

**NASDAQ OMX BX, INC.**  
**NOTICE OF ACCEPTANCE OF AWC**

**Certified, Return Receipt Requested**

**TO: Merrill Lynch, Pierce, Fenner & Smith Incorporated**  
**Mr. J. David Montague**  
**Associate General Counsel and Senior Vice President**  
**One Bryant Park**  
**New York, NY 10036**

**Merrill Lynch Professional Clearing Corp.**  
**Mr. Peter Melz**  
**President and Chief Operating Officer**  
**One Bryant Park**  
**6th Floor**  
**New York, NY 10036**

**FROM: The NASDAQ OMX BX, Inc. (the "Exchange")**  
**c/o Financial Industry Regulatory Authority ("FINRA")**  
**Department of Market Regulation**  
**9509 Key West Avenue**  
**Rockville, MD 20850**

**DATE: December 22, 2014**

**RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 20120322493-02**

**Please be advised** that your above-referenced Letter of Acceptance, Waiver and Consent ("AWC") has been accepted on **December 22, 2014** by the Exchange Review Council's Review Subcommittee, or by the Office of Disciplinary Affairs on behalf of the Exchange Review Council, pursuant to Nasdaq OMX BX 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 the Exchange 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 are reminded that Section I of the attached Letter of Acceptance, Waiver, and Consent includes an undertaking. In accordance with the terms of the AWC, a registered principal of the firm is required to notify the Compliance Assistant, Legal Section, Market Regulation Department, 9509 Key West Avenue, Rockville, MD 20850, of completion of the undertaking.

You will be notified by the Registration and Disclosure Department regarding sanctions if a suspension has been imposed and by the Nasdaq's Finance Department regarding the payment of any fine if a fine has been imposed.

Merrill Lynch, Pierce, Fenner & Smith Incorporated and  
Merrill Lynch Professional Clearing Corp.  
Page 2

If you have any questions concerning this matter, please call W. Kwame Anthony, Senior Counsel,  
at (646) 430-7030.



Robert A. Marchman  
Executive Vice President, Legal Section  
Department of Market Regulation, FINRA

Signed on behalf of Nasdaq OMX BX, Inc.

Enclosure

FINRA District 10 – New York  
Michael Solomon, Regional Director  
One World Financial Center  
200 Liberty Street  
New York, NY 10281

James D. Van De Graaff  
Counsel for Respondent  
Katten Muchin Rosenman LLP  
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Chicago, IL 60661-3693  
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james.vandegraaff@kattenlaw.com

**NASDAQ OMX BX, INC.**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
**NO. 20120322493 - 02**

TO: NASDAQ OMX BX, Inc.  
c/o Department of Market Regulation  
Financial Industry Regulatory Authority ("FINRA")

RE: Merrill Lynch, Pierce, Fenner & Smith Incorporated, Respondent  
Broker-Dealer  
7691

Merrill Lynch Professional Clearing Corp., Respondent  
Broker-Dealer  
16139

Pursuant to Chapter XXX of the Grandfathered Rules of NASDAQ OMX BX, Inc.<sup>1</sup> (the "Exchange")<sup>2</sup> and Rule 9216 of The Exchange Code of Procedure<sup>3</sup>, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Pierce") and Merrill Lynch Professional Clearing Corp. ("Merrill Pro") (collectively, the "Firms") submit 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, the Exchange will not bring any future actions against the Firms alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. Merrill Pierce and Merrill Pro hereby accept and consent, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of the Exchange, or to which the Exchange 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 the Exchange:

**BACKGROUND**

Merrill Pierce became a member of the Exchange in 1981, and Merrill Pro became a member of the Exchange in 1988. Thereafter, both became Participants of the Boston

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<sup>1</sup> The applicable Rules and authority for this action can be found in the By-Laws of NASDAQ OMX BX, Inc., the Rules of NASDAQ OMX BX ("The Options Rules") and the Grandfathered Rules of the Exchange.

<sup>2</sup> Please note, for purposes of this AWC, "Exchange" includes NASDAQ OMX BX, Inc.

<sup>3</sup> Additionally, this disciplinary matter is further governed by The Nasdaq Code of Procedure.

Options Exchange (“BOX”),<sup>4</sup> a facility of the Exchange when Merrill Pierce’s and Merrill Pro’s Options Participation Agreements were accepted by the Exchange. Under the terms of that agreement, the Firms agreed, among other things, to be bound by the Rules of the Exchange, as amended, including the Grandfathered Boston Options Exchange Group LLC Rules (“BOX Trading Rules”), and to be subject to the Exchange’s jurisdiction and oversight.

### **RELEVANT DISCIPLINARY HISTORY**

1. Merrill Pierce consented to findings that it had violated Chicago Board Options Exchange (“CBOE”) Rule 4.13(a) by failing to submit reportable positions for 1,346 accounts to the Large Option Position Reporting (“LOPR”) system. It consented to a censure, a \$150,000 fine, and an undertaking requiring it to certify within thirty days of the decision that it had corrected the problems leading to the failure to report the positions, that all information required by CBOE Rule 4.13(a) was accurate and submitted timely, and that it would notify CBOE of any inaccuracies in any LOPR Reports. *Merrill Lynch, Pierce, Fenner & Smith Incorporated*, File No. 09-0045 (April 13, 2010).
2. Merrill Pierce consented to findings that from March 31, 2008 to June 20, 2008, it violated Chapter III, Section 10 of the rules of the NASDAQ Options Market LLC by failing to report positions to the LOPR system on three occasions and by reporting the effective date for an options position inaccurately on two occasions. It also consented to findings that it had lacked adequate supervisory procedures. Merrill Pierce agreed to a \$10,000 fine (\$5,000 for the LOPR-related violations and \$5,000 for the supervisory violation). *Merrill Lynch, Pierce, Fenner & Smith, Inc.*, Matter No. 20080144510-01 (NOM Nov. 12, 2010).
3. Among other violations, Merrill Pierce consented to findings that from August through October 2007, it violated NASD Rules 2110 and 2860(b)(5) by failing to report 13,239 positions to the LOPR system by the close of business on the day after the positions were established. Merrill Pierce agreed to a total fine of \$304,000, including \$7,500 for the LOPR violations. *Merrill Lynch, Pierce, Fenner & Smith, Incorporated*, Matter No. 20060052666-01 (FINRA Jan. 5, 2011).
4. Merrill Pierce stipulated to findings that in various periods in 2007 and 2008, it violated Amex Rule 904 by exceeding position limits, Amex Rule 906(a) by failing to submit complete and accurate LOPR submissions, and Amex Rule 320 by failing to provide adequate supervision with respect to compliance with Rules 904 and 906. Merrill Pierce’s LOPR-related violations resulted from its failure to attach in-concert designations to groups of accounts and to aggregate positions in those accounts in its LOPR submissions. The positions

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<sup>4</sup> BOX became a facility of NASDAQ OMX BX in August 2008.

in these accounts exceeded the position limits. Merrill Pierce consented to a fine of \$20,000. *Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 11-AMEX-7, Matter No. 20110270261, formerly Matter No. 20070101167 (NYSE Amex LLC Hr'g Bd. Sept. 12, 2011).

### SUMMARY

5. As a result of deficiencies in the Firms' systems and procedures with respect to reporting positions to the LOPR system, the Firms violated Chapter III, Section 10 of the BOX Trading Rules from January 2008 until May 14, 2012, by failing to include reportable positions in their LOPR submissions and by including inaccurate data in their LOPR submissions. In addition, the Firms violated Chapter III, Sections 1, 2(a) and 2(a)(i) of the BOX Trading Rules by failing to institute a reasonable system of supervision, including a system of follow-up and review, to achieve compliance with BOX Trading Rule Chapter III, Section 10 governing LOPR reporting.

### FACTS AND VIOLATIVE CONDUCT

6. BOX, as well as the other listed options exchanges and FINRA, all receive LOPR data that broker-dealers submit to The Options Clearing Corporation. LOPR data is used extensively by self-regulatory organizations to identify holders of large options positions who may be, among other things, attempting to manipulate the market or otherwise violate securities rules and regulations.
7. The accuracy of LOPR data is essential for analyzing potential violations related to, among other things, insider trading, position limits, exercise limits, front-running, capping and pegging, mini-manipulation, and marking the close.
8. Pursuant to an agreement among FINRA and the exchanges, under Rule 17d-2 of the Securities Exchange Act of 1934, one self-regulatory organization is allocated responsibility for reviewing certain firms' compliance with the rules governing the reporting of options positions to the LOPR system. BOX was allocated responsibility for reviewing Merrill Pierce's LOPR submissions from January through March 2012. Although only one self-regulatory organization at a time is allocated responsibility for conducting LOPR reviews of a particular firm, because all listed exchanges and FINRA receive LOPR data, all of their surveillances are affected by the LOPR submissions.
9. Matter No. 20120322493 originated from several sources. First, on the Exchange's behalf, FINRA's Market Surveillance Department conducted a review of Merrill Pierce's LOPR submissions in the first quarter of 2012. Second, BOX received a referral from CBOE involving Merrill Pierce's failure to include complete addresses in its LOPR submissions, and BOX referred this matter to the Market Regulation Department. Third, Merrill Pierce self-reported that it had not remedied a deficiency in its in-concert

reporting as it had previously represented to FINRA. Fourth, during a position limit review that the Market Regulation Department had conducted on the Exchange's behalf, the Department learned that Merrill Pierce had submitted LOPR data with incorrect account types.

10. In Matter No. 20120326130, on behalf of BOX Options Exchange LLC,<sup>5</sup> FINRA's Market Regulation Department conducted a review of Merrill Pro's LOPR reporting for the second quarter of 2012.
11. In Matter No. 20120330912, NASDAQ OMX PHLX referred a matter to the Market Regulation Department. This matter involved Merrill Pierce and Merrill Pro's filing of inaccurate LOPR submissions in 2010 and 2011, the period when PHLX had been allocated responsibility for conducting LOPR reviews of Merrill Pierce and Merrill Pro pursuant to the 17d-2 agreement.
12. Matter Nos. 20120326130 and 20120330912 were thereafter combined into Matter No. 20120322493. On behalf of the Exchange, BOX Options Exchange LLC and PHLX, the Market Regulation Department conducted an extensive investigation into Merrill Pierce's and Merrill Pro's LOPR submission practices, which disclosed systemic deficiencies in their LOPR submissions from 2008 through 2013. As a result of these deficiencies, the Firms violated the exchanges' rules by submitting inaccurate reports to LOPR and omitting reportable positions in their LOPR submissions from 2008 through 2013. By submitting inaccurate data to LOPR and omitting reportable positions in their LOPR submissions, the Firms violated BOX Trading Rule Chapter III, Section 10 from 2008 through May 14, 2012.
13. In this investigation, the Firms quantified their deficient LOPR submissions for various periods from January 2010 through November 2013. LOPR violations are quantified in "instances"; each day that a single position goes unreported or is reported inaccurately is an "instance." For example, if a broker-dealer fails to report one position for two days and reports a second position inaccurately for three days, the broker-dealer has committed LOPR violations in five "instances." Since this investigation was also conducted on behalf of self-regulatory organizations in addition to the Exchange, the violations cover the period 2008 through 2013, and the numbers disclosed in the investigation cover the period 2010 through 2013, rather than only through May 14, 2012, when BOX ceased to be a trading facility of the Exchange.

#### **LOPR Violations – Merrill Pierce**

14. In more than 26.8 million instances from January 2010 through April 2013, Merrill Pierce failed to report positions with respect to accounts acting in concert with others that together had established an aggregate position of 200 or more option contracts on the same side of the market covering the same

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<sup>5</sup> In May 2012, BOX (the Boston Options Exchange) ceased being a facility of NASDAQ OMX BX, Inc., and the BOX Options Exchange LLC became registered as an exchange with the Securities and Exchange Commission.

underlying security. To the extent the conduct described in this paragraph occurred until May 14, 2012, the conduct constituted separate and distinct violations of BOX Trading Rule Chapter III, Section 10.

15. In approximately 1.1 million instances from January 2010 through April 2013, Merrill Pierce reported in-concert positions, but failed to identify them as acting in concert. To the extent the conduct described in this paragraph occurred until May 14, 2012, the conduct constituted separate and distinct violations of BOX Trading Rule Chapter III, Section 10.
16. In approximately two million instances from January 2010 through November 2013, Merrill Pierce reported positions to the LOPR system with incorrect account types. To the extent the conduct described in this paragraph occurred until May 14, 2012, the conduct constituted separate and distinct violations of BOX Trading Rule Chapter III, Section 10.
17. In approximately 171,400 instances from January 2010 through November 2013, Merrill Pierce reported positions to the LOPR system with incorrect addresses. To the extent the conduct described in this paragraph occurred until May 14, 2012, the conduct constituted separate and distinct violations of BOX Trading Rule Chapter III, Section 10.
18. In approximately 19,000 instances from September 2010 through April 2012, in its LOPR submissions, Merrill Pierce aggregated positions having weekly expirations with positions having monthly expirations. The conduct described in this paragraph constituted separate and distinct violations of BOX Trading Rule Chapter III, Section 10.

#### **LOPR Violations – Merrill Pro**

19. In more than 700,000 instances from January 2010 through March 2013, Merrill Pro failed to report positions with respect to accounts acting in concert with others that together had established an aggregate position of 200 or more option contracts on the same side of the market covering the same underlying security. To the extent the conduct described in this paragraph occurred until May 14, 2012, the conduct constituted separate and distinct violations of BOX Trading Rule Chapter III, Section 10.
20. In approximately 39,000 instances from January 2010 through March 2013, Merrill Pro reported in-concert positions inaccurately by over-reporting positions as in concert. To the extent the conduct described in this paragraph occurred until May 14, 2012, the conduct constituted separate and distinct violations of BOX Trading Rule Chapter III, Section 10.
21. In approximately 112,000 instances from January 2010 through March 2013, Merrill Pro under-reported in-concert positions. To the extent the conduct described in this paragraph occurred until May 14, 2012, the conduct constituted separate and distinct violations of BOX Trading Rule Chapter III,

Section 10.

22. In approximately 1,650,000 instances from June 2011 through January 2013, Merrill Pro reported positions to the LOPR system with incorrect account types. To the extent the conduct described in this paragraph occurred until May 14, 2012, the conduct constituted separate and distinct violations of BOX Trading Rule Chapter III, Section 10.
23. In nearly 35,000 instances from January 2010 through April 2013, Merrill Pro reported positions to the LOPR system with incorrect addresses. To the extent the conduct described in this paragraph occurred until May 14, 2012, the conduct constituted separate and distinct violations of BOX Trading Rule Chapter III, Section 10.
24. From January 2010 through April 2013, Merrill Pro improperly deleted approximately 360,000 positions from the LOPR system on the Friday before expiration. To the extent the conduct described in this paragraph occurred until May 14, 2012, the conduct constituted separate and distinct violations of BOX Trading Rule Chapter III, Section 10.
25. In nearly 80,000 instances from June 2011 through January 2013, Merrill Pro reported positions to the LOPR system with incorrect clearing numbers. To the extent the conduct described in this paragraph occurred until May 14, 2012, the conduct constituted separate and distinct violations of BOX Trading Rule Chapter III, Section 10.
26. For 209 trading days from March 2011 through January 2012, Merrill Pro failed to update one reported position after a corporate action. The conduct described in this paragraph constituted separate and distinct violations of BOX Trading Rule Chapter III, Section 10.

### Supervision

27. Pursuant to Chapter III, Sections 1, 2(a), and 2(a)(i) of the BOX Trading Rules, an Options Participant<sup>6</sup> was responsible for supervising its associated persons to achieve compliance with the BOX Trading Rules, the Securities Exchange Act of 1934 and rules thereunder, and the rules of The Options Clearing Corporation insofar as they relate to reporting or clearing BOX transactions, or any written interpretation thereof.
28. From 2008 until May 14, 2012, Merrill Pierce and Merrill Pro failed to establish adequate systems of supervision, including systems of follow-up and review, which were reasonably designed to achieve compliance with the rules governing the reporting of positions to the LOPR system. Merrill Pierce lacked sufficient written supervisory procedures requiring reviews to

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<sup>6</sup> An Options Participant is a firm or organization that is registered with the Exchange for the purpose of trading in options on the Exchange as an Order Flow Provider or Market Maker.



determine that LOPR submissions accepted by the LOPR system were accurate or that all reportable positions had actually been reported. Although Merrill Pro had established written supervisory procedures that provided for limited reviews of randomly selected reports, these reviews were inadequate to detect or prevent systemic violations of the LOPR rules. As a result, both Respondents failed to detect the violations described in Paragraphs 14–26 when they occurred. Instead, in most instances, the violations became known through the reviews conducted by FINRA on behalf of the Exchange. The conduct described in this paragraph constituted separate and distinct violations of Chapter III, Sections 1, 2(a), and 2(a)(i) of the BOX Trading Rules.

### **OTHER FACTORS**

29. Consideration has been given to the fact that Merrill Pierce and Merrill Pro have already taken significant remedial action, including providing extraordinary cooperation with this investigation by retaining outside counsel to conduct a review and report its findings to FINRA periodically; enhancing their LOPR reporting systems and written supervisory procedures; hiring an independent consultant to conduct a complete review of the Firms' LOPR systems and identify any additional or remaining deficiencies; and correcting the deficiencies identified by the independent consultant.

- B. Merrill Pierce and Merrill Pro consent to the imposition of the following sanctions:

As to Merrill Pierce, a censure and a total fine in the amount of \$5,796,000, of which \$1,450,000 shall be paid to the Exchange.<sup>7</sup>

As to Merrill Pro, a censure and a total fine in the amount of \$1,454,000, of which \$365,000 shall be paid to the Exchange.<sup>8</sup>

As to Merrill Pierce and Merrill Pro, the following undertaking:

90 days after this AWC becomes final, and again 180 days after this AWC becomes final, Respondents shall make a written submission to NASDAQ in care of FINRA's Market Regulation Department regarding their in-concert reporting. The written submission shall address, at a minimum, the following:

1. An assessment of the degree to which Merrill Pierce and Merrill Pro have taken steps to confirm that the data they submit to the LOPR system is accurate and that they reported all reportable in-

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<sup>7</sup> The balance of Merrill Pierce's fine will be paid to BOX Options Exchange LLC, FINRA, and NASDAQ OMX PHLX pursuant to separate settlement agreements.

<sup>8</sup> The balance of Merrill Pro's fine will be paid to BOX Options Exchange LLC, FINRA, and NASDAQ OMX PHLX pursuant to separate settlement agreements.

concert positions to the LOPR system; and

2. The adequacy of Merrill Pierce's and Merrill Pro's policies, systems, procedures, and training relating to achieving complete and accurate reporting to the LOPR system.

Additionally, acceptance of this AWC is conditioned upon acceptance of equivalent settlement agreements in related matters between Merrill Pierce and Merrill Pro collectively and BOX Options Exchange LLC, FINRA, and NASDAQ OMX PHLX pursuant to separate settlement agreements.

Merrill Pierce and Merrill Pro agree to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. Merrill Pierce and Merrill Pro have submitted an Election of Payment form showing the method by which they propose to pay the fine imposed.

Merrill Pierce and Merrill Pro specifically and voluntarily waive any right to claim that they are unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

## II.

### WAIVER OF PROCEDURAL RIGHTS

Merrill Pierce and Merrill Pro specifically and voluntarily waive the following rights granted under the Rules of the Exchange and the Exchange Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the Firms in writing;
- 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 Exchange Review Council and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Merrill Pierce and Merrill Pro specifically and voluntarily waive any right to claim bias or prejudice of the Chief Regulatory Officer, the Exchange Review Council, or any member

of the Exchange 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.

Merrill Pierce and Merrill Pro further specifically and voluntarily waive 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**

Merrill Pierce and Merrill Pro understand 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 of Market Regulation and the Exchange Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs ("ODA"), pursuant to Exchange Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Merrill Pierce or Merrill Pro; and
- C. If accepted:
  - 1. This AWC will become part of Merrill Pierce's and Merrill Pro's permanent disciplinary records and may be considered in any future actions brought by the Exchange or any other regulator against the Firms;
  - 2. This AWC will be made available through NASDAQ's public disclosure program in accordance with Exchange Rule 9216;
  - 3. NASDAQ may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASDAQ Rule 8310 and IM-8310-3; and
  - 4. Merrill Pierce and Merrill Pro 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 Firms

may not take any position in any proceeding brought by or on behalf of the Exchange, or to which the Exchange is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects Merrill Pierce's or Merrill Pro's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Exchange is not a party.

- D. Merrill Pierce and Merrill Pro may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Merrill Pierce and Merrill Pro understand that they 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 the Exchange, nor does it reflect the views of the Exchange or its staff.

The undersigned, on behalf of Merrill Pierce and Merrill Pro, certify that persons duly authorized to act on their behalves have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that they have 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 Merrill Pierce or Merrill Pro to submit it.

Date

December 17, 2014

Respondent

Merrill Lynch, Pierce, Fenner & Smith Incorporated

By: J. David Montague

Name: J. David Montague


Title: Associate General Counsel & Senior Vice President

Date

DECEMBER 14, 2014

Respondent

Merrill Lynch Professional Clearing Corp.

By: 

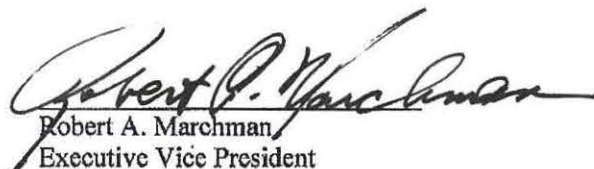
Name: **Peter Melz**  
**President &**

Title: **Chief Operating Officer**

Reviewed by:

  
James D. Van De Graaff  
Counsel for Respondent  
Katten Muchin Rosenman LLP  
525 W. Monroe Street  
Chicago, IL 60661-3693  
(312) 902-5227  
james.vandegraaff@kattenlaw.com  
Accepted by NASDAQ OMX BX, Inc.:

12/22/14  
Date

  
Robert A. Marchman  
Executive Vice President  
Department of Market Regulation

Signed on behalf of NASDAQ OMX BX,  
Inc., 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;
- The installment payment plan (only if approved by FINRA staff and the Office of Disciplinary Affairs).<sup>9</sup>

Respectfully submitted,  
Respondent  
Merrill Lynch, Pierce, Fenner & Smith Incorporated

December 17, 2014  
Date

By: J. David Montague  
Name: J. David Montague  
Title: Associate General Counsel & Senior Vice President

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<sup>9</sup> The installment payment plan is only available for fines of \$5,000 or more. Certain requirements apply. You must discuss these terms with FINRA staff prior to requesting this method of payment.

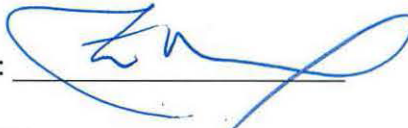
### ELECTION OF PAYMENT FORM

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- A firm check or bank check for the full amount;
- Wire transfer;
- The installment payment plan (only if approved by FINRA staff and the Office of Disciplinary Affairs).<sup>10</sup>

Respectfully submitted,  
Respondent  
Merrill Lynch Professional Clearing Corp.

Date 02/17/2014

By:   
Name: Peter Melz  
Title: President & Chief Operating Officer

<sup>10</sup> The installment payment plan is only available for fines of \$5,000 or more. Certain requirements apply. You must discuss these terms with FINRA staff prior to requesting this method of payment.