment.
- Violated NASD Rules 3510(e) and 2110 and FINRA Rules 4370 and 2010 by failing to send customers of third-party registered investment advisers written copies of the Firm's business continuity plan upon account enrollment.
- Violated Section 17(a) of the Exchange Act, Rules 17a-3 and 17a-4 thereunder by failing to send customers trade confirmations..

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

- Censure;
- \$2,800,000 fine;
- The sanctions imposed herein shall be effective on a date set by FINRA staff.

¹¹ On December 15, 2008, FINRA made changes to its rulebook. As a result, on December 15, 2008, NASD Rule 2260 has been changed to FINRA Rule 2251 for violations of the rule which occurred after December 15, 2008. For violations prior to December 15, 2008, Enforcement will charge violations of NASD Rule 2260.

- 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.

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 Complaint issued specifying the allegations against the Firm;
- B. To be notified of the 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 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. 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 rights to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that Respondent 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.

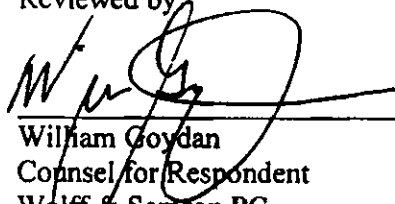
The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that the Firm has agreed to its provisions voluntarily; and that no offer, threat, 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.

May 25, 2012
Date (mm/dd/yyyy)

Respondent
Merrill Lynch, Pierce, Fenner & Smith Incorporated

By: Mark L. Keene
Mark L. Keene, Associate General Counsel

Reviewed by:

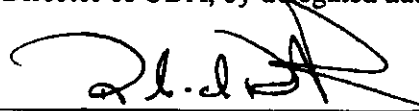


William Goydan
Counsel for Respondent
Wolff & Samson PC
One Boland Drive
West Orange, NJ 07052

Accepted by FINRA:

6-28-12
Date

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



Richard R. Best, Chief Counsel
FINRA Department of Enforcement
One World Financial Center
200 Liberty Street
New York, NY 10281
T: (646) 315-7308
richard.best@finra.org