

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20110255802 -02**

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

RE: Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill" or the "Firm")
(BD No. 7691)
Respondent

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, 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

Merrill has been a member of FINRA since January 1937, and has its principal place of business in New York, New York. Merrill is a global investment banking and multi-service brokerage firm. As of May 2013, the Firm maintained more than 2,600 branch offices and employed more than 32,000 registered individuals.

RELEVANT DISCIPLINARY HISTORY

In February 2012, Merrill entered into an AWC that included the following violations of Municipal Securities Rulemaking Board ("MSRB") Rule G-14: (i) From January 1, 2009 to March 31, 2009, the Firm failed to report the correct Time of Trade to the MSRB Real-Time Reporting System ("RTRS") in 475 reports of transactions in municipal securities, and also reported these 475 trades late; and (ii) from October 1, 2009, to December 31, 2009, the Firm failed to report the correct Time of Trade to the RTRS in 138 reports of transactions in municipal securities, and also reported these 138 trades late. The AWC allocated \$25,000 of the

fine in this matter to the violations of Rule G-14.

In September 2008, Merrill entered into an AWC that included two Rule G-14 violations during the time period of January 1, 2006, through March 31, 2006: (i) the Firm late-reported 381 purchase and sale transactions effected in municipal securities to RTRS; and (ii) in 79 instances, the Firm improperly reported trades that were not inter-dealer transactions reportable to the RTRS. The AWC allocated \$7,500 of the fine in this matter to the Rule G-14 violations.

OVERVIEW

From May 16, 2011, through June 21, 2011 (the "Relevant Period"), Merrill erroneously reported to the Short Term Obligation Rate Transparency System ("SHORT") that interest rates for 373 CUSIPs were "Set by Auction" instead of the maximum interest rates for these CUSIPs. By reason of the foregoing, Merrill violated MSRB Rule G-34.

FACTS AND VIOLATIVE CONDUCT

On May 16, 2011, Merrill made adjustments to its auction rate system logic to conform to amendments to MSRB Rules G-34 and G-8. As the result of an error in this process, the Firm began misreporting to SHORT that interest rates associated with various ARS CUSIPs were triggered by auction, rather than by resets to the maximum interest rates associated with those CUSIPs. Out of the 451 reports that Merrill made to SHORT between May 16, 2011, and June 21, 2011, 373 (82.7%) erroneously stated that the interest rates associated with the CUSIPs being reported were "Set by Auction." In fact, no auctions had occurred with respect to any of the 373 CUSIPs that were the subject of the erroneous reports during the Relevant Period.

OTHER FACTORS

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

- A censure
- A fine in the amount of \$10,000 (\$10,000 of which pertains to the violation of MSRB Rule G-34)

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. Respondent 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.

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 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, Respondent 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.

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 Respondent'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 Respondent'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 Respondent'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. Respondent 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 the Firm 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.

09/20/13
Date (mm/dd/yyyy)

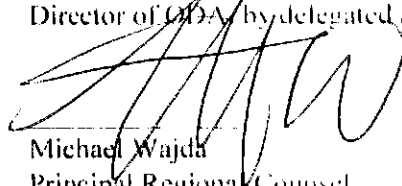
Merrill Lynch, Pierce, Fenner & Smith Incorporated
BD No. 7691
Respondent

By:  MD
[Name and Title]

Accepted by FINRA:

September 26, 2013
Date

Signed on behalf of the
Director of ODA by delegated authority

A handwritten signature in black ink, appearing to read 'MW', is written over a horizontal line.

Michael Wajda
Principal Regional Counsel
FINRA Department of Enforcement
One World Financial Center
200 Liberty Street
New York, NY 10281-1003
Tel: (212) 858-4298
Fax: (202) 721-1357