

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20090174104-01**

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

RE: Banc of America Securities LLC (now known as Merrill Lynch, Pierce, Fenner & Smith Inc.) Respondent
Broker-Dealer
CRD No. 26091

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Banc of America Securities LLC ("BOFA" or the "Firm") (now known as Merrill Lynch, Pierce, Fenner & Smith Inc., CRD No. 7691) 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 has been a member of FINRA since 1937 and its registration remains in effect. The Firm does not have any relevant disciplinary history.

SUMMARY

Review No. 20090174104 is the result of a quarterly Trade Reporting and Compliance Engine ("TRACE") Corporate Bond Fair Pricing Sweep conducted by the Market Regulation Department's Fixed Income Investigations Team (the "Staff") for the period October 1, 2008 through December 31, 2008 (the "Review Period").

FACTS AND VIOLATIVE CONDUCT

Staff determined that during the Review Period, in 11 paired transactions involving 12 customers, the Firm sold (bought) corporate bonds to (from) customers and failed to sell (buy) such bonds at a price that was fair, taking into consideration all relevant

circumstances, including market conditions with respect to each bond at the time of the transaction, the expense involved and that the Firm was entitled to a profit. The transactions are identified in Exhibit A, which is attached. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rules 2440, IM-2440 and 2110 (for trades executed before December 15, 2008) and FINRA Rule 2010 (for trades executed on or after December 15, 2008).

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

A censure, a fine of \$35,000, and restitution by the Firm to the customers listed on Exhibit A (attached) in the total amount of \$11,616.23, plus interest at the rate set forth in Section 6621(a) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from the date of the violative conduct until the date this AWC is accepted by the National Adjudicatory Council. A registered principal of the Firm shall submit satisfactory proof of payment of the restitution, or of reasonable and documented efforts undertaken to effect restitution, to the COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850 or in an e-mail from a work-related account of the registered principal to MarketRegulationComp@finra.org, no later than 120 days after acceptance of this AWC. If for any reason, the Firm cannot locate any customer after reasonable and documented efforts within such period, or such additional period agreed to by the staff, the Firm shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed-property or abandoned-property fund for the state in which the customer is known to have last resided.

The Firm agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments 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 sanctions 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. 19, 2011
Date

Respondent
Merrill Lynch, Pierce, Fenner & Smith Inc.

By: [Signature]
Name: Kevin Finnegan
Title: M.D.

Reviewed by:

Accepted by FINRA:

1/24/12
Date

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

[Signature]
Thomas R. Gira
Executive Vice President
Department of Market Regulation

Item No.	Date	CUSIP ID	Issue	Quantity	Contra 1*	Trade 1 Time	Trade 1 Price	Firm	Contra 2*	Trade 2 Time	Trade 2 Price	Markup	Markdown	Spread	Profit	Restitution
1	12/31/2008	02635PTC7	AIG.GLP	20.0	C (S)	13:41:24	32.361	BOFA	BD (B)	11:11:46	40.83		20.74%		\$ 1,893.80	\$ 1,293.80
2	10/14/2008	020002AR2	ALL.HM	20.0	C (S)	11:02:11	86.213	BOFA	BD (B)	10:52:45	93.108		7.41%		\$ 1,379.00	\$ 447.40
5	11/20/2008	060505CL6	BAC.GRE	10.0	C (S)	14:23:57	85.053	BOFA	BD (B)	13:33:13	89.813		5.30%		\$ 476.00	\$ 76.00
8	10/21/2008	693627AZ4	CIN.IM	10.0	C (S)	9:58:05	81.312	BOFA	BD (B)	9:48:00	91.523		11.16%		\$ 1,021.10	\$ 562.80
11	10/07/2008	20825TAA5	COP.GI	10.0	C (S)	15:24:02	91.731	BOFA	BD (B)	16:53:52	98.544		6.91%		\$ 681.30	\$ 187.90
26	12/02/2008	338032AZ8	FSH.GP	10.0	C (S)	12:19:19	80.285	BOFA	BD (B)	12:08:41	92.96		13.63%		\$ 1,267.50	\$ 802.70
33	11/21/2008	460146CB7	IP.IN	10.0	C (S)	10:36:58	78.153	BOFA	BD (B)	13:57:13	86.298		9.44%		\$ 814.50	\$ 383.00
37	12/02/2008	494550AX4	KMP.GT	15.0	C (S)	11:43:34	90.309	BOFA	BD (B)	11:04:07	98.279		8.11%		\$ 1,195.50	\$ 458.40
43	10/28/2008	552848AB9	MTG.GE	2,000.0	C (S)	16:07:38	23.8741	BOFA	C (B)	18:22:11	26.463			10.84%	\$ 51,778.00	\$ 1,578.00
45	10/16/2008	845905AX6	SVRN.GM	500.0	C (S)	15:51:25	75	BOFA	BD (B)	15:57:28	80		6.25%		\$ 25,000.00	\$ 5,000.00
50	10/01/2008	929903AD4	WB.NR	50.0	C (S)	11:24:00	88.38	BOFA	BD (B)	11:01:16	93.96		5.94%		\$ 2,790.00	\$ 826.23
TOTAL																\$ 11,616.23

* Contra parties are identified as follows: B-D (S) indicates another Broker-Dealer selling to the firm; B-D (B) indicates another Broker-Dealer buying from the firm; C (S) indicates a customer selling to the firm; and C (B) indicates a customer buying from the firm.