

**THE NASDAQ STOCK MARKET LLC
NOTICE OF ACCEPTANCE OF AWC**

Certified, Return Receipt Requested

**TO: Merrill Lynch, Pierce, Fenner & Smith Incorporated
Mr. John Goeller
Managing Director
One Bryant Park
New York, NY 10036**

**FROM: The NASDAQ Stock Market LLC ("Nasdaq")
c/o Financial Industry Regulatory Authority ("FINRA")
Department of Market Regulation
9509 Key West Avenue
Rockville, MD 20850**

DATE: August 7, 2014

RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 20120309147-01

Please be advised that your above-referenced Letter of Acceptance, Waiver and Consent ("AWC") has been accepted on **August 7, 2014** by the Nasdaq Review Council's Review Subcommittee, or by the Office of Disciplinary Affairs on behalf of the Nasdaq Review Council, pursuant to Nasdaq Rule 9216. A copy of the AWC is enclosed herewith.

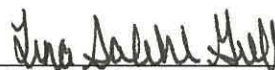
You are again reminded of your obligation, if currently registered, immediately to update your Uniform Application for Broker-Dealer Registration ("Form BD") to reflect the conclusion of this disciplinary action. Additionally, you must also notify FINRA (or NASDAQ if you are not a member of FINRA) in writing of any change of address or other changes required to be made to your Form BD.

You are reminded that Section I of the attached Letter of Acceptance, Waiver, and Consent includes an undertaking. In accordance with the terms of the AWC, a registered principal of the firm is required to notify the Compliance Assistant, Legal Section, Market Regulation Department, 9509 Key West Avenue, Rockville, MD 20850, of completion of the undertaking

You will be notified by the Registration and Disclosure Department regarding sanctions if a suspension has been imposed and by NASDAQ's Finance Department regarding the payment of any fine if a fine has been imposed.

Merrill Lynch, Pierce, Fenner & Smith Incorporated
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If you have any questions concerning this matter, please contact Kevin M. McGee, Senior Counsel,
at (240) 386-5098.



Tina Salehi Gubb
Chief Counsel, Legal Section
Department of Market Regulation

Signed on behalf of NASDAQ

Enclosure

FINRA District 10 – New York
Michael Solomon
Senior Vice President and Regional Director
(Via email)

Elizabeth Mitchell, Esq.
Wilmer Cutler Pickering Hale and Dorr
1875 Pennsylvania Avenue, NW
Washington, DC 20006
Counsel for Respondent

THE NASDAQ STOCK MARKET LLC
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20120309147-01

TO: The NASDAQ Stock Market LLC
c/o Department of Market Regulation
Financial Industry Regulatory Authority ("FINRA")

RE: Merrill Lynch, Pierce, Fenner & Smith Incorporated, Respondent
Broker-Dealer
CRD No. 7691

Pursuant to Rule 9216 of The NASDAQ Stock Market LLC ("Nasdaq") Code of Procedure, Merrill Lynch, Pierce, Fenner & Smith Incorporated (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, Nasdaq will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. The firm 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 Nasdaq, or to which Nasdaq 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 Nasdaq:

BACKGROUND

The firm has been a member of Nasdaq since July 12, 2006, and a member of FINRA since January 26, 1937. Its registrations remain in effect.

RELEVANT PRIOR DISCIPLINARY HISTORY

The firm has no relevant disciplinary history.

SUMMARY

In connection with Matter No. 20120309147, the staff in the Market Analysis Section of the Department of Market Regulation reviewed the firm's compliance with Nasdaq rules

regarding locked/crossed markets during the period July 1, 2011 through September 30, 2011 (the "review period").

FACTS AND VIOLATIVE CONDUCT

1. During the review period, the firm failed to reasonably avoid displaying, and engaged in a pattern or practice of displaying, quotations that locked or crossed a protected quotation. Specifically, the firm gave another broker-dealer, which was not a member of Nasdaq, sponsored access to Nasdaq and that broker-dealer entered intermarket sweep orders into the Nasdaq Single Book Execution System that locked or crossed a quotation previously disseminated pursuant to an effective national market system plan and failed to simultaneously route an intermarket sweep order to execute against the full displayed size of the locked or crossed protected quote. The conduct described in this paragraph constitutes a violation of Nasdaq Rule 4613(e).
2. During the review period, the firm failed to supervise its sponsored access clients to reasonably prevent these clients from engaging in a pattern or practice of displaying quotations in the Nasdaq Single Book Execution System that locked or crossed a protected quotation. As a result, the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the Nasdaq Rules concerning locked/crossed markets. Specifically, the firm's supervisory system did not include written supervisory procedures providing for: (1) the identification of the person(s) responsible for supervision with respect to the applicable rules; (2) a statement of the supervisory step(s) to be taken by the identified person(s); (3) a statement as to how often such person(s) should take such step(s); and (4) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented. The conduct in this paragraph constitutes a violation of Nasdaq Rules 2110 and 3010.

B. The firm also consents to the imposition of the following sanctions:

A censure and a fine of \$27,500 (consisting of a \$17,500 fine for the violation of Nasdaq Rule 4613(e) and a \$10,000 fine for the violation of Nasdaq Rules 2110 and 3010), and an undertaking to revise the firm's written supervisory procedures with respect to the locked/crossed markets described in paragraph A.2. Within 30 business days of acceptance of this AWC by the NAC, a registered principal of the Respondent shall submit to the COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850, a signed, dated letter, or an e-mail from a work-related account of the registered principal to MarketRegulationComp@finra.org, providing the following information: (1) a

reference to this matter; (2) a representation that the firm has revised its written supervisory procedures to address the deficiencies described in paragraph A.2; and, (3) the date the revised procedures were implemented.

The firm agrees to pay the monetary sanction in accordance with its executed Election of Payment Form.

The firm 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

The firm specifically and voluntarily waives the following rights granted under Nasdaq's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the firm;
- 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 Nasdaq Review Council and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the firm specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Regulatory Officer, the Nasdaq Review Council, or any member of the Nasdaq Review Council, 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.

The firm 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.

III.

OTHER MATTERS

The firm 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 FINRA's Department of Market Regulation and the Nasdaq Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs ("ODA"), pursuant to Nasdaq Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
- C. If accepted:
 - 1. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by Nasdaq or any other regulator against the firm;
 - 2. Nasdaq may make a public announcement concerning this agreement and the subject matter thereof in accordance with Nasdaq Rule 8310 and IM-8310-3; and
 - 3. The firm 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. The firm may not take any position in any proceeding brought by or on behalf of Nasdaq, or to which Nasdaq is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which Nasdaq is not a party.
- D. The firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm 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 Nasdaq, nor does it reflect the views of Nasdaq or its staff.

The undersigned, on behalf of the firm, 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 the firm to submit it.

7/2/14

Date

Merrill Lynch, Pierce, Fenner & Smith
Incorporated
Respondent

By: 

Name: John Goellse

Title: M.D.

Reviewed by:

Elizabeth Mitchell

Elizabeth Mitchell, Esq.
Wilmer Cutler Pickering Hale and Dorr
1875 Pennsylvania Avenue, NW
Washington, D.C. 20006
(202) 663-6000

Accepted by Nasdaq:

8/7/14
Date

Tina Salehi Gubb
Tina Salehi Gubb
Chief Counsel
Department of Market Regulation

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

ELECTION OF PAYMENT FORM

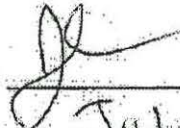
The firm intends to pay the fine proposed in the attached Letter of Acceptance, Waiver and Consent by the following method (check one):

- A firm check or bank check for the full amount;
- Wire transfer;
- The installment payment plan.¹
 - Monthly
 - Quarterly

Respectfully submitted,

Respondent
Merrill Lynch, Pierce, Fenner & Smith
Incorporated

7/2/14
Date

By: 
Name: JOHN GOEBEL
Title: N.D.

¹ The installment payment plan is only available for a fine of \$50,000 or more. Certain requirements apply.