

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

NO. 20080145847-02

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 FINRA's Code of Procedure, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLCO" or 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 AND RELEVANT DISCIPLINARY HISTORY

The firm became a member of FINRA on January 26, 1937, and its registration remains in effect. The firm has no relevant disciplinary history.

FACTS AND VIOLATIVE CONDUCT

This matter involves an investigation by the Customer Issues staff of FINRA's Department of Market Regulation (the "staff") regarding retail transactions in exchange listed non-convertible preferred securities executed off exchange on the firm's proprietary ML BondMarket order execution system ("ML BondMarket") during the period from April 1, 2006 through December 31, 2010 (the "review period").

On or about April 2, 2013, an AWC was finalized that resolved 12,259 violations of NASD Rule 2320 and a violation of NASD Rule 3010. The firm paid a fine of \$1,050,000.

In addition to the above findings, during the review period, the staff also determined that the firm's order memorandum for the 12,259 transactions reflected only one order time. The firm maintains that the time stamp represented multiple order events (*i.e.*, the order receipt, order entry and order execution times) because the decision to purchase the security, and the resultant execution, happened simultaneously or nearly simultaneously with one another. Because the order memorandum did not clearly identify that the time stamp represented multiple order events, the staff determined that the firm committed the following violations:

The firm failed to identify the order receipt, order entry and order execution times on the memorandum of 12,259 brokerage orders entered into ML BondMarket to buy non-convertible preferred securities. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 17a-3 and NASD Rule 3110.

- B. In connection with the violations of SEC Rule 17a-3 and NASD Rule 3110, the firm consents to the imposition of the following sanctions:

- A censure; and
- A fine of \$45,000.

The firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. 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 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 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;
- 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: (i) testimonial obligations; or (ii) 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 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 the issuance of a Complaint, has been made to induce the firm to submit it.

November 25, 2013
Date

Respondent
Merrill Lynch, Pierce, Fenner & Smith
Incorporated

By: Jacqueline M. Sena
Name: JACQUIN M. SENNA
Title: Associate General Counsel

Reviewed by:

Elizabeth H. Baird
Elizabeth H. Baird, Esq.
Counsel for Respondent
Bingham McCutchen LLP
2020 K Street NW
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Accepted by FINRA:

1/7/14
Date

Signed on behalf of the
Director of ODA, by delegated authority
Tina Salehi Gubb
Tina Salehi Gubb, Esq.
Chief Counsel
Department of Market Regulation

*Corrective Action Statement
Submitted by
Merrill Lynch, Pierce, Fenner & Smith Incorporated*

FINRA Matter No. 20080145847

During the review period, Merrill Lynch, Pierce, Fenner & Smith Incorporated (the "Firm") recorded the time of receipt and time of entry as the "Order Insert Time" and the time of execution as the "Order Update Time" for certain orders involving non-convertible preferred securities entered into the Firm's electronic order and execution system, ML Bondmarket. SEC guidance permits firms to record a single time entry when the time of entry is simultaneous or nearly simultaneous with the time the order is received provided that it is clear from the order ticket that the time of receipt was the same as the time of entry. See SEC Exchange Act Release 34-44992 (Oct. 26, 2001). Prior to the resolution of this matter, the Firm made certain changes to ML Bondmarket to ensure that order events were labeled, respectively, "OrderReceivedOrderEntryTime" and "OrderExecutionTime." The Firm believes that these changes are reasonably designed to address the conduct that is the subject of the proposed AWC.

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