

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

**Certified, Return Receipt Requested**

**TO: Merrill Lynch, Pierce, Fenner & Smith Incorporated  
Mr. Adam Inzirillo  
Managing Director  
One Bryant Park  
New York, NY 10036**

**FROM: The NASDAQ Stock Market LLC ("Nasdaq")  
c/o Financial Industry Regulatory Authority ("FINRA")  
Department of Enforcement  
9509 Key West Avenue  
Rockville, MD 20850**

**DATE: October 31, 2017**

**RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 20140437801-01**

**Please be advised** that your above-referenced Letter of Acceptance, Waiver and Consent ("AWC") has been accepted on **October 31, 2017** 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 Bryan C. Wallace, Principal Counsel,  
at (646) 430-7060.



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Kenneth R. Bozza  
Chief Counsel  
Department of Enforcement, FINRA

Signed on behalf of NASDAQ

Enclosure

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

Daniel T. Chaudoin  
Counsel for Respondent  
WilmerHale  
1875 Pennsylvania Avenue, NW  
Washington, DC 20006

**THE NASDAQ STOCK MARKET LLC**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
**NO. 20140437801-01**

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 (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 has been a member of Nasdaq since July 12, 2006, and a member of FINRA since January 26, 1937. Its registrations remain in effect.

**RELEVANT DISCIPLINARY HISTORY**

On June 1, 2012, Nasdaq accepted an AWC from the firm in which the firm consented to a censure and a \$12,500 fine for violations of Nasdaq Rules 4613(e) and 4755(a)(4) for failing to reasonably avoid displaying and engaging in a pattern or practice of displaying quotations that locked or crossed a protected quotation, in that it entered intermarket sweep orders ("ISOs") into the Nasdaq Single Book Execution System that locked or crossed a quotation previously disseminated pursuant to an effective national market system plan and failed to simultaneously route an ISO to execute against the full displayed size of the locked or crossed protected quote.

**SUMMARY**

In connection with Matter No. 20140437801, the staff of the Market Analysis Section of the Department of Market Regulation ("Market Regulation") reviewed the firm's

compliance with Nasdaq rules regarding locked/crossed markets during the period of March 2013 through August 2014 (the "review period"). Based on this review, Market Regulation found that the firm routed ISOs that locked or crossed protected quotations during the review period.

### **FACTS AND VIOLATIVE CONDUCT**

1. During the review period, the firm failed to reasonably avoid displaying, and engaged in a pattern or practice of displaying, quotations that locked or crossed a protected quotation. Specifically, the firm allowed a non-broker-dealer client of the firm, to whom it provided market access, to route ISOs through the firm's trading platform that were entered into the Nasdaq Single Book Execution System that locked or crossed a quotation previously disseminated pursuant to an effective national market system plan, and failed to simultaneously route an ISO to execute against the full displayed size of the locked or crossed protected quote. The conduct described in this paragraph constitutes separate and distinct violations of Nasdaq Rules 4613(e) and 4755(a)(4).
2. During the review period, the firm failed to establish and maintain a supervisory system that was reasonably designed to achieve compliance with Nasdaq Rules 4613(e) and 4755(a)(4) regarding displaying quotations that locked or crossed a protected quotation. In addition, the firm allowed its market access clients to use market data snapshots of protected quotations that were created and provided by its clients' vendor, which the firm did not review, and the firm failed to determine on a pre-order entry basis that its nonbroker-dealer market access clients were routing ISOs in accordance with Nasdaq Rules 4613(e) and 4755(a)(4).<sup>1</sup> 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:

A censure and a fine of \$38,000 (consisting of a fine of \$20,500 for the violations of Nasdaq Rules 4613(e) and 4755(a)(4), and a fine of \$17,500 for the violations of Nasdaq Rules 2010A and 3010).<sup>2</sup>

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

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.

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<sup>1</sup> Subsequent to the review period, the firm implemented additional procedures to address the deficiencies described above.

<sup>2</sup> A parallel action is concurrently being brought on behalf of Bats EDGX Exchange, Inc. in connection with Matter No. 20140437801.

## **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 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 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.**

[Continued on Next Page]

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.

10/13/17  
Date

Merrill Lynch, Pierce, Fenner & Smith Incorporated

Respondent

By:   
Name: Adam I. Zambillo  
Title: Managing Director

Reviewed by:



Counsel for Respondent: Daniel T. Chaudoin  
Firm Name: WilmerHale  
Address 1875 Pennsylvania Avenue, NW  
City/State/Zip Washington, DC 20006  
Phone Number 202-663-6741

Accepted by Nasdaq:

10/31/17  
Date

  
Kenneth R. Bozza, Chief Counsel  
Department of Enforcement

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

Respectfully submitted,

Respondent

Merrill Lynch, Pierce, Fenner & Smith Incorporated

10/13/17

Date

By: 

Name: Adam Trucillo

Title: Managing Director

**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, Esq.

Billing Contact Address: 50 Rockefeller Plaza, NY 10020-1605

Billing Contact Email: c.chatfield@bankofamerica.com

Billing Contact Phone Number: 646-556-3226