

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2010022652202**

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

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

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

I.

ACCEPTANCE AND CONSENT

- A. Merrill Lynch 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 is a FINRA member and has been such since January 26, 1937.¹ It is a full-service broker-dealer with its principal offices located in New York, New York. Merrill Lynch employs over 31,000 registered individuals and maintains over 1,200 branch offices.

RELEVANT DISCIPLINARY HISTORY

In October 2011, Merrill Lynch was censured and fined \$1 million by FINRA for its supervisory failures stemming from the firm's failure to have in place an adequate supervisory system to ensure that all employee and employee-interested accounts were monitored and reviewed for potential misconduct.

In July 2011, Merrill Lynch was censured and fined \$400,000 by FINRA for failing to adequately enforce the Firm's third party check acceptance procedures.

¹ In January 2009, Merrill Lynch was acquired by Bank of America Corporation.

OVERVIEW

During the period from September 2008 through March 2010 (the relevant period), Merrill Lynch failed to establish, maintain and enforce a supervisory system that was reasonably designed to adequately review and monitor the transmittals of funds from the accounts of customers to third party accounts, in violation of NASD Conduct Rules 3010, 3012(a)(2)(B)(i) and 2110 (from September 2008 through December 14, 2008), and FINRA Rule 2010 (from December 15, 2008 through March 2010). Specifically, Merrill Lynch's supervisory system failed to monitor for the disbursement of funds from multiple customers' accounts to common outside bank accounts.

FACTS AND VIOLATIVE CONDUCT

NASD Conduct Rule 3012 requires firms to, among other things, establish, maintain, and enforce written supervisory control policies and procedures which address a variety of activities. Among other things, firms must test and verify that their supervisory procedures are sufficient and amend or create additional supervisory procedures when needed, based on such testing and verification.

NASD Conduct Rule 3012(a)(2)(B)(i) provides that a member shall have procedures that are reasonably designed to review and monitor all transmittals of funds or securities from the accounts of customers to third party accounts and outside entities (including banks).

During the relevant period, registered representative James Lanier converted approximately \$887,931 from 13 customers by: (1) initiating approximately 45 wires out of their accounts to bank accounts that he apparently controlled; and (2) having five checks disbursed to bank accounts that he also apparently controlled.¹ The disbursements ranged in size from \$1,200 to \$102,000. Firm records reflect that 41 of the wire transfers were disbursed from 13 different customers' accounts, and while the name of the receiving account listed on the wire instruction matched the customer's name, the destination account number on the instructions was one of two bank accounts that Lanier apparently controlled. Similarly, in three instances, appropriately marked third party wires were disbursed from three different customers' accounts to a third party bank account that Lanier apparently controlled.

Merrill Lynch's supervisory control system in this area failed to include a policy or procedure requiring a review to detect or prevent multiple transmittals of funds from multiple customers going to the same third party accounts. The Firm's system also failed to include exception reports that would have identified multiple

¹ On July 14, 2011, Lanier was barred from associating with any FINRA firm in any capacity. Additionally, Merrill Lynch has repaid each of the affected customers.

customer wires going to the same third party account. Consequently, Merrill Lynch failed to detect that Lanier had initiated fund transfers, totaling approximately \$887,931, out of 13 customer accounts, to bank accounts that he apparently controlled.

Based on the above, during the relevant period, Merrill Lynch failed to establish, maintain and enforce a supervisory system that was reasonably designed to adequately review and monitor the transmittals of funds from the accounts of customers to third party accounts and outside entities, as required by NASD Conduct Rule 3012(a)(2)(B)(i). Consequently, Merrill Lynch violated NASD Conduct Rules 3010, 3012(a)(2)(B)(i) and 2110 (from September 2008 through December 14, 2008), and FINRA Rule 2010 (from December 15, 2008 through March 2010).

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

A censure and a \$450,000 fine.

Merrill Lynch agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Merrill Lynch has submitted an Election of Payment form showing the method by which it proposes 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 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 it;
- 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:

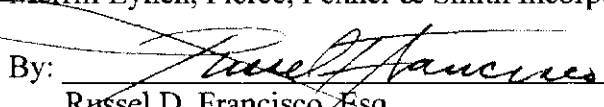
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; 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 it;
 - 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. 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 its 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.

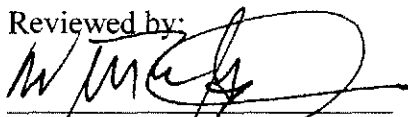
The undersigned, on behalf of Merrill Lynch, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that Merrill Lynch has agreed to its provisions voluntarily; and that no 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.

Merrill Lynch, Pierce, Fenner & Smith Incorporated

By: 

Russel D. Francisco, Esq.
Assistant General Counsel

7/11/12
Date

Reviewed by: 

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Counsel for Respondent

Accepted by FINRA:

August 3, 2012
Date

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

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