

CBOE BZX EXCHANGE, INC.
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20140413243-01

TO: Cboe BZX Exchange, Inc.
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 8.3 of the Rules of Cboe BZX Exchange, Inc. ("BZX"), 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, BZX 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 BZX, or to which BZX 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 BZX:

BACKGROUND

The firm became a member of FINRA and BZX on January 26, 1937, and August 18, 2008, respectively, and its registrations remain in effect.

RELEVANT PRIOR DISCIPLINARY HISTORY

On October 6, 2014, the firm finalized an AWC where it was censured and fined \$50,000 for violating SEC Rule 611 of Regulation NMS ("Rule 611") for conduct that occurred during various periods between August 2007 and June 2012.

SUMMARY

In matters 20140413243 and 20150452815, the Market Analysis Section of the Department of Market Regulation (the "staff") reviewed the firm's compliance with Rule 611 during the periods of: May 12, 2011 through June 3, 2011; August 12, 2011 through November 30, 2011; January 6, 2012; February 2012 through March 2012; July 2013; October 2013; February 19, 2014; August 2014 through September 2014; and October 1, 2014 through June 30, 2015. Based on these reviews, the firm violated Rule 611(c), and

BZX Rules 11.9(d)(1) (for conduct occurring before October 17, 2014), 11.9(d) (for conduct occurring on or after October 17, 2014), 11.20, 5.1 and 3.1.

FACTS AND VIOLATIVE CONDUCT

In matters 20140413243 and 20150452815:

1. During the relevant periods, the firm failed to take reasonable steps to establish that the intermarket sweep orders it routed met the definitional requirements set forth in SEC Rule 600(b)(30) of Regulation NMS. The conduct described in this paragraph constitutes separate and distinct violations of Rule 611(c) and BZX Rule 11.9(d)(1) (for conduct occurring before October 17, 2014) and BZX Rule 11.9(d) (for conduct occurring on or after October 17, 2014).
 2. During the relevant periods, the firm failed to establish, maintain and enforce a supervisory system that was reasonably designed to achieve compliance with the applicable securities laws and regulations, and BZX Rules, concerning compliance with Rule 611(c). Specifically, the firm's supervisory system did not include written supervisory procedures ("WSPs") that included an identification of the person(s) responsible for supervision with respect to the applicable rules. The conduct described in this paragraph constitutes a violation of BZX Rules 5.1 and 3.1.
 3. During the relevant periods, the firm failed to reasonably avoid displaying, or engaging in a pattern or practice of displaying, quotations that locked or crossed a protected quotation, or any manual quotations that locked or crossed a quotation previously disseminated pursuant to an effective national market system plan. The conduct described in this paragraph constitutes a violation of BZX Rule 11.20.
- B. The firm also consents to the imposition of the following sanctions:
1. A censure;
 2. A total fine of \$135,000, of which \$77,500 is payable to BZX¹ (consisting of a \$57,500 fine for violating Rule 611(c), and BZX Rules 11.9(d)(1) (for conduct occurring before October 17, 2014), Rule 11.9(d) (for conduct occurring on or after October 17, 2014), 5.1 and 3.1 and a \$20,000 fine for violating BZX Rule 11.20); and
 3. An undertaking to revise the firm's WSPs with respect to the areas described in paragraphs I.A 2. Within 30 calendar days of acceptance of this AWC by the National Adjudicatory Council ("NAC"), a registered principal of the Respondent 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 this paragraph; and (3) the date the revised procedures were implemented.

¹ The balance of the sanction will be paid to Cboe BYX Exchange, Inc.

4. Acceptance of this AWC is conditioned upon acceptance of a similar settlement agreement between the firm and Cboe BYX Exchange, 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. 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 BZX.

II.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under BZX 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, 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 Appeals Committee of the BZX'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"), in connection with the CRO'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 BZX Rule 8.16, 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 CRO, pursuant to BZX Rule 8.3;

- 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 BZX or any other regulator against the firm;
 2. This AWC will be published on a website maintained by BZX in accordance with BZX Rule 8.18. In addition, this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the firm's disciplinary record; 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 BZX, or to which BZX 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 BZX 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 BZX, nor does it reflect the views of BZX 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.

January 25, 2018
Date

Merrill Lynch, Pierce, Fenner & Smith
Incorporated
Respondent

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

Reviewed by:

[Signature]

Counsel for Respondent

Firm Name Wilmer Hale

Address 1875 Pennsylvania Avenue, N.W.

City/State/Zip Washington, D.C. 20006

Phone Number 202.603.6741

1/26/2018
Date

[Signature] 2/6/2018
Greg Hoogasian
Senior Vice President & Chief Regulatory Officer
Cboe BZX Exchange, Inc.

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; or
- Wire transfer.

January 25, 2018
Date

Respectfully submitted,

Respondent
Merrill Lynch, Pierce, Fenner & Smith
Incorporated

By: David Montague

Name: David Montague

Title: Associate General Counsel