

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013037137602**

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

RE: Merrill Lynch, Pierce, Fenner & Smith Incorporated, Respondent
CRD No. 7691

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch" 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 me 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

Merrill Lynch is a Delaware Corporation with its principal place of business in New York, New York. The Firm is a global investment banking and multi-service brokerage firm that provides, among other things, retail brokerage, corporate and investment banking services, wealth management and commercial lending services. Merrill Lynch is a registered broker-dealer and has been a FINRA member since 1937. The Firm has more than 15,000 registered representatives and holds approximately \$2.2 trillion in customer assets.

RELEVANT DISCIPLINARY HISTORY

On October 28, 2010, pursuant to Letter of Acceptance, Waiver and Consent No. 2008015403102, FINRA made findings (which Merrill Lynch neither admitted nor denied) that, from January 2007 through January 2009, Merrill Lynch failed to timely and accurately report a customer complaint in accordance with NYSE Rule 351 and Article V, Section 3 of NASD's By-Laws. Among other things, FINRA found that Merrill Lynch failed to timely amend a Form U5 to report the

customer complaint. FINRA found that, as a result, Merrill Lynch violated NYSE Rule 351(a) and (d) and NASD Rule 2110. Merrill Lynch consented to a censure and a fine of \$75,000.

On September 24, 2012, pursuant to Letter of Acceptance, Waiver and Consent No. 2009020356301, FINRA made findings (which Merrill Lynch neither admitted nor denied) that, from in or about 2005 to August 2011, Merrill Lynch failed to make or timely make approximately 1200 required filings or acknowledgments of customer complaints, certain arbitrations and civil litigations and related Forms U4 and Forms U5. FINRA found that, as a result, Merrill Lynch violated various NYSE, NASD and FINRA rules, including NASD Rules 3070(f) and 2110, FINRA Rule 2010 and Article V, Section 3 of NASD's and FINRA's By-Laws. Merrill Lynch consented to a censure and a fine of \$500,000.

OVERVIEW

Merrill Lynch registered representative Greg Campbell misappropriated over \$1.7 million from customers of Merrill Lynch between May 2008 and October 2011. After leaving Merrill Lynch on October 29, 2011 and joining a new firm, Campbell misappropriated over \$500,000 from customers at his new firm.¹

Merrill Lynch received a written complaint on October 26, 2011 from a customer alleging that Campbell had misappropriated the customer's funds. On May 25, 2012, Merrill Lynch received a written complaint from another customer alleging that Campbell had misappropriated that customer's funds. Merrill Lynch failed to amend Campbell's Form U5 Notice of Termination or otherwise report either written customer complaint until October 26, 2012, one year after the first complaint was received and approximately five months after the second complaint was received. As a result, Merrill Lynch violated FINRA Rules 4530(a) and 2010 and Article V, Section 3 of FINRA's By-Laws.

FACTS AND VIOLATIVE CONDUCT

On October 26, 2011, Merrill Lynch received a written complaint from a customer alleging unauthorized activity occurring in his Firm IRA and personal brokerage accounts managed by Campbell. Among other things, the customer alleged that unauthorized withdrawals had been made from his accounts, that loans had been taken in his name using his securities as collateral and that his address of record had been changed without his authorization.

Campbell left Merrill Lynch on October 29, 2011 and, shortly thereafter, joined a new firm. Merrill Lynch filed a Form U5 Notice of Termination for Campbell on October 31, 2011. The Form U5 described Campbell's termination as voluntary and did not disclose any customer complaints against him.

¹ Campbell entered into a Letter of Acceptance, Waiver and Consent with FINRA in which he consented to a bar for misappropriating and converting customers' funds. See AWC No. 2012034193201 (Mar. 14, 2013).

On May 25, 2012, Merrill Lynch received a written complaint from another customer alleging unauthorized activity in his Firm account that had been managed by Campbell. That customer alleged that unauthorized withdrawals were made from his account, that loans had been made in his name using his securities as collateral and that he had not been receiving account statements.

Between May 2008 and October 2011, Campbell misappropriated over \$1.7 million from Merrill Lynch customers.

Merrill Lynch did not report the two written complaints alleging misappropriation of funds by Campbell until October 26, 2012, when the Firm amended Campbell's Form U5 to disclose the customer complaints. By that time, approximately one year had elapsed since the Firm received the first complaint, and approximately five months had elapsed since the Firm received the second complaint.

Following Merrill Lynch's disclosures, Campbell was discharged from his new firm for initiating transactions without customers' knowledge or consent, including transferring customers' funds to his control. At his new firm, Campbell misappropriated over \$500,000 from customers.

FINRA Rule 4530(a) requires each member firm to "promptly report to FINRA, but in any event not later than 30 calendar days, after the member knows or should have known" that the firm is, among other things, "the subject of any written customer complaint involving allegations of theft or misappropriation of funds or securities or forgery." By failing to timely report the two written customer complaints alleging misappropriation of funds to FINRA, Merrill Lynch violated FINRA Rules 4530(a) and 2010.

Article V, Section 3 of FINRA's By-Laws requires each member firm, not later than 30 days after terminating a person's registration, to notify FINRA of the termination through the filing of a Form U5. Section 7.E of the Form U5 requires each firm to disclose whether the terminated person was "the subject of an *investment-related* consumer-initiated written complaint" alleging "that the individual was *involved* in one or more *sales practice violations*," including misappropriation. Each member firm is required, under Article V, Section 3 of the By-Laws, to amend a Form U5 within 30 days of when "the member learns of facts or circumstances causing any information set forth" in the Form U5 "to become inaccurate or incomplete." By failing to amend Campbell's Form U5 to disclose the written customer complaints alleging misappropriation of funds within 30 days of becoming aware of the complaints, Merrill Lynch violated Article V, Section 3 of FINRA's By-Laws and FINRA Rule 2010.

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

- A censure; and
- A fine in the amount of \$175,000.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Respondent 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 it;
- 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

Respondent 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 Respondent; and
- C. If accepted:
 - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondent'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. Respondent 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. Respondent 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 Respondent'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. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent 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 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.

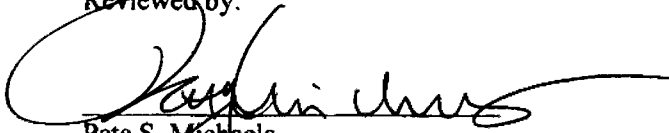
12/12/2014

Date (mm/dd/yyyy)

Merrill Lynch, Pierce, Fenner & Smith Incorporated

By: Mark L. Keene
Mark L. Keene
Associate General Counsel

Reviewed by:

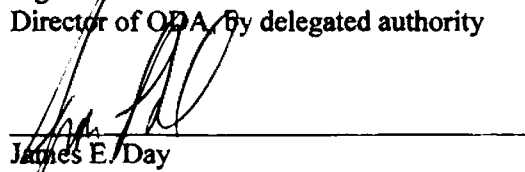


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(617) 350-4040

Accepted by FINRA:

1/13/15
Date

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



James E. Day
Vice President & Chief Counsel
FINRA Department of Enforcement
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Rockville, MD 20850
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