

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20090186444-01**

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 ("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 September 23, 2008, FINRA accepted an AWC in which the firm was censured and fined \$242,500, including \$7,500 for violations of MSRB Rule G-14.

SUMMARY

This matter is the result of two separate reviews conducted by staff of the Municipal Bonds Team of the Department of Market Regulation. In each review, the Municipal Bonds Team conducted a review of the firm's compliance with Municipal Securities Rulemaking Board ("MSRB") Rules applicable to trade reporting of inter-dealer transactions in the Real-time Transaction Reporting System ("RTRS"). In Review No. 20090186444, the review period was January 1, 2009 through March 31, 2009. In Review No. 20100217923, the review period was October 1, 2009 through December 31, 2009.

FACTS AND VIOLATIVE CONDUCT

20090186444

1. From January 1, 2009 to March 31, 2009, the firm failed to report information regarding 475 purchase and sale transactions effected in municipal securities to the RTRS in the manner prescribed by Rule G-14 RTRS Procedures and the RTRS Users Manual. Specifically, the firm failed to report the correct Time of Trade to the RTRS in 475 reports of transactions in municipal securities. In addition, the firm failed to report information for 475 transactions within 15 minutes of Time of Trade to an RTRS portal. These transactions constituted 3.48% of the transactions that the firm reported to the RTRS during the review period. The conduct described in this paragraph constitutes separate and distinct violations of MSRB Rule G-14.
2. From January 1, 2009 to March 31, 2009, the firm failed on 49 occasions to show the correct time of execution on the memorandum of 49 transactions in municipal securities for the account of the firm executed with another broker-dealer. The conduct described in this paragraph constitutes separate and distinct violations of MSRB Rule G-8.

20100217923

3. From October 1, 2009 to December 31, 2009, the firm failed to report information regarding 138 purchase and sale transactions effected in municipal securities to the RTRS in the manner prescribed by Rule G-14 RTRS Procedures and the RTRS Users Manual. Specifically, the firm failed to report the correct Time of Trade to the RTRS in 138 reports of transactions in municipal securities. In addition, the firm failed to report information for 138 transactions within 15 minutes of Time of Trade to an RTRS portal. These transactions constituted 1.08% of the transactions that the firm reported to the RTRS during the review period. The conduct described in this paragraph constitutes separate and distinct violations of MSRB Rule G-14.

4. From October 1, 2009 to December 31, 2009, the firm failed on 130 occasions to show the correct time of execution on the memorandum of 130 transactions in municipal securities for the account of the firm executed with another broker-dealer. The conduct described in this paragraph constitutes separate and distinct violations of MSRB Rule G-8.

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

A censure, a fine of \$35,000 (\$25,000 for MSRB Rule G-14 violations and \$10,000 for MSRB Rule G-8 violations)

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.

12/6/2011
Date

Respondent

Merrill Lynch, Pierce, Fenner & Smith Incorporated

By: J. David Montague

Name: J. David Montague

Title: Associate General Counsel

Reviewed by:

Counsel for Respondent

Accepted by FINRA:

2/15/12
Date

Signed on behalf of the

Director of ODA, by delegated authority

Thomas R. Gira

Thomas R. Gira

Executive Vice President

Department of Market Regulation