

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2019062983001**

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

RE: Merrill Lynch, Pierce, Fenner & Smith Incorporated (Respondent)
Member Firm
CRD No. 7691

Pursuant to FINRA Rule 9216, Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated 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 in this AWC.

I.

ACCEPTANCE AND CONSENT

- A. Respondent accepts and consents to the following findings by FINRA without admitting or denying them:

BACKGROUND

Merrill Lynch has been a FINRA member since 1937 and a Municipal Securities Rulemaking Board (MSRB) registrant since 1976. It currently is a multi-service brokerage firm that provides, among other things, retail brokerage and wealth management services. The firm is headquartered in New York, New York. The firm has more than 27,800 registered representatives and over 4,000 branch offices.¹

OVERVIEW

From March 2010 to September 2020, the firm failed to accurately report to the Trade Reporting and Compliance Engine (TRACE) over two million retail customer² transactions in TRACE-eligible securities, as defined in FINRA Rule 6710(a). Specifically, the firm reported incorrect execution times for approximately 1,576,000 primary market transactions in market-linked securities, in violation of FINRA Rules 6730(c)(8) and 2010. The firm also under-reported 422,197 allocations of various TRACE-eligible securities to client accounts, in violation of FINRA Rules 6730(a)(4), 6730(a)(5), and 2010. In addition, the firm failed to include the No Remuneration (NR)

¹ For more information about the firm, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

² Effective in May 2019, Merrill transferred its investment banking and other institutional brokerage businesses to BofA Securities, Inc.

indicator for 179,734 U.S. Treasury securities transactions for which there was no transaction-based compensation, in violation of FINRA Rules 6730(d)(1), 6730(d)(4)(F), and 2010.

Further, from September 2017 to February 2019, the firm reported 65,335 municipal securities transactions for retail customers to RTRS that it should not have reported, in violation of MSRB Rule G-14(b).

Finally, the firm's supervisory systems relating to TRACE and RTRS reporting were not reasonably designed in violation of NASD Rule 3010 and FINRA Rules 3110(a) and (b) and 2010 from March 2010 to September 2020³ and MSRB Rule G-27 from September 2017 to December 2019.

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's reviews of the firm's compliance with FINRA rules regarding TRACE reporting.

The firm failed to accurately report execution times for certain primary market transactions in TRACE-eligible securities.

FINRA Rule 6730(c)(8) requires that each trade report to TRACE include the time of execution. FINRA Rule 2010 states that a "member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." A violation of FINRA Rule 6730 constitutes a violation of FINRA Rule 2010.

From March 2010 to June 2018, the firm reported incorrect execution times to TRACE for approximately 1,576,000 primary market transactions in market-linked securities. The misreporting occurred because the firm failed to include a field for execution time for market-linked primary market transactions when they became TRACE reportable. As a result, the firm's systems misclassified each transaction's processing time as the execution time, and the firm inaccurately reported the processing time as the execution time to TRACE. The firm corrected the issue and reported it to FINRA pursuant to FINRA Rule 4530(b) in 2019.

As a result of its failure to accurately report certain execution times to TRACE, the firm violated FINRA Rules 6730(c) and 2010.

The firm failed to report certain allocations of TRACE-eligible securities to client accounts.

FINRA Rule 6730(a) provides that members have an obligation to report transaction information to TRACE promptly, accurately, and completely. Where a firm purchases a block of TRACE-eligible securities and then allocates portions of the block to the various client accounts, the firm must report the corresponding sales, or allocations, to its

³ FINRA Rule 3110 superseded NASD Rule 3010 on December 1, 2014.

customers individually.⁴ From August 2013 to June 2019, the firm failed to report 422,197 customer allocations in TRACE-eligible securities as separate transactions to TRACE but, instead, reported each block transaction as a single transaction. The firm corrected the issue and reported it to FINRA pursuant to FINRA Rule 4530(b) in 2019.

As a result of its under-reporting of certain customer allocations to TRACE, the firm violated FINRA Rules 6730(a) and 2010.

The firm failed to report the NR indicator for certain transactions in TRACE-eligible U.S. Treasury Securities.

FINRA Rules 6730(d)(1) and (d)(4)(F) require that members use the NR indicator when reporting a trade to TRACE that did not include transaction-based compensation. From July 2017 to September 2020, however, the firm failed to include the NR indicator for 179,734 transactions in U.S. Treasury securities that did not include transaction-based compensation. This occurred because the firm incorrectly concluded the NR indicator was not required when reporting Treasury transactions.

Therefore, the firm violated FINRA Rules 6730(d) and 2010.

The firm reported certain transactions in municipal securities to RTRS that it should not have reported.

MSRB Rule G-14(b) provides that dealers in municipal securities must report transaction information to the MSRB's RTRS only if the dealer effected the relevant transaction.⁵ From September 2017 to February 2019, the firm reported 65,335 transactions in municipal securities that a third-party dealer executed and for which the firm acted only as custodian. The over-reporting occurred because the firm failed to code its systems to suppress the reporting for such transactions. The firm corrected the issue and reported it to FINRA pursuant to FINRA Rule 4530(b) in 2019.

As a result of its over-reporting of certain municipal securities transactions, the firm violated MSRB Rule G-14(b).

The firm's supervisory system was not reasonably designed to achieve compliance with TRACE reporting rules.

FINRA Rule 3110(a) and NASD Rule 3010(a) require a member firm to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations and FINRA rules.

⁴ FAQ 3.1.47, *Frequently Asked Questions (FAQ) about the Trade Reporting & Compliance Engine (TRACE)*, FINRA, available at <https://www.finra.org/filing-reporting/trace/faq>.

⁵ *Notice on Reporting & Comparison of Certain Transactions Effected by Investment Advisors: Rule G-12(f) and G-14*, MSRB Notice 2003-20 (May 23, 2013), available at <https://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2003/2003-20.aspx?n=1>.

FINRA Rule 3110(b) and NASD Rule 3010(b) require a member firm to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations and FINRA rules.

A violation of FINRA Rule 3110 or NASD Rule 3010 constitutes a violation of FINRA Rule 2010.

From March 2010 to September 2020, the firm failed to establish and maintain a supervisory system reasonably designed to achieve compliance with FINRA Rule 6730. Specifically, the firm did not have reasonable supervisory reviews or written procedures relating to over-reporting or under-reporting of certain transactions in TRACE-eligible securities from March 2010 to December 2019, or relating to the accuracy of execution times or NR indicators in certain TRACE reports from March 2010 to September 2020.

Therefore, the firm violated NASD Rule 3010 and FINRA Rules 3110(a) and (b) and 2010.

The firm's supervisory system was not reasonably designed to ensure compliance with MSRB reporting rules.

MSRB Rule G-27(a) requires brokers, dealers, and municipal securities dealers to supervise the conduct of their municipal securities activities to ensure compliance with MSRB rules and applicable provisions of the Securities Exchange Act of 1934 and Exchange Act rules. MSRB Rule G-27(b) requires brokers, dealers, and municipal securities dealers to establish and maintain a system to supervise the municipal securities activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable MSRB rules. MSRB Rule G-27(c) requires brokers, dealers, and municipal securities dealers to adopt, maintain, and enforce written supervisory procedures reasonably designed to ensure compliance with MSRB Rule G-27(a).

From September 2017 to December 2019, the firm's supervisory system, including written supervisory procedures, was not reasonably designed to ensure compliance with RTRS reporting requirements because it did not have reasonable supervisory reviews or written procedures relating to over-reporting of certain transactions.

Therefore, the firm violated MSRB Rule G-27.

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

- a censure and
- a \$2,000,000 fine (\$50,000 of which pertains to the violations of MSRB Rules G-14 and G-27).

Respondent agrees to pay the monetary sanctions 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 an inability to pay, now or at any time after the execution of this AWC, the monetary sanctions imposed in this matter.

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

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 its acceptance or rejection.

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 action brought by FINRA or any other regulator against Respondent;
 - 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 its subject matter 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 right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.
- 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.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent'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 Respondent 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 in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce Respondent to submit this AWC.

September 20, 2024

Date

Russel D. Francisco

Merrill Lynch, Pierce, Fenner & Smith Incorporated
Respondent

Print Name: Russel D. Francisco

Title: Assistant General Counsel, Senior VP

Reviewed by:

Thomas J. Hennessey

Thomas J. Hennessey
Counsel for Respondent
Morgan, Lewis & Bockius LLP
One Federal Street
Boston, MA 02110-1726

Accepted by FINRA:

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

September 30, 2024

Date

Jeffery Ding

Jeffery Ding
Senior Counsel
FINRA
Department of Enforcement
200 Liberty Street
New York, NY 10281