

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2013037904801**

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

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

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Merrill Lynch, Pierce, Fenner & Smith Inc. ("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 Merrill Lynch alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. 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:

**BACKGROUND**

Merrill Lynch, a wholly-owned subsidiary of Bank of America Corporation, is a Delaware corporation with its principal place of business in New York, New York. It 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 registered with the Securities and Exchange Commission as a broker-dealer and investment adviser and has been a FINRA-regulated firm since January 26, 1937. It has more than 15,000 registered representatives and holds approximately \$2.2 trillion in customer assets.

**RELEVANT DISCIPLINARY HISTORY**

In January 2006, the New York Stock Exchange ("NYSE") censured Merrill Lynch and fined it \$500,000 for violating NYSE Rule 410A by failing to submit accurate trading information through the submission of electronic blue sheets; violating NYSE Rule 401 by submitting inaccurate trading information on electronic blue sheets; and violating NYSE Rule 342 by failing

to establish and maintain appropriate systems and procedures for supervision and control for complying with electronic blue sheet reporting requirements and failing to establish a separate system of follow-up and review to reasonably ensure compliance with NYSE Rules relating to preparation and submission of electronic blue sheets. Merrill Lynch also consented to a requirement that it conduct a validation of all required blue sheet data elements and an undertaking to inform the NYSE in writing that the validation had been completed.

## OVERVIEW

From March 2006 through January 2014, Merrill Lynch submitted at least 5,323 inaccurate blue sheets to various securities regulators, including the SEC and FINRA. Specifically, the inaccurate blue sheets failed to include customer names and addresses for trades made on the day the customer opened a Merrill Lynch account. Additionally, Merrill Lynch failed to have in place an audit system reasonably designed to ensure compliance with federal securities laws. As a result of the foregoing conduct, Merrill Lynch violated Section 17(a) of the Exchange Act and Rules 17a-4(j), 17a-4(f)(3)(v), and 17a-25, thereunder; NASD Rules 8211, 8213, and 2110; and FINRA Rules 8211, 8213, and 2010.<sup>1</sup>

## FACTS AND VIOLATIVE CONDUCT

Federal securities laws and FINRA rules require that member firms submit trade data in an automated format when requested by the SEC or FINRA. These trade data are commonly known as “blue sheets.”

The SEC, FINRA, and other regulators request blue sheets to assist them in investigations focused on equity trading, including suspicious and insider trading. Blue sheets provide regulators with critical information about suspicious transactions, including the name of the account owner, the nature of the transaction (whether it was a buy, sale, or short sale), and the price at which the transaction occurred. This information is essential to regulators’ ability to discharge their enforcement and regulatory mandates.

The failure of a member firm to provide complete and accurate blue sheet information in response to a regulatory request can impact a regulator’s ability to discharge its obligations, undermine the integrity of its investigations and examinations, and ultimately interfere with its ability to protect investors. It is therefore an essential and fundamental obligation of each member firm to provide complete, accurate, and timely blue sheet submissions.

**Submission of Inaccurate Blue Sheets.** Section 17(a) of the Exchange Act and Rules 17a-4(j) and 17a-25, thereunder, require broker-dealers to submit “legible, true, complete, and current” blue sheet data to the SEC upon request. FINRA Rules 8211 and 8213 (formerly NASD Rules 8211 and 8213) require that member firms submit trade data, as prescribed in FINRA Rule 8211, to FINRA upon request.

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<sup>1</sup> NASD Rules 8211, 8213, and 2110 were replaced by FINRA Rules 8211, 8213, and 2010 effective December 15, 2008. Conduct occurring before December 15, 2008, violates the applicable NASD rule.

Between March 2006 and January 2014, Merrill Lynch submitted inaccurate blue sheets to the SEC, FINRA, and other regulators. Specifically, for blue sheets relating to transactions effected on the day a customer opened a Merrill Lynch account, Merrill Lynch failed to include the customer's name and address on at least 5,323 blue sheets.

When Merrill Lynch processes a trade, its systems collect the relevant customer data and append it to the trade in real time. Between 2008 and January 2014, however, a trade could occur in a new customer's account before the customer's data was fully populated across all of Merrill Lynch's databases. In such instances, Merrill Lynch's systems were unable to append the customer data to the trade. When that happened, Merrill Lynch listed "no name" on the blue sheets associated with such trades. As a result of this problem, Merrill Lynch submitted at least 2,980 inaccurate blue sheets to the SEC; 1,538 inaccurate blue sheets to FINRA; 733 inaccurate blue sheets to NYSE; and 72 inaccurate blue sheets to other regulators.

Merrill Lynch's failure to submit accurate blue sheets had a negative impact on regulatory investigations into possible violations of securities laws, as suspicious trading often occurs shortly after a customer opens a securities account.

As a result of the foregoing, Merrill Lynch violated Section 17(a) of the Exchange Act; Rules 17a-4(j) and 17a-25, thereunder; NASD Rules 8211, 8213, and 2110; and FINRA Rules 8211, 8213, and 2010.

**Inadequate Audit System.** Section 17(a) of the Exchange Act and Rule 17a-4(f)(3)(v), thereunder, require broker-dealers to have "in place an audit system providing for accountability regarding inputting of records required to be maintained and preserved pursuant to Rules 17a-3 and 17a-4 to electronic storage media and inputting of any changes made to every original and duplicate record maintained and preserved thereby."

Between March 2006 and January 2014, Merrill Lynch did not have in place an audit system providing for accountability of its blue sheet submissions. As a result of the foregoing, Merrill Lynch violated Section 17(a) of the Exchange Act and Rule 17a-4(f)(3)(v), thereunder; NASD Rule 2110; and FINRA Rule 2010.

B. Merrill Lynch also consents to the imposition of the following sanctions:

- (1) a censure; and
- (2) a fine of \$1,000,000.

Merrill Lynch further agrees to conduct a review of its policies, systems, and procedures (written or otherwise) relating to its compilation and submission of blue sheet data and the audit deficiencies addressed herein. Within 90 days of the issuance of a Notice of Acceptance of this AWC, an officer of Merrill Lynch shall certify in writing to James E. Day, Vice President and Chief Counsel, FINRA Department of Enforcement, that (i) Merrill Lynch has engaged in the comprehensive review described above, and (ii) as of the date of the certification, Merrill Lynch has in place policies, systems, and procedures to address and correct the violations described in

this AWC and also reasonably designed to ensure the firm provides accurate and timely blue sheet submissions as requested by regulators. The Department of Enforcement may, upon a showing of good cause and in its sole discretion, extend the time for compliance with this provision.

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

Merrill Lynch 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

Merrill Lynch 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, Merrill Lynch 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.

Merrill Lynch 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

Merrill Lynch 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 it; and
- (C) if accepted:
  - (1) this AWC will become part of Merrill Lynch’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 Merrill Lynch’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) Merrill Lynch 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. Merrill Lynch 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 Merrill Lynch’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) Merrill Lynch may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Merrill Lynch 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 Merrill Lynch, 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 Merrill Lynch 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 Merrill Lynch to submit it.

May 29, 2014  
May 29, 2014

Respondent  
Merrill Lynch, Pierce, Fenner & Smith Incorporated

By: David Montague  
David Montague  
Associate General Counsel

Accepted by FINRA:

6/4/14  
Date:

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

James E. Day  
James E. Day  
Vice President and Chief Counsel  
FINRA Department of Enforcement  
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