

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20120316450-01**

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 ("BOFA" 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 AND RELEVANT DISCIPLINARY HISTORY

The firm became a member of FINRA on January 26, 1937, and its registration remains in effect. On January 5, 2011, an AWC was finalized in which the firm was censured and fined a total of \$304,000 for, among other things, violations of SEC Rule 17a-3, SEC Rule 203(b) of Regulation SHO, and NASD Rules 3110, 4632 and 6130.

FACTS AND VIOLATIVE CONDUCT

In 20120316450, the staff in the Trading and Market-Making Surveillance ("TMMS") Examination Section of Market Regulation reviewed the items listed on Exhibit 1, attached, as part of the firm's 2012 TMMS examination for the trade date June 6, 2012.

The TMMS staff determined that the firm committed the following violations:

1. The firm failed to show the terms and conditions on the memorandum of 82 brokerage orders. In 78 instances, the firm failed to identify if an order was held/not held; in two instances, the firm failed to provide a complete order ticket; in one instance, the firm failed to identify if an order was held/not held and unsolicited/solicited; and in one instance, the firm failed to document the MQT term and condition on the order ticket. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 17a-3, SEC Rule 17a-4 and FINRA Rule 4511.
2. The firm, on five occasions, accepted a short sale order in an equity security from another person, or effected a short sale in an equity security for its own account, without: (1) borrowing the security, or entering into a bona-fide arrangement to borrow the security; or (2) having reasonable grounds to believe that the security could be borrowed so that it could be delivered on the date delivery is due; and (3) documenting compliance with SEC Rule 203(b)(1) of Regulation SHO. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 203(b)(1) of Regulation SHO.
3. The firm transmitted to the Order Audit Trail System ("OATS") 33 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, in 18 instances, the firm incorrectly submitted the special handling code of "CSH" to OATS; in six instances, the firm submitted an incorrect account type code of "U" and failed to submit an execution report to OATS; in five instances, the firm failed to submit route ("RT") reports to OATS; in one instance, the firm submitted an incorrect account type code of "A" and a special handling code of "CSH" to OATS; in two instances, the firm submitted an incorrect account type code of "A" to OATS; in one instance, the firm failed to submit OATS data for an order; and in one instance, the firm submitted a report with an inaccurate order entry time. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7450.
4. The firm failed to append the short sale indicator on 24 trade reports submitted to the FINRA/Nasdaq Trade Reporting Facility for a short sale transaction in a Reportable Security. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 6182.
5. The firm failed to timely report to the FINRA/Nasdaq Trade Reporting Facility Reporting by 8:00 p.m. Eastern Time 12 transactions that required a .RX modifier. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7230A.
6. For the month of April, 2012, the firm made available a report on the covered orders in national market system securities that it received for

execution from any person. This report included inaccurate information. Specifically, in one instance, the firm inaccurately reported the "total covered orders" and "canceled shares;" in one instance, the firm inaccurately reported "covered shares," "canceled shares," "away executed shares," "shares from 0-9 seconds," "shares from 60-299 seconds," "shares from 5-30 minutes" and "average realized spread;" and in one instance, the firm inaccurately reported the "total covered orders," "total covered shares," "away executed shares," "shares from 0-9 seconds" and "average realized spread." The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 605 of Regulation NMS ("SEC Rule 605").

- B. The firm also consents to the imposition of the following sanctions:
- A censure; and
 - A fine of \$70,000 (consisting of a \$10,000 fine for the recordkeeping violations, a \$10,000 fine for the short sales violations, a \$12,500 fine for the OATS violations, a \$22,500 fine for the equity trade reporting violations and a \$15,000 fine for the SEC Rule 605 violations).

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.

7/1/15
Date

Respondent
Merrill Lynch, Pierce, Fenner & Smith
Incorporated

By: [Signature]

Name: Robert M. [Signature]

Title: MD / BCO

Reviewed by:

7/1/15 - [Signature]

Accepted by FINRA:

8/10/15
Date

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

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

Exhibit No. 1

**2012 Market Regulation Examination Samples
Merill Lynch, Pierce, Fenner Smith Inc.
Trading Examination No. 20120316450
Sample Source/Period*: Trade Date June 6, 2012**

<u>Sample Size</u>	<u>Sample Description</u>
96	Sales reviewed for compliance with SEC Rule 200(g) long/short sale recording requirements
24	Short Sales reviewed for compliance with SEC Rule 203(b) security location requirements
0	Sales reviewed for compliance with SEC Rule 204 fail-to-deliver requirements
252	Sell trades reported to a TRF or OTCRF for compliance with sale indicator requirements, FINRA Rules 6182 or 6624
20	Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4755(a)(1)(A) long/short reporting requirements
20	0 Buy and 20 Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4611 capacity reporting requirements
0	Sell orders entered into Nasdaq OMX BX execution system for compliance with Nasdaq OMX BX Rule 4755 long/short reporting requirements
20	Sell orders entered into Nasdaq OMX PHLX execution system for compliance with Nasdaq OMX PHLX Rule 3305 long/short reporting requirements
40	Sell orders entered into DirectEdge Exchange execution system for compliance with EDGA/EDGX Rule 11.15 long/short reporting requirements
40	Sell orders entered into NYSE-Arca execution system for compliance with NYSE-Arca Equity Rule 7.16 long/short reporting requirements
0	Limit orders for NMS securities in which the member acts as an exchange market maker for compliance with the display requirements of SEC Rules 602 and 604, and Nasdaq Rule 3390
25	Orders for compliance with best execution requirements of NASD Rule 2320 0 Held orders from the Held Order Protection Review 0 Not Held orders from the Not Held Order Review 0 Order executed with a .PRP (Prior Reference Price) trade modifier 25 Customer orders in OTC equity securities for compliance with NASD Rule 3110(b) requirements to ascertain and document best interdealer market related to execution of orders
0	Orders for compliance with order protection requirements of NASD Rules 2110, IM-2110-2, 2111, and Nasdaq Rules 2110, IM-2110-2, and 2111
10	Open Limit orders to buy and/or open Stop orders to sell securities that traded ex-dividend for compliance with NASD Rule 3220 and Nasdaq Rule 4761
0	Order memoranda and Net Trading agreements for compliance with NASD Rule 2441 requirements
76	Orders in securities required to be submitted to OATS for compliance with FINRA Rules 7440 and 7450, and Nasdaq Rules 6954 and 6955 requirements
34	Customer confirmations prepared and maintained in connection with select samples for compliance with SEC Rule

Created by MAV September 12, 2012
Revised by MAV September 13, 2012
EL 12/27/12

Exhibit No. 1

2012 Market Regulation Examination Samples
 Merrill Lynch, Pierce, Fenner Smith Inc.
 Trading Examination No. 20120316450
 Sample Source/Period*: Trade Date June 6, 2012

<u>Sample Size</u>	<u>Sample Description</u>
25	Orders for NMS securities in which the Firm acts as a market center for compliance with SEC Rule 605 order classification requirements
6	Data sets published for April 2012 monthly order execution report for compliance with SEC Rule 605 requirement to publish accurate data (a 'data set' encompasses all required statistical data for single security and order type/size category as described in SEC Rule 605)
1	Quarterly Routing Report for compliance with SEC Rule 606 requirements
21	CRD registration records for persons conducting and/or supervising Firm's trading and/or market making activities for compliance with NASD Rule Series 1020, 1030, 1040 and Nasdaq Rule Series 1020, 1030, 1040
25	Customer orders in OTC equity securities for compliance with NASD Rule 3110(b) requirements to ascertain and document best interdealer market related to execution of orders
10	Disclosures to customers relating to trading in the Extended Hours session for compliance with FINRA Rule 2265 and Nasdaq Rule 4631
408	Records prepared and maintained in connection with the above samples for compliance with SEC Rules 17a-3 and 17a-4, and NASD Rule 3110
495	Trades reported to a TRF or OTCRF for compliance with FINRA Rules 6380A and 7230A or 6622 and 7330
All Provided	Member's "Regular & Rigorous" review procedures regarding order execution quality for compliance with NASD Rules 2320 and 3010
All Provided	Member's supervisory and operational policies and procedures and documentation evidencing execution of the policies and procedures for compliance with SEC Regulation NMS Rule 611
All Provided	Member's supervisory system, written supervisory procedures ("WSPs") and documentation evidencing execution of the WSPs for compliance with NASD Rule 3010 or Nasdaq Rule 3010 requirements
2	Trading Halts declared during the on-site portion of the examination for which FINRA Staff observed the operation of the ATS.
0	Trades reported to the ADF/TRACS for compliance with FINRA Rule 6282
0	ADF orders and quotes accessed by other market participants for compliance with FINRA Rule 6250 requirements to submit Order and Order Response reports