

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20100238890-01**

2014 SEP 25 PM 2:12

FINRA

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 & RELEVANT DISCIPLINARY HISTORY

The firm became a member of FINRA on January 26, 1937, and its registration remains in effect. On or about May 12, 2012, FINRA accepted an AWC in which the firm was censured and fined \$10,000 for violations of SEC Rule 611 of Regulation NMS.

SUMMARY

In 20100238890, 20110282168 and 20120341853, the staff in Market Regulation's Market Making Analysis Section (the "staff") reviewed the firm's compliance with SEC Rule 611 of Regulation NMS during the periods: August 20, 2007 through December 31, 2008; January 1, 2009 through December 31, 2009, and January 1, 2010 through September 30, 2011; and April 1, 2012 through June 30, 2012, respectively.

FACTS AND VIOLATIVE CONDUCT

In matters 20100238890, 20110282168 and 20120341853, the staff determined that in each of the respective periods reviewed:

1. The firm failed to establish, maintain, and enforce written policies and procedures that were reasonably designed to prevent trade-throughs of protected quotations in NMS stocks that do not fall within any applicable exception, and if relying on an exception, are reasonably designed to assure compliance with the terms of the exception. The conduct described in this paragraph constitutes a violation of SEC Rule 611(a)(1) of Regulation NMS, and NASD Rules 3010 and 2110 (and FINRA Rule 2010 after December 15, 2008).
2. The firm failed to take reasonable steps to establish that the intermarket sweep orders it routed met the definitional requirements set forth in Rule 600(b)(30) of Regulation NMS. The conduct described in this paragraph constitutes a violation of SEC Rule 611(c) of Regulation NMS.

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

- A censure; and
- a fine of \$50,000.

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:

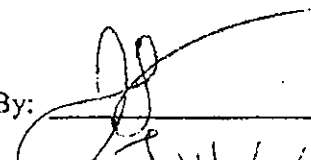
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will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

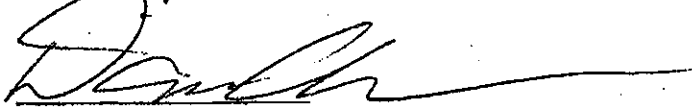
The undersigned, on behalf of the firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's provisions voluntarily; and that no offer, threat,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

9/4/14
Date

Respondent
Merrill Lynch, Pierce, Fenner & Smith
Incorporated

By: 
Name: JOHN VOELKER
Title: N.D.

Reviewed by:

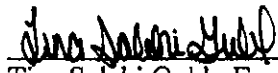


Daniel T. Chaudoin
Counsel for Respondent
WilmerHale
1875 Pennsylvania Ave., NW
Washington, DC 20006
(202) 663-6741

Accepted by FINRA:

10/6/14
Date

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


Tina Salehi Gubb, Esq.
Chief Counsel
Department of Market Regulation