

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20130357978-01**

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 (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

The firm became a member of FINRA on January 26, 1937, and its registration remains in effect.

RELEVANT DISCIPLINARY HISTORY

On January 4, 2011, FINRA accepted the firm's AWC (Matter No. 20060052666) in which it agreed to a censure and a total fine of \$304,000, which included a \$12,500 fine for over-reporting 5,090 transactions in Trade Reporting and Compliance Engine ("TRACE") eligible securities during the period of January 1, 2006 through September 30, 2006, and failing to report to TRACE 152 transactions in TRACE-eligible securities within fifteen minutes of the time of execution during the period January 1, 2007 through March 31, 2007.

On January 25, 2012, FINRA accepted the firm's AWC (Matter No. 20080163822) in which it agreed to a censure and a fine of \$12,500 for failing to report to TRACE 254 transactions and failing to report to TRACE the correct contra-party's identifier for 174 transactions in TRACE-eligible securities during the period of July 1, 2007 through September 30, 2007.

Matter No. 20130357978, (DMJ)

SUMMARY

In connection with Matter No. 20130357978, the TRACE Team of the Department of Market Regulation reviewed the firm's trade reporting of large block S1 transactions during the period October 1, 2012 through December 31, 2012 (the "review period").¹

FACTS AND VIOLATIVE CONDUCT

1. During the review period, the firm failed to report to TRACE 14 block transactions in TRACE-eligible securities within 15 minutes of the time of execution. These late transactions constituted 33 percent of all block transactions in TRACE-eligible securities that the firm reported during the review period. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6730(a) and a pattern or practice of late reporting without exceptional circumstances in violation of FINRA Rule 2010.
- B. The firm also consents to the imposition of the following sanctions:

A censure and a fine of \$7,500.

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 sanction 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

¹ The review conducted in this matter focused solely on TRACE-eligible transactions where the volume size equals \$5,000,000 face value for a single trade reported to TRACE.

- 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 firm 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 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 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.

04/28/2014

Date

Respondent
Merrill Lynch, Pierce, Fenner
& Smith Incorporated

By: Don Alexander

Name: Don Alexander

Title: Managing Director

Reviewed by:

Eric Kriftcher

Eric Kriftcher
Counsel for Respondent
Merrill Lynch, Pierce, Fenner & Smith Incorporated
One Bryant Park
New York, NY 10036

Accepted by FINRA:

5/15/2014

Date

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

Justin Chretien

Justin Chretien
Chief Counsel
Department of Market Regulation

FINRA 20130357978 - Firm Exhibit 1

TRACE Reporting for S1 Transactions <i>based on TRACE Report Cards</i>		Agency Debt			Corporate Bonds			TOTAL	Agency Debt			Corporate Bonds			TOTAL
		MLCO	BOFA	Subtotal	MLCO	BOFA	Subtotal		MLCO	BOFA	Subtotal	MLCO	BOFA	Subtotal	
Oct 2012	Total Valid Trade Reports	1,226	3,014	4,240	25,441	30,194	55,635	59,875	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	Late Same Day Trade Reports	13	60	73	153	234	387	460	1.06%	1.99%	1.72%	0.60%	0.77%	0.70%	0.77%
	Late As-Of Trade Reports	3	19	22	182	273	455	477	0.24%	0.63%	0.52%	0.72%	0.90%	0.82%	0.80%
	Total Late Trade Reports	16	79	95	335	507	842	937	1.31%	2.62%	2.24%	1.32%	1.68%	1.51%	1.56%
Nov 2012	Total Valid Trade Reports	1,216	2,964	4,180	23,212	27,341	50,553	54,733	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	Late Same Day Trade Reports	9	25	34	77	205	282	316	0.74%	0.84%	0.81%	0.33%	0.75%	0.56%	0.58%
	Late As-Of Trade Reports	6	9	15	190	246	436	451	0.49%	0.30%	0.36%	0.82%	0.90%	0.86%	0.82%
	Total Late Trade Reports	15	34	49	267	451	718	767	1.23%	1.15%	1.17%	1.15%	1.65%	1.42%	1.40%
Dec 2012	Total Valid Trade Reports	1,175	3,401	4,576	22,009	26,264	48,273	52,849	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	Late Same Day Trade Reports	10	54	64	82	110	192	256	0.85%	1.59%	1.40%	0.37%	0.42%	0.40%	0.48%
	Late As-Of Trade Reports	3	17	20	186	224	410	430	0.26%	0.50%	0.44%	0.85%	0.85%	0.85%	0.81%
	Total Late Trade Reports	13	71	84	268	334	602	686	1.11%	2.09%	1.84%	1.22%	1.27%	1.25%	1.30%
Oct - Dec 2012	Total Valid Trade Reports	3,617	9,379	12,996	70,662	83,799	154,461	167,457	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	Late Same Day Trade Reports	32	139	171	312	549	861	1,032	0.88%	1.48%	1.32%	0.44%	0.66%	0.56%	0.62%
	Late As-Of Trade Reports	12	45	57	558	743	1,301	1,358	0.33%	0.48%	0.44%	0.79%	0.89%	0.84%	0.81%
	Total Late Trade Reports	44	184	228	870	1,292	2,162	2,390	1.22%	1.96%	1.75%	1.23%	1.54%	1.40%	1.43%