

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20130376789-01**

**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 ("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

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

RELEVANT DISCIPLINARY HISTORY

On February 23, 2010, FINRA accepted an AWC in which the firm was censured and fined \$55,000 for violations of NASD Rule 6955(a) (now FINRA Rule 7450).

On January 4, 2011, FINRA accepted an AWC in which the firm was censured and fined \$50,000 for violations of NASD Rule 6130 (now FINRA Rule 7230A).

On March 4, 2013, FINRA accepted an AWC in which the firm was censured and fined \$80,000 for violations of NASD Rule 6955 and FINRA Rule 7450, and \$30,000 for violations of NASD Rule 6130 and FINRA Rule 7230A.

On October 24, 2013, FINRA accepted an AWC in which the firm was censured and fined \$15,000 for violations of FINRA Rule 7230A.

SUMMARY

In connection with Matter No. 20130376789, the OATS Operations Team of the Department of Market Regulation at FINRA conducted a review of MLCO's compliance with FINRA Rule 7450, NASD Rule 3010, and FINRA Rule 2010 during the period December 1, 2010 through July 31, 2013.

In connection with Matter No. 20140414707, the Trade Reporting Team of the Department of Market Regulation at FINRA conducted a review of MLCO's compliance with FINRA Rule 7230A, NASD Rule 3010, and FINRA Rule 2010 during the period January 1, 2014 through April 30, 2014.

OVERVIEW

1. As a result of its review of Matter No. 20130376789, Market Regulation determined that between December 1, 2010 and July 31, 2013, MLCO failed to transmit to OATS approximately 303 million Reportable Order Events ("ROEs"). Because FINRA uses OATS data as an integral part of its automated market surveillance program to detect manipulative activity and other potential violations of FINRA rules and the federal securities laws, a failure to transmit ROEs can hamper FINRA's ability to detect potentially violative conduct and/or create false positive alerts requiring the expenditure of unnecessary resources to resolve the alerts. Moreover, these failures also caused the Audit Trail to be inaccurate.
2. With respect to Matter No. 20140414707, Market Regulation determined that between January 1, 2014 and April 30, 2014, MLCO failed to report to the FINRA/Nasdaq Trade Reporting Facility ("TRF") 447 transactions effected pursuant to the exercise of over-the-counter ("OTC") options by 8:00 p.m. (or the end of the reporting session that was in effect at that time) on the relevant trade dates.
3. In addition, during all the above-referenced review periods, MLCO failed to have adequate supervisory procedures reasonably designed to achieve compliance with FINRA Rule 7450 and FINRA Rule 7230A in connection with the deficiencies described herein.

FACTS AND VIOLATIVE CONDUCT

Matter No. 20130376789

4. During the period between March 2012 and May 2013, the firm failed to transmit 123,091,148 ROEs to OATS under its MLCO MPID. These ROEs represented 100% of the ROEs it was required to submit for a third party for which it provided direct market access to a foreign exchange, and represented 0.35% of all ROEs that the firm was required to transmit to OATS during this period under its MLCO MPID. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7450.

5. During the period between December 1, 2010 and July 31, 2013, the firm failed to transmit approximately 180,000,000 ROEs to OATS under its MLCO, MLEX, BCEP and BCEX MPIDs. Specifically, the firm: (a) failed to submit approximately 146,898,000 ROEs under its MLCO MPID, which represented approximately 0.42% of all ROEs that the firm was required to transmit to OATS during this period for this MPID; (b) failed to submit approximately 18,486,000 ROEs under its MLEX MPID, which represented approximately 7.11% of all ROEs that the firm was required to transmit to OATS during this period for this MPID; (c) failed to submit approximately 12,816,000 ROEs under its BCEP MPID, which represented approximately 9.43% of all ROEs that the firm was required to transmit to OATS during this period for this MPID; and (d) failed to submit approximately 1,782,000 ROEs under its BCEX MPID, which represented approximately 11.88% of all ROEs that the firm was required to transmit to OATS during this period for this MPID. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7450.

Matter No. 20140414707

6. During the period between January 1, 2014 and April 30, 2014, the firm failed to report to the FINRA/Nasdaq TRF by 8:00 p.m. Eastern Time 447 transactions that required a .X modifier. These transactions represented 78% of transactions requiring a .X modifier during this period. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7230A(g).

Matter Nos. 20130376789 and 20140414707

7. During the above-referenced review periods, the firm failed to provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the rules of FINRA concerning OATS and trade reporting, in violation of NASD Rule 3010 and FINRA Rule 2010.

OTHER FACTORS

In determining to resolve this matter in the manner set forth herein, and in determining the appropriate monetary sanction for Matter No. 20130376789,¹ Market Regulation gave consideration that the firm self-reported to Market Regulation staff in July 2013 the failure to submit to OATS the ROEs involved in this matter. The Firm further undertook steps to remediate the issues, and subsequently submitted to OATS the 123,091,148 ROEs it failed to submit during the period between March 2012 and May 2013.

¹ See Principal Consideration No. 12 of the FINRA Sanction Guidelines and Regulatory Notice 08-70.

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

- 1. A censure;**
- 2. A fine of \$155,000 (consisting of a fine of \$80,000 for the violations of FINRA Rule 7450, a fine of \$30,000 for the violations of FINRA Rule 7230A(g), and a fine of \$45,000 for the violations of NASD Rule 3010 and FINRA Rule 2010).**

Respondent agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. It 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(s) 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

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 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. 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 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. Respondent 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.

2/25/16
Date

Merrill Lynch, Pierce, Fenner & Smith
Incorporated
Respondent

By: [Signature]

Name: Joseph Page

Title: Vice President

Reviewed by:

Attorney Name
Counsel for Respondent
Firm Name
Address
City/State/Zip
Phone Number

Date

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

[Signature]

David E. Rosenstein, Esq.
Senior Vice President, Legal Section
FINRA Department of Market Regulation

3/14/16
Date