

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the
Continued Membership
of

Merrill Lynch, Pierce, Fenner & Smith
Incorporated (BD #7691)

and

Merrill Lynch Professional Clearing
Corporation (BD #16139)

Notice Pursuant to
Rule 19h-1
Securities Exchange Act
of 1934

SD-2074
SD-2075

Date: April 5, 2017

I. Introduction

On July 29, 2015 and August 14, 2015, respectively, Merrill Lynch, Pierce, Fenner & Smith Incorporated (“MLPF&S”) and Merrill Lynch Professional Clearing Corporation (“MLPro”) (collectively, the “Firms”) submitted Membership Continuance Applications (“MC-400As” or the “Applications”) to FINRA’s Department of Registration and Disclosure (“RAD”). The Applications seek to permit the Firms, FINRA members subject to a statutory disqualification, to continue their memberships with FINRA. A hearing was not held in these matters; rather, pursuant to FINRA Rule 9523(b), FINRA’s Department of Member Regulation (“Member Regulation” or the “Department”) is filing this Notice pursuant to Rule 19h-1 of the Securities Exchange Act of 1934 (“Exchange Act”).

II. The Statutorily Disqualifying Event

MLPF&S and MLPro are subject to statutory disqualification, as defined in Section 15(b)(4)(D) of the Securities Exchange Act of 1934 (“Exchange Act”), incorporated by reference in Exchange Act Section 3(a)(39)(F), as a result of a June 1, 2015 Securities and Exchange Commission (“SEC” or the “Commission”) Order (the “Order”) finding

that they willfully violated Regulation SHO (“Reg SHO”).¹

According to the Order, from at least 2008 to June 2015, the Firms willfully violated Reg SHO in connection with their practices related to execution of short sales. The Firms’ execution platforms continued executing short sale orders in reliance on the Firms’ “easy to borrow list” (“ETB list”) even after certain stocks had been placed on a watch list due to countervailing factors impacting the stocks’ availability. By relying on ETB lists that could not provide reasonable grounds to believe the securities could be borrowed for delivery as required and recording the ETB list as the locate source for short sale orders after the Firms had determined to remove the securities from the ETB list, the Firms violated Rule 203(b) of Reg. SHO. Furthermore, in certain circumstances, the Firms used data that was more than 24 hours old to construct their ETB lists. As a result, the Firms executed short sale orders in reliance on defective ETB lists and lacked reasonable grounds to believe the securities could be borrowed for delivery, which constituted a separate violation of Rule 203(b) of Reg SHO.²

In anticipation of the institution of an administrative proceeding, the Firms submitted an Offer of Settlement accepting the findings contained in the Order and collectively were censured, ordered to cease and desist from committing or causing any violations of Rule 203(b) of Reg SHO, and ordered to pay \$1,566,245.67 in disgorgement, \$334,564.65 in prejudgment interest and a \$9 million civil money penalty.³

In addition, the Firms agreed to the following undertakings:⁴

(A) Within thirty (30) days of the issuance of the Order, to retain an independent consultant (the “Consultant”) at the Firms’ expense to conduct a comprehensive review of their policies, procedures and practices with respect to their execution of short sales in

¹ Order in *In the Matter of Merrill Lynch, Pierce, Fenner & Smith Incorporated, et al.*, Admin. Proc. File No. 3-16567, Exchange Act Release No. 75083 (June 1, 2015) (attached as Attachment 1). The Commission consented to the Department filing a combined Rule 19h-1 Notice for MLPF&S and MLPro on the grounds that the Firms are corporate affiliates and are both subject to a statutory disqualification as a result of an Order which identifies the Firms collectively, makes the same findings against each of the Firms and imposes the same sanctions against the Firms.

² *Id.* at p. 3.

³ The Firms paid all three amounts on June 15, 2015. *See* MC-400A Application of MLPF&S at FINRA p. 1821 (attached as Attachment 2) and MC-400A Application of MLPro at FINRA p. 776 (attached as Attachment 3).

⁴ *See* Attachment 1 at pp. 7 – 9.

reliance on the ETB list, and their procedures to monitor compliance therewith in order to satisfy their obligations under Rule 203(b) of Reg SHO to: (i) accept short sale orders or effect short sales in equity securities only if they have borrowed the securities or entered into a bona fide arrangement to borrow the securities or have reasonable grounds to believe that securities can be borrowed for delivery when due; and (ii) document their compliance with Rule 203(b)(1).

(B) Cooperate fully with the Consultant, including providing the Consultant with access to their files, books, records, and personnel as reasonably requested for the review; obtaining the cooperation of employees or other persons under the Firms' control; and permitting the Consultant to engage such assistance (whether clerical, legal, technological, or of any other expert nature) as necessary to achieve the purposes of the retention.

(C) Require the Consultant to complete its review and submit a written preliminary report ("Preliminary Report") to the Firms and Commission staff within ninety (90) days of the issuance of the Order. The Firms shall require that the Preliminary Report address the issue described in paragraph A above; include a description of the review performed, the conclusions reached as well as recommendations for any changes in or improvements to the Firms' policies and procedures; and include a procedure for implementing such recommended changes.

(D) Within ninety (90) days of receipt of the Preliminary Report, adopt and implement all recommendations contained in the Preliminary Report. Within forty-five (45) days of receiving the Preliminary Report, the Firms and the Consultant shall attempt in good faith to reach an agreement relating to each recommendation that the Firms consider to be unduly burdensome or impractical. Within fifteen (15) days after the discussion and evaluation by the Firms and the Consultant, the Firms shall require that the Consultant inform the Firms and Commission staff of the Consultant's final determination concerning any recommendation that the Firms consider unduly burdensome or impractical, and the Firms shall abide by the determinations of the Consultant and adopt and implement all recommendations within the 90-day time period set forth in this paragraph.

(E) Within fourteen (14) days of the Firms' adoption of all of the recommendations that the Consultant deems appropriate, certify in writing to the Consultant and Commission staff that the Firms have adopted and implemented all of the Consultant's recommendations and that the Firms have established policies, practices, and procedures consistent with its obligations under Rule 203(b) of Reg. SHO.

(F) Require that the Consultant review the Firms' revised policies, practices, and procedures for the six month period following implementation of the Consultant's recommendations, and require that the Consultant submit a written final report ("Final

Report") to the Firms and Commission staff within thirty (30) days after the one-year anniversary of the issuance of the Order. The Final Report shall: (i) describe the review made of the Firms' revised policies, practices, and procedures; (ii) describe how the Firms are implementing, enforcing, and auditing compliance with the policies, practices, and procedures; and (iii) provide an opinion of the consultant concerning whether the Firms are adequately implementing, enforcing, and auditing compliance with the policies, practices, and procedures.

(G) Require the Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with the Firms, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Consultant will require that any firm with which the Consultant is affiliated or of which the Consultant is a member, and any person engaged to assist the Consultant in performance of the Consultant's duties under the Order shall not, without prior written consent of Commission staff in the New York Regional Office, enter into any employment, consultant, attorney-client, auditing or other professional relationship with the Firms, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

(H) The Firms shall not have the authority to terminate the Consultant without prior written approval of Commission staff and shall compensate the Consultant and persons engaged to assist the Consultant for services rendered pursuant to the Order at their reasonable and customary rates.

(I) Within fourteen (14) days after the one-year anniversary of the issuance of the Order, certify in writing to Commission staff that as of the one-year anniversary date the Firms have continued to implement and enforce all of the Consultant's recommendations and have continued to maintain policies, practices, and procedures consistent with its obligations under Rule 203(b) of Reg. SHO.

(J) Certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The certification and supporting material shall be submitted no later than sixty (60) days from the date of the completion of the undertakings.

III. Background Information of the Firms

A. MLPF&S

MLPF&S has been a member of FINRA since 1937.⁵ The Firm, which is owned by Bank of America Corporation, is based in New York, NY and engages in a general securities business.⁶ The Firm represents that it employs 40,214 persons. Of these, 32,057 are registered representatives, 6,247 of whom are also registered principals.⁷ It has 3,294 branch offices, 903 of which are Offices of Supervisory Jurisdiction (“OSJs”).⁸

B. MLPro

MLPro, a wholly-owned subsidiary of MLPF&S, has been a member of FINRA since 1985.⁹ The Firm is based in New York, NY and also engages in a general securities business.¹⁰ The Firm represents that it employs 252 persons. Of these, 148 are registered representatives, 45 of whom are also registered principals.¹¹ It has 3 branch offices, one of which is an OSJ.¹²

C. Routine Examinations of MLPF&S

The most recent cycle examination of MLPF&S began in April 2015 and concluded in August 2016. The examination resulted in referrals to FINRA’s Department of Enforcement (“DOE”) for exceptions relating to consistency of pricing between securities held across the MLPF&S’s proprietary and customer accounts; supervision of and retention of books and records for margin accounts; procedures addressing short

⁵ See Attachment 2 at p. 1804.

⁶ CRD Snapshot of MLPF&S at p. 6 (attached as Attachment 4).

⁷ *Id.* at Note 5.

⁸ *Id.*

⁹ See Attachment 3 at p. 759.

¹⁰ CRD Snapshot of MLPro at p. 6 (attached as Attachment 5).

¹¹ *Id.* at Note 9.

¹² *Id.*

inventory positions; failing to execute recall instructions for stock loans with an affiliate; and for improperly allocating fail to deliver positions under Reg SHO Rule 204.¹³

FINRA's prior cycle examination of MLPF&S, a Financial/Operational, Alternative Net Capital, Sales Practice and Municipal examination, was conducted in 2014. It resulted in a referral to FINRA's DOE for an exception relating to MLPF&S's compliance with Municipal Securities Rulemaking Board ("MSRB") Rules, and a Cautionary Action for exceptions relating to inadequate supervision and supervisory systems in areas unrelated to the disqualifying event at issue herein, such as addressing short inventory positions in municipal securities, monitoring and ensuring consistency of pricing between securities held in MLPF&S's inventory versus retail client accounts, and identifying and responding to regulatory changes.¹⁴

Routine Examinations of MLPro

The most recent cycle examination of MLPro began in April 2015 and concluded in August 2016. The examination resulted in a referral to the DOE for exceptions relating to registration of employees with certain exchanges. The examination also resulted in a Cautionary Action for exceptions relating to supervision of the third-party vendor to which it outsourced its prospectus delivery obligations.¹⁵

The prior cycle examination of MLPro, a Financial/Operational and Sales Practice examination conducted in 2013 and 2014, resulted in a Cautionary Action for exceptions relating to MLPro's usage of escrow agreements by options customers.¹⁶

¹³ Examination Disposition Letter, Examination Report, and MLPF&S' Response, 2015 Cycle Examination of Merrill Lynch, Pierce, Fenner & Smith Incorporated, Examination No. 20150432679 (August 2, 2016) (attached as Attachment 6).

¹⁴ Examination Disposition Letter, Examination Report, and MLPF&S' Response, 2014 Cycle Examination of Merrill Lynch, Pierce, Fenner & Smith Incorporated, Examination No. 20140390431 (September 16, 2015) (attached as Attachment 7).

¹⁵ Examination Disposition Letter and Examination Report, 2015 Cycle Examination of Merrill Lynch Professional Clearing Corporation, Examination No. 20150432677 (August 10, 2016) (attached as Attachment 8).

¹⁶ Examination Disposition Letter, Examination Report, and MLPro's Response, 2014 Cycle Examination of Merrill Lynch Professional Clearing Corporation, Examination No. 20140390348 (April 2, 2015) (attached as Attachment 9).

D. Regulatory Actions against MLPF&S and MLPro

In the past two years, MLPF&S and MLPro have been subject to regulatory actions by FINRA, federal regulators, state securities commissions and other SROs.¹⁷

MLPF&S and MLPro

In June 2016, the SEC accepted an offer of settlement from the Firms wherein the Firms acknowledged the following wrongdoing: (i) cash belonging to MLPro customers was used to fund MLPF&S' business activities through a series of increasingly complex trades, and (ii) MLPF&S allowed MLPro to hold general liens over tens of billions of dollars of securities owned by its customers in violation of Exchange Act Rule 15c3-3.¹⁸ The Firms were ordered to pay, jointly and severally, disgorgement of \$50 million and prejudgment interest of \$7 million. MLPF&S was also fined \$358 million. All fines levied against the Firms have been paid in full.

In May and June 2015, various self-regulatory organizations ("SROs"), including the Chicago Board Options Exchange, NYSE Arca, NYSE MKT, ISE, NASDAQ OMX PHLX, BATS, ISE, NASDAQ NOM and NASDAQ OMX BX executed Letters of Acceptance, Waiver and Consent ("AWCs") or issued decisions by consent with and against the Firms for misconduct involving improperly marking numerous options orders on behalf of broker-dealers with incorrect origin codes and supervisory deficiencies related to the improper marking, execution and clearance of incorrect order codes.¹⁹ The

¹⁷ This section discusses the regulatory actions taken against MLPF&S and MLPro between March 2015 and March 2017 that resulted in fines of \$100,000 or more. MLPF&S and MLPro were subject to twenty one other regulatory actions during this period by FINRA and various other SROs with fines ranging from \$5,000 to \$85,000.

¹⁸ See *In the Matter of Merrill Lynch, Pierce, Fenner, & Smith Incorporated and Merrill Lynch Professional Clearing Corp*, Admin. Proc. File No. 3-17312 (June 23, 2016) (attached as Attachment 10). The Department notes that the order in this matter subjects MLPF&S and MLPro to a statutory disqualification, as defined in Section 15(b)(4)(D) of the Securities Exchange Act of 1934 ("Exchange Act"), incorporated by reference in Exchange Act Section 3(a)(39)(F), as a result of findings that they willfully violated Sections 15(c)(3) and 17(a)(1) of the Exchange Act.

¹⁹ See ISE AWC dated May 20, 2015; NYSE Arca Decision dated May 27, 2015, NYSE MKT Decision dated May 27, 2015; NASDAQ OMX PHLX Decision dated June 8, 2015; BATS AWC dated June 9, 2015; NASDAQ NOM dated June 23, 2015; and NASDAQ OMX BX AWC date June 23, 2015 (collectively, case no. 20110277299); See also CBOE Decision Accepting Letter of Consent, File No. 15-0052, dated June 23, 2015 (attached together as Attachment 11).

Firms collectively were ordered revise their written supervisory procedures, were censured, and were fined \$9 million, which was paid in full.

In October 2014, FINRA and NYSE Arca accepted an AWC from MLPF&S and MLPro for failing to establish, maintain and enforce supervisory systems and procedures related to Rules 204T(a) and 204(a) of Reg. SHO, and other securities laws. The Firms were censured, fined \$7.5 million in total, and MLPF&S was required to adopt and implement supervisory systems and written procedures reasonably designed to achieve compliance with the requirements of Regulation SHO.²⁰ The Department notes that while the aforementioned matter involved distinct and unrelated violations to the conduct at issue in this Application and occurred prior to the Department's two year disciplinary history review, the Department has nevertheless chosen to consider it in its analysis since the violations involved Reg SHO.

MLPF&S

In the past two years, MLPF&S has resolved 6 FINRA matters via AWC addressing misconduct unrelated to that which resulted in MLPF&S' current disqualification. Specifically, the matters related to: failing to establish and maintain adequate supervisory systems and written supervisory procedures reasonably designed to ensure the suitability of transactions in Puerto Rico securities, including municipal bonds and closed-end funds, and to achieve compliance with certain federal securities laws and regulations and FINRA rules concerning securities-based loans by non-broker-dealers;²¹ systemic issues relating to trade reporting, Order Audit Trail System reporting, books and records and supervision;²² issuing materially misleading offering materials in connection with the sale of structured notes;²³ transacting in municipal securities and corporate bonds with its customers at aggregate prices that were not fair and reasonable and failing to use reasonable diligence to ascertain the best inter-dealer market in corporate bonds so that the resultant price to its customers was as favorable as possible under prevailing market conditions;²⁴ failing to submit required reports to FINRA's Order Audit Trail System;²⁵

²⁰ AWC No. 20100229712 (October 27, 2014) (attached as Attachment 12).

²¹ AWC No. 2014042578001 (Nov. 30, 2016) (attached as Attachment 13).

²² AWC No. 20130358229-01 (Oct. 17, 2016) (attached as Attachment 14).

²³ AWC No. 2012032967901 (June 23, 2016) (attached as Attachment 15).

²⁴ AWC No. 2009020212-01 (March 24, 2016) (attached as Attachment 16).

and failing to fingerprint associated persons, adequately screening non-registered persons for statutory disqualification, and failing to create required documents relating to fingerprinting and screening of certain of its associated persons.²⁶ MLPF&S was censured in connection with each AWC and ordered to pay fines ranging from \$100,000 to \$5,000,000, all of which were paid in full.

In addition to the above FINRA actions, MLPF&S has entered into a number of settlements with other self-regulatory organizations for violations unrelated to this Application. For example, between March 2015 and March 2017, MLPF&S has settled regulatory actions with the Bats BZX Exchange, the New York Stock Exchange, and NYSE Arca. The settlements related to allegations involving failing to establish and maintain a system of supervision reasonably designed to prevent customers from effecting short sales in violation of Rule 105 of Regulation M;²⁷ and failing to establish, document and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory and other risks of market access.²⁸ MLPF&S was ordered to pay fines ranging from \$100,000 to \$1,350,000.

During the same time period, MLPF&S also settled civil matters with the SEC for violations unrelated to this Application. The settlements related to violations involving the Firm's failure to establish pre-trade risk management controls reasonably designed to prevent the entry of erroneous orders; to establish pre-trade risk management controls reasonably designed to prevent the entry of orders that would exceed pre-set credit or capital limits for several of its trading desks; to establish required controls and procedures for fixed income securities; to review adequately the effectiveness of its risk management controls and supervisory procedures required by the Market Access Rule, particularly for preventing the entry of erroneous orders and to comply with the Rule's CEO certification requirements;²⁹ failure to adequately disclose fixed costs of certain structured products in

²⁵ AWC No. 20130376789-01 (March 14, 2016) (attached as Attachment 17).

²⁶ AWC No. 2013038772501 (Dec. 16, 2015) (attached as Attachment 18).

²⁷ Decision (Proceeding No. 20110278726) dated May 27, 2015 (attached as Attachment 19).

²⁸ See NYSE Arca Decision dated September 28, 2016; BATS BZX AWC dated September 13, 2016; BATS BYX AWC dated September 13, 2016; BATS EDGX AWC dated September 13, 2016; and NYSE AWC dated September 12, 2016 (collectively, case no. 20120344693) (attached together as Attachment 20).

²⁹ Order *In the Matter of Merrill Lynch, Pierce, Fenner & Smith Incorporated*, Admin. Proc. File No. 3-17573 (Sept. 26, 2016) (attached as Attachment 21).

offering documents;³⁰ and selling municipal bonds using offering documents that contained materially false statements or omissions about the bond issuers' compliance with continuing disclosure obligations, as well as failing to conduct adequate due diligence to identify the misstatements and omissions before offering and selling the bonds to their customers.³¹ MLPF&S was ordered to pay fines and disgorgement ranging from \$500,000 to \$12.5 million, which have been paid in full.

In addition to the matters above, MLPF&S has also settled a matter with the Massachusetts Securities Division for presenting deficient and dated internal training materials to financial advisers without the Firm's compliance department approving their use, as required by the Firm's policies and procedures.³² MLPF&S was ordered to pay a fine of \$2.5 million which has since been paid in full.

MLPro

In June 2015, FINRA accepted an AWC from MLPro for submitting trade corrections directly through The Options Clearing Corporation, resulting in improper duplication of options trades, and for failing to maintain and have a system in place to prevent duplication. The Firm was censured and fined \$100,000, which was paid in full.³³

E. Prior Rule 19h-1 Notices

FINRA previously filed two Rule 19h-1 notices, on May 15, 2013 and August 10, 2015, approving MLPF&S's continued membership. FINRA approved the Firm's continued membership after it became subject to statutory disqualification resulting from two separate SEC orders finding that it willfully violated the federal securities laws. The SEC acknowledged FINRA's notices on September 26, 2013 and August 20, 2015, respectively.³⁴

³⁰ Order *In the Matter of Merrill Lynch, Pierce, Fenner & Smith Incorporated*, Admin. Proc. File No. 3-17314 (June 23, 2016) (attached as Attachment 22).

³¹ Order *In the Matter of Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative*, Admin. Proc. File Nos. 3-16605, *et al.* (June 18, 2015) (attached as Attachment 23).

³² Consent Order *In the Matter of Merrill Lynch, Pierce, Fenner & Smith Incorporated*, Docket No. E-2014-0002, dated March 23, 2015 (attached as Attachment 24).

³³ AWC No. 20120343837-01 (June 10, 2015) (attached as Attachment 25).

³⁴ SEC Rule 19h-1 Notices and SEC Acknowledgement Letters (attached as Attachment 26).

No prior 19h-1 notices have been filed on behalf of MLPro.

IV. The Firms' Proposed Continued Membership with FINRA and Proposed Supervisory Plan

The Firms seek to continue their membership in FINRA notwithstanding the Order that triggered their statutory disqualification. As noted above, the SEC required the Firms to comply with ten undertakings that relate to the execution or effecting of short sales in reliance on the Firms' ETB list and procedures to monitor compliance therewith, to satisfy obligations under 203(b) of Reg. SHO to: (i) accept short sale orders or effect short sales in equity securities only if the Firms have borrowed the securities, entered into a bona fide arrangement to borrow the securities, or have reasonable grounds to believe that the securities can be borrowed for delivery when due; and (ii) document compliance with Rule 203(b)(1). The Firms have represented that they have implemented the changes required by the SEC and have timely submitted their annual certifications.

Thus, pursuant to Exchange Act Rule 19h-1 and FINRA Rule 9523(a), the Firms agree to the following plan of supervision (the "Supervisory Plan" or the "Plan"):³⁵

1. Comply with the undertakings specified in the Order;
2. Establish protocols to ensure that the undertakings outlined in the Order are completed in the time period established in the Order or by the time period granted by Commission staff in any extension;
3. Provide FINRA with copies of correspondence between the Firms and Commission staff regarding requests to extend the procedural dates relating to the undertakings; and
4. Provide FINRA with a copy of the certification and all supporting documentation that will be provided to the Commission upon completion of the undertakings as specified in the Order. These documents may be sent directly to:

Lorraine Lee-Stepney

³⁵ Letters dated March 15, 2017 and March 16, 2017 from Nicholas Vitalo of FINRA to Kroll confirming the Firms' consent to the Supervisory Plan (attached together as Attachment 27).

Manager, Statutory Disqualification Program
FINRA
1735 K Street NW
Washington, DC 20006
Lorraine.Lee@finra.org

Subsequent to an approval of the Firms' continued membership in FINRA notwithstanding their statutory disqualification, FINRA will utilize its examination and surveillance processes to monitor the Firms' compliance with the standards prescribed by FINRA Rule 9523. Specifically, FINRA will examine the Firm during either the first year following the filing of the Rule 19h-1 Notice or, alternatively, during the Firm's regularly scheduled cycle examination, to review the Firms' implementation of the agreed upon Supervisory Plan. After the initial examination, the determination of whether to subject the Plan to further review will be driven by FINRA's overall risk-based assessment of the Firms.

V. Discussion

Member Regulation recommends approval of the Firms' requests to continue their memberships in FINRA pursuant to Exchange Act Rule 19h-1.

In evaluating the Applications, Member Regulation considered, among other things, the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed and whether there has been any intervening misconduct.

Although the Order involved serious violations of securities rules and regulations, the Firms took steps to address the issue involving their use of data that was more than 24 hours old to construct their ETB lists on their own initiative in 2009 and 2011, and completely eliminated it from their systems by 2012.³⁶ Moreover, the Firms represent that in 2014 they developed and implemented system changes which provide an automatic notification to their execution systems when countervailing factors exist that render their reliance on the ETB list as a locate source unreasonable, and that their execution platforms remove such stocks from their ETB list after receiving such notification.³⁷

³⁶ *Id.* at Note 1.

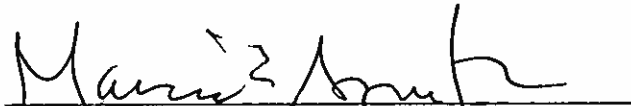
³⁷ *Id.*

MLPF&S continues to work with the Consultant to further refine its policies and procedures addressing its acceptance of short sale orders for execution in reliance on its ETB list and its procedures to monitor compliance therewith, to satisfy its obligations with Rule 203(b) of Reg SHO, while MLPro has ceased the practice altogether.³⁸ Furthermore, Member Regulation recognizes that, beyond the undertakings described above, the Commission did not separately institute administrative proceedings to expel, suspend, or otherwise limit the Firms' securities activities.³⁹ Instead, the Commission imposed remedial sanctions consistent with the purpose of disciplinary actions under the Exchange Act.⁴⁰

Member Regulation is satisfied, based on the foregoing and on the Firms' representations made pursuant to the Supervisory Plan that the Firms' should be permitted to continue their membership in FINRA.

Accordingly, Member Regulation recommends approval of the Firms' Applications to continue their membership with FINRA as set forth herein. The Firms are also members of various SROs and, where appropriate, those SROs have indicated that they concur with FINRA's determination to approve the Firms' continued membership.⁴¹

On Behalf of FINRA,



Marcia E. Asquith
Senior Vice President and Corporate Secretary

³⁸ See Attachment 3 at p. 779.

³⁹ FINRA notes that the Commission found good cause to grant the Firm a waiver from the disqualification provision of Securities Act Rule 506(d)(1)(ii). *See* Order under Rule 506(d) of the Securities Act of 1933 Granting a Waiver of the Rule 506(d)(1)(ii) Disqualification Provision, Securities Act Rel. No. 9657 (Sept. 26, 2014) (attached as Attachment 28).

⁴⁰ *See* Exchange Act Section 15(b) *et seq.*

⁴¹ The following SROs concur with the Firms' continued membership: BATS-YX and BATS-ZX, BOX, C2 and CBOE, CHX, EDGA and EDGX, ISE Gemini and ISE, MIAX, NASDAQ OMX BX, NASDAQ OMX PHLX, NQX and NYSE Arca, NYSE-MKT and NYSE.

List of Attachments

1. Order *In the Matter of Merrill Lynch, Pierce, Fenner & Smith Incorporated, et al.*, Admin. Proc. File No. 3-16567 (June 1, 2015).
2. MC-400A Application of MLPF&S.
3. MC-400A Application of MLPro.
4. CRD Snapshot of MLPF&S.
5. CRD Snapshot of MLPro.
6. 2015 MLPF&S Cycle Examination (No. 20150432679) documents.
7. 2014 MLPF&S Cycle Examination (No. 20140390431) documents.
8. 2015 MLPro Cycle Examination (No. 20150432677) documents.
9. 2014 MLPro Cycle Examination (No. 20140390348) documents.
10. Order *In the Matter of Merrill Lynch, Pierce, Fenner, & Smith Incorporated and Merrill Lynch Professional Clearing Corp*, Admin. Proc. File No. 3-17312 (June 23, 2016).
11. ISE AWC dated May 20, 2015; NYSE Arca Decision dated May 27, 2015, NYSE MKT Decision dated May 27, 2015; NASDAQ OMX PHLX Decision dated June 8, 2015; BATS AWC dated June 9, 2015; NASDAQ NOM dated June 23, 2015; and NASDAQ OMX BX AWC date June 23, 2015 (collectively, case no. 20110277299); and CBOE Decision Accepting Letter of Consent, File No. 15-0052, dated June 23, 2015.
12. AWC No. 20100229712 (Oct. 27, 2014).
13. AWC No. 2014042578001 (Nov. 30, 2016).
14. AWC No. 20130358229-01 (Oct. 17, 2016).

15. AWC No. 2012032967901 (June 23, 2016).
16. AWC No. 2009020212-01 (March 24, 2016).
17. AWC No. 20130376789-01 (March 14, 2016).
18. AWC No. 2013038772501 (Dec. 16, 2015).
19. NYSE Arca Decision, Proceeding No. 20110278726 (May 27, 2015).
20. NYSE Arca Decision dated September 28, 2016; BATS BZX AWC dated September 13, 2016; BATS BYX AWC dated September 13, 2016; BATS EDGX AWC dated September 13, 2016; and NYSE AWC dated September 12, 2016 (collectively, case no. 20120344693).
21. Order *In the Matter of Merrill Lynch, Pierce, Fenner & Smith Incorporated*, Admin. Proc. File No. 3-17573 (Sept. 26, 2016).
22. Order *In the Matter of Merrill Lynch, Pierce, Fenner & Smith Incorporated*, Admin. Proc. File No. 3-17314 (June 23, 2016).
23. Order *In the Matter of Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative*, Admin. Proc. File Nos. 3-16605, *et al.* (June 18, 2015).
24. Massachusetts Securities Division's Consent Order *In the Matter of Merrill Lynch, Pierce, Fenner & Smith Incorporated*, Docket No. E-2014-0002, dated March 23, 2015.
25. AWC No. 20120343837-01 (June 10, 2015).
26. Notice Pursuant to Rule 19h-1, dated May 15, 2013, *In the Matter of the Continued Membership of Merrill Lynch, Pierce, Fenner & Smith Incorporated*; and Notice Pursuant to Rule 19h-1, dated August 10, 2015, *In the Continued Membership of Merrill Lynch, Pierce, Fenner & Smith Incorporated*.
27. MLPF&S and MLPro Consents to Supervisory Plan dated March 15, 2017 and March 16, 2017, respectively.
28. Order under Rule 506(d) of the Securities Act of 1933 Granting a Waiver of the

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Rule 506(d)(1)(ii) Disqualification Provision, Securities Act Rel. No. 9657 (Sept. 26, 2014).