

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20110274341**

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

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

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

I.

ACCEPTANCE AND CONSENT

- A. The 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

MLPFS has been a member of FINRA since January 1937, and has its principal place of business in New York, New York. MLPFS is a global investment banking and multi-service brokerage firm. As of April 2013, MLPFS maintained more than 2,400 branch offices and employed more than 32,000 registered individuals.

On September 15, 2008, Bank of America Corporation ("Legacy BAC") announced that it had agreed to acquire the parent company of MLPFS (Merrill Lynch & Co., Inc.) (the "Acquisition"). On January 1, 2009, the Acquisition was completed and the equity research business of Banc of America Securities LLC, a U.S. broker-dealer subsidiary of Legacy BAC and former FINRA member, was transferred into MLPFS on that day.

RELEVANT DISCIPLINARY HISTORY

MLPFS does not have any relevant disciplinary history with the Securities and Exchange Commission, any self-regulatory organization or any state securities regulator.

OVERVIEW

Between January 2009 and August 2010, 36.7% (over 19,000) of the fundamental equity research reports issued by MLPFS omitted one or more disclosures required by NASD Conduct Rule 2711(h) relating to potential conflicts of interest with the company(ies) that was the subject of the research report ("Covered Company"). Additionally, as further discussed below, a small but undetermined number of reports omitted disclosures relating to whether (i) MLPFS owned 1% or more of the Covered Company's equity and (ii) whether MLPFS had been a manager or co-manager of a public offering of the Covered Company in the prior 12 months.

From September 2008 through March 16, 2011, 16% (nearly 14,000) of the fundamental equity research reports issued by MLPFS were impacted by a data flaw causing an undetermined but significant number of these reports to include a distorted price chart, as further discussed below.

As further set forth below, the MLPFS supervisory systems were insufficient to detect and remedy these deficiencies in a timely manner, some of which impacted thousands of fundamental equity research reports for a period of over two years.

As a result of the foregoing disclosure, price chart, and supervisory failures, MLPFS violated NASD Conduct Rules 2711 and 2110, and FINRA Rule 2010.¹

FACTS AND VIOLATIVE CONDUCT

1. MLPFS Violated NASD Conduct Rule 2711(h) (Research Analysts and Research Reports)

NASD Conduct Rule 2711(h) requires disclosure in equity research reports of conflicts or potential conflicts of interest stemming from, among other things, a member's receipt of compensation from, ownership of securities in or other relationships with subject companies (collectively the "Required Disclosures"). Additionally, Rule 2711(h) requires the inclusion of historical price charts in any research report that includes a rating or price target, if the member had been assigning such targets or rating to the Covered Company's securities for at least one year. Such charts must be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than 15 days after the most recent calendar

¹ NASD Conduct Rule 2110 was consolidated into FINRA Rule 2010 on December 15, 2008, during the period of the violations. As a result, MLPFS is found to have violated both rules.

quarter), and must include historical prices and price targets assigned by the member for the past three years (or for the period that the member has assigned such ratings, if shorter).

a. Disclosure Deficiencies

Beginning on January 1, 2009, as a result of the Acquisition, the Research Department of MLPFS was required to consider Legacy BAC's relationships with Covered Companies in determining which Required Disclosures to include in research reports issued by MLPFS. As a result of the compressed timeline of the Acquisition, Legacy BAC still used separate systems from MLPFS after the Acquisition, and research and technology teams from the two entities were required to aggregate information about the two entities' respective relationships with Covered Companies in order to generate complete and accurate Required Disclosures in research reports. However, errors occurred in this aggregation process that were not discovered by MLPFS until July 2010. An "upstream" Legacy BAC file that was used to match companies covered by the MLPFS Research Department with BAC revenues and client relationships included inaccurate data, and the process designed to update that file failed. As a result, the Legacy BAC information used by the MLPFS Research Data Repository to determine disclosures was stale and resulted in the omission of Required Disclosures in approximately 19,200 research reports. The following chart illustrates the deficiencies.

	Missing Disclosure	Scope of Deficiency
i	MLPFS received compensation from the Covered Company related to non-investment banking services in the prior 12 months.	36.7% of fundamental equity research reports issued between January 2009 and August 2010 (approximately 19,220) were missing one or more of these disclosures.
ii	MLPFS had the Covered Company as a non-investment banking securities-related client in the prior 12 months.	
iii	MLPFS had the Covered Company as a non-securities related client in the prior 12 months.	
iv	MLPFS had the Covered Company as an investment banking client in the prior 12 months.	
v	MLPFS received compensation from the Covered Company related to investment banking services in the prior 12 months.	
vi	MLPFS expected to receive or intended to seek compensation for investment banking services from the Covered Company in the next 3	

	Missing Disclosure	Scope of Deficiency
	months.	
vii	MLPFS beneficially owned 1% or more of the equity securities of the Covered Company.	This failure impacted reports covering 14 subject companies (.38% of the equity research coverage universe) from January 2009 through October 2010. It has not been determined how many reports were impacted.

An additional disclosure deficiency began on an undetermined date when a third-party vendor provided incomplete data to MLPFS relating to 22 Covered Companies (or .59% of the MLPFS equity research coverage universe). As a result of the incomplete data, an undetermined number of research reports relating to these Covered Companies failed to disclose whether MLPFS had managed or co-managed a public offering of the Covered Company's securities in the past twelve months. The missing data was discovered and corrected in October 2010, but it has not been determined when the disclosure deficiency began or how many research reports were impacted by it.

b. Price Chart Deficiencies

Beginning in September 2008, a new third-party vendor began providing the Firm with stock price information that contained incorrect data related to certain Covered Companies that had been impacted by a stock split. The data problem occurred in each monthly file that MLPFS received from the vendor since September 2008, and impacted as many as 13,778 fundamental equity research reports. As a result of the data problem, an undetermined but significant number of these reports issued between September 2008 and March 16, 2011, included a price chart that retroactively adjusted the historical stock price of the Covered Company to reflect a subsequent stock split but did not provide the same retroactive adjustment to the historical price targets included in the chart. As a result, impacted price charts showed a distorted relationship between the historical stock price and the historical price target. These errors were also reflected on the MLPFS price charts website during this period.

As a result of the foregoing disclosure and price chart failures, MLPFS violated NASD Conduct Rule 2711, NASD Conduct Rule 2110, and FINRA Rule 2010.

2. MLPFS Violated NASD Conduct Rule 2711(i)

NASD Conduct Rule 2711(i) requires firms to adopt and implement written supervisory procedures reasonably designed to ensure compliance with the requirements of Rule 2711.

Although the MLPFS Research Department had policies, procedures, and testing practices (collectively "Procedures") with respect to research disclosures and price charts during the time period of the violations addressed in this AWC, the Procedures focused on the "downstream" aspects of the research report creation process. The Procedures did not effectively evaluate the accuracy of the data provided by internal and external data sources to the Research Department through the Research Data Repository, but rather were intended to ensure that the data was accurately and completely reflected on research reports. The Procedures included separate steps for Research Analysts (who assembled research reports), Supervisory Analysts (whose approval was necessary before a research report was issued), and a support unit called Supervisory Analyst Support Services ("SASS"). The Procedures included, among other things:

- a requirement for Research Analysts to identify the research report's Covered Company so Required Disclosures could be automatically populated in the report;
- a requirement for Supervisory Analysts to confirm that all of the Covered Companies were correctly identified and that all applicable disclosures were included; and
- the production of various reports used to support the review and testing conducted by SASS to ensure that research reports included all disclosures indicated by the Research Data Repository.

Because the Procedures were not designed to evaluate the underlying accuracy of the data from internal and external data sources in the Research Data Repository, and because the disclosure and price chart failures were caused by inaccuracies in underlying data, the Procedures were ineffective in identifying the disclosure and price chart deficiencies that are the subject of this AWC. MLPFS also did not have procedures designed to ensure that (i) third party pricing information used for price charts was accurate as it related to corporate actions affecting the price of a stock and (ii) such adjusted prices were accurately reflected on the price chart.

As a result of the foregoing, MLPFS violated NASD Conduct Rules 2711(i) and 2110, and FINRA Rule 2010.

OTHER FACTORS

In determining the sanction in this matter, FINRA took into consideration several factors: (1) MLPFS promptly self-reported all of the deficiencies set forth in this AWC; (2) MLPFS took significant remedial action to prevent the reoccurrence of these deficiencies; and (3) in early 2011, MLPFS engaged an independent consultant for a 22-month period to assist an internal task force with, among other things, introducing new technologies and processes designed to remedy the problems that had been caused by inaccurate "upstream" data.

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

- A censure
- A fine in the amount of \$325,000

The 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. The Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

The 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.

II.

WAIVER OF PROCEDURAL RIGHTS

The 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, the 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.

The 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

The 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 Respondent;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about its 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 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. The 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 the 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.

12. The Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The 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.

05/13/2013
Date (mm/dd/yyyy)

Jorge M. Silva
Merrill Lynch, Pierce, Fenner & Smith Incorporated
BD No. 7691

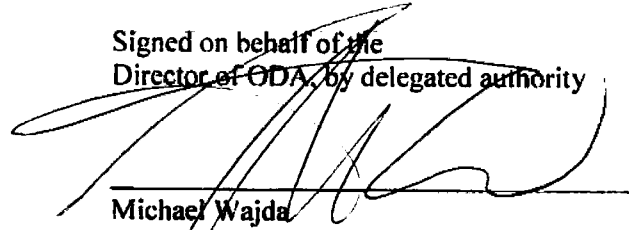
By: Jorge M. Silva, Associate General Counsel
[Name and Title]

Accepted by FINRA:

9-20-13

Date

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



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