

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT(Corrected)¹
NO. 2011030744101

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

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

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Merrill Lynch 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 Merrill Lynch alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Merrill Lynch 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 Lynch is a Delaware corporation with its principal place of business in New York, New York.² The Firm is a global investment banking and multi-service brokerage firm that, among other things, provides retail brokerage, corporate and investment banking services, wealth management and commercial lending. It is registered with the Securities and Exchange Commission ("SEC") as a broker-dealer and investment adviser and has been a FINRA regulated firm since January 26, 1937. Merrill Lynch has more than 15,000 financial advisors and approximately \$2.2 trillion in customer assets.

¹ Typographical errors in a prior case number and date have been corrected.

² Merrill Lynch is a wholly-owned subsidiary of Bank of America Corporation ("Bank of America"). On or about September 14, 2008, the boards of directors of Bank of America and Merrill Lynch & Co., Inc. unanimously approved the merger of the two entities. On December 5, 2008, Bank of America's shareholders voted to approve the merger and the merger closed on January 1, 2009.

RELEVANT DISCIPLINARY HISTORY

In 2012, in connection with FINRA Matter No. 20090203563, pursuant to a Letter of Acceptance, Waiver and Consent, Merrill Lynch consented to a sanction consisting of a censure and a fine of \$500,000 for violating NASD Rule 3010, NASD Rule 2110 and FINRA Rule 2010, among other securities rules. From 2007 to 2011, the Firm failed to file or timely file certain required reports, including customer complaints and customer settlements; failed to acknowledge and/or timely acknowledge to customers the receipt of customer complaints; failed to adequately train and supervise personnel responsible for customer complaint tracking and reporting; and did not have systems in place to identify the high volume of customer complaints that were not being acknowledged or reported as required.

OVERVIEW

During the period from August 2009 to September 2011 (the "Relevant Period"), Merrill Lynch failed to record and preserve certain order information required by Securities Exchange Act Rules 17a-3(a)(6) and 17a-4 on options order memoranda. In 1,801 options trades, the Firm failed to record the time of order receipt and the identity of the person who entered or accepted the order on behalf of the customer. As a result, Merrill Lynch violated Securities Exchange Act Rules 17a-3(a)(6) and 17a-4, and NASD Rule 3110 and FINRA Rule 2010.

In addition, Merrill Lynch violated NASD Rule 3010 and FINRA Rule 2010 in that it failed to adequately enforce its written supervisory procedures to ensure that its registered representatives recorded and preserved the foregoing order information required by Securities Exchange Act Rules 17a-3(a)(6) and 17a-4 on options order memoranda.

FACTS AND VIOLATIVE CONDUCT

The Firm Violated Securities Exchange Act of 1934 Rules 17a-3 and 17a-4. NASD Rule 3110(a) and FINRA Rule 2010

NASD Rule 3110(a) requires member firms to "make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations, and statements of policy promulgated thereunder and with the Rules of this Association and as prescribed by the Securities Exchange Act of 1934, Rule 17a-3." In turn, Exchange Act Rule 17a-3(a)(6) requires that member firms keep current a memorandum of each brokerage order which sets forth "the time the order was received ... the identity of any other person who entered or accepted the order on behalf of the customer..." Rule 17a-4(b)(4) requires that a firm preserve records relating to communications concerning the firm's business, and those records must be accurate.

Firm procedures held that options orders under 100 contracts be entered online with the relevant trade information. Options transactions over 100 contracts were telephoned into the trading desk and a paper order ticket was completed. During the Relevant Period, five representatives in one branch did not follow the Firm's procedure to complete a paper ticket when options orders were called into the trading desk. Thus in 1,801 instances of large options orders, the Firm's order memoranda did not have the information reflecting 1) the time the order was received and 2) the identity of any other person who entered or accepted the order on behalf of the customer.

Based on the foregoing, the Firm violated Securities Exchange Act of 1934 Rules 17a-3(a)(6) and 17a-4(b)(4), NASD Rule 3110(a) and FINRA Rule 2010 in that it failed to record and preserve certain record keeping information required on options order memoranda.

The Firm Violated NASD Rule 3010 and FINRA Rule 2010

NASD Conduct Rule 3010 requires member firms to enforce written procedures that are reasonably designed to achieve compliance with applicable securities laws and regulations.

The Firm failed to ensure that its registered representatives accurately recorded all required order memoranda information for options orders that were telephoned to the trading desk. Although the Firm's procedures required registered representatives to separately complete a paper ticket to record options order details when the orders were called into the trading desk, it failed to adequately enforce these procedures at one of its branches. The branch audit involved a review of a select number of manual tickets that may include various products, but manual tickets for options were not necessarily reviewed. As such, the Firm did not adequately review and monitor options order tickets for orders that were called into the trading desk by certain registered representatives during a two-year time period.

Based on the foregoing, the Firm violated NASD Rule 3010 and FINRA Rule 2010 in that it failed to enforce its written supervisory procedures requiring that its registered representatives properly recorded all required information for options orders that were telephoned to the trading desk.

B. Merrill Lynch also consents to the imposition of the following sanctions:

1. Censure; and
2. Fine in the amount of \$300,000.

Merrill Lynch 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 Firm has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Merrill Lynch has specifically and voluntarily waived any right to claim an inability to pay at any time hereafter the monetary sanction imposed in this matter.

II.

WAIVER OF PROCEDURAL RIGHTS

Merrill Lynch 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 National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Merrill Lynch 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.

Merrill Lynch 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

Merrill Lynch 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 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. Merrill Lynch 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. Merrill Lynch may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Merrill Lynch 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 Merrill Lynch, 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.

9/24/2014
Date (mm/dd/yyyy)

Mark L. Keene
Respondent
Merrill Lynch, Pierce, Fenner & Smith Incorporated

By: MARK L. KEENE

Reviewed by:

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Accepted by FINRA:

10/6/14
Date

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

Susan Light
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