

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20090203563**

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

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

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Merrill Lynch, Pierce, Fenner & Smith, Incorporated ("Merrill Lynch" 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 Merrill Lynch alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Merrill 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 member of FINRA and the New York Stock Exchange ("NYSE") since January 1937 and November 1982 respectively, and has its principal place of business in New York, NY. The Firm is a global investment banking and multi-service brokerage firm that, among other things, provides retail brokerage, corporate and investment banking services, wealth management and commercial lending. As of January 2012, it maintained more than 1,800 branch offices and employed more than 15,000 registered individuals. In January 2009, Merrill Lynch's parent company, Merrill Lynch & Co., was acquired by Bank of America Corporation through merger with a wholly-owned subsidiary of Bank of America (the "Acquisition")¹. In October 2009, Banc of America Investment Services, Inc. was consolidated into the Firm. As of November 2011, the Firm had a net capital of approximately of \$11 billion and an excess net capital in excess of \$10 billion.

¹ As a result of the merger, all of the direct and indirect subsidiaries of Merrill Lynch & Co., including Merrill Lynch are indirect subsidiaries of Bank of America.

RELEVANT DISCIPLINARY HISTORY

The Firm's relevant disciplinary history is as follows:

In NYSE Hearing Panel Decision ("HPD") 00-109 (June 29, 2000), without admitting or denying them, the Firm consented to findings that it violated certain provisions of the Securities Exchange Act of 1934 (the "Exchange Act") and NYSE Rules, including (1) Rule 15c3-1 of the Exchange Act (net capital) (2) NYSE Rule 345.17 by failing to file or promptly file certain Forms U-5; (3) NYSE Rule 351(a) by failing to report certain matters to the Exchange as required; (4) NYSE Rule 345.12 by failing to file or file promptly certain Forms U-4; (5) NYSE Rule 346(f) by having certain persons associated with it who were subject to statutory disqualification; (6) NYSE Rule 351(a)(9) by failing to promptly report its association with persons subject to statutory disqualification; (7) NYSE Rule 351(d) for failing to report as required certain statistical information regarding customer complaints; and (7) NYSE Rule 342 by failing to provide for, establish and maintain adequate procedures and controls regarding the foregoing. The Firm consented to a censure, a \$250,000 fine and an undertaking to perform a review of its systems and procedures in the area of reporting of events to the NYSE, and to prepare a report that reflects the enhancements made to those systems and procedures.

In HPD 05-87 (July 21, 2005), without admitting or denying them, the Firm consented to findings that it violated, among other things: (1) NYSE Rule 345 by (i) permitting certain employees not registered with the Exchange to perform duties requiring registration, (ii) failing to file and/or file promptly Forms U-4 with the Exchange, and (iii) failing to update certain changes of address on Forms U-4; (2) NYSE Rule 351(a) by failing to report and/or promptly report certain reportable matters as required; (3) NYSE Rule 351(d) by failing to report, timely report and/or accurately report statistical information regarding customer complaints; and (4) NYSE Rule 342(a) and (b) in that the Firm failed to reasonably discharge its duties and obligations in connection with supervision and control including maintaining a separate system of follow-up and review with respect to the items enumerated above. The Firm also consented to findings that it engaged in conduct inconsistent with just and equitable principles of trade in that the Firm failed to fully comply with an undertaking in connection with earlier HPD 00-109 as described above. The Firm consented to a censure, a \$10 million fine and an undertaking. The fine also related to prospectus delivery and other failures.

The undertaking required the Firm to retain an independent consultant to conduct a review of Respondent's policies, procedures and supervisory systems relating to compliance with NYSE Rules 351(a) and 351(d). The undertaking also required the Firm to adopt and implement any and all policies, procedures and supervisory systems recommended by the independent consultant.

In connection with **FINRA Matter No. 20080154031-02**, dated October 2010, without admitting or denying them, the Firm consented to findings that it violated: (1) NYSE Rule 351(d) by filing an inaccurate 351(d) report regarding one customer complaint; (2) NYSE Rule 351(a) by failing to timely file a Form RE-3 on one customer complaint; and NASD Rule 2110 for failing to

comply with Article V, Section 3(b) of NASD's By-Laws for failing to timely report a customer complaint on a Form U-5. Merrill Lynch consented to a censure and a \$75,000 fine.

OVERVIEW

From in or about 2005 to August 2011 the Firm failed to make or timely make approximately 1,200 required filings or acknowledgments of customer complaints, certain arbitrations and civil litigations and related Forms U-4 and Forms U-5.

In November 2009, Merrill self-reported to FINRA that it had experienced a backlog in researching and resolving approximately 1,500 customer complaints most of which were received by the Firm between 2005 and 2009 (the "Backlog Complaints"). A review of the Backlog Complaints and of additional customer complaints received by Merrill Lynch from January 2010 through August 2011 (the "Post Backlog Complaints") disclosed that from at least 2007 through 2011, Merrill Lynch failed to file and/or timely file with the NYSE and/or the NASD/FINRA in excess of 650 required reports with respect to: (a) customer complaints involving allegations of theft or misappropriation of funds or securities, or forgery; (b) customer claims for damages settled for an amount exceeding \$15,000 against Firm employees or \$25,000 against the Firm; (c) quarterly reports of customer complaints; and (d) related Forms U-4 and Forms U-5. Merrill Lynch further failed to acknowledge and/or timely acknowledge to customers the receipt of nearly 300 customer complaints. For the above-referenced categories, the Firm failed to make or timely make the required filing between 23% and 63 % of the time. FINRA uses the information provided in these reports to identify and initiate investigations of firms, offices and associated persons that may pose a risk, and for the timely identification of other regulatory matters in line with the goal of enhancing risk-based approaches to regulation, investor protection and market integrity.

From July 2007 through September 2010 Merrill Lynch also violated NASD Rule 3070(f) by failing to file or timely file copies of approximately 300 non-NASD/FINRA arbitrations and civil and criminal complaints that it received. In those cases where they were required, the Firm also failed to file or timely file related Forms U-4 and Forms U-5 between 28% and 79% of the time. During two distinct time periods – from July 1, 2007 through June 11, 2009 and again from October 24, 2009 through February 22, 2010, the Firm failed to make 100% of required NASD Rule 3070(f) filings.

As evidenced by the foregoing, during the period from at least 2005 through December 31, 2010, the Firm failed to establish and implement supervisory systems and procedures to adequately review, monitor and ensure compliance with its obligations to timely file required reports and timely acknowledge customer complaints. Following the January 1, 2009 merger and subsequent consolidations of broker dealers in 2009 and 2010 as described above, the Firm restructured and enhanced its policies and procedures relative to customer complaint reporting.

The Firm's failures may have concealed significant risks and potential investor harm.

FACTS AND VIOLATIVE CONDUCT

The Backlog Complaints

The Firm detected the approximately 1,524 Backlog Complaints in 2009 when various departments of the Firm and Bank of America Investment Services began to be consolidated into a combined Compliance Department following the Acquisition. The Firm failed to comply and/or timely comply with its obligation to make certain required, filings and acknowledgements relative to the Backlog Complaints as detailed below.

The Firm's Reporting/Acknowledgement Obligations Relative to Customer Complaints

NYSE Rule 351

***NYSE Rule 351(a)*²**

NYSE Rule 351 required that each member organization promptly report certain information, as enumerated under subsection (a) of the Rule, to the Exchange. The term "promptly" as used in this rule has been interpreted to mean within 30 calendar days of when the Firm knew or should have known of the reportable event. The following events require reporting under the identified subsection of NYSE Rule 351(a) when any member or registered or non-registered employee of such member:

(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 against an employee or exceeding \$25,000 against the member firm.

NASD Rule 2110 and FINRA Rule 2010³ provide that "[a] member in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." Violations of federal securities laws and NASD/FINRA rules, are viewed as violations of Rule 2110 because members of the securities industry are expected and required to abide by the applicable rules and regulations.

² At all times relevant to this matter, the reporting requirements of NYSE Rule 351(a) and (d) are substantially similar to the reporting requirements set forth in NASD Rule 3070(a) and (c). NASD Rule 3070(e) exempts from the reporting requirements of NASD Rule 3070 (a) and (c) any member subject to substantially similar reporting requirements of another self-regulatory organization of which it is a member. The Firm was at all times relevant to this inquiry, dually registered with the NASD/FINRA and the NYSE. Consequently, the Firm made its filings pursuant to NYSE Rule 351. Pursuant to the merger of NASD and NYSE regulatory operations into FINRA, this rule was incorporated into FINRA's rulebook and became FINRA Incorporated NYSE Rule 351.

³ FINRA Rule 2010 superseded NASD Rule 2110 and became effective on December 15, 2008.

Here, of the 1,524 Backlog Complaints, 77 customer complaints required the Firm to file a report pursuant to NYSE Rule 351(a)(2) or (a)(8). The Firm's violative filings or lack of filings were as follows:

- Required filings for 35 of the 77 Backlog Complaints were never made;
- Required filings for 14 of the 77 Backlog Complaints were made late;

In total, these 49 missed or untimely NYSE Rule 351(a) filings account for 63% of Backlog Complaints that required reporting. Most of the late filings were at least six months late and as much as one year late.

The Firm's failures relative to NYSE Rule 351(a) filings continued after the period of the Backlog Complaints. A review of customer complaints received by the Firm from January 1, 2010 through August 31, 2011 (the "Post Backlog Period") disclosed that of 172 Post Backlog Complaints requiring a NYSE Rule 351(a) filing, 26 filings were never made and 10 filings were not timely made. These 36 missed or untimely NYSE Rule 351(a) filings account for 20% of the Post Backlog Complaints that required reporting. Most untimely filings were less than 90 days late.

Based on the foregoing, the Firm violated NYSE Rule 351(a), FINRA Incorporated NYSE Rule 351(a), NASD Rule 2110 and FINRA Rule 2010.

NYSE Rule 351(d)

NYSE Rule 351(d) required each member firm to report to the NYSE on a quarterly basis statistical information regarding customer complaints relating to such matters as may be specified by the NYSE. Prior to November 11, 2008, the requirement extended to both oral and written complaints. After November 11, 2008 only written complaints were subject to 351(d) quarterly reporting requirements. Here, of the 1,524 Backlog Complaints, 1,157 were required to be included in the Firm's quarterly filings made pursuant to NYSE Rule 351(d). The Firm's violative filings or lack of filings were as follows:

- 26 of 1,157 Backlog Complaints were never included in the Firm's quarterly filings;
- 248 of the 1,157 Backlog Complaints were not timely included in the Firm's quarterly filings.

In total, the Firm failed to make and/or timely make required NYSE Rule 351(d) filings for 23% of Backlog Complaints requiring reporting. Most of the untimely filings were 90 days late or less.

Based on the foregoing, the Firm violated NYSE Rule 351(d), FINRA Incorporated NYSE Rule 351(d), NASD Rule 2110 and FINRA Rule 2010.

NYSE Rule 401A⁴

NYSE Rule 401A(a)(1) requires member firms to acknowledge to the customer every complaint they receive that is subject to the reporting requirements of NYSE Rule 351(d) within 15 business days of receipt⁵.

Here, of the 1,524 Backlog Complaints, 1,085 required the Firm to acknowledge the customers' complaint within 15 days of receipt. The Firm's violative acknowledgements or lack of acknowledgements were as follows:

- Required acknowledgements for 163 of the 1,085 Backlog Complaints were never made;
- Required acknowledgements for 117 of the 1,085 Backlog Complaints were made late;

In total, the Firm failed to acknowledge or timely acknowledge 25% of the Backlog Complaints requiring an acknowledgement. Most of the untimely acknowledgements were 90 days late or less.

Based on the foregoing, the Firm violated NYSE Rule 401A, FINRA Incorporated NYSE Rule 401A, NASD Rule 2110 and FINRA Rule 2010.

Forms U-4

Article V, Section 2(a) of FINRA's By-Laws⁶ provides that applications by any person for registration with FINRA shall be made by a process established by FINRA on a prescribed form signed by the applicant. Article V, Section 2(c) further generally provides that every application for registration filed with FINRA shall be kept current at all times by supplementary amendments that must be filed within 30 days after learning of the facts or circumstances giving rise to the amendment. Documents filed pursuant to this section of the By-Laws are entitled Uniform Application for Securities Industry Registration or Transfer and generally referred to as Forms U-4. Among items that must be reported on Forms U-4 are various types of consumer initiated complaints and consumer initiated arbitrations or civil litigations naming a registered person as a respondent or defendant and alleging sales practice violations which are pending, resulted in a judgment or were settled for \$10,000 or more.⁷

⁴ Pursuant to the merger of NASD and NYSE regulatory operations into FINRA, this rule was incorporated into FINRA's rulebook and became FINRA Incorporated NYSE Rule 401A.

⁵ Written complaints must be acknowledged in writing. Verbal complaints may be acknowledged in writing or verbally but verbal acknowledgements must be recorded in a log of verbal acknowledgements and maintained at the Firm.

⁶ The FINRA By-Laws superseded the NASD By-Laws and took effect on or about July 30, 2007 following the merger of NASD and NYSE regulatory operations into FINRA. The requirements relevant to the filings of Forms U-4 and Forms U-5 were not changed.

⁷ Effective May 2009, a Form U-4 report is required when, among other things, any such arbitrations or civil litigations are settled on or after May 18, 2009 for an amount of \$15,000 or more; or when a registered person is the "subject" as opposed to a named respondent or defendant of the arbitration or civil litigation which settles for

Here, of the 1,524 Backlog Complaints, 310 customer complaints required the Firm to file a Form U-4. The Firm's violative filings or lack of filings were as follows:

- 12 of the 310 required Form U-4 filings were never made;
- 80 of the 310 required Form U-4 filings were made late;

In total, the Firm failed to make and/or timely make approximately 29% of the required Form U-4 filings with respect to the Backlog Complaints. About one-half of the untimely Forms U-4 were filed more than 90 days late.

Based on the foregoing, the Firm violated Article V, Section 2(a) and 2(c) of the NASD's and FINRA's By-Laws, NASD Rule 2110 and FINRA Rule 2010.

Forms U-5

Article V, Section 3(a) of FINRA's By-Laws requires a member firm to give notice of the termination of a registered person's association with the member firm no later than 30 days after such termination. Documents filed pursuant to this section of the By-Laws are entitled Uniform Termination Notice for Securities Industry Registration and generally referred to as Forms U-5. Article V, Section 3(b) of FINRA's By-Laws provides that, in the event a member learns of facts or circumstances causing any information set forth in a termination notice filed with FINRA to become inaccurate or incomplete, the member must notify FINRA, within 30 days thereafter, of those facts or circumstances by means of an amendment to the termination notice.

Here, of the 1,524 Backlog Complaints, the Firm was required to file a Form U-5 in 162 instances. However, 45 of 162 required filings were made late. In total, the Firm failed to timely make 27% of the 162 required Form U-5 filings for the Backlog Complaints. Nearly two-thirds of the untimely Forms U-5 were filed more than 90 days late.

During the Post Backlog Period, 344 customer complaints required the filing of a Form U-5. Of these, the Firm failed to make or timely make 35 filings or approximately 10% of required Form U-5 filings for the Post Backlog Complaints. About one-third of the untimely Forms U-5 were more than 90 days late.

Based on the foregoing, the Firm violated Article V, Section 3(a) of the NASD's and FINRA's By-Laws, NASD Rule 2110 and FINRA Rule 2010.

Failure to File Copies of Non-NASD/FINRA Arbitrations and Civil and Criminal Complaints

The Firm failed to file copies of all non-NASD/FINRA arbitrations and civil and criminal complaints received during the two-year period from July 1, 2007 through June 11, 2009 and for the four-month period from October 24, 2009 through February 22, 2010. As with the Backlog

\$15,000 or more; or when there is an arbitration award or civil judgment rendered against "any" named respondent or defendant regardless of the amount.

Complaint, the Firm detected the problem when various departments of the Firm and Bank of America Investment Services began consolidation pursuant to the Acquisition.

NASD Rule 3070(f)

During all times relevant to this matter, NASD Rule 3070(f) required firms to file copies of certain criminal and civil complaints and arbitration claims with NASD/FINRA, including copies of any securities or commodities related private civil complaint or arbitration claim filed against the firm in any forum other than FINRA Dispute Resolution.

The Firm did not make any NASD Rule 3070(f) filings during two distinct periods - July 1, 2007 through June 11, 2009 ("First 3070(f) Period") and October 24, 2009 through February 22, 2010 ("Second 3070(f) Period") – together, spanning nearly two and one-half years. During these two periods, approximately 214 events required an NASD Rule 3070(f) filing. Accordingly, the Firm failed to make 100% of required NASD Rule 3070(f) filings during the referenced periods.

The Firm also experienced NASD Rule 3070(f) reporting failures during the time between the First and Second 3070(f) Periods and for a span of approximately six months after the Second 3070(f) Period until September 2010 (collectively, the "Test 3070(f) Period").

Here, 80 arbitrations and/or civil litigations (collectively, "Litigations") received by the Firm during the Test 3070(f) Period required an NASD Rule 3070(f) filing. However, the Firm failed to file the required documents for four of the 80 Litigations and made late filings for an additional 14 Litigations.

In total, the Firm failed to make and/or timely make required NASD Rule 3070(f) filings for 23% of the Litigations requiring reporting.

Based on the foregoing, the Firm violated NASD Rule 3070(f), NASD Rule 2110 and FINRA Rule 2010.

In addition, during the period from July 1, 2007 through September 10, 2010, the Firm did not file or timely file Forms U-4 and Forms U-5 related to the arbitrations and civil litigations that were the subject NASD Rule 3070(f) filings. The Firm's violations were as follows:

Forms U-4

Of the 294 required NASD Rule 3070(f) filings, 53 also required the Firm to file a Form U-4.

- Required Form U-4 filings for 9 of the 53 required NASD Rule 3070(f) filings were never made;
- Required Form U-4 filings for 6 of the 53 required NASD Rule 3070(f) filings were made late.

In total, the Firm did not make and/or timely make Form U-4 filings for 28% of arbitrations and civil litigations requiring reporting.

Based on the foregoing, the Firm violated Article V, Section 2(a) of the NASD's and FINRA's By-Laws, NASD Rule 2110 and FINRA Rule 2010.

Form U-5

With respect to the 294 arbitrations and civil litigations requiring NASD Rule 3070(f) filings, 94 also required the Firm to file a Form U-5.

- 36 of these required Form U-5 filings were never made;
- 21 of these 94 required Form U-5 filings were made late.

In total, the Firm failed to make and/or timely make Form U-5 filings for 60% of Litigations requiring reporting.

Based on the foregoing, the Firm violated Article V, Section 3(b) of the NASD's and FINRA's By-Laws, NASD Rule 2110 and FINRA Rule 2010.

Supervisory Violations

NASD Rule 3010 requires members to, among other things, "establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules. Final responsibility for supervision shall rest with the member." The rule further provides that "[e]ach member shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of the registered representatives, registered principals, and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable rules of NASD."

While the Firm had in place Written Supervisory Policies and Procedures ("WSP") that were reasonably designed to prevent and detect violations of NYSE Rules 351(a) and (d), NASD Rule 3070(f) and the NASD/FINRA By-Laws during times relevant to this matter, the Firm failed to put in place an adequate supervisory system to implement and enforce those WSPs. From at least July 1, 2007 through at least October 2009, the Firm's Office of General Counsel, specifically its Intake Group ("Intake"), was responsible for initial handling all customer complaints, including inputting complaints into the Firm's complaint tracking system. Complaints were then distributed to one of three different subgroups depending on the nature of the complaint. These subgroups were generally charged with verifying Intake's initial reporting determinations, making appropriate entries in the complaint tracking system and assisting with reviewing and responding to the allegations. Intake was also responsible for reviewing non-FINRA arbitrations and civil litigations against registered persons received by the Firm. During the referenced periods, personnel of the Intake group were not adequately trained and/or supervised in performing certain assigned functions with respect to customer complaint reporting and tracking.

As evidenced by the violations described above, the Firm's complaint tracking system, by which customer complaints and filing determinations were to be monitored, was ineffective as it failed to identify the high volume of customer complaints that were not being acknowledged or reported as required. Similarly, the Firm's procedures for making its quarterly reports were defective because they failed to include in its quarterly filings customer complaints that were reported before the end of the quarter but not entered in the pertinent data base until after 351(d) reporting information had been retrieved. With respect to its 3070(f) filings the Firm's procedures broke down due to human error and the repeated failure of the Firm to identify the failures and make the required filings. The failure to make required 3070(f) filings was not detected by the Firm's systems or responsible supervisors for a continuous period of nearly two years. Moreover, no one department of the Firm was monitoring for compliance with the above-referenced reporting and filing rules.

The Firm's failures are highlighted by the extended periods – over three years in some cases – during which the Firm failed to process, research and make timely filings related to customer complaints as well as the extended periods – at least two years - during which the Firm failed to make any NASD Rule 3070(f) filings. Moreover, in the case of the NASD Rule 3070(f) filings, the Firm briefly corrected the problem, and then experienced a second period of four months during which no required 3070(f) filings were made.

These facts demonstrate a significant failure in the supervision of the reporting processes as described above. Had the process been properly monitored and reviewed, the issues would have been identified and corrected soon after the problems occurred.

The timely filing of these reports serves a significant regulatory purpose. Specifically, they assist the relevant regulatory entity in identifying and investigating instances of possible investor harm or other regulatory concerns. The Firm's failures may have concealed significant risks and potential investor harm.

Based on the foregoing, the Firm violated NASD/FINRA Rule 3010, NASD Rule 2110 and FINRA Rule 2010.

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

- a. A censure; and
- b. A fine in the amount of \$500,000.

Merrill Lynch agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. Merrill has submitted an Election of Payment form showing the method by which it propose to pay the fine imposed.

Merrill Lynch 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

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 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, 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

Merrill Lynch 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 it; 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 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 they have 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 the Firm to submit it.

July 26, 2012
Date

Joaquin M. Sena
Merrill Lynch, Pierce, Fenner & Smith Incorporated
By: Joaquin M. Sena
Associate General Counsel and
Senior Vice President

Reviewed by:

Matthew C. Cyg
Matthew Applebaum, Esq.
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Bingham McCutchen LLP
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Accepted by FINRA:

9/21/12
Date

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

Susan Light (by R.C.)
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