

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

**Certified, Return Receipt Requested**

**TO: Merrill Lynch, Pierce, Fenner & Smith Inc.  
Mr. Steven Longo  
Managing Director  
222 Broadway  
NY3-222-12-05  
New York, NY 10038**

**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: November 18, 2013**

**RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 20090169999-02**

**Please be advised** that your above-referenced Letter of Acceptance, Waiver and Consent ("AWC") has been accepted 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.

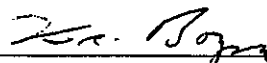
You are again reminded of your obligation, if currently registered, immediately to update your Uniform Application for Broker-Dealer Registration ("Form BD") to reflect the conclusion of this disciplinary action. Additionally, you must also notify FINRA (or NASDAQ if you are not a member of FINRA) in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

You 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 Inc.

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If you have any questions concerning this matter, please call me at (646) 430-7034.



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Kenneth R. Bozza

Chief Counsel, Legal Section  
Department of Market Regulation, FINRA

Signed on behalf of NASDAQ

Enclosure

FINRA District 10 – New York  
Michael Solomon  
Regional Director  
One World Financial Center  
200 Liberty Street  
New York, NY 10281

Justin M. Kletter, Director & Assistant General  
Counsel  
Global Equities Legal Department  
Merrill Lynch, Pierce, Fenner & Smith Inc.  
One Bryant Park  
New York, NY 10036

**THE NASDAQ STOCK MARKET LLC  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT**

NO. 20090169999-02

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

RE: Merrill Lynch, Pierce, Fenner & Smith Inc. ("MLCO"), 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 Inc. ("MLCO" 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, 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 became a member of FINRA on January 31, 1937, and a member of Nasdaq on July 12, 2006, and its registrations remain in effect. The firm does not have a relevant prior disciplinary history.

## FACTS AND VIOLATIVE CONDUCT

The staff in Market Regulation's Trading and Market Making Surveillance ("TMMS") Section, on behalf of Nasdaq, reviewed the items listed on Exhibit 1, attached, to determine the firm's compliance with various Nasdaq and SEC rules for trade dates July 1, 2009 and July 2, 2009 (the "review period"). As a result of this review, the TMMS staff determined the following:

1. During the review period, MLCO entered 8 proprietary orders to sell short into the Nasdaq Market Center that incorrectly identified the orders as long. In addition, the firm entered one proprietary order to sell long into the Nasdaq Market Center that incorrectly identified the order as short. The conduct described in this paragraph constitutes separate and distinct violations of Nasdaq Rule 4755.
2. During the review period, MLCO entered 15 orders into the Nasdaq Market Center that failed to indicate the correct capacity. The conduct described in this paragraph constitutes separate and distinct violations of Nasdaq Rule 4611(a)(6).

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

A censure and fine of \$12,500 (consisting of a \$7,500 fine for the Nasdaq Rule 4755 violation and a \$5,000 fine for the Nasdaq Rule 4611(a)(6) violation).

The firm agrees to pay the monetary sanction in accordance with its executed Election of Payment Form upon notice that this AWC has been accepted and that such payment is due and payable.

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(s) 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
- Matter No. 20090169999 (KB)

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 prejudice 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. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the firm's disciplinary record;

3. 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
  4. 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.

9/30/13  
Date

Merrill Lynch, Pierce, Fenner & Smith Inc.  
Respondent

By: [Signature]  
Name: Steven Longo  
Title: Managing Director

Reviewed by:

[Signature]  
Counsel for Respondent  
Firm Name Merrill Lynch, Pierce, Fenner & Smith Inc.  
Address One Bryant Park  
City/State/Zip NY / NY / 10036  
Phone Number 646-855-1186

Accepted by Nasdaq:

11/18/13  
Date

[Signature]  
Kenneth R. Bozza, Chief Counsel  
Legal Section  
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.<sup>1</sup>
  - Monthly
  - Quarterly

Respectfully submitted,

Respondent  
Merrill Lynch, Pierce, Fenner & Smith Inc.

9/30/13  
Date

By: 

Name: Steven Longo

Title: MANAGING DIRECTOR

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



**2009 Market Regulation Examination Samples**  
**Merrill Lynch, Pierce, Fenner and Smith, Inc. ("MLCO")**  
**Exam No. 20090169999**  
**Sample Source/Period\*: July 1 and 2, 2009**

**Exhibit # 1**

Sample

<u>Size</u>	<u>Sample Description</u>
63	Sales reviewed for compliance with SEC Rule 200(g) long/short sale recording requirements
14	Short Sales reviewed for compliance with SEC Rule 203(b) security location requirements
4	Sales reviewed for compliance with SEC Rule 204 fail-to-deliver requirements
685	Sell trades reported to a TRF or OTCRF for compliance with sale indicator requirements, FINRA Rules 6182 or 6624
87	Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4755(a)(1)(A) long/short reporting requirements
87	Buy and Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4611 capacity reporting requirements
0	Sell orders entered into BATS Exchange execution system for compliance with BATS Rule 11.19 long/short reporting requirements
0	Limit orders for NMS securities in which the member acts as an exchange market maker for compliance with the display requirements of SEC Rules 602 and 604, and Nasdaq Rule 3390
22	Orders for compliance with best execution requirements of NASD Rule 2320
0	Held orders from the Held Order Protection Review
22	Not Held orders from the Not Held Order Review
0	Order executed with a .PRP (Prior Reference Price) trade modifier
10	Customer orders in OTC equity securities for compliance with NASD Rule 3110(b) requirements to ascertain and document best interdealer market related to execution of orders
0	Orders for compliance with order protection requirements of NASD Rules 2110, IM-2110-2, 2111, and Nasdaq Rules 2110, IM-2110-2, and 2111
10	Open Limit orders to buy and/or open Stop orders to sell securities that traded ex-dividend for compliance with NASD Rule 3220 and Nasdaq Rule 4761
0	Order memoranda and Net Trading agreements for compliance with NASD Rule 2441 requirements
51	Orders in securities required to be submitted to OATS for compliance with FINRA Rules 7440 and 7450, and Nasdaq Rules 6954 and 6955 requirements
126	Customer confirmations prepared and maintained in connection with select samples for compliance with SEC Rule 10b-10

**2009 Market Regulation Examination Samples**  
**Merrill Lynch, Pierce, Fenner and Smith, Inc. ("MLCO")**  
**Exam No. 2009016999**  
**Sample Source/Period\*: July 1 and 2, 2009**

**Exhibit # 1**

<u>Sample</u>	<u>Size</u>	<u>Sample Description</u>
	33	Orders for NMS securities in which the Firm acts as a market center for compliance with SEC Rule 605 order classification requirements
	4	Data sets published for Month Year monthly order execution report for compliance with SEC Rule 605 requirement to publish accurate data (a 'data set' encompasses all required statistical data for single security and order type/size category as described in SEC Rule 605)
	1	Quarterly Routing Report for compliance with SEC Rule 606 requirements
	16	CRD registration records for persons conducting and/or supervising Firm's trading and/or market making activities for compliance with NASD Rule Series 1020, 1030, 1040; Nasdaq Rule Series 1020, 1030, 1040; and BATS Rule 11.4
	10	Customer orders in OTC equity securities for compliance with NASD Rule 3110(b) requirements to ascertain and document best interdealer market related to execution of orders
	1	Disclosures to customers relating to trading in the Extended Hours session for compliance with FINRA Rule 2265 and Nasdaq Rule 4631
	735	Records prepared and maintained in connection with the above samples for compliance with SEC Rules 17a-3 and 17a-4, and NASD Rule 3110
	938	Trades reported to a TRF or OTCRF for compliance with FINRA Rules 6380A and 7230A or 6622 and 7330
All Provided		Member's "Regular & Rigorous" review procedures regarding order execution quality for compliance with NASD Rules 2320 and 3010
All Provided		Member's supervisory and operational policies and procedures and documentation evidencing execution of the policies and procedures for compliance with SEC Regulation NMS Rule 611
All Provided		Member's supervisory system, written supervisory procedures ("WSPs") and documentation evidencing execution of the WSPs for compliance with NASD Rule 3010, Nasdaq Rule 3010, or BATS Rule 5.1 requirements