



## **Notice of Disciplinary Action against Merrill Lynch, Pierce, Fenner & Smith Incorporated and Merrill Lynch Professional Clearing Corp., Member Organizations**

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**To:** Members, Member Organizations, Participants and Participant Organizations

**From:** John C. Pickford, Assistant General Counsel, NASDAQ OMX PHLX<sup>SM</sup>

**DATE:** June 24, 2015

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### **FINRA Matter No. 20110277299 (includes Matter No. 20110277298) Enforcement No. 2015-04**

On June 8, 2015, the Business Conduct Committee (the "Committee") issued a disciplinary decision against Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Pierce") and Merrill Lynch Professional Clearing Corp. ("Merrill Pro") (collectively, the "Firms"), member organizations of the Exchange. In response to a Statement of Charges issued in this action, the Firms submitted an Offer of Settlement, Stipulation to Findings and Consent to Sanctions ("Offer"). Solely to settle this proceeding, and without admitting or denying the charges, the Firms stipulated to findings that they violated Section 17(a)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"), and Rule 17a-3 promulgated thereunder, and Exchange Rules 707, 760, 785(c), 1014(g)(i)(A), 1053 and 1063(e)(i), by entering and executing orders with incorrect origin codes, resulting in: (i) transactions executed by the Firms that may have traded ahead of other orders entitled to execution priority; (ii) potential adverse impact to the execution price and quantity of other market participants' orders; (iii) an inaccurate audit trail and inaccurate order records; (iv) trades being reported to The Options Clearing Corporation with inaccurate trade details; and (v) an adverse impact to the Exchange's ability to surveil for and detect potential violations of its rules and federal securities laws. Merrill Pierce did so from 2004 through 2014, and Merrill Pro did so from 2005 through 2011. Additionally, staff concluded that the Firms had supervisory deficiencies related to these matters. In summary, from 2004 to 2014, in violation of Exchange Rule 748, the Firms failed to have supervisory systems and controls in place, including a separate system of follow-up and review, reasonably designed to achieve compliance with the Exchange's origin code requirements in that the Firms failed to do the following: (i) reasonably address origin code requirements in the development and programming of their order entry systems; (ii) maintain written supervisory procedures reasonably designed to achieve compliance with the Exchange's rules relating to the assignment of origin codes; (iii) adequately train their employees with respect to the significance of properly marking origin codes in their order entry systems; and (iv) adequately supervise their employees with respect to the proper marking of origin codes.

The Offer submitted by the Firms was accepted by the Committee and was the basis of its Decision. The Committee found that the Firms violated each of the aforementioned rules, concurred in the sanctions consented to by the Firms, and ordered the imposition of the following sanctions: (i) a censure; (ii) a joint and several fine of \$9,000,000, of which

\$1,125,000 shall be paid to the Exchange; (iii) an undertaking by Merrill Pierce, pursuant to which at intervals of 90, 180, 270 and 360 days after the Decision on the Offer became final, Merrill Pierce must make a written submission to the Exchange regarding its compliance with Exchange rules, policies and practices governing the inclusion of accurate account origin codes in order and execution records and data; and (iv) an undertaking by Merrill Pro, pursuant to which Merrill Pro must submit, within 30 business days of acceptance of this Offer, a signed dated letter, or an e-mail from a work-related account of the firm's registered principal, providing the following information: (1) a reference to this matter; (2) a representation that Merrill Pro has revised its written supervisory procedures to address its deficiencies; and (3) the date on which the revised procedures were implemented. The Firms will pay the balance of their fine to BATS Exchange, Inc.; Chicago Board Options Exchange, Incorporated; International Securities Exchange, LLC; NASDAQ OMX BX, Inc.; The Nasdaq Options Market LLC; and NYSE Regulation, Inc.

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For more information, contact:

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