

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20140404007-01**

TO: Department of Enforcement
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", the "firm", or "Respondent") 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

The firm has been a member of FINRA since 1937, and its registration remains in effect. The firm does not have a relevant disciplinary history.

SUMMARY

Matter No. 20140404007 involves a review conducted by the Department of Market Regulation's Short Interest Section (the "staff") of MLCO's compliance with short interest reporting requirements during the period between July 15, 2013 and December 31, 2013.

Matter No. 20140434847 involves a review conducted by staff of MLCO's compliance with short interest reporting requirements during the period between August 15, 2012 and October 31, 2014.

Matter No. 20150467456 involves a review conducted by staff of MLCO's compliance with short interest reporting requirements during the period between September 28, 2012 and March 31, 2015.

Matter No. 20140404007 (includes 20140434847 and 20150467456) (BW)

OVERVIEW

During the period between August 15, 2012 through March 31, 2015 (the “relevant period”), FINRA Rule 4560 required that firms maintain a record of short interest positions in all customer and proprietary firm accounts in all equity securities (with certain exceptions), and regularly report such positions to FINRA, in a manner prescribed by FINRA.¹

During the relevant period, MLCO failed to establish and maintain a supervisory system that was reasonably designed to achieve compliance with the applicable securities laws and regulations and FINRA rules concerning short interest reporting. As a result, MLCO violated FINRA short interest reporting and supervisory rules.

The firm’s supervisory deficiencies were evidenced by various undetected system, coding and configuration issues that occurred during the relevant period on 64 settlement dates, which resulted in MLCO failing to report a total of 37,359 short interest positions totaling 9,583,599,754 shares, and inaccurately reporting 10 short interest positions totaling 2,045,270 shares when it should have reported 10 short interest positions totaling 4,992,758 shares.

The accuracy of reported short interest is essential for regulatory purposes, particularly for the evaluation of compliance with Regulation SHO. Additionally, aggregate short interest data is disseminated to the public by various entities, such as self-regulatory organizations, which include exchanges and FINRA, as well as financial media, and may be relied upon by the public in making investment decisions or evaluating particular securities or companies.

FACTS AND VIOLATIVE CONDUCT

Matter No. 20140404007

1. As a result of an undetected system logic error in the Firm’s internal short interest report that dropped certain symbols involved in recent corporate actions that resulted in mergers and an exchange of shares, between July 15, 2013 and December 31, 2013, MLCO failed to report 18 short interest positions totaling 160,934 shares on 9 settlement dates involving a total of seven securities, and inaccurately reported 10 short positions totaling 2,045,270 shares, when it should have reported 10 short interest positions totaling 4,992,748 shares on 8 settlement dates. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 4560.

¹ For further information, see Regulatory Notice 12-38.

Matter No. 20140434847

2. Due to an undetected coding error on its internal short interest report that omitted certain over-the-counter ("OTC") foreign securities (*i.e.*, duly listed securities) from its short interest submission, between August 15, 2012 and October 31, 2014, MLCO failed to report 36,413 short interest positions totaling 9,530,879,808 shares on 54 settlement dates. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 4560.

Matter No. 20150467456

3. As a result of a failure to update its internal programming logic in its Master Security Database used to determine if a security was reportable, MLCO failed to capture certain equity preferred securities involving corporate actions between September 28, 2012 and March 31, 2015, and thus MLCO failed to report 928 short interest positions totaling 52,559,012 shares. The issue that caused this failure was only initially detected by MLCO during the firm's short interest reporting process for settlement date of January 30, 2015. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 4560.

Matter Nos. 20140404007, 20140434847, and 20150467456

4. During the relevant period, MLCO failed to establish and maintain a supervisory system that was reasonably designed to achieve compliance with FINRA Rule 4560. Specifically, because MLCO failed to detect various system, coding and configuration issues that occurred during the relevant period with regard to its short interest reporting, the firm failed to report and failed to accurately report its short interest positions to FINRA as set forth in paragraphs 1 through 3 above. The conduct described in this paragraph and above constitutes a violation of NASD Rule 3010 (for conduct prior to December 1, 2014) and FINRA Rule 3110² (for conduct on and after December 1, 2014) 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,³ Enforcement took into consideration the following: (i) that MLCO self-reported a significant number of the violations at issue after conducting an internal investigation; (ii) provided assistance to FINRA in assessing the number and scope of violations; and (iii) promptly took remedial action to correct the deficiencies that led to the violative activity.

² On December 1, 2014, FINRA Rule 3110 replaced NASD Rule 3010.

³ See Notice to Members 08-70.

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

- 1. A censure; and**
- 2. A fine totaling \$525,000 (consisting of a fine of \$300,000 for violations of FINRA Rule 4560, and \$225,000 for violations of NASD Rule 3010, FINRA Rules 3110 and 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 the firm's 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.

10-JAN-18
Date

Merrill Lynch, Pierce, Fenner & Smith
Incorporated, Respondent

By: TW

Name: TIMOTHY WARTEN

Title: MANAGING DIRECTOR

Reviewed by:

Attorney Name
Counsel for Respondent
Firm Name
Address
City/State/Zip
Phone Number
Accepted by FINRA:

1/19/18
Date

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

Robert A. Marchman
Robert A. Marchman, Executive Vice President
FINRA Department of Enforcement