

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20080154031**

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

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

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. Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch" or 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

Merrill Lynch has been a registered broker-dealer and a member of FINRA since January 26, 1937. Merrill Lynch is a full service brokerage firm headquartered in New York, NY and has approximately 814 active branches and approximately 28,232 registered representatives.

RELEVANT DISCIPLINARY HISTORY

Merrill Lynch has no relevant disciplinary history.

OVERVIEW

This matter involves multiple failures by Merrill Lynch to accurately and timely report a complaint by customers MS and DS (together "MDS"), sister and brother. MDS alleged, among other things, that millions of dollars had been misappropriated from their accounts. The Firm's failure to accurately and timely

000034302 2010

report MDS's complaint resulted in FINRA's loss of jurisdiction over a potential respondent.

FACTS AND VIOLATIVE CONDUCT

From 2001 to 2008, MDS held numerous trust and brokerage accounts at Merrill Lynch. MDS were clients of Merrill Lynch broker, Richard Gleeson ("Gleeson"), who was a friend of MS's son, LS. Gleeson's assistant, HM, substantially assisted Gleeson with the handling of MDS's accounts.

In the fall of 2006, MDS complained to the Firm, alleging, among other things, that Gleeson had conspired with HM and LS to misappropriate millions of dollars from their accounts. In December 2008, Merrill Lynch settled with MDS for \$5,875,000.

Merrill Lynch reported MDS's complaint: in a January 2007 Rule 351(d) quarterly report; in an October 2008 US filing on Gleeson's CRD; and in a January 2009 Form RE-3. However, the Firm's reporting of MDS's complaint was inaccurate and untimely. As a result, FINRA lost jurisdiction over HM.¹

1. Inaccurate 351(d) Filing (NYSE Rule 351(d) and NASD Rule 2110)

NYSE Rule 351(d) requires member firms to report statistical information regarding customer complaints to the NYSE. NYSE Information Memo 98-16 (April 14, 1998) requires member organizations to treat all customer complaints, oral and written, with equal scrutiny and report them to the Exchange in the quarterly report of customer complaint statistics.

On January 17, 2007, Merrill Lynch reported MDS's complaint as part of its 351(d) quarterly report. However, the Firm inaccurately reported the complaint as firm-related instead of a sales practice matter, and as a result was not required to identify Gleeson or HM or note the amount in dispute.

The Firm reported the complaint as firm-related even though prior to January 17, 2007, it was aware that MDS's complaint involved sales practice allegations. As early as November 7, 2006, MDS had complained about unauthorized transactions, misappropriation/forgery, and failures to obtain or provide required documents, which are all examples of "sales practice complaints" in Merrill Lynch's written procedures.

By inaccurately filing a 351(d) report on MDS's complaint, the Firm violated NYSE Rule 351(d) and NASD Rule 2110.

¹ In December 2009, Gleeson consented to a bar for failing to cooperate with Enforcement's investigation.

2. Untimely Reporting to Gleeson's U5 (NASD Rule 2110)

Article V, Section 3(b) of NASD's By-Laws provides that, in the event a member learns of facts or circumstances causing any information set forth in termination notice (Form U5) filed with NASD to become inaccurate or incomplete, the member must notify NASD of those facts or circumstances by means of an amendment to the termination notice not later than 30 days thereafter. A member's failure to comply with a duty imposed by NASD's By-Laws constitutes unethical business conduct in violation of Rule 2110.

Question 7E(3)(b) on Form U5 requires disclosure if a registered individual "employed by or associated with your firm, was . . . the subject of an investment-related, consumer-initiated, written complaint, not otherwise reported . . . which would be reportable under question 14I(3)(b) on Form U4, if the individual were still employed by your firm, but which has not previously been reported on the individual's Form U4."

Question 14I(3)(b) on Form U4 requires disclosure if a registered individual, "within the past twenty four (24) months, [has been] the subject of an investment-related, consumer-initiated, written complaint, not otherwise reported . . . , which alleged that [the registered individual] was involved forgery, theft, misappropriation or conversion of funds or securities."

On October 22, 2008, nearly two years after MDS's initial complaint, Merrill Lynch filed an amended Form U5 reporting the complaint on Gleeson's CRD. In the U5 filing, the Firm reported that Gleeson was the subject of an investment-related consumer-initiated, written complaint not previously reported on his Form U4. The Firm reported that MDS alleged that Gleeson, along with HM and LS, had misappropriated approximately \$8.9 million from their accounts.

As early as November 7, 2006, however, the Firm was aware that MDS's complaint involved Gleeson and possible sales practice violations and should have reported it to Gleeson's U5 at that time.

By failing to timely report MDS's complaint on Gleeson's Form U5, the Firm violated NASD Rule 2110.

3. Untimely RE-3 Filing (NYSE Rule 351(a) and NASD Rule 2110)

NYSE Rule 351(a) requires that a Form RE-3 be filed whenever a reportable event occurs. Reportable events include when a registered or non-registered employee:

- (1) "has violated any provision of any securities law or regulation, or any agreement with or rule or standards of conduct of any . . . self-regulatory organization, or business or professional organization, or engaged in conduct which is inconsistent with just and equitable principles of trade;"

- (2) "is the subject of any written customer complaint involving allegations of theft or misappropriation of funds or securities or of forgery;"
- (8) "is the subject of any claim for damages by a customer, broker or dealer which is settled for an amount exceeding \$15,000;" and
- (10) "is the subject of any disciplinary action taken by the . . . member organization . . . involving suspension, termination . . . or any other significant limitation on activities."

NYSE Rule 351 states that the above events must be reported "promptly." NYSE Information Memo 90-17 states that the filing of a Form RE-3 must occur within 30 days of the reportable event.

On January 2, 2009, Merrill Lynch filed a Form RE-3 reporting the settlement of MDS's complaint for \$5,875,000. The RE-3 stated, among other things, that MDS alleged the misappropriation of millions of dollars from their accounts by Gleeson, HM, and LS. The RE-3 also stated that the discovery date of the event was November 2006.

The Firm's RE-3 filing was untimely. Over two years earlier, the Firm was aware of events that should have triggered at least three RE-3 filings. On November 6, 2006, MS sent a fax to the Firm alleging theft and misappropriation of funds, which should have triggered an RE-3 filing pursuant to Rule 351(a)(2). On November 24, 2006, HM admitted to the Firm that she had notarized two POAs for DS at Gleeson's request, even though she had not witnessed DS's signatures, which should have triggered an RE-3 filing pursuant to Rule 351(a)(1). On December 1, 2006, the Firm terminated HM for violating Firm policy by notarizing a POA for DS without witnessing his signature, which should have triggered an RE-3 filing pursuant to Rule 351(a)(10).

By failing to timely file a Form RE-3 regarding MDS's complaint, the Firm violated NYSE Rule 351(a) and NASD Rule 2110.

B. Merrill Lynch also consents to the imposition of the following sanctions:

- A censure; and
- A fine in the amount of \$75,000.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

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 Complaint issued specifying the allegations against it;
- 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, 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

I understand 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 Merrill Lynch; and

C. If accepted:

1. this AWC will become part of Merrill Lynch's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Merrill Lynch;
2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Merrill Lynch'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 Merrill Lynch'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.

The undersigned, on behalf of Merrill Lynch, 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 Merrill Lynch 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 Merrill Lynch to submit it.

10/18/2010
Date (mm/dd/yyyy)

Merrill Lynch, Pierce, Fenner & Smith Incorporated

By: Joaquin M. Sena

Print Name: Joaquin M. Sena

Title: Associate General Counsel

Reviewed by:

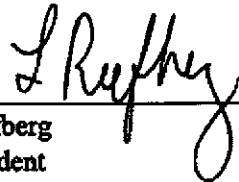


Amy J. Greer
Reed Smith LLP
2500 One Liberty Place
1650 Market Street
Philadelphia, PA 19103
(tel) 215-851-8211

Accepted by FINRA:

10-28-10
Date

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



Linda Riefberg
Vice President
FINRA Department of Enforcement
14 Wall Street, 14th Floor
New York, NY 10005
(tel) 646-315-7395
(fax) 202-689-3412