

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. EAF0401090003**

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA") (f/k/a NASD)

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

Pursuant to Rule 9216 of FINRA's Code of Procedure, Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Respondent" or "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 in Part II below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against it alleging violations based on the same factual findings.

Respondent understands that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by FINRA's Department of Enforcement and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against it; and
3. If accepted:
 - a. 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;
 - b. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondent's disciplinary records;
 - c. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and
 - d. 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

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that the AWC is without factual basis. Nothing in this provision affects Respondent's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

Respondent also understands that its experience in the securities industry and disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and history are as follows:

Merrill Lynch is a full-service broker-dealer and has been a FINRA member since 1937. Currently, Merrill Lynch has over 600 branch offices and over 14,000 registered representatives in the United States. The Firm's principal offices are located in New York, New York.

Merrill Lynch's relevant disciplinary history is as follows: Pursuant to a settlement, on December 19, 2005, FINRA accepted an AWC submitted by the Firm in which Merrill Lynch, without admitting or denying the findings therein, was censured and fined \$14 million for suitability and supervisory violations relating to sales of certain Class B and Class C mutual fund shares that occurred between January 2002 and September 30, 2003. In connection with the settlement, the Firm agreed to undertake a remediation plan including more than 105,000 transactions involving at least 23,000 client households. In Re Merrill Lynch, Pierce, Fenner & Smith Incorporated, Letter of Acceptance, Waiver and Consent No. EAF030072 (December 19, 2005).

I.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against it;
- B. To be notified of the Formal 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 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 General Counsel, 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 Rule 9143 or the separation of functions prohibitions of 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.

II.

ACCEPTANCE AND CONSENT

Merrill Lynch 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:

A. Summary

From January 1, 2002 through December 31, 2004 ("the relevant period"), Merrill Lynch failed to ensure that certain investors purchased Class A shares of certain mutual funds at net asset value ("NAV") when eligible to do so. In particular, certain mutual funds offered "NAV Transfer Programs" that allowed investors to purchase Class A shares at NAV and not pay any sales charges, if the investor invested proceeds from the redemption of shares of another mutual fund within specified time frames and previously had paid either a front-end or back-end sales charge.

During the relevant period, Merrill Lynch failed to exercise reasonable due diligence to identify the essential terms and conditions of the NAV Transfer Programs of certain mutual funds, and failed to establish, maintain and enforce a system and procedures relating to NAV Transfer Programs that was reasonably designed to achieve compliance with applicable securities laws, rules and regulations. As a result of these deficiencies, certain investors who were eligible to purchase Class A shares under NAV Transfer Programs (1) purchased Class A shares and incurred front-end sales charges that they should not have paid, and/or (2) purchased other share classes of these mutual funds and thereby became subject to back-end sales charges, also known as contingent deferred sales charges ("CDSCs"), as well as higher ongoing distribution and service fees ("Rule 12b-1 fees" or "fees"), typically associated with share classes other than Class A.

B. Mutual Fund Share Classes

Most mutual funds offer three classes of shares to individual investors: Class A, Class B, and Class C shares. Some mutual funds also offer additional mutual fund share classes with fee

structures similar to Class A, B and C shares. Investors who purchase Class A shares pay a sales charge at the time of purchase, which is referred to as an initial sales charge, or front-end load. Investors who purchase Class B shares incur a sales charge upon redemption of their Class B shares, which is referred to as a Contingent Deferred Sales Charge (CDSC), or back-end sales load, if they redeem their Class B shares prior to the expiration of the holding period specified in the prospectus. Investors also may purchase Class C Shares, which typically do not require the payment of an initial sales charge, but may require the payment of a CDSC, if the shares are not held for at least one year. In addition to these sales charges, all classes of shares are subject to Rule 12b-1 fees, but these fees are higher for Class B and C shares than for Class A shares. Also, over a period of time, Class B shares ultimately convert to Class A shares (thereby resulting in reduced Rule 12b-1 fees after conversion), while Class C shares typically do not convert to Class A shares.

C. Purchases of Class A Shares at NAV

When purchasing Class A shares, investors typically purchase the shares at the “public offering price,” which is the NAV plus the initial sales charge. Most mutual funds, however, offer investors the opportunity to purchase Class A shares at NAV – without paying an initial sales charge – under certain circumstances. For example, most mutual funds allow investors who invest \$1 million or more to purchase the shares at NAV, so long as these shares are held for at least one year, under sales charge discount programs commonly referred to as “breakpoints.” Other examples of NAV opportunities include those provided by mutual funds to retirement plans, employees of broker-dealers, and employees of the mutual fund companies and their affiliates.

During the relevant period, some mutual funds offered investors the opportunity to purchase Class A shares at NAV through NAV Transfer Programs, regardless of the amount invested. Under these programs, an investor purchasing Class A shares using proceeds from the redemption of shares of another unaffiliated mutual fund may have been eligible to purchase Class A shares at NAV, provided that the investor paid an initial sales charge or CDSC on the redeemed shares and that the qualifying redemptions occurred sufficiently close in time to the new purchase. While the precise terms of each NAV Transfer Program varied from fund to fund, if an investor’s purchase and prior redemption met the terms and conditions of the fund’s NAV Transfer Program, the investor was entitled to purchase Class A shares without paying an initial sales charge. An investor who purchased Class A shares with a sales load, when he qualified for a purchase at NAV, may have paid up to 5.50% of his purchase price in sales charges that he did not have to incur.

In addition, an investor who purchased Class B or Class C shares, when he qualified for the purchase of Class A shares through an NAV Transfer Program, generally would have paid higher ongoing Rule 12b-1 fees and, potentially, sales charges upon the sale of the fund shares (CDSC).

D. Merrill Lynch’s Failure to Identify Available NAV Transfer Programs

During the relevant period, Merrill Lynch failed to establish, maintain and enforce a system and procedures reasonably designed to identify NAV Transfer Programs available to its clients.

For example, the Firm lacked systems and procedures to systematically review whether each fund sold by the Firm offered an NAV Transfer Program. The Firm also lacked adequate written procedures that were reasonably designed to supervise its activities in connection with client purchases of mutual funds that offered NAV Transfer Programs. The Firm did not prepare reports or documents to identify clients eligible for available programs and did not attempt to track qualifying redemption proceeds or otherwise systematically evaluate whether clients satisfied the conditions associated with available NAV Transfer Programs. Thus, the Firm did not take adequate steps to provide eligible clients with the benefit of available programs.

During the relevant period, certain funds of an affiliate of Merrill Lynch, then known as Merrill Lynch Investment Managers ("MLIM"), offered an NAV Transfer Program.¹ The MLIM NAV Transfer Program entitled investors to receive NAV pricing on investments in those funds when certain conditions were met. For example, during the relevant period, clients of Merrill Lynch financial advisors who had invested in a mutual fund for which Merrill Lynch did not serve as a dealer (a "non-agreement fund") were eligible for NAV pricing on their purchase of MLIM fund shares if the purchase was made during a certain time period following the redemption of shares of a non-agreement fund, and the new purchase was made with the proceeds from the redemption of the non-agreement fund shares. The NAV benefit of this proprietary NAV Transfer Program was also available to clients of financial advisors who had joined Merrill Lynch from another investment firm during a certain time period prior to the date on which a client purchased shares of a MLIM fund, if such purchase was made using the proceeds from the redemption of a fund sponsored by the financial advisor's previous firm.

While not every investor purchasing mutual funds offering NAV Transfer Programs during the relevant period qualified for NAV pricing, Merrill Lynch's system and procedures did not provide all eligible clients with such pricing when appropriate. Merrill Lynch estimates that remediation payments to investors who qualified for but did not receive the benefit of NAV pricing during the relevant period will be approximately \$15 million, not including interest.

E. NASD Rule Violations

During the relevant period, Merrill Lynch failed to establish, maintain and enforce a supervisory system and procedures reasonably designed to: (i) identify certain opportunities for investors to purchase mutual funds at NAV under available NAV Transfer Programs, and (ii) provide eligible investors with the benefit of available NAV Transfer Programs. By reason of the foregoing, Merrill Lynch violated NASD Conduct Rules 3010 and 2110.

¹ On September 29, 2006, MLIM merged with Blackrock, Inc. The new entity primarily operates under the Blackrock name.

Sanctions

Merrill Lynch consents to the imposition, at a maximum, of the following sanctions:

1. A censure.
2. A fine of \$250,000.
3. Merrill Lynch agrees to the following undertakings:
 - a. Merrill Lynch will provide remediation to clients who purchased shares of mutual funds during the period January 1, 2002 through the Notice of Acceptance of this AWC, and qualified for, but did not receive, the benefit of an NAV Transfer Program (each such purchase, a "Qualifying NAV Purchase").²
 - i. For each client who paid an initial sales charge, Merrill Lynch shall refund the sales charge paid, plus interest from the date of the purchase through the payment date at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2) (the "IRS Rate").
 - ii. For each client who purchased a class of shares other than Class A, with either a back-end or level load (including but not limited to B and C shares), Merrill Lynch shall make a cash payment to the client sufficient to place the client in a substantially equivalent financial position to the position such client would have been in with respect to the Qualifying NAV Purchase had the investor purchased Class A shares at NAV rather than another class of shares, plus interest from the date of purchase through the payment date at the IRS Rate.
 - b. Merrill Lynch will provide remediation pursuant to Section 3.a. above in accordance with a methodology not unacceptable to FINRA staff (the "Remediation Methodology"). The Remediation Methodology will be provided in writing to FINRA staff prior to retaining the Third Party Examiner, as described in Section 3.c. below.
 - c. Merrill Lynch shall:
 - i. Within 60 days from the Notice of Acceptance of this AWC, retain a Third Party Examiner, not unacceptable to FINRA staff, to assess the Firm's remediation and provide a report to FINRA staff as set forth in Section 3.h. below;³

² Eligible purchases for which a client used proceeds of qualifying redemptions totaling less than \$2,000 are excluded and shall not be deemed "Qualifying NAV Purchases."

³ Merrill Lynch may retain the same Examiner that it retained to perform the Examiner services for the Firm pursuant to AWC No. EAF030072.

- ii. Provide a copy of this AWC and a copy of the Remediation Methodology, in the form accepted by FINRA staff, to the Third Party Examiner upon the retention of the Third Party Examiner by the Firm;
 - iii. Exclusively bear all costs, including compensation and expenses, associated with the retention of the Third Party Examiner; and
 - iv. Cooperate with the Third Party Examiner in all respects in order to fulfill its obligations under this AWC, including by providing staff support. Merrill Lynch shall place no restrictions on the Third Party Examiner's communications with FINRA staff and, upon request, shall make available to FINRA staff any and all communications between the Third Party Examiner and Merrill Lynch and documents reviewed by the Third Party Examiner in connection with his or her engagement under this AWC. Once retained, Merrill Lynch shall not terminate this engagement without the FINRA staff's written approval. Merrill Lynch shall not be in and shall not have an attorney-client relationship with the Third Party Examiner and shall not seek to invoke the attorney-client privilege or other doctrine or privilege to prevent the Third Party Examiner from transmitting any information, reports or documents to FINRA relating to this engagement.
- d. Within 90 days from the Notice of Acceptance of this AWC, Merrill Lynch shall submit to FINRA for review a sample letter notifying clients of remediation payments. The letter shall not be unacceptable to FINRA.
- e. Within 120 days from the Notice of Acceptance of this AWC, Merrill Lynch shall designate and train staff (the "Response Team"), to field and respond to client inquiries in connection with this AWC and the remediation process pursuant to this AWC.
- f. Within 300 days from the Notice of Acceptance of this AWC, Merrill Lynch shall complete the remediation process.
- g. Within 360 days following the Notice of Acceptance of this AWC, Merrill Lynch shall file a report with FINRA, and simultaneously provide a copy to the Third Party Examiner, certified to, and signed by, an officer of Merrill Lynch who is registered with FINRA at the time of the certification (the "Initial Report"), providing a detailed description of the following:
- i. The remediation process, including the identification of, and payment to, clients eligible for remediation, pursuant to Section 3.a. above, and the application of the Remediation Methodology to identify Qualifying NAV Purchases and to calculate payments to clients;
 - ii. All Qualifying NAV Purchases, in the format of a Microsoft Excel spreadsheet, including each client's name, contact information and

account number, the trade date, fund name, fund symbol, number of shares purchased, the gross principal amount invested for each Qualifying NAV Purchase, and the total dollar amount of restitution provided to each client;

- iii. The staffing of the Response Team to field and respond to client inquiries, including, the number of individuals on the response team, the training of these individuals, how and by whom the response team was supervised, what tools and information were used to respond to client inquiries, and how the Firm maintained a record of all client inquiries; and
- iv. A list of all clients and investors who contacted the Response Team concerning remediation.
- h. The Third Party Examiner will utilize the Remediation Methodology to assess the Firm's implementation of the remediation process. Within 420 days after the date of Notice of Acceptance of this AWC, Merrill Lynch shall require the Third Party Examiner to submit to the Firm and FINRA staff a report (the "Final Report"), which shall address, at a minimum, (i) the Third Party Examiner's assessment of the Firm's performance of the remediation process, as reflected in the Initial Report, including the identification of, and payment to, clients eligible for remediation, and whether such performance was consistent with the Remediation Methodology, and (ii) a description of the review performed and the conclusions reached.
- i. For good cause shown, and upon receipt of a timely written request from Merrill Lynch, FINRA staff may extend any of the dates set forth above.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

III.

OTHER MATTERS

- A. Respondent understands that it 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.
- B. Respondent agrees to pay any monetary fine imposed on them upon notice that this AWC has been accepted and that such payments are due and payable and have attached an Election of Payment form showing the method by which it proposes to pay any fine imposed. Respondent also agrees to comply with the restitution order discussed above and pay the restitution amounts in accordance with the terms of the undertakings set forth above.

C. Respondent specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

Respondent certifies that it has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce it to submit it.

MERRILL LYNCH, PIERCE, FENNER &
SMITH, INC.

November 30, 2007
Date

By: David L. Kornblau

Name: David L. Kornblau

Title: Managing Director &
Head of Global Regulatory Affairs

Reviewed by:

MORGAN, LEWIS & BOCKIUS LLP

Ben A. Indek
Ben A. Indek, Esq.
Counsel for Respondent

Accepted by FINRA:

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

2/28/08
Date

Katherine A. Malfa
Katherine A. Malfa
Vice President and Chief Counsel
FINRA – Department of Enforcement
1801 K Street, N.W., Suite 800
Washington, D.C. 20006