

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO 20090201082-01**

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

RE: Merrill Lynch, Pierce, Fenner & Smith Inc., Respondent
Broker-Dealer
CRD No. 7691

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Merrill Lynch, Pierce, Fenner & Smith Inc. ("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 on January 26, 1937, and its registration remains in effect.

RELEVANT DISCIPLINARY HISTORY

On September 28, 2008, an AWC became final wherein the firm was censured and fined a total of \$242,500. The total fine included \$5,000 for violations of SEC Rule 200(g) of Regulation SHO, \$38,000 for violations of NASD Rule 6955, \$55,000 for violations of NASD Rules 4632 and 6130, and \$5,000 for violations of NASD IM-2110-2.

On February 24, 2010, an AWC became final wherein the firm was censured and fined a total of \$55,000 for violations of NASD Rule 6955.

On January 5, 2011, an AWC became final wherein the firm was censured and fined a total of \$304,000. The total fine included \$50,000 for violations of NASD Rule 6130 and other equity trade reporting rules.

SUMMARY

In 20090201082, the staff in the OTC Compliance Section of Market Regulation reviewed the firm's compliance with NASD Rule 3340 during the period from July 1, 2008 through December 31, 2008.

In 20100215961, the staff in the Trading and Market-making Surveillance ("TMMS") Section of Market Regulation conducted the firm's 2010 TMMS examination. For trade dates July 28 and 29, 2010, the TMMS staff reviewed the items listed in Exhibit 1.

In 20100226111, the staff in the Short Sales Section of Market Regulation reviewed the firm's compliance with SEC Rule 204 of Regulation SHO during the period from January 1, 2010 through March 31, 2010.

In 20110259822, the staff in the Customer Issues Section of Market Regulation reviewed the firm's compliance with its limit order protection obligations in connection with customer transactions in OTC securities during the period from April 1, 2009 to June 30, 2009.

In 20110260978, the TMMS staff of Market Regulation conducted the firm's 2011 TMMS examination. For trade date August 2, 2011, the TMMS staff reviewed the items listed in Exhibit 2.

FACTS AND VIOLATIVE CONDUCT

20090201082

1. During the period reviewed, the firm effected eight securities transactions while a trading halt was in effect with respect to the securities. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rules 2110 (or FINRA Rule 2010) and 3340.¹

20100215961

2. During the period reviewed, the firm transmitted to the Order Audit Trail System ("OATS") 22,020 reports that contained inaccurate, incorrect, incomplete, or improperly formatted data. Specifically, in 21,951 instances the reports contained an inaccurate originating Department ID; in six instances, the firm submitted an erroneous desk report; in three instances, the firm submitted a report with an incorrect

¹ On or about December 15, 2008, NASD Rule 2110 converted to FINRA Rule 2010.

special handling code; in 24 instances the firm submitted a report without a reporting exception code and in two instances the firm incorrectly submitted a new order report and 34 route reports. These inaccurate and/or incomplete reports represented 100 percent of all reports sampled by the TMMS staff during the period reviewed. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7450.

3. For the month of June, 2010, the firm made available a report on the covered orders in national market system securities that it received for execution from any person. This report included incorrect information. Specifically, in one instance, the firm incorrectly classified a "covered" order as "not covered." Also, the firm calculated and reported an incorrect amount of total covered orders, covered shares, and total cancelled shares. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 605 of Regulation NMS.
4. The firm failed to report to FINRA/Nasdaq Trade Reporting Facility ("FNTRF") the correct symbol indicating the related market center in 22 transactions in Reportable Securities. In two instances, the failed to report the exercise of an OTC option. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7230A.
5. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to certain applicable securities laws and regulations, and/or the Rules of FINRA. At a minimum, adequate written supervisory procedures addressing quality of markets topics should describe the following:
 - a. specific identification of the individual(s) responsible for supervision;
 - b. the supervisory steps and reviews to be taken by the appropriate supervisor;
 - c. the frequency of such reviews; and
 - d. how such reviews shall be documented.

The firm's written supervisory procedures failed to provide for one or more of the four above-cited minimum requirements for adequate written supervisory procedures, in the following subject areas: Trade Reporting (Use of trade modifiers, Third Party Reporting) [(a), (b), (c), (d)]; OATS (Accuracy of data)[(a), (b), (c), (d)]; Multiple MPIDs (Approval of MPIDs) [(a), (b), (c), (d)]. The conduct described in this paragraph constitutes a violation of NASD Rule 3010 and FINRA Rule 2010.

20100226111

6. From February 1, 2010 through February 26, 2010, the firm had fail-to-deliver positions in eight instances at a registered clearing agency in an equity security that resulted from a long sale, and did not close the fail-to-deliver position by purchasing

securities of like kind and quantity within the time frame prescribed by SEC Rule 204(a)(1). The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 204(a)(1).

7. During the period reviewed, the firm executed 51 short sale orders and failed to properly mark the orders as short. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 200(g) of Regulation SHO.

20110259822

8. In eight instances during the period reviewed, the firm failed to contemporaneously or partially execute a customer limit order in a Nasdaq security after it traded each subject security for its own market-making account at a price that would have satisfied each customer's limit order. The instances are reflected on Exhibit 3. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 2010 and NASD IM-2110-2.

20110260978

9. During the period reviewed, the firm transmitted to OATS 17 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, in seven instances the firm submitted reports with erroneous handling codes; in five instances the firm submitted reports with an incorrect order received time; in four instances the firm submitted reports with an incorrect limit price; and in one instance the firm failed to submit a route report. These inaccurate and/or incomplete reports represented 21 percent of all reports sampled by the TMMS staff during the period reviewed. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7450.
 10. The firm failed to report complete and accurate data to the FNTRF in 66 transactions in Reportable Securities. Specifically, In 53 instances, the firm incorrectly reported an agency cross transaction as a principal transaction with a blank contra party; in two instances, the firm failed to report the contra party broker-dealer on a principal trade; in one instance, the firm reported the incorrect buy/sell indicator; in one instance, the firm failed to report the correct execution time; and, in nine instances, the firm failed to timely submit the non-tape report with the .RX modifier. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7230A.
- B. The firm also consents to the imposition of the following sanctions:
- A censure;
 - A fine of \$85,000 (comprised of \$10,000 for the trading halt violations, \$22,500 for the OATS violations, \$10,000 for the SEC Rule 605 of Regulation NMS violations, \$15,000 for the trade reporting violations, \$10,000 for the supervision

violations \$7,500 for the Regulation SHO violations, and \$10,000 for the limit order protection violations);

- Restitution in connection with the transactions listed on Exhibit 3, which is attached, in the total amount of \$77.98, 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 ("NAC"). 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, Respondent cannot locate any customer after reasonable and documented efforts within such period, or such additional period agreed to by the staff, Respondent 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; and
- An undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph five. Within 30 business days of acceptance of this AWC by the NAC, a registered principal of the Respondent shall submit to the COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850, a signed, dated letter, or an e-mail from a work-related account of the registered principal to MarketRegulationComp@finra.org, providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its written supervisory procedures to address the deficiencies described in paragraph five; and, (3) the date the revised procedures were implemented.

The firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. The firm 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

20090201082 (Inc. 20100215961, 20100226111, 20110259822 and 20110260978)(KM)

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: (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.

8/29/13
Date

Respondent
Merrill Lynch, Pierce, Fenner & Smith Inc.

By: [Signature]

Name: Steven Longo

Title: Managing Director

Reviewed by:

[Signature]
Attorney Name
Counsel for Respondent
Firm Name
Address
City/State/Zip
Phone Number

Accepted by FINRA:

10/24/13
Date

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

[Signature]
Robert A. Marchman, Esq.
Executive Vice President
Department of Market Regulation

2010 Market Regulation Examination Samples
 Bank of America Merrill Lynch ("MLCO")
 Exam No. 20100215961
 Sample Source/Period*: 7/28/10-7/29/10

<u>Sample Size</u>	<u>Sample Description</u>
74	Sales reviewed for compliance with SEC Rule 200(g) long/short sale recording requirements
85	Short Sales reviewed for compliance with SEC Rule 203(b) security location requirements
0	Sales reviewed for compliance with SEC Rule 204 fail-to-deliver requirements
439	Sell trades reported to a TRF or OTCRF for compliance with sale indicator requirements, FINRA Rules 6182 or 6624
137	Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4755(a)(1)(A) long/short reporting requirements
137	Buy and Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4611 capacity reporting requirements
49	Sell orders entered into BATS Exchange execution system for compliance with BATS Rule 11.19 long/short reporting requirements
0	Limit orders for NMS securities in which the member acts as an exchange market maker for compliance with the display requirements of SEC Rules 602 and 604, and Nasdaq Rule 3390
13	Orders for compliance with best execution requirements of NASD Rule 2320
0	Held orders from the Held Order Protection Review
0	Not Held orders from the Not Held Order Review
3	Order executed with a .PRP (Prior Reference Price) trade modifier
10	Customer orders in OTC equity securities for compliance with NASD Rule 3110(b) requirements to ascertain and document best interdealer market related to execution of orders
0	Orders for compliance with order protection requirements of NASD Rules 2110, IM-2110-2, 2111, and Nasdaq Rules 2110, IM-2110-2, and 2111
10	Open Limit orders to buy and/or open Stop orders to sell securities that traded ex-dividend for compliance with NASD Rule 3220 and Nasdaq Rule 4761
0	Order memoranda and Net Trading agreements for compliance with NASD Rule 2441 requirements
22001	Orders in securities required to be submitted to OATS for compliance with FINRA Rules 7440 and 7450, and Nasdaq Rules 6954 and 6955 requirements
132	Customer confirmations prepared and maintained in connection with select samples for compliance with SEC Rule 10b-10

2010 Market Regulation Examination Samples
 Bank of America Merrill Lynch ("MLCO")
 Exam No. 20100215961
 Sample Source/Period*: 7/28/10-7/29/10

<u>Sample</u>	<u>Size</u>	<u>Sample Description</u>
	25	Orders for NMS securities in which the Firm acts as a market center for compliance with SEC Rule 605 order classification requirements
	4	Data sets published for Month Year monthly order execution report for compliance with SEC Rule 605 requirement to publish accurate data (a 'data set' encompasses all required statistical data for single security and order type/size category as described in SEC Rule 605)
4th Quarter 2010		Quarterly Routing Report for compliance with SEC Rule 606 requirements
	47	CRD registration records for persons conducting and/or supervising Firm's trading and/or market making activities for compliance with NASD Rule Series 1020, 1030, 1040; Nasdaq Rule Series 1020, 1030, 1040; and BATS Rule 11.4
	10	Customer orders in OTC equity securities for compliance with NASD Rule 3110(b) requirements to ascertain and document best interdealer market related to execution of orders
	1	Disclosures to customers relating to trading in the Extended Hours session for compliance with FINRA Rule 2265 and Nasdaq Rule 4631
	3095	Records prepared and maintained in connection with the above samples for compliance with SEC Rules 17a-3 and 17a-4, and NASD Rule 3110
	578	Trades reported to a TRF or OTCRF for compliance with FINRA Rules 6380A and 7230A or 6622 and 7330
All Provided		Member's "Regular & Rigorous" review procedures regarding order execution quality for compliance with NASD Rules 2320 and 3010
All Provided		Member's supervisory and operational policies and procedures and documentation evidencing execution of the policies and procedures for compliance with SEC Regulation NMS Rule 611
All Provided		Member's supervisory system, written supervisory procedures ("WSPs") and documentation evidencing execution of the WSPs for compliance with NASD Rule 3010, Nasdaq Rule 3010, or BATS Rule 5.1 requirements

2011 Market Regulation Examination Samples
Merrill Lynch, Pierce, Fenner Smith Inc. ("MLCO")
Exam No. 20110260978
Sample Source/Period*: August 2, 2011

<u>Sample Size</u>	<u>Sample Description</u>
175	Sales reviewed for compliance with SEC Rule 200(g) long/short sale recording requirements
44	Short Sales reviewed for compliance with SEC Rule 203(b) security location requirements
0	Sales reviewed for compliance with SEC Rule 204 fail-to-deliver requirements
188	Sell trades reported to a TRF or OTCRF for compliance with sale indicator requirements, FINRA Rules 6182 or 6624
36	Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4755(a)(1)(A) long/short reporting requirements
36	Buy and Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4611(a)(6) capacity reporting requirements
8	Sell orders entered into Nasdaq OMX BX execution system for compliance with Nasdaq OMX BX Rule 4755 long/short reporting requirements
0	Sell orders entered into Nasdaq OMX PHLX execution system for compliance with Nasdaq OMX PSX Rule 3305 long/short reporting requirements
40	Sell orders entered into DirectEdge Exchange execution system for compliance with EDGA/EDGX Rule 11.15 long/short reporting requirements
40	Sell orders entered into NYSE-Arca execution system for compliance with NYSE-Arca Equity Rule 7.16 long/short reporting requirements
0	Limit orders for NMS securities in which the member acts as an exchange market maker for compliance with the display requirements of SEC Rules 602 and 604, and Nasdaq Rule 3390
25	Orders for compliance with best execution requirements of NASD Rule 2320
0	Held orders from the Held Order Protection Review
0	Not Held orders from the Not Held Order Review
0	Order executed with a .PRP (Prior Reference Price) trade modifier
25	Customer orders in OTC equity securities for compliance with NASD Rule 3110(b) requirements to ascertain and document best interdealer market related to execution of orders
0	Orders for compliance with order protection requirements of NASD Rules 2110, IM-2110-2, 2111, and Nasdaq Rules 2110, IM-2110-2, and 2111
10	Open Limit orders to buy and/or open Stop orders to sell securities that traded ex-dividend for compliance with FINRA Rule 5330 and Nasdaq Rule 4761
0	Order memoranda and Net Trading agreements for compliance with NASD Rule 2441 requirements
82	Orders in securities required to be submitted to OATS for compliance with FINRA Rules 7440 and 7450, and Nasdaq Rules 6954 and 6955 requirements

* unless otherwise noted

2011 Market Regulation Examination Samples
Merrill Lynch, Pierce, Fenner Smith Inc. ("MLCO")
Exam No. 20110260978
Sample Source/Period*: August 2, 2011

<u>Sample Size</u>	<u>Sample Description</u>
23	Customer confirmations prepared and maintained in connection with select samples for compliance with SEC Rule 10b-10
59	Orders for NMS securities in which the Firm acts as a market center for compliance with SEC Rule 605 order classification requirements
4	Data sets published for monthly order execution report for compliance with SEC Rule 605 requirement to publish accurate data (a 'data set' encompasses all required statistical data for single security and order type/size category as described in SEC Rule 605)
1	Quarterly Routing Report for compliance with SEC Rule 606 requirements
19	CRD registration records for persons conducting and/or supervising Firm's trading and/or market making activities for compliance with NASD Rule Series 1020, 1030, 1040 and Nasdaq Rule Series 1020, 1030, 1040
25	Customer orders in OTC equity securities for compliance with NASD Rule 3110(b) requirements to ascertain and document best interdealer market related to execution of orders
1	Disclosures to customers relating to trading in the Extended Hours session for compliance with FINRA Rule 2265 and Nasdaq Rule 4631
433	Records prepared and maintained in connection with the above samples for compliance with SEC Rules 17a-3 and 17a-4, and NASD Rule 3110
372	Trades reported to a TRF or OTCRF for compliance with FINRA Rules 6380A and 7230A or 6622 and 7330
11	OTC option exercises submitted as non-tape reports to a TRF or OTCRF for compliance with FINRA Rules 7230A(g)(2) or 7330(g)(2)
25	Transactions in the firm's security for compliance with NYSE Arca Equities Rule 4.3(c)
All Provided	Member's "Regular & Rigorous" review procedures regarding order execution quality for compliance with NASD Rules 2320 and 3010
All Provided	Member's supervisory and operational policies and procedures and documentation evidencing execution of the policies and procedures for compliance with SEC Regulation NMS Rule 611
All Provided	Member's supervisory system, written supervisory procedures ("WSPs") and documentation evidencing execution of the WSPs for compliance with NASD Rule 3010 or Nasdaq Rule 3010 requirements

Triggering Transaction Details (Part I)																	
Item #	Trade Report Date	Trade Report Time	Execution Time	MPID	Side	Capacity	Trade Vol	Issue Symbol	Trade Price	Order Received Date	Order Received Time	MPID	Order to Buy/Sell	Quantity	Issue Symbol	Order Price	Restitution
1	04/02/2009	09:30:12	09:30:02	MLCO	B	P	182	OGZPY	16.7300	04/02/2009	08:01:31	MLCO	B	640	OGZPY	30.0000	\$2.80
2	04/02/2009	09:30:20	09:30:02	MLCO	B	P	500	OGZPY	16.7300	04/03/2009	08:01:31	MLCO	B	640	OGZPY	30.0000	\$20.00
3	04/15/2009	09:30:16	09:30:02	MLCO	B	P	177	BAYRY	49.6300	04/15/2009	09:16:37	MLCO	B	100	BAYRY	49.7000	\$4.00
4	04/15/2009	15:36:14	15:36:11	MLCO	B	P	128	SVNDY	43.4000	04/15/2009	15:31:27	MLCO	B	583	SVNDY	43.7500	\$32.00
5	04/17/2009	13:39:14	13:39:12	MLCO	B	P	150	MSIGY	13.0300	04/17/2009	12:44:50	MLCO	B	9,663	MSIGY	13.3900	\$10.50
										04/17/2009	13:01:51	MLCO	B	1,396	MSIGY	13.4000	n/a
6	05/01/2009	09:30:06	09:30:03	MLCO	B	P	100	RHHBY	31.5500	05/01/2009	08:44:24	MLCO	B	150	RHHBY	31.6200	\$5.00
7	06/10/2009	09:30:05	09:30:03	MLCO	B	P	131	RHHBY	33.1500	06/10/2009	08:03:12	MLCO	B	500	RHHBY	33.2500	\$1.00
8	06/19/2009	09:30:17	09:30:03	MLCO	B	P	134	KKPNY	13.1800	06/19/2009	08:03:02	MLCO	B	1,895	KKPNY	13.2000	\$2.68
																	\$77.98