

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20100226911-01**

FINRA

2014 DEC 10 PM 12:1

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 ("MLCO" 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 on January 26, 1937, and its registration remains in effect. The firm has no relevant disciplinary history.

SUMMARY

In 20100226911, the staff of FINRA's Fixed Income Investigations Section of the Market Regulation Department reviewed certain customer transactions in Senior Notes issued by the Motors Liquidation Company ("MLC Notes")¹ executed by the firm's Global Banking & Markets Credit Trading Desk (the "Credit Desk")² between July 1, 2009

¹ Formerly the General Motors Corporation.

² During the review period, the Credit Desk primarily executed fixed-income securities transactions with its institutional customers. The Credit Desk, however, also executed transactions in certain preferred securities, notes and hybrid securities with its retail customers.

through June 30, 2011 (the “review period”). As a result of the review, the staff of Fixed Income Investigations and the Legal Section of the Market Regulation Department determined that: 1) in 716 instances the firm purchased MLC Notes from its customers at an unfair price; and 2) the firm’s supervisory system with respect to the pricing of retail customer transactions executed on the Credit Desk was deficient.

FACTS AND VIOLATIVE CONDUCT

Fair Pricing Violations

The MLC Notes were originally issued by the General Motors Corporation and listed on the New York Stock Exchange. On or about June 1, 2009, the General Motors Corporation filed for bankruptcy and changed its name to "Motors Liquidation Company." The MLC Notes were de-listed from the New York Stock Exchange on June 1, 2009, after the bankruptcy filing.

After the de-listing, the MLC Notes were highly distressed and required to be executed manually at MLCO. Typically, a trade was initiated when a customer called a Financial Advisor (“FA”) with an order. The FA then contacted one of the firm’s Service Desks to facilitate the order. The Service Desks contacted the firm’s Credit Desk to obtain a bid, which was then provided to the FA and the customer. If the customer accepted the bid then the transaction was executed. All 716 transactions at issue in this matter involved retail customers selling their MLC Notes to the firm.

During the review period, the firm’s Credit Desk provided bids away from the prevailing market to the Service Desks, which ultimately resulted in MLCO purchasing MLC Notes from retail customers at prices from 5.3% to 61.5% below the prevailing market price, which ranged from \$2.25 to \$8.55 during the review period. Moreover, of the 716 transactions here, 510 of these had markdowns in excess of 10%.

One trader on the Credit Desk (“RS”) was responsible for executing 640 out of the 716 transactions. RS’s trading followed the same pattern. He accumulated the MLC Notes over several days or weeks at below-market prices and then sold the larger sized lot to other broker-dealers within the prevailing market price. While RS’s multiple sales to other broker-dealers were within the prevailing market price, RS did not provide MLCO’s retail customers with executions that were within the prevailing market. The foregoing led to MLCO purchasing hundreds of lots of MLC Notes at prices that were not fair to its retail customers.

As a result, in 716 corporate bond transactions, the firm bought corporate bonds from customers and failed to 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 conduct described in this section constitutes separate and distinct violations of

Supervision Violations

During the review period, MLCO did not have an adequate supervisory system in place to detect whether the firm's Credit Desk executed a retail customer transaction at a price consistent with the prevailing market price of that security. Specifically, MLCO did not conduct fair pricing post-trade reviews of the transactions here, or fair pricing or best execution post-trade reviews of other retail customer trades executed on the Credit Desk. As a result, MLCO's supervisory system during the review period was deficient. Moreover, the firm's written supervisory procedures ("WSPs") were deficient, with respect to the transactions here and other retail customer trades executed on the Credit Desk, because they did not establish: (1) the identification of the person responsible for supervision with respect to fair pricing and best execution reviews of retail customer transactions executed by the Credit Desk; (2) a statement of the supervisory steps to be taken by the identified person; (3) a statement as to how often such person should take such steps; and (4) a statement as to how the completion of the steps included in the WSPs should be documented.

The conduct described in this section constitutes a violation of NASD Rule 3010 and FINRA Rule 2010.

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

- A censure;
- A fine of \$1,900,000 (consisting of a \$1,400,000 fine for the fair pricing violations and a \$500,000 fine for the supervision violations);
- Restitution to be paid to the customers related to the transactions at issue in the amount of \$541,629.19 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 affected customer 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; and

- An undertaking to provide three reports, written and oral, to FINRA on dates that are no more than six months, 12 months, and 18 months after the date of the Notice of Acceptance of this AWC, regarding the effectiveness of the firm's supervisory system with respect to the pricing of retail customer transactions executed by the Credit Desk. The written reports shall be certified by an officer of the firm and shall address, at a minimum, the efficacy of the firm's supervisory system, the steps taken by supervisory personnel to review for compliance with the Credit Desk's fair pricing and best execution obligations in connection with such transactions, and the results of such supervisory reviews.

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

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;
- 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.

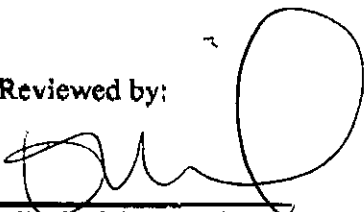
The undersigned, on behalf of the firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's provisions voluntarily; and that no offer, threat,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

12/5/2014
Date

Respondent
Merrill Lynch, Pierce, Fenner & Smith
Incorporated

By: J. David Montague
Name: J. DAVID MONTAGUE
Title: Associate General Counsel and
Senior Vice President

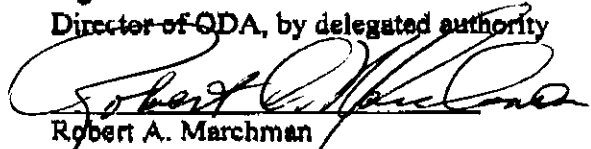
Reviewed by:


Elizabeth H. Baird, Esq.
Counsel for Respondent
Morgan, Lewis & Bockius LLP
2020 K Street NW
Washington, DC 20006-1806
Tel. (202) 373-6561

Accepted by FINRA:

12/16/2014
Date

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


Robert A. Marchman
Executive Vice President
Department of Market Regulation