

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

Certified, Return Receipt Requested

**TO: Merrill Lynch, Pierce, Fenner & Smith Incorporated
Mr. J. David Montague
Associate General Counsel
One Bryant Park
New York, NY 10036**

**FROM: The NASDAQ Stock Market LLC (“Nasdaq”)
c/o Financial Industry Regulatory Authority (“FINRA”)
Department of Enforcement
15200 Omega Drive, Suite 300
Rockville, MD 20850**

DATE: May 20, 2019

RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 2017056712301

Please be advised that your above-referenced Letter of Acceptance, Waiver and Consent (“AWC”) has been accepted on **May 20, 2019** 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 Incorporated
Page 2

If you have any questions concerning this matter, please contact me at (240) 386-6720.



Luis A. Prieto
Counsel
Department of Enforcement, FINRA

Signed on behalf of NASDAQ

Enclosure

FINRA District 10 – New York
William St. Louis
Senior Vice President and District Director
(via email)

Ivan B. Knauer
Counsel for Respondent
Snell & Wilmer LLP
The Evening Star Building
1101 Pennsylvania Avenue NW
Washington, DC 20004

THE NASDAQ STOCK MARKET LLC
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2017056712301

TO: The NASDAQ Stock Market LLC
c/o Department of Enforcement
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 ("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 & RELEVANT DISCIPLINARY HISTORY

MLCO became a Nasdaq member on July 12, 2006, and a FINRA member on January 26, 1937, and its registrations remain in effect. The firm has no relevant disciplinary history.

SUMMARY

The staff of the Market Analysis Section of the Department of Market Regulation at FINRA (the "staff") conducted reviews of the firm's compliance with Nasdaq Rule 4613(a) during the period from July 1, 2017 through December 31, 2017 (the "review period"). Based on the reviews, it was determined that the firm violated Nasdaq Rules 4613(a), 3010, and 2010A, as set forth below:

FACTS AND VIOLATIVE CONDUCT

Market Maker Quoting Obligations

1. Pursuant to Nasdaq Rule 4613(a), for each National Market System (“NMS”) security in which a Nasdaq member is registered as a market maker, the member is required to maintain a continuous two-sided trading interest, during regular market hours, at prices within certain parameters expressed as a percentage referenced from the National Best Bid or Offer (“NBBO”).
2. During the review period, the firm, in 97 instances,¹ failed to maintain a continuous two-sided trading interest during regular market hours at prices within certain percentages away from the NBBO. In all 97 instances, the firm failed to maintain a quote for the entire market hours. The violations occurred as a result of system related coding issues involving the sending of Market Maker Peg Orders (“MMPO”) to Nasdaq for new securities that were issued with same symbol as previously inactive securities (*e.g.*, as a result of a name change, relisting, new listing, etc.). In these situations, the firm’s systems failed to append the proper codes that were used to match the symbols in which the firm was a market maker and obtain market data for sending a MMPO, which was due to the fact that the codes for these symbols were still associated with the inactive securities. The conduct described in this paragraph constitutes separate and distinct violations of Nasdaq Rule 4613(a).

Supervision

3. Nasdaq Rule 3010(a) provides, “Each member shall establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable Nasdaq rules.”
4. Nasdaq Rule 2010A provides, “A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.”
5. During the review period, the firm’s supervisory system was not reasonably designed to achieve compliance with Nasdaq quoting obligations. Specifically, the firm’s supervision system failed to include a review for Nasdaq symbols for which it was a registered market maker and where the firm’s relevant system did not generate MMPO quotes for securities that were issued with the same symbol as previously inactive securities. As a result, the firm did not detect the system related coding issues that

¹ This is the number of validated violations based on samples reviewed during the review period: 54 out of 54 during 3Q17; and 43 out of 43 during 4Q17.

occurred during the review period.² The conduct described in this paragraph constitutes a violation of Nasdaq Rules 2010A and 3010.

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

1. A censure, and
2. A fine of \$17,500 (comprised of \$10,000 for the violations of Nasdaq Rule 4613(a), and \$7,500 for the violations of Nasdaq Rules 2010A and 3010).

The firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. It has submitted a Payment Information form showing the method by which it proposes to pay the fine imposed.

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 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

² Subsequent to the review period, the firm updated its supervisory systems by implementing a report designed to identify symbols in which the firm did not generate a MMPO quote, which includes quotes in previously inactive securities. Therefore, Enforcement is not recommending an undertaking.

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 Enforcement 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 release this AWC or 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.

May 9, 2019
Date

Merrill Lynch, Pierce, Fenner & Smith Incorporated
Respondent

By: J. David Montague

Name: J. David Montague

Title: Associate General Counsel

Reviewed by:

Ivan B. Knauer

Ivan B. Knauer
Counsel for Respondent
Snell & Wilmer LLP
The Evening Star Building
1101 Pennsylvania Avenue NW
Washington, DC 20004
(202) 802-9770

Accepted by Nasdaq:

May 20, 2019
Date

Luis A. Prieto

Luis A. Prieto
Counsel
Department of Enforcement

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

PAYMENT INFORMATION

For firms, the fine and/or disgorgement amount will be reflected on an upcoming invoice and will be direct debited from the account for your firm that the Exchange currently has on file. **Please DO NOT submit payment at this time.**

Please inform your finance or applicable department of this forthcoming debit.

For individuals, and for firms that would like to arrange for an alternative method of payment, please enter the billing contact information below and the Exchange's Billing Department will contact you. **Otherwise, please leave the following information blank.**

Billing Contact Name: Hugh Patton
Billing Contact Address: 50 Rockefeller Plaza, 7th fl, N.Y., N.Y. 10020
Billing Contact Email: hugh.patton@bankofamerica.com
Billing Contact Phone Number: 646.556.1542

Respectfully submitted,

Merrill Lynch, Pierce, Fenner & Smith Incorporated
Respondent

May 9, 2019

Date

By: J. David Montague
Name: J. David Montague
Title: Associate General Counsel