

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20090202012-01**

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 (the "firm" or "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 Respondent alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A.** Respondent 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

The firm has no relevant disciplinary history.

SUMMARY

In matters 20090202012, 20100227207, and 20100255621, the Fixed Income Investigations Team of the Department of Market Regulation (the "staff") conducted a review of the firm's compliance with Municipal Securities Rulemaking Board ("MSRB") Rule G-30 in municipal bond transactions executed by the firm during the periods of January 1, 2009 through March 31, 2009, October 1, 2009 through December 31, 2009, and July 1, 2010 through September 30, 2010 (the "Municipal Bond Matters").

In matters 20090209438 and 20130374338, the staff conducted a review of the firm's compliance with best execution obligations in corporate bond transactions executed by the firm during the periods of January 1, 2009 through March 31, 2009, October 1, 2009 through December 31, 2009, July 1, 2010 through September 30, 2010, and April 1, 2011 through June 30, 2011 (the "Corporate Bond Best Execution Matters").

In matter 20090207495, the staff conducted a review of the firm's compliance with fair pricing obligations in corporate bond transactions executed by the firm during the period of April 1, 2009 through June 30, 2009 (the "Corporate Bond Fair Pricing Matter").

FACTS AND VIOLATIVE CONDUCT

In connection with the Municipal Bond Matters, the staff found that:

1. The firm, in 55 transactions, purchased municipal securities for its own account from a customer and/or sold municipal securities for its own account to a customer at an aggregate price (including any mark-down or mark-up) that was not fair and reasonable, taking into consideration all relevant factors, including the best judgment of the broker, dealer or municipal securities dealer as to the fair market value of the securities at the time of the transaction and of any securities exchanged or traded in connection with the transaction, the expense involved in effecting the transaction, the fact that the broker, dealer, or municipal securities dealer is entitled to a profit, and the total dollar amount of the transaction. The transactions are listed on the attached Exhibits A, B and C. The conduct described in this paragraph constitutes separate and distinct violations of MSRB Rules G-17 and G-30(a).

In connection with the Corporate Bond Best Execution Matters, the staff found that:

2. The firm, in 40 corporate bond transactions for or with a customer, failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions. The transactions are listed on the attached Exhibits D and E. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 2320 and FINRA Rule 2010.

In connection with the Corporate Bond Fair Pricing Matter, the staff found that:

3. The firm, in 12 corporate bond transactions, 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 listed on the attached Exhibit F. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 2010, and NASD Rules 2440, IM-2440-1 and IM-2440-2.

B. Respondent also consents to the imposition of the following sanctions:

A censure and a fine of \$565,000 (\$317,500 of which pertains to the violations of MSRB Rules G-17 and G-30(a)).

Restitution is ordered to be paid to the customer(s) related to the transactions listed on Exhibits A through F hereto in the amount of \$95,530.93,¹ 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 on behalf of the Respondent firm shall submit satisfactory proof of payment of the restitution, or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted to the COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850, either by letter that identifies the Respondent and case number, or by email from a work-related account of the registered principal of the firm to MarketRegulationComp@finra.org. This proof shall be provided to FINRA no later than 120 days after acceptance of this AWC.

If for any reason, Respondent cannot locate any customer related to the transactions listed on Exhibits A through F after reasonable and documented efforts within 120 days from the date the AWC is accepted, or such additional period agreed to by FINRA staff in writing, 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. Respondent shall provide satisfactory proof of such action to FINRA in the manner described above, within 14 days of forwarding the undistributed restitution and interest to the appropriate state authority.

The imposition of a restitution order or any other monetary sanction herein, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

Respondent 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.

Respondent 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.

¹ Respondent has paid remediation to relevant customers in the amount of \$90,841.10.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent 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, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, 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.

Respondent 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

Respondent 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 Respondent; 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. **Respondent 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. Respondent 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. Respondent 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.

February 25, 2016
Date

Respondent
Merrill Lynch, Pierce, Fenner & Smith Incorporated

By: Joaquin M. Sena

Name: JOAQUIN M. SENA

Title: ASSOCIATE GENERAL COUNSEL

Reviewed by:

Elizabeth H. Baird

Attorney Name: Elizabeth H. Baird
Counsel for Respondent
Firm Name: Morgan, Lewis & Bockius LLP
Address: 2020 K Street, NW
City/State/Zip: Washington, DC 20006
Phone Number: 202-373-6561

Accepted by FINRA:

3/24/16
Date

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

Robert A. Marchman / TEG
Robert A. Marchman
Executive Vice President and Counsel
FINRA Department of Market Regulation

Merrill Lynch, Pierce, Fenner and Smith, Inc. ("MLCO")
FINRA Matter #200902022012
Exhibit A

Item No.	Date	CUSIP ID	Firm	Quantity	Contra*	Trade Time	Trade Price	Restitution Paid	Restitution Owed
2	02/04/2009	047870DK3	MLCO	25,000	C (B)	14:16:19	83.200	\$ 431.00	\$0.00
3	02/27/2009	07202AAQ1	MLCO	40,000	C (S)	15:58:18	95.984	\$ 2,006.40	\$0.00
4	03/23/2009	091089KH4	MLCO	40,000	C (B)	15:17:44	83.000	\$ 6,792.00	\$0.00
5	03/23/2009	091089KH4	MLCO	40,000	C (B)	15:18:19	83.000	\$ 6,292.80	\$499.20
6	2/20/2009	106214FP9	MLCO	50,000	C (S)	13:27:46	84.630	\$ 2,497.50	\$0.00
8	1/26/2009	13062N6F9	MLCO	25,000	C (S)	17:30:17	90.620	\$ 345.00	\$0.00
9	01/22/2009	13063A2X1	MLCO	30,000	C (S)	14:44:16	93.462	\$ 1,062.00	\$342.63
10	1/8/2009	13063AR55	MLCO	25,000	C (S)	13:51:48	87.870	\$ 782.50	\$0.00
11	2/18/2009	13067JBD2	MLCO	50,000	C (S)	15:31:00	95.880	\$ 2,810.00	\$0.00
17	01/06/2009	341080AS8	MLCO	10,000	C (B)	13:45:49	86.000	\$ 300.00	\$619.50
18	01/07/2009	341080AS8	MLCO	10,000	C (B)	17:21:12	85.500	\$ 250.00	\$619.50
19	01/07/2009	341080AS8	MLCO	10,000	C (B)	14:25:03	86.000	\$ 300.00	\$619.50
20	01/07/2009	341080AS8	MLCO	30,000	C (B)	11:33:21	86.000	\$ 900.00	\$1,858.51
21	01/20/2009	403715CK9	MLCO	55,000	C (B)	15:36:29	113.058	\$0.00	\$1,203.98
24	02/04/2009	546456AY0	MLCO	50,000	C (B)	10:59:27	103.500	\$ 1,111.50	\$0.00
25	2/20/2009	56036YAY1	MLCO	20,000	C (S)	16:07:47	83.700	\$ 1,660.00	\$0.00
26	01/22/2009	574217W92	MLCO	35,000	C (S)	13:26:24	92.259	\$ 2,271.50	\$0.00
27	01/22/2009	574217W92	MLCO	50,000	C (S)	13:26:24	92.259	\$ 3,245.00	\$0.00
28	01/08/2009	576000FF5	MLCO	30,000	C (B)	10:54:41	97.993	\$ 672.00	\$0.00
31	1/21/2009	576000FF5	MLCO	50,000	C (B)	10:37:38	100.000	\$ 1,750.00	\$0.00
32	1/21/2009	576000FF5	MLCO	50,000	C (B)	11:09:39	100.000	\$ 1,750.00	\$0.00
33	1/21/2009	576000FF5	MLCO	50,000	C (B)	12:08:36	100.000	\$ 1,750.00	\$0.00
36	1/21/2009	576000FF5	MLCO	100,000	C (B)	12:12:21	100.000	\$ 3,500.00	\$0.00
37	1/22/2009	576000FF5	MLCO	130,000	C (B)	8:21:44	100.000	\$ 4,550.00	\$0.00
39	1/16/2009	576000FF5	MLCO	100,000	C (B)	11:45:11	100.119	\$ 2,249.00	\$2,627.50
40	01/16/2009	576000FF5	MLCO	50,000	C (B)	11:47:58	99.119	\$ 625.00	\$1,313.75
43	01/16/2009	59333FFY1	MLCO	55,000	C (S)	11:37:55	91.836	\$0.00	\$2,363.90
44	1/12/2009	641480EP9	MLCO	25,000	C (B)	12:40:37	112.070	\$ 1,520.00	\$0.00
45	02/20/2009	64579FPJ6	MLCO	25,000	C (S)	14:39:58	62.459	\$ 885.00	\$0.00
49	03/05/2009	66285WAT3	MLCO	10,000	C (S)	14:23:13	89.500	\$ 175.00	\$358.26
50	03/11/2009	73358TQM6	MLCO	25,000	C (S)	14:54:45	70.856	\$ 1,160.00	\$0.00
								\$53,643.20	\$12,426.23

* 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; C (B) indicates a customer buying from the firm

Merrill Lynch, Pierce, Fenner and Smith, Inc. ("MLCO")

FINRA Matter #20100227207

Exhibit B

Item No.	Date	Cusip Id	Quantity	Firm	Contra	Trade Time	Trade Price	Restitution Paid	Restitution Owed
1	10/13/2009	059151BB5	100,000	MLCO	C (S)	12:02:21	91.112	\$5,888.00	\$0.00
2	12/29/2009	121342KS7	50,000	MLCO	C (B)	14:35:43	99.632	\$1,066.00	\$0.00
7	10/5/2009	402175KF9	100,000	MLCO	C (B)	9:50:30	94.866	\$3,961.00	\$1,940.60
10	10/22/2009	544646DR0	30,000	MLCO	C (S)	13:48:42	91.793	\$662.10	\$0.00
13	10/7/2009	574300GB9	50,000	MLCO	C (B)	11:44:36	105.326	\$663.00	\$0.00
14	10/7/2009	574300GB9	35,000	MLCO	C (B)	13:48:08	105.326	\$464.10	\$0.00
15	10/7/2009	574300GB9	35,000	MLCO	C (B)	13:48:55	105.326	\$464.10	\$0.00
16	10/29/2009	576018CX1	55,000	MLCO	C (S)	12:49:32	90.85	\$3,657.50	\$0.00
19	10/8/2009	592650MQ5	70,000	MLCO	C (S)	14:39:53	94.423	\$2,153.90	\$0.00
21	11/24/2009	59333PHR2	50,000	MLCO	C (B)	13:26:09	90.25	\$995.50	\$0.00
22	12/1/2009	59333PHR2	10,000	MLCO	C (B)	11:30:54	91.25	\$199.10	\$0.00
25	10/1/2009	861402DH5	25,000	MLCO	C (B)	15:52:16	98.095	\$788.75	\$0.00
26	10/5/2009	861402DH5	50,000	MLCO	C (B)	14:01:00	98.089	\$1,574.50	\$0.00
								\$22,537.55	\$1,940.60

*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

Merrill Lynch, Pierce, Fenner and Smith, Inc. ("MLCO")

FINRA Matter #20100255621

Exhibit C

Item #	Date	Trade Time	CUSIP	Amount	Contra 1*	Firm	Trade Price	Restitution Paid	Restitution Owed
2	07/08/2010	18:15:09	59259RUX0	45,000	C (S)	MLCO	93.09	\$1,535.85	\$0.00
3	08/19/2010	13:45:08	13063BAS1	200,000	C (B)	MLCO	109.50	\$1,000.00	\$0.00
4	08/19/2010	15:12:28	13063BAS1	70,000	C (B)	MLCO	110.00	\$1,050.00	\$0.00
5	08/30/2010	9:33:37	65820HG31	75,000	C (B)	MLCO	106.28	\$3,177.00	\$0.00
6	09/02/2010	15:55:28	745220FQ1	50,000	C (B)	MLCO	111.04	\$1,020.50	\$0.00
7	09/14/2010	15:26:28	745190ZN1	25,000	C (B)	MLCO	108.25	\$686.25	\$0.00
8	09/15/2010	8:43:20	724799BD2	75,000	C (B)	MLCO	103.61	\$2,331.75	\$0.00
9	09/15/2010	8:41:38	724799BD2	10,000	C (B)	MLCO	103.61	\$310.90	\$0.00
10	09/15/2010	8:47:06	724799BD2	50,000	C (B)	MLCO	103.61	\$1,564.50	\$0.00
11	09/16/2010	11:12:05	944514CD8	30,000	C (S)	MLCO	88.64	\$1,758.30	\$0.00
12	09/23/2010	13:53:35	047870CZ1	10,000	C (S)	MLCO	96.65	\$235.30	\$0.00
								\$14,660.35	\$0.00

* 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; C (B) indicates a customer buying from the firm

Merrill Lynch, Pierce, Fenner and Smith, Inc. ("MLCO")

FINRA Matter #20090209438

Exhibit D

Item	8210 #	Date	Cusip Id	Issue	Firm	Quantity	Contra	Trade Time	Trade Price	Restitution Owed
1	1	03/02/2009	172967BW0	C.HBO	MLCO	20	C (B)	14:22:27	68.3	\$400.00
3	3	03/16/2009	460146BU6	IP.JG	MLCO	20	C (S)	15:08:07	47.83	\$4,595.00
4	5	03/16/2009	758940AF7	RGBK.GC	MLCO	28	C (S)	10:48:58	83.902	\$2,575.44
5	8	03/13/2009	060505BD5	BAC.GBY	MLCO	25	C (S)	14:35:24	65.673	\$1,224.45
6	9	02/05/2009	066048AA7	BAC.OP	MLCO	10	C (S)	16:25:26	61.655	\$1,037.50
7	10	02/19/2009	035229CT8	BUD.HE	MLCO	13	C (B)	10:34:36	92.399	\$1,138.67
8	11	03/23/2009	172967BW0	C.HBO	MLCO	12	C (S)	13:47:41	55.542	\$626.16
9	13	03/10/2009	40429CCR1	HBC.KX	MLCO	23	C (B)	15:01:27	82.793	\$728.93
10	14	03/13/2009	40429CCR1	HBC.KX	MLCO	150	C (B)	13:13:32	83.507	\$5,824.88
11	15	03/09/2009	36966R2V7	GE.HHI	MLCO	5	C (S)	10:47:14	66.123	\$393.35
12	17	01/05/2009	87425EAK9	TLM.GF	MLCO	70	C (B)	12:40:17	81.816	\$7,921.20
										\$26,465.58

* 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; C (B) indicates a customer buying from the firm

Merrill Lynch, Pierce, Fenner and Smith, Inc. ("MLCO")
FINRA Matter #20090207495
Exhibit F

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* 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.