

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20110285873-01

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

MLCO has been a member of FINRA since January 26, 1937, and its registration remains in effect.

RELEVANT DISCIPLINARY HISTORY

On May 27, 2010, an AWC became final wherein the Firm was censured and fined for violations of NASD Rule 6955 for three time periods between January 2006 and September 2007. The total fine was \$47,500, of which \$32,500 pertained to the OATS violations. The OATS violations included over 5.7 million inaccurate or incomplete reports.

On February 10, 2010, an AWC became final wherein the Firm was censured and fined a total of \$55,000 for OATS reporting violations during the period from October 1, 2005 through April 30, 2007.

On January 5, 2011, an AWC became final wherein the Firm was censured and fined \$304,000, including \$50,000 for equity trade reporting violations (FINRA Rules 6130(b) and (g), n/k/a FINRA Rule 7230A) during the following time periods: September 1, 2006 through December 31, 2006; December 1, 2006 through March 3, 2008; January 1, 2007 through April 30, 2007; and May 1, 2008 through August 31, 2008.

SUMMARY

In Review No. 20110285873, the Order Audit Trail System ("OATS") Compliance Team of FINRA's Department of Market Regulation conducted a review of the Firm's compliance with OATS reporting requirements for the period of January 1, 2011 through April 30, 2011.

In Review No. 20120315425, the OATS Compliance Team of FINRA's Department of Market Regulation conducted a review of the Firm's compliance with OATS reporting requirements for the period of June 1, 2011 through October 14, 2011.

In Review No. 20120316828, the Trade Reporting Team of FINRA's Department of Market Regulation conducted a review of the Firm's compliance with trade reporting requirements of FINRA Rule 7230A(g) for the period of September 1, 2011 through December 31, 2011.

In Review No. 20120344495, the OATS Compliance Team conducted a review of the Firm's compliance with OATS reporting requirements and trade reporting requirements for the period of May 1, 2012 through August 31, 2012.

In Review No. 20130359737, the Trade Reporting Team conducted a review of the Firm's compliance with trade reporting requirements of FINRA Rule 7230A(g) for the period of September 1, 2012 through December 31, 2012.

In Review No. 20130363807, the Trade Reporting Team conducted a review of the Firm's compliance with trade reporting requirements of FINRA Rule 7230A(b) for the period of September 1, 2012 through December 31, 2012.

In Review No. 20140400377, the Trade Reporting Team conducted a review of the Firm's compliance with trade reporting requirements of FINRA Rule 7230A(b) for the period of September 1, 2013 through December 31, 2013.

As a result of these reviews, the following violations were found:

FACTS AND VIOLATIVE CONDUCT

STAR No. 20110285873

1. During the time period of January 1, 2011 through April 30, 2011, the Firm transmitted to OATS:
 - a. 62 Execution or Combined Order/Execution Reports for which the OATS system was unable to link the execution reports to the related trade reports in a FINRA transaction reporting system due to inaccurate, incomplete or improperly formatted data; and
 - b. 34 Execution or Combined Order/Execution Reports for which it failed to append the required Reporting Exception Code.

The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7450(a).

STAR No. 20120344495

2. During the time period of May 1, 2012 and August 31, 2012, the Firm transmitted to OATS:
 - a. 3,280 New Order Reports and related subsequent reports for which the OATS system was unable to create an accurate, time sequenced record from the receipt of the order through its resolution because the timestamp for the related subsequent report occurred prior to receipt of the order;
 - b. 74 Execution or Combined Order/Execution Reports that contained inaccurate, incomplete or improperly formatted data. In 49 of these instances, the OATS system was unable to link the Execution Reports to the related trade reports in a FINRA trade reporting system. In 25 of these instances, MLCO failed to append the required Reporting Exception Code;
 - c. 96 Route or Combined Order/Route reports for which the OATS system was unable to link to the related exchange due to inaccurate, incomplete or improperly formatted data;
 - d. 55 Route or Combined Order/Route Reports for which the OATS system was unable to link to the corresponding new order transmitted by the receiving member firm due to inaccurate, incomplete or improperly formatted data; and
 - e. 65 Route or Combined Order/Route Reports, which were submitted by other members where MLCO was named as the "Sent to Firm," for which the OATS system was unable to match.

The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7450(a).

STAR No. 20120315425

3. During the time period of June 1, 2011 through October 14, 2011, the Firm failed to transmit 5,344,007 Reportable Order Events ("ROEs") to OATS. These ROEs represented .242% of all ROEs that the Firm was required to transmit to OATS during the review period. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7450(a).

STAR No. 20120344495

4. During the period of May 1, 2012 through August 31, 2012, the Firm failed to timely report to OATS 63,221,879 ROEs. These late ROEs represented .5% of all ROEs that the Firm transmitted to OATS during the review period. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7450(b).

STAR Nos. 20130363807 and 20140400377

5. On 149 occasions between September 1, 2012 and December 31, 2012, and on 115 occasions between September 1, 2013 and December 31, 2013, the Firm failed to accept or decline in the FINRA/Nasdaq Trade Reporting Facility ("FNTRF") transactions in Reportable Securities within twenty minutes after execution. The conduct described in this paragraph constitutes separate and distinct violations FINRA Rule 7230A(b).

STAR Nos. 20120316828 and 20130359737

6. On 435 occasions between September 1, 2011 and December 31, 2011, and on 132 occasions between September 1, 2012 and December 31, 2012, the Firm failed to timely report to the FNTRF by 8:00 p.m. Eastern Time transactions that required an .RX modifier. These late reported transactions constituted approximately 93.15% and 68.04%, respectively, of transactions that required an .RX modifier that the Firm reported during the respective time periods. The conduct described in this paragraph constitutes separate and distinct violations FINRA Rule 7230A(g).

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

A censure and a fine totaling \$72,500 (of which \$25,000 is for the violation of FINRA Rule 7450(a) (inaccurate reports), \$15,000 is for the violations of FINRA Rule 7450(a) and (b) (failure to submit ROEs and late submission of ROEs), \$17,500 is for the violations of FINRA Rule 7230A(b), and \$15,000 is for the violations of FINRA Rule 7230A(g)).

The Firm agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. The Firm 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 sanctions 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; and
- 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 records;
 - 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.

7/23/14
Date

Respondent
Merrill Lynch, Pierce, Fenner & Smith Inc.

By: Steven Longo

Name: [Signature]

Title: MANAGING Director

Reviewed by:

Accepted by FINRA:

8/13/14
Date

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

[Signature]
Kenneth R. Bozza, Chief Counsel
Legal Section
Department of Market Regulation