



**Certified Mail, Return Receipt Requested**

September 26, 2018

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

**RE: Payment of Fine in Connection with Executed Letter of Consent**  
**FINRA Matter No. 20140411279-03**

Dear Mr. Montague:

Enclosed is an executed copy of the Letter of Consent (“LOC”), signed by you at Merrill Lynch, Pierce, Fenner & Smith Incorporated (the “Firm”), and countersigned by Edward Deitzel, Executive Vice President and Chief Regulatory Officer, for the Business Conduct Committee, at the Miami International Securities Exchange, LLC (“MIAX” or the “Exchange”) on August 22, 2018. Please consider this correspondence as notice to the Firm that this LOC has been accepted, and as a result, the Firm must promptly remit payment of the agreed upon sanction. Please make the payment to Miami International Securities Exchange, LLC.

The payment should be sent to the below address if payment is by check:

MIAX Options  
Attn: Tia Toms  
7 Roszel Road, Suite 5A  
Princeton, NJ 08540  
Reference Number: Matter No. 20140411279-03

Pursuant to MIAX Rule 1011, after seven calendar days’ notice in writing, the Exchange may summarily suspend a Member that fails to pay promptly a fine when such fine becomes finally due and payable.

If you have any questions concerning this matter, please contact me at (646) 430-7050.

Very truly yours,

Elyse D. Kovar  
Senior Counsel

Merrill Lynch, Pierce, Fenner & Smith Incorporated  
Mr. J. David Montague  
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Enclosure

cc: Larry O'Leary, VP Regulation, Miami International Securities Exchange, LLC  
(via e-mail to [loley@miaxoptions.com](mailto:loley@miaxoptions.com))

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

*This letter is issued on behalf of the Miami International Securities Exchange, LLC, by FINRA Department of Enforcement pursuant to a grant of authority to FINRA. Accordingly, this constitutes a letter by the Miami International Securities Exchange, LLC.*

**MIAMI INTERNATIONAL SECURITIES EXCHANGE, LLC**

**LETTER OF CONSENT**

**NO. 20140411279-03**

**TO: Miami International Securities Exchange, 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 1003 of the Rules of the Miami International Securities Exchange, LLC ("MIAX"), Merrill Lynch, Pierce, Fenner & Smith Incorporated (the "firm") submits this Letter of Consent ("LOC") for the purpose of proposing a settlement of the alleged rule violations described below. This LOC is submitted on the condition that, if accepted, MIAX 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 MIAX, or to which MIAX 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 MIAX:

**BACKGROUND**

The firm has been a member of FINRA since January 26, 1937, and a member of MIAX since December 7, 2012; 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 MIAX, 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 MIAX 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. MIAX Rule 300 requires every Member to supervise persons associated with it to assure compliance with the Securities Exchange Act of 1934 and MIAX's By-Laws and Rules.
2. MIAX Rule 500(b) makes it a violation for a Member to "engage in conduct (1) inconsistent with the maintenance of a fair and orderly market; (2) apt to impair public confidence in the operations of the Exchange; or (3) inconsistent with the ordinary and efficient conduct of business."
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 also could have constituted manipulative cross-product 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 MIAX 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 MIAX Rules 300 and 500(b).

- 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 MIAX;<sup>1</sup> 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 LOC, 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.3; and (3) the date the revised procedures were implemented.

Additionally, acceptance of this LOC 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) Nasdaq PHLX LLC; (vi) The NASDAQ Options Market LLC; and (vii) NYSE Arca, Inc.

The firm agrees to pay the monetary sanction(s) upon notice that this LOC has been accepted and that such payment(s) are due and payable. It has submitted an Election of Payment 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 MIAX.

## II.

### WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under MIAX Rules:

- A. To have a Statement of Charges issued specifying the allegations against the firm;
- B. To be notified of the Statement of Charges and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a Hearing Panel,

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

to have a written record of the hearing made and to have a written decision issued;  
and

- D. To appeal any such decision to MIAX'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 prejudice of the Chief Regulatory Officer ("CRO"), as well as the Business Conduct Committee ("BCC"), in connection with participation in discussions regarding the terms and conditions of this LOC, or other consideration of this LOC, including acceptance or rejection of this LOC.

The firm further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of MIAX Rule 1006, in connection with such person's or body's participation in discussions regarding the terms and conditions of this LOC, or other consideration of this LOC, including its acceptance or rejection.

### III.

#### OTHER MATTERS

The firm understands that:

- A. Submission of this LOC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the CRO and the BCC, pursuant to MIAX Rule 1003;
- B. If this LOC 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 LOC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by MIAX or any other regulator against the firm;
  - 2. This AWC will be published on a website maintained by MIAX; 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 LOC or create the impression that the LOC is without factual basis. The firm may not take any position in any proceeding brought by or on behalf of MIAX, or to which MIAX is a party, that is inconsistent with any part of this LOC. 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 MIAX is not a party.
- D. The firm may attach a Corrective Action Statement to this LOC 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 LOC in this Statement. This Statement does not constitute factual or legal findings by MIAX, nor does it reflect the views of MIAX 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 LOC and has been given a full opportunity to ask questions about it; that it has agreed to the LOC'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.

July 12, 2018  
Date

Respondent  
Merrill Lynch, Pierce, Fenner & Smith Incorporated

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

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

Accepted by Miami International Securities Exchange, LLC:

8/22/18  
Date

Edward Deitzel  
Edward Deitzel  
Executive Vice President and  
Chief Regulatory Officer  
Miami International Securities Exchange, LLC

Decision of the Business Conduct Committee:

Accept  Decline

8/22/18  
Date

Edward Deitzel  
By: Edward Deitzel  
For the Business Conduct Committee

**ELECTION OF PAYMENT FORM**

The firm intends to pay the fine proposed in the attached Letter of 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

July 12, 2018  
Date

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