



Notice of Disciplinary Action Against Merrill Lynch, Pierce, Fenner & Smith Incorporated and Merrill Lynch Professional Clearing Corp., both Member Organizations

To: Members, Member Organizations, Participants and Participant Organizations

From: John C. Pickford, Assistant General Counsel, NASDAQ OMX PHLXSM

DATE: December ____, 2014

FINRA Matter No. 20120322493 (including Matter Nos. 20120330912 and 20120326130) Enforcement No. 2014-18

On December 22, 2014, the Business Conduct Committee (the "Committee") issued a Disciplinary Decision against Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Pierce") and Merrill Lynch Professional Clearing Corp. ("Merrill Pro") (collectively, the "Merrill Lynch firms"), both member organizations of the Exchange. In response to a Statement of Charges issued in this action, the Merrill Lynch firms submitted an Offer of Settlement, Stipulation to Findings and Consent to Sanctions ("Offer"). Solely to settle this proceeding and without admitting or denying the charges, the Merrill Lynch firms stipulated to findings that from January 2008 through November 2013, they violated Exchange Rule 1003(a) by omitting positions and submitting inaccurate data to the Large Options Position Reporting ("LOPR") system.

Merrill Pierce stipulated to the entry of facts and conclusion of violations of Exchange Rule 1003(a), as follows:

- In more than 26.8 million instances from January 2010 through April 2013, the firm 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.
- In approximately 1.1 million instances from January 2010 through April 2013, the firm reported in-concert positions, but failed to identify them as acting in concert.
- In approximately two million instances from January 2010 through November 2013, the firm reported positions to the LOPR system with incorrect account types.
- In approximately 171,400 instances from January 2010 through November 2013, the firm reported positions to the LOPR system with incorrect addresses.
- In approximately 19,000 instances from September 2010 through April 2012, in its LOPR submissions, the firm aggregated positions having weekly expirations with positions having monthly expirations.

Merrill Pro stipulated to the entry of facts and conclusion of violations of Exchange Rule 1003(a), as follows:

- In more than 700,000 instances from January 2010 through March 2013, the firm 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.
- In approximately 39,000 instances from January 2010 through March 2013, Merrill Pro reported in-concert positions inaccurately by over-reporting certain positions.
- In approximately 112,000 instances from January 2010 through March 2013, the firm under-reported in-concert positions.
- In approximately 1,650,000 instances from June 2011 through January 2013, the firm reported positions to the LOPR system with incorrect account types.
- In nearly 35,000 instances from January 2010 through April 2013, the firm reported positions to the LOPR system with incorrect addresses.
- From January 2010 through April 2013, the firm improperly deleted approximately 360,000 positions from the LOPR system on the Friday before expiration.
- In nearly 80,000 instances from June 2011 through January 2013, the firm reported positions to the LOPR system with incorrect clearing numbers.
- For 209 trading days from March 2011 through January 2012, the firm failed to update one reported position after a corporate action.

In addition, without admitting or denying the allegations or violations, Merrill Pierce and Merrill Pro stipulated to the entry of facts and conclusions that they violated Exchange Rule 748(b), (d), and (g), and later (h),¹ by failing to establish adequate systems of supervision, including systems of follow-up and review, that were reasonably designed to achieve compliance with Exchange Rule 1003(a) governing the reporting of options positions to the LOPR system.

The Committee accepted Merrill Pierce and Merrill Pro's Offer, which formed the basis of the Committee's Decision. The Committee concurred in the sanctions consented to by the Merrill Lynch firms and ordered the imposition of the following sanctions:

- (i) as to Merrill Pierce, a censure, a total fine of \$5,796,000, of which \$1,856,000 shall be paid to the Exchange, and an undertaking. Merrill Pierce will pay the balance of its fine to NASDAQ OMX BX, Inc., BOX Options Exchange LLC, and FINRA pursuant to separate settlement agreements.
- (ii) As to Merrill Pro, a censure, a total fine of \$1,454,000, of which \$464,000 shall be paid to the Exchange, and an undertaking. Merrill Pro will pay the balance of its fine to NASDAQ OMX BX, Inc., BOX Options Exchange LLC, and FINRA pursuant to separate settlement agreements.
- (iii) The terms of the undertaking that the Merrill Lynch firms agreed to is as follows:

¹ Rule 748(g) was renumbered as Rule 748(h), effective November 23, 2012.

- a. 90 days after the Decision in this case becomes final, and again 180 days after the Decision becomes final, Merrill Pierce and Merrill Pro shall make a written submission to the Exchange, 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 the Merrill Lynch firms have taken steps to confirm that the data they submit to the LOPR system is accurate and that they reported all reportable in-concert positions to the LOPR system; and
 - (2) The adequacy of the Merrill Lynch firms' policies, systems, procedures, and training relating to achieving complete and accurate reporting to the LOPR system.

For more information, contact:

- John C. Pickford, Enforcement Counsel, NASDAQ OMX PHLX, at +1 215 496 5273

© Copyright 2009 The NASDAQ OMX Group, Inc. All Rights Reserved.