

BEFORE THE BUSINESS CONDUCT COMMITTEE
OF THE
CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

_____)	
In the Matter of:)	
)	
Merrill Lynch, Pierce,)	
Fenner & Smith, Inc.)	
c/o Bank of America/Merrill Lynch)	File No. 10-0014
One Bryant Park)	
5 th Floor)	
New York, NY 10035)	
)	
Respondent)	
_____)	

DECISION ACCEPTING OFFER OF SETTLEMENT

This proceeding was instituted by the Business Conduct Committee (the “Committee”) of the Chicago Board Options Exchange, Incorporated (the “Exchange”) as a result of an investigation by the staff of the Exchange, which indicated that there was probable cause for finding a violation within the disciplinary jurisdiction of the Exchange. In accordance with that determination, the Committee directed the issuance of a Statement of Charges (“Statement of Charges”). Pursuant to Exchange Rule 17.8, the respondent (“Respondent”), Merrill Lynch, Pierce, Fenner & Smith, Inc. (“Merrill”), submitted an offer of settlement (“Offer of Settlement”).

In submitting the Offer of Settlement, the Respondent neither admitted nor denied the violations alleged in the Statement of Charges.

The Respondent has agreed that the determination of the Committee to accept the Offer of Settlement shall constitute a final Decision, and, as provided in Exchange Rule 17.8, the Respondent may not seek review thereof.

The Respondent understands and acknowledges that the Committee’s decision in this matter will become part of its disciplinary record and may be considered in any future Exchange proceeding.

With due regard to the particulars of this matter, the Committee believes it is appropriate to accept the Respondent’s Offer of Settlement based on the following stipulated facts and findings and thereby to impose the sanction specified below.

FACTS

1. During all relevant periods herein, Merrill was registered to transact business on the Exchange in accordance with Exchange Rules as a Floor Broker and Clearing Member.

2. During all relevant periods herein, Exchange Rule 6.24(a) – Required Trade Information; was in full force and effect.
3. During all relevant periods, pursuant to Exchange Rule 6.24, orders must be systematized. As set forth in Exchange Rule 6.24, the Exchange has undertaken with the other options exchanges to develop a Consolidated Options Audit Trail System ("COATS"); and except as provided in paragraphs (a)(2) through (a)(4), and (b), of Rule 6.24, each order, cancellation of, or change to an order transmitted to the Exchange must be "systematized", in a format approved by the Exchange, either before it is sent to the Exchange or upon receipt on the floor of the Exchange. An order is systematized if: (i) the order is sent electronically to the Exchange; or (ii) the order that is sent to the Exchange non-electronically (e.g., telephone orders) is input electronically into the Exchange's systems contemporaneously upon receipt on the Exchange, and prior to representation of the order.
4. Attached to and made a part of the Statement of Charges in File No. 10-0014 is an Excel Spreadsheet containing a sampling of exceptions in which Merrill failed to systematize numerous option orders prior to representation and execution.
5. During the approximate period from on or about January 1, 2009 through October 31, 2009, Merrill failed to systematize numerous option orders prior to representation and execution.

FINDINGS

The acts, practices and conduct described in Paragraph 5 above constitutes violations of Exchange Rule 6.24 by Merrill, in that Merrill failed to systematize numerous option orders prior to representation and execution.

SANCTION

The sanction to be imposed shall consist of a \$20,000 fine and a censure.

ORDER

ACCORDINGLY IT IS ORDERED THAT, the Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. shall be and hereby is censured and fined in the amount of twenty thousand dollars (\$20,000).

**SO ORDERED
FOR THE COMMITTEE**

Dated: March 25, 2010

/s/ Bruce Andrews
Bruce Andrews
Chairman
Business Conduct Committee