

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20130367081-01

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, Respondent 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 Respondent alleging violations based on the same factual findings described herein.

I.
ACCEPTANCE AND CONSENT

- A. 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 AND RELEVANT DISCIPLINARY HISTORY

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

On October 24, 2013, an AWC became final in which the firm was censured and fined for, among other things, violations of NASD Rule 2110-2 in connection with the handling of customer orders in OTC securities. For these violations, the firm was fined \$10,000.

FACTS AND VIOLATIVE CONDUCT

In 20130367081, the staff in the Customer Issues Section of Market Regulation (the "staff") conducted a trading ahead review in over-the-counter ("OTC") securities handled at the firm during the period July 1, 2012 through September 30, 2014 (the "review period"). As a result of this review, it was determined that:

1. In 86 instances during the review period, the firm accepted and held an order in an OTC equity security from its own customer, or a customer of another broker-dealer, and traded that security on the same side of the market for its own account at a price that would have satisfied the customer order without immediately thereafter executing the customer order up to the size and at the same or better price at which it traded for its own account. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rules 5320 and 2010.
2. In 38 of the above 86 instances, the firm also failed to make every effort to cross a marketable customer order with another order received by the firm on the opposite side of the market. Further, on 13 occasions mentioned above as involving either a trading ahead and/or crossing failure, the firm failed to execute a marketable customer order fully and promptly. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rules 5320 (Supplementary Material .07) and 2010.
3. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the Rules of FINRA, concerning trading ahead of customer orders. Specifically, the firm, when performing its trading ahead reviews in OTC securities, failed to: 1) identify price exceptions of market held orders; and 2) ensure that customer orders were executed within 60 seconds of the firm's proprietary trade and up to the lesser of the proprietary or customer order share quantity. The conduct described in this paragraph constitutes a violation of NASD Rule 3010 and FINRA Rule 2010.
4. The firm's Trading Supervision Checklist did not evidence a supervisory review related to trading ahead of customer orders from July 1, 2012 through September 30, 2012, and July-August 2014. The firm also failed to provide to the staff evidence of a supervisory review related to trading ahead of customer orders for June 2013. The conduct described in this paragraph constitutes a violation of NASD Rule 3010 and FINRA Rule 2010.

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

- A censure;
- A fine of \$52,500 (\$37,500 for the trading ahead violations and \$15,000 for the supervision violations);
- Restitution is ordered to be paid to customers in the amount of \$582.72, attached as Exhibit A, plus interest at the rate set forth in Section 6621(a) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from the date of the violative conduct until the date this AWC is accepted by the National Adjudicatory Council; and
- An undertaking to submit to the COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850, no later than 30 days after the AWC becomes final, a signed, dated letter or e-mail from a work-related account of

the registered principal to MarketRegulationComp@finra.org, acknowledging that the firm revised its written supervisory procedures to address the deficiencies described in paragraph I.A.2 above, and the date the revised procedures were implemented.

A registered principal on behalf of the firm shall submit satisfactory proof of payment of the restitution, or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted to the COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850, either by letter that identifies the firm and case number, or by email from a work-related account of the registered principal of the firm to MarketRegulationComp@finra.org. This proof shall be provided to FINRA no later than 120 days after acceptance of this AWC.

If for any reason, the firm cannot locate any customer identified after reasonable and documented efforts within 120 days from the date the AWC is accepted, or such additional period agreed to by FINRA staff in writing, the firm shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed-property or abandoned-property fund for the state in which the customer is known to have last resided. The firm shall provide satisfactory proof of such action to FINRA in the manner described above, within 14 days of forwarding the undistributed restitution and interest to the appropriate state authority.

The imposition of a restitution order or any other monetary sanction herein, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

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

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 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, Respondent 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.

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 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 accordance with FINRA Rule 8313;
 - 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.

09.29.16

By

10/31/16
Date

Robert A. Marchman/BSG

Robert A. Marchman, Esq. /
Executive Vice President
Department of Market Regulation

Item No.	Trade Date	Trade Report Time	Execution Time	Firm	Capacity	Side	Trade Vol	Issue Symbol	Trade Price	Realization
1	7/10/2012	09:30:02	9:30:01	MLCO	P	B	204	RHHBY	42.78	\$2.04
2	8/23/2012	14:46:13	14:46:13	MLCO	P	B	1,000	RHHBY	45.09	\$133.92
3	8/23/2012	14:46:18	14:46:18	MLCO	P	B	1,000	RHHBY	45.09	
4	8/23/2012	14:46:22	14:46:22	MLCO	P	B	1,000	RHHBY	45.09	
5	8/23/2012	14:46:25	14:46:25	MLCO	P	B	1,000	RHHBY	45.09	
6	8/23/2012	14:46:53	14:46:53	MLCO	P	B	400	RHHBY	45.09	
7	8/31/2012	09:30:02	9:30:00	MLCO	P	S	500	OGZPY	9.62	\$5.00
8	9/21/2012	14:02:41	14:02:41	MLCO	P	B	2,500	RHHBY	48.16	\$13.96
9	9/21/2012	14:02:48	14:02:48	MLCO	P	B	520	RHHBY	48.16	
10	4/18/2013	09:30:02	9:30:01	MLCO	P	B	500	OGZPY	7.63	\$10.00
11	5/3/2013	09:30:03	9:30:01	MLCO	P	S	220	NSRGY	70.30	\$20.00
12	6/25/2013	09:30:03	9:30:01	MLCO	P	S	100	RHHBY	57.66	\$10.00
13	7/29/2014	09:30:03	9:30:01	MLCO	P	S	500	OGZPY	7.36	\$15.00
14	7/29/2014	09:30:03	9:30:01	MLCO	P	S	500	OGZPY	7.36	
15	7/29/2014	09:30:03	9:30:02	MLCO	P	B	500	OGZPY	7.34	\$5.00
16										\$5.00
17	8/25/2014	09:30:02	9:30:01	MLCO	P	S	100	RHHBY	36.51	\$5.00
18	8/29/2014	11:14:49	11:14:48	INTL	P	S	500	NABZY	16.47	\$8.50
19	10/22/2012	09:30:03	9:30:01	MLCO	P	S	100	AAUKY	15.32	\$7.00
20	12/7/2012	09:30:03	9:30:02	MLCO	P	B	157	OGZPY	8.98	\$3.14
21	1/9/2013	09:30:02	9:30:00	MLCO	P	S	117	OGZPY	9.71	\$1.85
22	3/14/2013	09:30:03	9:30:01	MLCO	P	B	500	OGZPY	9.14	\$2.50
23	3/14/2013	09:30:02	9:30:01	MLCO	P	S	500	OGZPY	9.15	\$2.50
24	3/19/2013	09:30:03	9:30:01	MLCO	P	B	173	OGZPY	9.26	\$1.73
25	3/26/2013	09:30:02	9:30:01	MLCO	P	B	500	OGZPY	8.86	\$10.00
26	3/26/2013	09:30:01	9:30:00	MLCO	P	S	500	OGZPY	8.90	\$10.00
27	3/26/2013	09:30:01	9:30:00	MLCO	P	S	500	OGZPY	8.90	
28	4/18/2013	09:30:02	9:30:01	MLCO	P	B	500	OGZPY	7.63	\$3.00
29	4/22/2013	09:30:02	9:30:00	MLCO	P	B	500	CRRFY	5.37	\$20.00
30	4/22/2013	09:30:03	9:30:02	MLCO	P	B	500	RHHBY	60.98	\$35.00
31	6/25/2013	09:30:03	9:30:01	MLCO	P	S	100	RHHBY	57.66	\$10.00
32	11/1/2013	09:30:15	9:30:08	MLCO	P	B	200	KMTUY	21.42	\$16.00
33	12/17/2013	09:34:57	9:33:00	INTL	P	B	600	AESAY	7.46	\$18.00
34	12/23/2013	09:30:03	9:30:01	MLCO	P	B	100	RHHBY	68.07	\$13.00
35	4/14/2014	09:30:03	9:30:01	MLCO	P	B	500	OGZPY	7.34	\$30.00
36	4/14/2014	09:30:03	9:30:01	MLCO	P	B	275	OGZPY	7.34	
37	4/14/2014	09:30:03	9:30:01	MLCO	P	B	500	OGZPY	7.34	
38	4/14/2014	09:30:03	9:30:01	MLCO	P	B	500	OGZPY	7.34	
39	4/14/2014	09:30:03	9:30:01	MLCO	P	B	350	OGZPY	7.34	
40	5/12/2014	09:30:02	9:30:01	MLCO	P	B	500	OGZPY	7.84	\$10.00
41	5/12/2014	09:30:02	9:30:01	MLCO	P	S	500	OGZPY	7.86	\$5.00
42	10/11/2012	09:30:02	9:30:00	MLCO	P	S	205	CGEMY	20.65	\$14.24
43	11/15/2012	13:03:32	13:03:32	BARD	P	B	18,000	RHHBY	46.00	\$78.40
44	11/15/2012	13:04:24	13:04:24	BARD	P	B	16,000	RHHBY	46.6788	
45	11/15/2012	13:05:07	13:05:07	BARD	P	B	2,000	RHHBY	46.6788	
46	11/15/2012	13:51:03	13:51:03	BARD	P	B	3,000	RHHBY	46.72	
47	11/15/2012	14:45:14	14:45:12	MLCO	P	S	122	RHHBY	46.7	
48	12/7/2012	09:30:03	9:30:01	MLCO	P	S	500	OGZPY	9.00	\$3.14
49	2/5/2013	09:30:02	9:30:01	MLCO	P	B	221	RHHBY	55.68	\$5.34
50	2/5/2013	09:30:10	9:30:09	MLCO	P	B	300	RHHBY	55.68	
51	2/26/2013	09:30:02	9:30:01	MLCO	P	B	500	RHHBY	57.19	\$3.00
52	4/2/2013	09:30:03	9:30:01	MLCO	P	B	196	RHHBY	58.71	\$10.56
53	4/23/2013	09:30:02	9:30:00	MLCO	P	S	365	OGZPY	7.55	\$2.90
54	5/3/2013	09:30:03	9:30:01	MLCO	P	S	220	NSRGY	70.30	\$20.00
55	2/13/2014	09:30:03	9:30:01	MLCO	P	B	100	DBSDY	51.75	\$13.00
										\$582.72