

**BATS EDGX EXCHANGE, INC.**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
**NO. 20140437801-02**

TO: Bats EDGX 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 Bats EDGX Exchange, Inc. ("EDGX"), 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, EDGX 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 EDGX, or to which EDGX 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 EDGX:

**BACKGROUND**

The firm has been a member of FINRA since January 26, 1937, and a member of EDGX since May 14, 2010. Its registrations remain in effect.

**RELEVANT DISCIPLINARY HISTORY**

On June 1, 2012, The NASDAQ Stock Market LLC ("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 EDGX 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 that were entered into EDGX 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 EDGX Rules 11.8(c) and 11.10(f).
2. During the review period, the firm failed to establish and maintain a supervisory system that was reasonably designed to achieve compliance with EDGX Rules 11.8(c) and 11.10(f) 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 EDGX Rules 11.8(c) and 11.10(f).<sup>1</sup> The conduct described in this paragraph constitutes a violation of EDGX Rules 3.1, 5.1, 5.2, and 5.3.

B. The firm also consents to the imposition of the following sanctions:

A censure and a fine of \$52,000 (consisting of a fine of \$34,500 for the violations of EDGX Rules 11.8(c) and 11.10(f), and a fine of \$17,500 for the violations of EDGX Rules 3.1, 5.1, 5.2., and 5.3).<sup>2</sup>

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.

---

<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 The Nasdaq Stock Market LLC in connection with Matter No. 20140437801.

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 EDGX.

## II.

### WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under EDGX 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 EDGX'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 ("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 EDGX 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 EDGX 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 EDGX or any other regulator against the firm;
2. this AWC will be published on a website maintained by EDGX in accordance with EDGX 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 EDGX, or to which EDGX 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 EDGX 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 EDGX, nor does it reflect the views of EDGX 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


Respondent  
Merrill Lynch, Pierce, Fenner & Smith  
Incorporated

By:   
Name: Adam Inzillo  
Title: Managing Director

Reviewed by:

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

10/31/2017  
Date

  
Greg Hoogasian  
Senior Vice President & Chief Regulatory Officer  
Bats EDGX 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
- Wire transfer

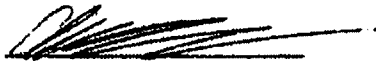
Respectfully submitted,

Respondent

Merrill Lynch, Pierce, Fenner & Smith Incorporated

10/13/17

Date

By: 

Name: Adam Inzville

Title: Managing Director