DISCIPLINARY DECISION
Cboe EDGA Exchange, Inc.
Star No. 20130386840-05/File No. USRI-7659-08
Merrill Lynch, Pierce, Fenner & Smith Incorporated

Pursuant to Exchange Rule 8.3, attached to and incorporated as part of this Decision is a Letter of Consent.

Applicable Rule

- EDGA Rule 5.1 – Written Procedures.

Sanction

- A censure and a monetary fine in the amount of $90,000.

Acceptance Date

March 22, 2021

Effective Date

March 30, 2021

/s/ Greg Hoogasian

Greg Hoogasian, CRO, SVP

Cboe EDGA Exchange, Inc.
LETTER OF CONSENT
STAR No. 2013038684005
File No. USRI-7659-08

In the Matter of:

Merrill Lynch, Pierce, Fenner & Smith Incorporated
One Bryant Park
New York, NY 10036,

Subject

Pursuant to the provisions of Cboe EDGA Exchange, Inc. ("EDGA" or the "Exchange") Rule 8.3 – Expedited Proceeding, Merrill Lynch, Pierce, Fenner & Smith Incorporated (the "Firm") submits this Letter of Consent for the purposes of proposing a settlement of the alleged rule violations described below.

The Firm neither admits nor denies that violations of Exchange Rules have been committed, and the stipulation of facts and findings described herein do not constitute such an admission.

BACKGROUND

1. During all relevant periods herein, the Firm was acting as a registered Broker-Dealer and was an Exchange Member. The Firm's registration remains in effect.

2. This matter originated from a review conducted by the Department of Market Regulation at the Financial Industry Regulatory Authority ("FINRA").

VIOLATIVE CONDUCT

Applicable Rules

3. During all relevant periods herein, the following rule was in full force and effect: Exchange Rule 5.1 – Written Procedures.

4. During all relevant periods herein, Exchange Rule 5.1 provided that "[e]ach Member shall establish, maintain and enforce written procedures which will enable it to supervise properly the activities of associated persons of the Member and to assure their compliance with applicable securities laws, rules, regulations and statements of policy promulgated thereunder, with the rules of the designated self-regulatory organization, where appropriate, and with Exchange Rules."

The Firm Did Not Reasonably Supervise Public and Private Side Employee Communications

5. From on or about September 1, 2013 through approximately June 2016 (the "Relevant Period"), the Firm maintained supervisory and compliance procedures that governed the management of information barriers and wall crossings. Those procedures included a firm-wide Enterprise Information Wall Policy, a Global Wealth and Investment Management ("GWIM") Information Wall Policy, a Global Banking and Markets/Global Commercial Banking ("GBAM") Information Wall Policy, and a Need to Know Policy. The Firm's policies required functional and physical separation of its private side and public side designated employees, and generally prohibited the flow of potential material nonpublic information ("MNPI"). During the Relevant Period, however, the Firm's systems and procedures for designating and training public and private side personnel, supervising communications between them, and escalating communications that disclosed potential MNPI, were not reasonable with respect to certain GWIM groups.

6. During the Relevant Period, a group within the Firm's GWIM business unit (the "GWIM sub-group") managed a proprietary distribution platform through which the Firm offered certain exchange-traded notes ("ETNs") issued by third parties. The GWIM sub-group included personnel responsible for the development of products on the platform and certain capital markets functions, who were generally designated as private side under the GWIM Information Wall Policy. It also included personnel responsible for the marketing and sale of ETNs offered through the platform, who were generally designated as public side personnel. The GWIM sub-group's private and public side employees were permitted to engage in communications about the ETNs.

7. In 2013, the Firm designated certain personnel in the GWIM sub-group as private side under the GWIM Information Wall Policy in connection with a physical relocation, even though their principal responsibilities included marketing of the ETNs and other investment products. The re-designated personnel also worked in physical proximity to private side personnel in the GWIM sub-group responsible for product development. The re-designated personnel, however, did not receive reasonable training concerning the responsibilities of private side personnel with respect to the identification and monitoring of potential MNPI.

8. During the fourth quarter of 2013, employees on the private side of the GWIM sub-groups came into possession of potential MNPI concerning a price dislocation in a thinly-held ETN. At least one employee whom GWIM had re-designated as private side earlier in 2013 discussed the potential MNPI in electronic mail with two public side Firm employees who did not have a need to know the information as defined by the Firm's policies. Firm employees in the GWIM sub-group and in a group within the Firm's GBAM business unit also shared the potential MNPI externally

through the Firm's electronic mail and instant messaging systems. The Firm's systems did not identify these communications and, although an external recipient questioned whether the communications contained potential MNPI, these communications were not escalated for further review.

9. Although the Firm had electronic communication review procedures in place during the Relevant Period designed to detect the disclosure of potential MNPI, those procedures were not reasonably designed at the time. Specifically, in addition to a general lexicon search, the Firm had a targeted electronic review of communications between its public side and its private side that was triggered by Watch List and Restricted List securities, as well as triggered by the request for an employee wall cross. Those procedures, however, did not provide for the reasonable review of communications between public and private side employees because the Firm's procedures did not describe a reasonable process for escalating for further review communications that contained potential MNPI. The Firm also failed during the Relevant Period to reasonably enforce its procedures requiring functional and physical separation of public and private side personnel within the GWIM sub-group, to reasonably train re-designated private side personnel on how to identify and monitor communications containing potential MNPI, and to maintain reasonable procedures regarding monitoring and escalation of communications of potential MNPI. These failures to establish, maintain and enforce such procedures and systems excluded from supervisory review certain categories of communications between public and private side employees and created the risk that potential MNPI could be impermissibly disclosed. These failures also inhibited the Firm's ability to identify any such potential disclosure and to take reasonable steps to mitigate or remediate any potential harm from such disclosure. As of June 2016, the Firm had enhanced its GWIM and GBAM procedures to address the deficiencies described herein.

10. The acts, practices, and conduct described in Paragraphs five through nine constitute violations of Exchange Rule 5.1 thereunder by the Firm, in that the Firm failed to establish, maintain, and enforce written procedures which enabled it to supervise properly certain types of public and private side employee communications.

SANCTIONS

11. The Firm does not have any prior relevant disciplinary history specifically related to supervision of its internal communications pursuant to the Firm's information barriers.

12. In light of the alleged rule violations described above, the Firm consents to the imposition of the following sanctions:

    a. A censure; and

b. A monetary fine in the amount of $450,000, of which $90,000 shall be paid to EDGA.[1]

Acceptance of this Letter of Consent is conditioned upon acceptance of similar settlement agreements in this matter between the Firm and each of the following self-regulatory organizations: Cboe EDGX Exchange, Inc., The Nasdaq Stock Market LLC, NYSE Arca, Inc., and FINRA.

If this Letter of Consent is accepted, the Firm acknowledges that it shall be bound by all terms, conditions, representations, and acknowledgements of this Letter of Consent, and, in accordance with the provisions of Exchange Rule 8.3, waives the right to review or to defend against any of these allegations in a disciplinary hearing before a Hearing Panel. The Firm further waives the right to appeal any such decision to the Board of Directors, the U.S. Securities and Exchange Commission, a U.S. Federal District Court, or a U.S. Court of Appeals.

The Firm waives any right to claim bias or prejudgment of the Chief Regulatory Officer ("CRO") in connection with the CRO's participation in discussions regarding the terms and conditions of this Letter of Consent, or other consideration of this Letter of Consent, including acceptance or rejection of this Letter of Consent. The Firm further waives any claim that a person violated the ex parte prohibitions of Exchange Rule 8.16, in connection with such person's participation in discussions regarding the terms and conditions of this Letter of Consent, or other consideration of this Letter of Consent, including its acceptance or rejection.

The Firm agrees to pay the monetary sanction upon notice that this Letter of Consent has been accepted and that such payment is due and payable. 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 imposed in this matter.

The Firm understands that submission of this Letter of Consent is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the CRO, pursuant to Exchange Rule 8.3. If the Letter of Consent is not accepted, it will not be used as evidence to prove any of the allegations against the Firm.

The Firm understands and acknowledges that acceptance of this Letter of Consent will become part of its disciplinary record and may be considered in any future actions brought by EDGA or any other regulator against the Firm. The Letter of Consent will be published on a website maintained by the Exchange in accordance with Exchange Rule 8.18.

The Firm understands that it may not deny the charges or make any statement that is inconsistent with the Letter of Consent. The Firm may attach a Corrective Action Statement to this Letter of Consent that is a statement of demonstrable corrective steps taken to prevent future misconduct. Any such statement does not constitute factual or legal findings by the Exchange, nor does it reflect the views of the Exchange or its staff.

[1] The remainder of the fine shall be paid to Cboe EDGX Exchange, Inc., The Nasdaq Stock Market LLC, NYSE Arca, Inc., and FINRA.

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 Letter of Consent and has been given a full opportunity to ask questions about it; that it has agreed to the Letter of Consent's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce the Firm to submit it.

Date: March 17, 2024

Merrill Lynch, Pierce, Fenner & Smith Incorporated

By: [redacted]

Name: MARK L. KEENE

Title: ASSOCIATE GENERAL COUNSEL