

NYSE AMERICAN LLC
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20140411279-02

TO: NYSE American 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 NYSE American LLC¹ ("NYSE American" or the "Exchange") 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, NYSE American 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 NYSE American, or to which NYSE American 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 NYSE American:

BACKGROUND

MLCO has been a member of FINRA since January 26, 1937 and a member of the Exchange since February 25, 1988; 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 the Exchange, 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

¹ Effective July 24, 2017, NYSE MKT LLC was renamed to NYSE American LLC. Thus, while certain of the conduct referred to herein occurred prior to July 24, 2017, and thus the violations were of NYSE MKT rules, for purposes of this document all the violations cited herein will be referred to as Exchange Rules.

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 Exchange 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. Exchange Rule 16 states that "[c]very member and member organization shall at all times adhere to the principles of good business practice in the conduct of his business affairs."
2. Exchange Rule 320 requires members and member organizations to provide for supervision and control of employees to ensure compliance with securities laws and regulations and NYSE American rules.
3. During the period between January and March 2014, MLCO 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 MLCO 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 Exchange Rules 16 and 320.

B. The firm 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 NYSE American;² and
3. an undertaking to revise the firm's WSPs with respect to mini-manipulation, as described in paragraph 1.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 1.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) The NASDAQ Options Market LLC; (iii) Nasdaq GEMX, LLC; (iv) Nasdaq ISE, LLC; (v) Nasdaq PHLX LLC; (vi) Miami International Securities Exchange, LLC; and (vii) NYSE Area, Inc.

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. The firm has submitted a Method of Payment Confirmation form showing the method by which it will 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 firm agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any fine amounts that the firm pays pursuant to this AWC, regardless of the use of the fine amounts. The firm further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any fine amounts that Respondent pays pursuant to this AWC, regardless of the use of the fine amounts.

² The balance of the fine shall be paid to the self-regulatory organizations referenced in the following paragraph.

The sanctions imposed herein shall be effective on a date set by NYSE Regulation staff.

II.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under the NYSE American'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 Exchange's Board of Directors 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 of NYSE American; the Exchange's Board of Directors, Disciplinary Action Committee ("DAC") and Committee for Review ("CFR"); any Director, DAC member or CFR member; Counsel to the Exchange Board of Directors or CFR; any other NYSE American employee; or any Regulatory Staff as defined in Rule 9120 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 the Chief Regulatory Officer of NYSE American, pursuant to NYSE American 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. The AWC shall be sent to each Director and each member of the Committee for Review via courier, express delivery or electronic means, and shall be deemed final and shall constitute the complaint, answer, and decision in the matter. 25 days after it is sent to each Director and each member of the Committee for Review, unless review by the Exchange Board of Directors is requested pursuant to NYSE American Rule 9310(a)(1)(B).
2. This AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by NYSE American, or any other regulator against the firm;
3. NYSE American shall publish a copy of the AWC on its website in accordance with NYSE American Rule 8313;
4. NYSE American may make a public announcement concerning this agreement and the subject matter thereof in accordance with NYSE American Rule 8313; and
5. 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 NYSE American, or to which NYSE American is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which NYSE American is not a party.

D. A signed copy of this AWC and the accompanying Method of Payment Confirmation form delivered by email, facsimile or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy.

E. 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 NYSE American, nor does it reflect the views of NYSE Regulation 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.

7/12/2018
Date

Merrill Lynch, Pierce, Fenner & Smith Incorporated
Respondent

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

Reviewed by:



Counsel for Respondent
Emily Gordy
McGuire Woods LLP
2001 K Street N.W.
Suite 400
Washington, D.C. 20006
202.857.2449

Accepted by FINRA

8/20/2018
Date

Elyse D. Kovar
Elyse D. Kovar
Senior Counsel
Department of Enforcement

Signed on behalf of NYSE American LLC,
by delegated authority from the Chief
Regulatory Officer of NYSE American
LLC.