

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2018059381801**

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 of FINRA's Code of Procedure, Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated ("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 is a global investment banking and brokerage firm with approximately 35,000 registered representatives that provides financial services to customers, including retail brokerage and wealth management services to individuals. Since January 2009, Merrill Lynch has been a wholly-owned subsidiary of Bank of America Corporation. The Firm has been a registered FINRA member since 1937 and has its principal place of business in New York.

RELEVANT DISCIPLINARY HISTORY

Merrill Lynch does not have any relevant disciplinary history with the Securities and Exchange Commission, any state securities regulators, FINRA, or any other self-regulatory organization.

OVERVIEW

From January 1, 2014 through September 7, 2018 (the "Relevant Period"), Merrill Lynch failed to establish and maintain a supervisory system, and failed to establish, maintain, and enforce written supervisory procedures ("WSPs"), reasonably designed to achieve

compliance with FINRA Rule 2090, which requires member firms to use “reasonable diligence” to determine “the essential facts” concerning every customer, including the “authority of each person acting on behalf of such customer.” Specifically, with respect to accounts established under the Uniform Gifts to Minors Act and/or the Uniform Transfers to Minors Act (collectively, “UTMA Accounts”), Merrill Lynch failed to establish, maintain, and enforce supervisory systems and procedures to take into account changes in the authority of custodians of such accounts to effect transactions on behalf of the beneficiaries of those accounts. Based on the foregoing, Merrill Lynch violated NASD Rules 3010(a) and 3010(b), and FINRA Rules 3110(a), 3110(b), and 2010.¹

FACTS AND VIOLATIVE CONDUCT

FINRA Rule 3110 and its predecessor, NASD Rule 3010, require that each member firm establish and maintain a system, and establish, maintain, and enforce WSPs, that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD and FINRA rules.

FINRA Rule 2090 requires member firms, in connection with the “opening and maintenance of every account,” to “use reasonable diligence” to determine “the essential facts concerning every customer and concerning the authority of each person acting on behalf of such customer.” In January 2011, FINRA issued Regulatory Notice 11-02, which reminded firms of their obligation to know “the ‘essential facts’ about a customer” and that those facts should be updated at reasonable intervals “throughout the life of its relationship with customers in order to, among other things, effectively service and supervise the customers’ accounts.”²

Merrill Lynch permitted customers to open UTMA Accounts, which are custodial accounts that provide a way to transfer property to a minor without the need for a formal trust. While the specific requirements and features of UTMA Accounts may vary from state to state, all UTMA Accounts share certain common characteristics. For example, in all states, in order to establish a UTMA Account, the donor appoints a custodian, designates a minor beneficiary, and deposits assets into the account. Once a donor contributes assets to the account, the assets become the property of the minor beneficiary and neither the donor nor the custodian can divest the beneficiary of the donated assets. The custodian makes all investment decisions on the beneficiary’s behalf until the beneficiary reaches the age of majority, at which point the custodian is required by state law to transfer control over the custodial property to the beneficiary.

During the Relevant Period, Merrill Lynch’s procedures described UTMA Accounts and their features, explaining that the custodian manages the account “until the Minor reaches the designated termination age.” Because the “termination age” may differ from state to state, the Firm’s procedures included a list of the termination ages for each state and

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

² Because a firm’s relationship with its customers is dynamic, FINRA has not prescribed a period within which firms must attempt to update information about their customers. The reasonableness of a firm’s efforts in this regard will depend on the facts and circumstances of the particular case. See Reg. Notice 11-02.

required that the state under which the custodianship was established appear in the title of each UTMA account. The Firm's procedures further provided that when the beneficiary reached the termination age, the custodian was required to submit a Letter of Resignation and the beneficiary could continue to use the same account or open a new one.

Although Merrill Lynch was aware that a UTMA Account customer's circumstances changed when the beneficiary reached the termination age, the Firm did not establish reasonable systems or procedures related to the custodians' obligation to timely transfer control over the custodial property to the beneficiary. As a result, UTMA Account custodians authorized transactions in at least 15,366 UTMA Accounts held at Merrill Lynch in which the beneficiaries had reached the termination age.

Accordingly, Merrill Lynch failed to establish and maintain a system, and establish, maintain, and enforce WSPs, reasonably designed to achieve compliance with its obligation, pursuant to FINRA Rule 2090, to know the "essential facts" about its UTMA Account customers.

By virtue of the foregoing, Merrill Lynch violated NASD Rules 3010(a) and 3010(b), and FINRA Rules 3110(a), 3110(b), and 2010.

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

- A censure;
- A \$300,000 fine; and
- Within 180 days of Notice of Acceptance of this AWC, or such additional period as agreed to by a FINRA staff member in writing, a managing director on behalf of Merrill Lynch shall submit to Artur M. Wlazlo, Senior Counsel, FINRA, at the address set forth below, a written certification that: (i) the firm has completed a review of its policies, systems, and procedures regarding the supervision of custodial accounts (including UTMA Accounts) and guardianship accounts for which the guardianship is defined by the age of the protected party; and (ii) as of the date of the certification, the firm's policies, systems, and procedures are reasonably designed to achieve compliance with applicable securities laws, regulations, and FINRA rules, including FINRA Rule 2090.

Merrill Lynch agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is 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 an inability 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 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.

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 Merrill Lynch; and
- C. If accepted:

1. this AWC will become part of Merrill Lynch's permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Merrill Lynch;
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. 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 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 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 it to submit it.

Merrill Lynch, Pierce, Fenner & Smith Incorporated
Respondent

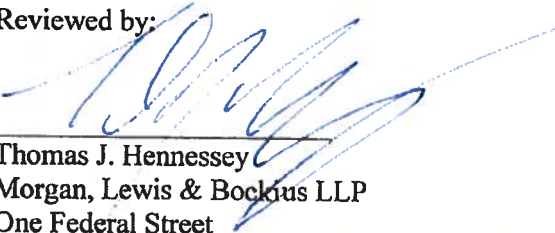
Nov. 26, 2019
Date

By: MARK L. KEENE

Print Name: MARK L. KEENE

Title: ASSOCIATE GENERAL
COUNSEL

Reviewed by:

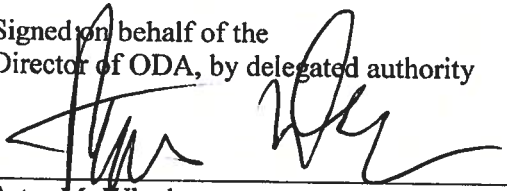


Thomas J. Hennessey
Morgan, Lewis & Bockius LLP
One Federal Street
Boston, MA 02110

Accepted by FINRA:

12/26/2019
Date

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



Artur M. Wlazlo
Senior Counsel
FINRA
Department of Enforcement
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Jericho, NY 11753