

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20080146363-01**

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 "MLMA" 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

The firm became a member of FINRA in 1937, and its registration remains in effect.

RELEVANT DISCIPLINARY HISTORY

On January 4, 2011, FINRA accepted an AWC in which the firm was censured and fined \$304,000, including \$50,000 for equity trade reporting violations during the following periods: September 1, 2006 through December 31, 2006; December 1, 2006 through March 3, 2008; January 1, 2007 through April 30, 2007; and May 1, 2008 through August 31, 2008. The \$304,000 fine also included \$12,500 for TRACE violations of

NASD Rule 6230 from January 1, 2006 through September 30, 2006 and from January 1, 2007 through March 31, 2007.

On September 23, 2008, FINRA accepted an AWC in which the firm was censured and fined \$242,500, including \$65,000 for equity trade reporting violations during the following periods: June 23, 2005; September 1, 2005 through December 31, 2005; trade date August 3, 2006; and June 4, 2007 through June 5, 2007. The \$242,500 fine also included \$12,500 for TRACE reporting violations from October 1, 2004 through December 31, 2004, and from October 1, 2005 through December 31, 2005. The \$242,500 fine also included \$38,000 for Order Audit Trail System ("OATS") violations from October 1, 2004 through December 31, 2005.

On June 26, 2007, FINRA accepted an AWC in which the firm was censured and fined \$40,000, including \$10,000 for OATS violations on July 21, 2004.

SUMMARY

This matter is the result of seven separate OATS reporting reviews, four separate equity trade reporting reviews and a TRACE reporting review as follows:

In Matter No. 20080159026, the OATS staff reviewed the firm's compliance with OATS reporting requirements for repairing rejected Reportable Order Events ("ROEs") for the period of July 1, 2008 through September 30, 2008.

In Matter No. 20090198623, the OATS staff reviewed the firm's compliance with OATS reporting requirements for repairing rejected ROEs for the period of April 1, 2009 through June 30, 2009.

In Matter No. 20080146363, the OATS staff reviewed the firm's compliance with OATS reporting requirements for Exception Codes for the period of April 1, 2008 through June 30, 2008.

In Matter No. 20100236850, the OATS staff reviewed the firm's compliance with OATS reporting requirements for Special Handling Codes for the period of July 1, 2009 through September 30, 2009.

In Matter No. 20090189497, the OATS staff reviewed the firm's compliance with the requirements to report ROEs to OATS for the period of July 1, 2008 through December 31, 2008.

In Matter No. 20090192004, the OATS staff reviewed the firm's compliance with OATS reporting requirements for Exception Codes for the period of January 1, 2008 through June 30, 2008 and October 1, 2009 through December 31, 2009.

In Matter No. 20110283743, the OATS staff reviewed the firm's compliance with OATS reporting requirements for Exception Codes for the period of January 1, 2011 through March 31, 2011.

In Matter No. 20100231675, the Trade Reporting Section of the Department of Market Regulation (the "Trading Reporting Staff") reviewed trade reporting by the firm as part of an excessive late sweep for the period of January 1, 2010 through April 30, 2010;

In Matter No. 20100255558, the Trading Reporting staff reviewed trade reporting by the firm as part of a 20 minute rule sweep for the period of May 1, 2010 through August 31, 2010;

In Matter No. 20110263241, the Trading Reporting staff reviewed trade reporting by the firm as part of an .R timeliness sweep for the period of October 1, 2006 through December 31, 2010;

In Matter No. 20110268405, the Trading Reporting staff reviewed trade reporting by the firm as part of a referral from the OATS staff for the period of February 1, 2008 through June 9, 2011; and

In Matter No. 20110284803, the TRACE Corporate Bonds Team of the Department of Market Regulation (the "TRACE staff") reviewed TRACE reporting by the firm as part of a self-report by the firm for the period of May 1, 2008 through May 31, 2011.

FACTS AND VIOLATIVE CONDUCT

20080159026

1. From July 1, 2008 through September 30, 2008, the firm transmitted to OATS 99,143 ROEs that were rejected by OATS for context or syntax errors and were repairable. The firm failed to repair 9,949 of these rejected ROEs during the review period. As a result of the firm's failure to repair these ROEs, the firm failed to transmit 9,949 ROEs to OATS during the review period. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955.

20090198623

2. From April 1, 2009 through June 30, 2009, the firm transmitted to OATS 22,954 ROEs that were rejected by OATS for context or syntax errors and were repairable. The firm failed to repair 3,538 of these rejected ROEs during the review period. As a

result of the firm's failure to repair these ROEs, the firm failed to transmit 3,538 ROEs to OATS during the review period. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7450.

20080146363

3. From April 1, 2008 through June 30, 2008, the firm: (a) transmitted to OATS 67 Execution or Combined Order/Execution Reports that contained inaccurate Reporting Exception Codes; (b) failed to report three Execution or Combined Order/Execution Reports; and (c) transmitted to OATS 18 Execution or Combined Order Execution Reports that it was not required to report. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955.

20100236850

4. From July 1, 2009 through September 30, 2009, the firm transmitted to OATS 47 Execution or Combined Order/Execution Reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, the reports included an inaccurate Reporting Exception Code. Because of the inaccurate, missing, or improperly formatted data, the OATS system was unable to link the execution reports to the related trade reports in an FINRA trade reporting system. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7450.

20090192004

5. From January 1, 2008 through June 30, 2008, the firm transmitted to OATS 145,628 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, the reports did not include the special handling code NH for not held limit orders. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955.
6. From October 1, 2009 through December 31, 2009, the firm transmitted to OATS 96 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, the reports did not include the special handling code NH for not held limit orders. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7450.

20090189497

7. From July 1, 2008 through December 31, 2009, the firm failed to transmit 606 ROEs to OATS on 380 business days for the MPID MLMA. These ROEs represented 100 percent of all ROEs that the firm was required to transmit during the review period for that secondary MPID. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a) (for conduct prior to December 15, 2008) and FINRA Rule 7450 (for conduct on or after December 15, 2008).

20110283743

8. From January 1, 2011 through March 31, 2011 the firm transmitted to OATS 34 Execution or Combined Order/Execution Reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, the reports included an inaccurate Reporting Exception Code. Because of the inaccurate, missing, or improperly formatted data, the OATS system was unable to link the execution reports to the related trade reports in an FINRA trade reporting system. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7450.

20100231675

9. From January 1, 2010 through April 30, 2010, the firm failed, within 90 seconds after execution, to transmit to the FINRA/NASDAQ Trade Reporting Facility ("FNTRF") 237,600 last sale reports of transactions in designated securities. These transactions constitute 2.38% of the transactions reviewed that the firm reported firm to the FNTRF from January 1, 2010 through April 30, 2010. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 6380A and a pattern or practice of late reporting without exceptional circumstances in violation of FINRA Rule 2010.

20100255558

10. From May 1, 2010 through August 31, 2010, the firm failed to accept or decline in the FNTRF 178 transactions in Reportable Securities within 20 minutes after execution, approximately 49% of all transactions that the firm had an obligation to accept or decline during this time period. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7230A(b) and a pattern or practice of late reporting without exceptional circumstances in violation of FINRA Rule 2010.

20110263241

11. From October 1, 2006 through December 31, 2010, the firm failed to timely report to the FNTRF by 8:00 p.m. Eastern Time 251 transactions that required a .RX modifier. The firm also failed to report 633 transactions with a .RX modifier that the firm was required to report. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6130 (for conduct prior to December 15, 2008) and FINRA Rule 7230A (for conduct on or after December 15, 2008).

20110268405

12. From February 1, 2008 through June 9, 2011, the firm incorrectly reported itself as the market maker in 6,150 last sale reports of transactions to the OTC Reporting Facility. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6620(b) (for conduct prior to December 15, 2008) and FINRA Rule 6622(b) (for conduct on or after December 15, 2008).

20110284803

13. From May 1, 2008 through May 31, 2011, the firm failed to report to TRACE 18,617 transactions in TRACE eligible securities it was required to report. The firm also reported to TRACE 869 transactions in TRACE eligible securities it was not required to report. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6230 (for conduct prior to December 15, 2008) and FINRA Rule 6730 (for conduct on or after December 15, 2008).

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

A censure and a fine of \$150,000'(\$15,000 for the reject repair violations identified in Matter Nos. 20080159026 and 20090198623; \$22,500 for the Exception Code violations identified in Matter Nos. 20080146363, 20100236850 and 20110283743; \$15,000 for the non-reporting violations identified in Matter No. 20090189497; \$12,500 for the Special Handling Code violations identified in Matter No. 20090192004; \$12,500 for the violations of FINRA Rules 6380A and 2010 in Matter No. 20100231675; \$12,500 for the violations of FINRA Rules 7230A(b) and 2010 in Matter No. 20100255558; \$17,500 for the violations of NASD Rule 6130 and FINRA Rule 7230A in Matter No. 20110263241; \$20,000 for the violations of NASD Rule 6620(b) and FINRA Rule 6622(b) in Matter No. 20110268405; and \$22,500 for the violations of NASD Rule 6230 and FINRA Rule 6730 in Matter No. 20110284803).

The firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. It has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) 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 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 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 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.

Dec 11, 2012
Date

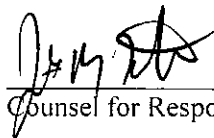
Respondent
Merrill Lynch, Pierce, Fenner & Smith Incorporated

By: 

Name: RICHARD CHAU

Title: MANAGING DIRECTOR

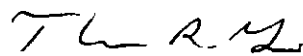
Reviewed by:


Counsel for Respondent

Accepted by FINRA:

3/4/13
Date

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


Thomas R. Gira
Executive Vice President
Department of Market Regulation