

**NASDAQ PHLX 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: Nasdaq PHLX LLC (“PHLX”)
c/o Financial Industry Regulatory Authority (“FINRA”)
Department of Enforcement
9509 Key West Avenue
Rockville, MD 20850**

DATE: September 26, 2018

RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 20140411279-08

Please be advised that your above-referenced Letter of Acceptance, Waiver and Consent (“AWC”) has been accepted on **September 26, 2018** by the PHLX Review Council’s Review Subcommittee, or by the Office of Disciplinary Affairs on behalf of the PHLX Review Council, pursuant to PHLX 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 PHLX 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, Department of Enforcement, 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
September 26, 2018
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If you have any questions concerning this matter, please contact me at (646) 430-7050.



Elyse D. Kovar
Senior Counsel
Department of Enforcement

Signed on behalf of PHLX

Enclosure

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

Emily Gordy
McGuire Woods LLP
2001 K. Street N.W.
Suite 400
Washington, DC 20006
Counsel for Respondent

NASDAQ PHLX LLC
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20140411279-08

TO: Nasdaq PHLX 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 Nasdaq PHLX LLC ("PHLX") Code of Procedure, Merrill Lynch, Pierce, Fenner & Smith Incorporated (the "Firm" or "Respondent") 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, PHLX will not bring any future actions against the Respondent alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

A. Respondent 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 PHLX, or to which PHLX 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 PHLX:

BACKGROUND

Respondent has been a member of FINRA since January 26, 1937, and a member of PHLX since March 12, 1959; these registrations remain in effect. The Firm has no relevant disciplinary history.

SUMMARY

In Matter No. 20140411279, FINRA's Department of Market Regulation's Options Regulation team (the "Staff") conducted a review, on behalf of PHLX, of potentially manipulative trading by the Firm in equities and the overlying options during the period between January and March 2014, and the reasonableness of the Firm's supervisory systems and written supervisory procedures ("WSPs") to detect and prevent potential cross-product manipulation or mini-manipulation during the period between January 2014 and June 2017, later expanded to December 1, 2017 (the "Review Period"). As a result of its reviews, FINRA's Department of Enforcement ("Enforcement") determined that, during the Review Period and until the Firm implemented surveillances for mini-manipulation on December 1, 2017, the Firm had no supervisory systems or surveillances reasonably designed to ensure compliance with PHLX rules prohibiting potentially manipulative cross-product trading or mini-manipulative activity. In

addition, during the Review Period and through the present, the Firm did not have reasonable WSPs with respect to the detection and prevention of potential mini-manipulation.

FACTS AND VIOLATIVE CONDUCT

1. PHLX Rule 707 prohibits member organizations from engaging in conduct inconsistent with just and equitable principles of trade.
2. PHLX Rule 748(b) requires member organizations to provide for appropriate supervisory control of the organization and compliance with securities laws and regulations, including PHLX's By-Laws and Rules. Member organizations are required to provide for appropriate written procedures of supervision and control, and to establish a separate system of follow-up and review, to determine that the delegated authority and responsibility is being properly exercised. PHLX Rule 748(d) requires each person with supervisory control to reasonably discharge his duties and obligations in connection with the organization's supervision and control to prevent and detect, insofar as practicable, violations of the applicable securities laws and regulations, including PHLX's By-Laws and Rules. PHLX Rule 748(h) requires member organizations to establish, maintain, and enforce written supervisory procedures reasonably designed to prevent and detect violations of securities laws and regulations, including PHLX's By-Laws and Rules.
3. During the period between January and March 2014, Firm traders, trading on behalf of the Firm, on multiple occasions and trade dates, engaged in trading whereby they effected purchases or sales of equity securities in a Firm proprietary account, immediately followed by purchases or sales of options overlying those securities. These transactions were potentially inconsistent with just and equitable principles of trade, because they could have disrupted the market for the equity securities and the overlying equity options. Depending on the economic rationale of the Firm traders for effecting the transactions, these transactions could have constituted manipulative cross-product trading or mini-manipulation trading activity.
4. Beginning in October 2014, Staff advised the Firm that it was reviewing potential mini-manipulation activity by Firm traders. In furtherance of its reviews, Staff issued multiple subsequent correspondence to the Firm seeking information and updates regarding the Firm's surveillances and procedures to monitor for potential mini-manipulation.
5. Before and during the Review Period, notices were made available to the industry through public settlements involving mini-manipulation, securities industry conferences that addressed mini-manipulation, and FINRA Priorities Letters in 2012 and 2013, which highlighted mini-manipulation as an area of FINRA's focus. Despite the foregoing and the multiple letters sent by Staff to the Firm beginning in October 2014, during the Review Period, the Firm had no supervisory systems or surveillances reasonably designed to ensure compliance with Exchange rules prohibiting manipulative cross-product trading or mini-manipulative activity. In addition, during the Review Period and through the present, the Firm had no WSPs with respect to mini-manipulation.

6. The Firm's conduct described in paragraph 5 above violated PHLX Rules 707 and 748(b), (d) and (h).

B. Respondent also consents to the imposition of the following sanctions:

1. a censure;
2. a fine in the amount of \$125,000, of which \$15,625 shall be paid to PHLX;¹ and
3. an undertaking to revise the Firm's WSPs with respect to mini-manipulation, as described in paragraph I.A.5 above. Within 30 business days of the date of the Notice of Acceptance of this AWC, a registered principal of the Firm shall submit to the COMPLIANCE ASSISTANT, DEPARTMENT OF ENFORCEMENT, 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 WSPs to address the deficiencies described in paragraph I.A.5; and (3) the date the revised procedures were implemented.

Additionally, acceptance of this AWC is conditioned upon acceptance of similar settlement agreements in related matters between the Firm and each of the following self-regulatory organizations: (i) BOX Options Exchange LLC; (ii) NYSE American LLC; (iii) Nasdaq GEMX, LLC; (iv) Nasdaq ISE, LLC; (v) The NASDAQ Options Market LLC; (vi) Miami International Securities Exchange, LLC; and (vii) NYSE Arca, Inc.

Respondent agrees to pay the monetary sanction(s) in accordance with its executed Election of Payment Form.

Respondent 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

Respondent specifically and voluntarily waives the following rights granted under PHLX's Code of Procedure:

¹ The balance of the fine shall be paid to the self-regulatory organizations referenced in the following paragraph.

- 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 PHLX Review Council and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

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

Respondent 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

Respondent 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 PHLX Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs ("ODA"), pursuant to PHLX 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 Respondent; and
- C. If accepted:
 - 1. This AWC will become part of the Respondent's permanent disciplinary record and may be considered in any future actions brought by PHLX or any other regulator against the Respondent;
 - 2. PHLX may release this AWC or make a public announcement concerning this agreement and the subject matter thereof in accordance with PHLX Rule 8310 and IM-8310-3; and

- 3. Respondent 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. Respondent may not take any position in any proceeding brought by or on behalf of PHLX, or to which PHLX is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Respondent's right to take legal or factual positions in litigation or other legal proceedings in which PHLX is not a party.**

- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent 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 PHLX, nor does it reflect the views of PHLX 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 the Firm 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.

7/12/2018
Date

Merrill Lynch, Pierce, Fenner & Smith Incorporated
Respondent

By: J. David Montague

Print Name: J. David Montague

Title: Associate General Counsel

Reviewed by:

[Signature]
Counsel for Respondent
Emily Gordy

McGuire Woods LLP
2001 K Street N.W.
Suite 400
Washington, D.C. 20006
202.857.2449

Accepted by PHLX:

9/26/18
Date

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

[Signature]
Elyse D. Kovar
Senior Counsel
Department of Enforcement

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

ELECTION OF PAYMENT FORM

The Firm 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

Respectfully submitted,

Respondent

Merrill Lynch, Pierce, Fenner & Smith Incorporated

7/12/2018
Date

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

Billing and Payment Contact

Please enter the billing contact information below. Nasdaq MarketWatch will contact you with billing options and payment instructions. ***Please DO NOT submit payment until Nasdaq has sent you an invoice.***

Billing Contact Name: Christopher Chatfield

Billing Contact Address: 50 Rockefeller Plaza, 7th Fl, New York, NY 10020

Billing Contact Email: cchatfield@bankofamerica.com

Billing Contact Phone Number: 212-550-3224