UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 78929 / September 26, 2016

INVESTMENT ADVISERS ACT OF 1940
Release No. 4536 / September 26, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17573

In the Matter of **Merrill Lynch, Pierce, Fenner & Smith Incorporated,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 203(e) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(e) of the Investment Advisers Act of 1940 ("Advisers Act") against Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Section 203(e) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

SUMMARY

1. This matter concerns violations by Merrill Lynch of Section 15(c)(3) of the Exchange Act and Exchange Act Rule 15c3-5 ("Market Access Rule" or "Rule").[1] Among other things, the Market Access Rule requires broker-dealers that have access to trading in securities directly on an exchange or alternative trading system to establish risk management controls that are reasonably designed to prevent the entry of erroneous orders and to prevent the entry of orders that would exceed appropriate credit or capital thresholds. During the period from July 14, 2011, the initial compliance date of the Rule, through December 2014 (the "relevant period"), Merrill Lynch violated the Market Access Rule by failing to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of its market access activity. In particular, Merrill Lynch failed to establish pre-trade risk management controls reasonably designed to prevent the entry of erroneous orders, to establish pre-trade risk management controls reasonably designed to prevent the entry of orders that would exceed pre-set credit or capital limits for several of its trading desks, to establish required controls and procedures for fixed income securities, to review adequately the effectiveness of its risk management controls and supervisory procedures required by the Market Access Rule, particularly for preventing the entry of erroneous orders, and to comply with the Rule's CEO certification requirements.

2. During the relevant period, Merrill Lynch's Rule 15c3-5 erroneous order controls for most of its order flow consisted primarily of single order maximum share quantity and maximum notional value controls, which prevented orders that exceeded specific limits from entering the market. But because the thresholds were set at such high levels, the controls were not reasonably designed to prevent erroneous orders from entering the market, and Merrill Lynch lacked other controls reasonably designed to prevent erroneous orders. For example, although Merrill Lynch had some risk management controls within its trading systems that could analyze orders for potential market impact on a security-by-security basis, Merrill Lynch did not apply such a control to many channels of its order flow. With many orders only subject to the unreasonably high share quantity and notional value limit controls, it was all but inevitable that Merrill Lynch would send erroneous orders to the market, as in fact occurred.

3. The gaps in Merrill Lynch's Rule 15c3-5 erroneous order controls allowed numerous erroneous orders to enter the marketplace after July 2011, harming the integrity of trading on the securities markets. A number of erroneous orders that Merrill Lynch sent to the market during the relevant period caused abrupt increases and decreases in the prices of stocks and exchange-traded funds -- usually within seconds of the executions of the orders. Certain erroneous orders that Merrill Lynch sent to the marketplace during the relevant period resulted in short-term price swings of ten percent or more in the affected securities within seconds of the executions of the

[1] In November 2010, the Commission adopted the Market Access Rule. 17 C.F.R. § 240.15c3-5.

orders, including two instances in which Merrill Lynch's erroneous orders drove stock prices down by approximately ninety-nine percent within two seconds of the orders.[2] Sudden stock price movements such as those caused by erroneous orders that Merrill Lynch sent to the market are commonly referred to "mini-flash crashes," and such events undermine investor confidence in the markets.

4. The trading aberrations caused by erroneous orders that Merrill Lynch sent to the market during the relevant period should have alerted Merrill Lynch that its financial risk management controls were not reasonably designed to prevent the entry of erroneous orders and caused Merrill Lynch to take timely remedial action. But Merrill Lynch did not begin to address the ineffectiveness of its financial risk management controls for erroneous orders until May 2013, after Merrill Lynch sent erroneous orders to the market that were quickly followed by a 99% decline in the stock price (see Paragraph 28 below) and after Commission staff had contacted Merrill Lynch.

5. During the relevant period, Merrill Lynch also violated the Market Access Rule by: (1) failing to establish controls that were reasonably designed to prevent the entry of orders that would exceed pre-set credit or capital limits for any of the trading desks associated with two of its primary trading units until long after the deadline set by the Rule for establishing such controls,[3] (2) failing to establish any controls and supervisory procedures that were reasonably designed to prevent the entry of erroneous orders or orders that would exceed capital limits for fixed income securities for seven months after the Rule's compliance date; (3) failing to review adequately the effectiveness of its risk management controls and supervisory procedures for preventing the entry of erroneous orders; and (4) failing to comply with the Market Access Rule with regard to annual CEO certifications for 2013 and 2014.

RESPONDENT

6. Merrill Lynch, a Delaware corporation with its principal offices in New York, New York, is registered with the Commission as a broker-dealer pursuant to Section 15 of the Exchange Act and as an investment adviser pursuant to Section 203 of the Investment Advisers Act of 1940. Merrill Lynch is a member of various self-regulatory organizations, including the Financial Industry Regulatory Authority ("FINRA"), and various exchanges, including the New York Stock Exchange ("NYSE"). Merrill Lynch engages in securities brokerage for retail and institutional customers and is a wholly-owned indirect subsidiary of Bank of America Corporation. Bank of

[2] For all but one of these trading incidents, Clearly Erroneous Execution ("CEE") petitions were filed with the relevant exchange(s), and, in most instances, as part of that resolution process, the erroneous orders were canceled. The exchanges generally allow a trade to be broken when the execution price is greater than a certain percentage away from the security's "reference price." *See, e.g*. NASDAQ Rule 11890.

[3] The initial compliance date for the Market Access Rule was July 14, 2011. The compliance date was extended by the Commission until November 30, 2011, for (1) the requirement to implement risk management controls and supervisory procedures reasonably designed to prevent the entry of orders that would exceed appropriate pre-set credit or capital thresholds, and (2) all of the requirements of the Market Access Rule for fixed income securities.

America Corporation is a Delaware corporation, whose common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and trades on the NYSE.

FACTS

A. Introduction

7. Merrill Lynch is one of the world's largest securities brokerage firms with more than 18,000 financial advisors and $2.4 trillion in client assets. As a member of various exchanges and a subscriber to alternative trading systems ("ATSs"), Merrill Lynch trades equities, options, fixed income securities, and exchange-traded funds, both for its own accounts and as an agent for its customers. During the relevant period, Merrill Lynch's average daily trading volume exceeded 2 million equity security trades.

B. Merrill Lynch's Equity Trading Channels and Systems

8. During the relevant period, equity trade orders that Merrill Lynch sent to the market originated from one of five business units at Merrill Lynch. Traders assigned to trading desks within the five business units, and often Merrill Lynch clients themselves, could access one or more of Merrill Lynch's order entry systems. These order entry systems directed orders to the market through one or more internal Merrill Lynch trading channels. Most orders originating from the firm's cash equities and derivative businesses, as well from certain channels used by Merrill Lynch's electronic trading clients, were sent to the market through an internal Merrill Lynch trading platform called the Electronic Trading Technology Stack ("ETTS"). The ETTS included an order management system, an algorithmic engine, and a smart order router that sent orders or portions of orders to the market.

C. Merrill Lynch's Rule 15c3-5 Erroneous Order Controls

9. In response to the Market Access Rule, Merrill Lynch determined that all equity order flow would be subject to four erroneous order controls: (1) single order quantity limits; (2) single order notional value limits; (3) controls based on the limit price assigned to limit orders; and (4) a duplicate order check. These erroneous order controls operated as hard blocks, rejecting orders that exceeded specified amounts and thereby preventing the orders from reaching the market.

10. Certain Merrill Lynch trading channels had other types of risk management controls in place prior to the Market Access Rule. Merrill Lynch, however, did not implement all of those controls across all equity order flow as part of its response to the Market Access Rule. For example, Merrill Lynch's algorithmic engine in the ETTS could perform an average daily volume ("ADV") check on orders it received, pausing an order that exceeded a pre-determined percentage of the stock's average daily volume, and then requiring desk personnel to take manual action to send that order to the market. Similarly, many retail orders were subject to a risk management control that assessed share quantity, notional value, and liquidity, as well as potential market impact, to determine whether to send an order to a market maker or to an internal Merrill Lynch algorithm that, in turn, would send the order or a portion of the order to the market based on the prevailing price of the stock.

11. Although the ADV control described above, and other controls that analyzed orders for potential market impact existed at Merrill Lynch prior to the July 2011 compliance date of the Market Access Rule, Merrill Lynch decided not to include such trading controls in every trading channel as part of its implementation effort for compliance with Rule 15c3-5.

D. Merrill Lynch Established Unreasonably High Triggering Thresholds for its Rule 15c3-5 Erroneous Order Controls

12. After Merrill Lynch had determined that all equity orders routed to the market under Merrill Lynch's market participant identifiers would be subject to the four erroneous order controls identified in paragraph 9, above, senior-level managers from each of the business units established the threshold settings for these controls in their respective business units. In an effort to comply with the Market Access Rule, Merrill Lynch also added a centralized pre-trade software application, known as "Sidecar," to the ETTS. Sidecar applied the four erroneous order controls to all orders that were sent through the ETTS (other than those from the cash equities business unit).[4]

13. Many of the thresholds selected by the senior managers of the business units were set at such high levels that they rendered the controls ineffective. For example, as of the July 2011 compliance date of the Market Access Rule, most orders originating in the institutional cash equities business unit were subject to a standard single order notional value hard block of $250,000,000 and a single order quantity hard block that ranged from 5,000,000 shares to 25,000,000 shares, depending on the particular trading strategy or market venue selected for an order.[5] In addition, many, but not all, orders from the cash equities desk also were subject to hard and soft blocks that imposed different single order quantity and notional value limits in the order entry systems.[6] Many of these additional limits, however, also were set at very high amounts.

14. Similarly, orders from the institutional derivatives business unit routed through Sidecar were subject to a notional value hard block of $250,000,000 and an order quantity hard block of 10,000,000 shares. These orders also were subject to hard and soft blocks in order entry systems. Although the limits varied by trading desk and order entry system (and sometimes even by trader), the derivatives order entry system blocks generally were lower than the Sidecar limits by 10-20% for single order quantity and by 40% for notional value limits, which still resulted in very high thresholds that rendered the controls ineffective. The default limits for the soft blocks were even lower than the limits for the hard blocks, but also were set at very high numerical levels that rendered the controls ineffective.

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[4] Orders from the cash equities business also were subject to the four erroneous order controls, but those controls were located in an order management system accessed by cash equities traders, rather than in Sidecar.

[5] In June 2013, after the SEC staff's investigation had begun, Merrill Lynch reduced the maximum quantity limit for two of its trading strategies within the cash equities business from 25 million shares to 50,000 shares.

[6] Soft blocks alert a trader when a specified order size threshold is exceeded, which the trader can then override.

15. Equity orders transmitted through Merrill's electronic trading channels by Merrill Lynch clients were subject to share and notional value limits established on a client specific basis based on a risk matrix, with single share limit amounts ranging from 10,000 to 25,000,000 shares and a related notional value limit ranging from $100,000 to $150,000,000, respectively.

E. Merrill Lynch Erroneous Trades Caused Numerous Market Aberrations

16. Merrill Lynch's lack of reasonably designed erroneous order controls allowed numerous erroneous orders to reach the market after July 2011, in some instances causing the prices of the affected stocks to fluctuate dramatically. Merrill Lynch's controls were ineffective in preventing these orders from reaching the market, in part because the single order limits to prevent erroneous orders for many of Merrill Lynch's trading channels had been set at such high levels. Examples of market incidents that resulted from erroneous orders that Merrill Lynch sent to the market during the relevant period are summarized in paragraphs 17 – 31 below, and details from each incident are reflected in the attached Exhibit A.

17. On September 19, 2012, the price of Tyco International Ltd. common stock (symbol "TYC") rose by approximately 4% in less than 2 seconds, after a Merrill Lynch trader inadvertently sent an institutional customer order to buy 200,000 shares of TYC to the market for immediate execution rather than to be executed over the course of the day, as the customer had instructed. Merrill Lynch's designated Market Access Rule financial risk management controls, which at that time consisted of a single order quantity threshold of 5 million shares, a single order notional value of $250 million, and no price limit controls for market orders, failed to prevent the erroneous order from reaching the market. Merrill Lynch had additional legacy order entry controls designed to block orders that exceeded share and notional value limits in place, but the TYC order was well below the thresholds that Merrill Lynch had set for those blocks as well.

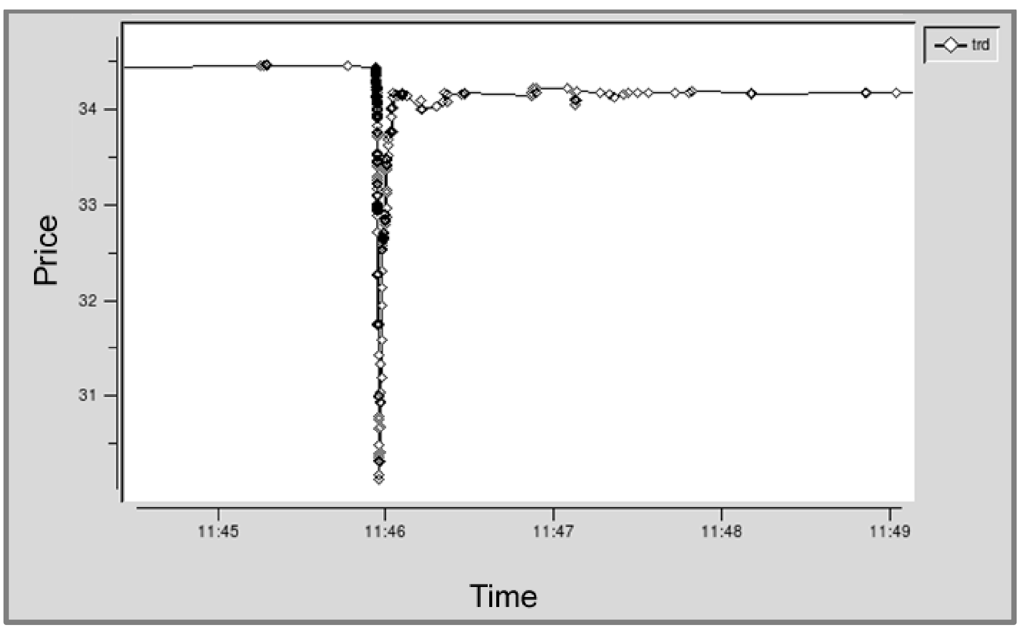
18. On November 7, 2012, the price of Diageo plc American Depository Receipts (symbol "DEO") rose by approximately 14% in less than 2 seconds, after a Merrill Lynch financial advisor inadvertently sent a market order on behalf of multiple clients to buy 115,500 shares of DEO, when intending to submit a market order for only a portion of that order—500 shares of the larger 115,500 share order. Merrill Lynch's designated Market Access Rule financial risk management controls, which at that time consisted of a single order quantity threshold of 5 million shares, a single order notional value of $250 million, and no price limit controls for market orders, failed to prevent the erroneous order from reaching the market. Merrill Lynch had additional legacy order entry controls designed to block orders that exceeded share and notional value limits in place, but the DEO order was well below the thresholds that Merrill Lynch had set for those blocks as well. The order was approximately 30% of the average daily volume in DEO over the trailing 20-day period.

19. On November 27, 2012, the price of Wisdom Tree LargeCap Growth Fund exchange-traded fund (former symbol "ROI") fell by approximately 9% in less than 30 seconds, after a Merrill Lynch financial advisor sent a market order to sell 19,662 shares of ROI when the advisor had intended to enter a limit price for the order. Merrill Lynch's designated Market Access Rule financial risk management controls, which at that time consisted of a single order quantity threshold of 25,000 shares, failed to prevent the erroneous order from reaching the

market. The order was approximately 775% of the average daily volume in ROI over the trailing 20-day period.

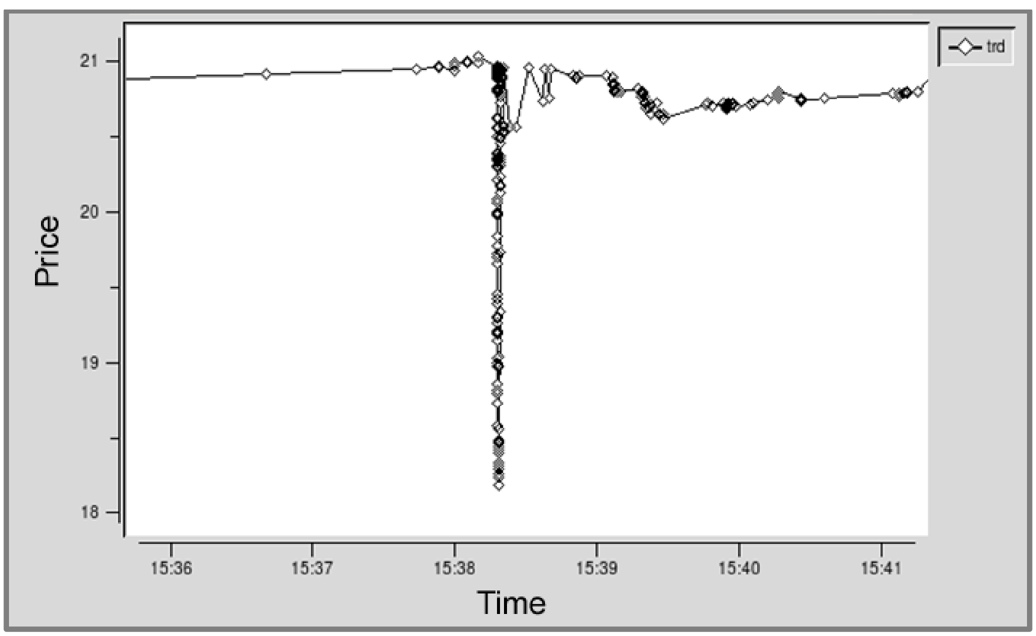
20. On December 5, 2012, the price of SPDR Barclay Emerging Markets Local Bond exchange-traded fund (symbol "EBND") rose by approximately 9%, after a Merrill Lynch trader inadvertently sent duplicate market orders to buy 50,000 shares of EBND. Merrill Lynch's designated Market Access Rule financial risk management controls, which at that time consisted of a single order quantity threshold of 2 million shares, a single order notional value of $250 million, and no price limit controls for market orders, failed to prevent the erroneous order from reaching the market. Merrill Lynch had additional legacy order entry controls designed to block orders that exceeded share and notional value limits in place, but the EBND orders were well below the thresholds that Merrill Lynch had set for those blocks as well. The order was approximately 28% of the average daily trading volume in EBND over the trailing 20-day period.

21. On January 2, 2013, the price of Granite Construction Incorporated common stock (symbol "GVA") fell by approximately 13% in less than 2 seconds, after a Merrill Lynch client entered an order to sell 50,900 shares of GVA at the market when the client had intended to include a limit price with the order. Merrill Lynch's designated Market Access Rule financial risk management controls, which at that time consisted of a single order quantity threshold of 500,000 shares, a single order notional value of $25 million, and no price limit controls for market orders, failed to prevent the erroneous order from reaching the market. The order was approximately 18% of the average daily trading volume in GVA over the trailing 20-day period. The following graph reflects the rapid price decline in GVA on the morning of January 2, 2013, from over $34 to less than $31:



22. On January 18, 2013, the price of PPG Industries, Inc. common stock (symbol "PPG") fell by approximately 10% in less than 2 seconds, after a Merrill Lynch institutional trader inadvertently entered an order to sell 300,000 shares of PPG at the market (to hedge a customer swap order), when intending to enter the sell order as a market on close order. Merrill Lynch's designated Market Access Rule financial risk management controls, which at that time consisted of a single order quantity threshold of 5 million shares, a single order notional value of $250 million, and no price limit controls for market orders, failed to prevent the erroneous order from reaching the market. The order was approximately 11% of the average daily trading volume in PPG over the trailing 20-day period.

23. On February 1, 2013, the price of Parcira Pharmaceuticals, Inc. common stock (symbol "PCRX") fell by approximately 13% in less than a second, after a Merrill Lynch institutional trader entered a principal market order to sell short 43,813 shares of PCRX stock instead of sending the order to Merrill Lynch's algorithm for execution over the last thirty-minutes of the trading day, as intended. Merrill Lynch's financial risk management controls, which at that time consisted of a single order quantity threshold of 10 million shares, a single order notional value of $250 million, and no price limit controls for market orders, failed to prevent the erroneous order from reaching the market. Merrill Lynch had additional legacy order entry controls designed to block orders that exceeded share and notional value limits in place, but the PCRX orders were well below the thresholds that Merrill Lynch had set for those blocks as well. The order was approximately 12% of the average daily trading volume in PCRX over the trailing 20-day period. The following graph reflects the rapid price decline in PCRX on the afternoon of February 1, 2013, from nearly $21 to just over $18 in less than one second:

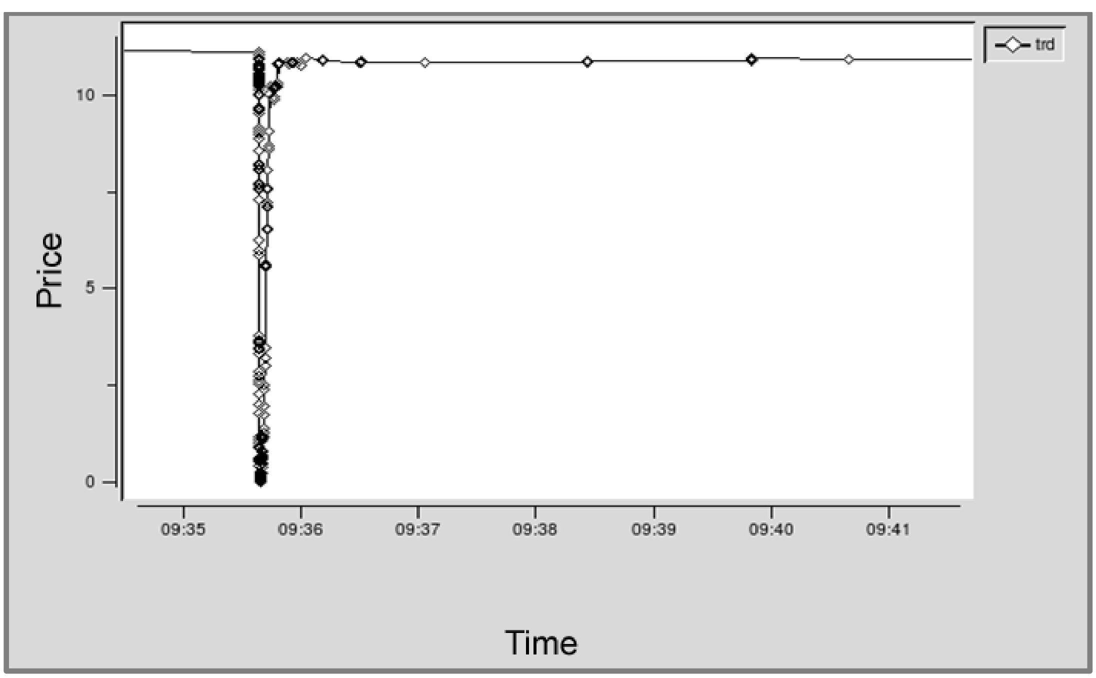


24. On March 8, 2013, the price of Anixter International, Inc. common stock (symbol "AXE") fell by approximately 12% in less than a second, after a Merrill Lynch institutional trader erroneously entered a market order to sell short 91,524 shares of AXE stock as part of a principal hedge instead of sending the order to a Merrill Lynch algorithm for execution over the last thirty-minutes of the trading day, as had been intended. Merrill Lynch's Rule 15c3-5 financial

risk management controls, which at that time consisted of a single order quantity threshold of 10 million shares, a single order notional value of $250 million, and no price limit controls for market orders, failed to prevent the erroneous order from reaching the market. Merrill Lynch had additional legacy order entry controls designed to block orders that exceeded share and notional value limits in place, but the AXE orders were well below the thresholds that Merrill Lynch had set for those blocks as well. The order was approximately 17% of the average daily trading volume in AXE over the trailing 20-day period.

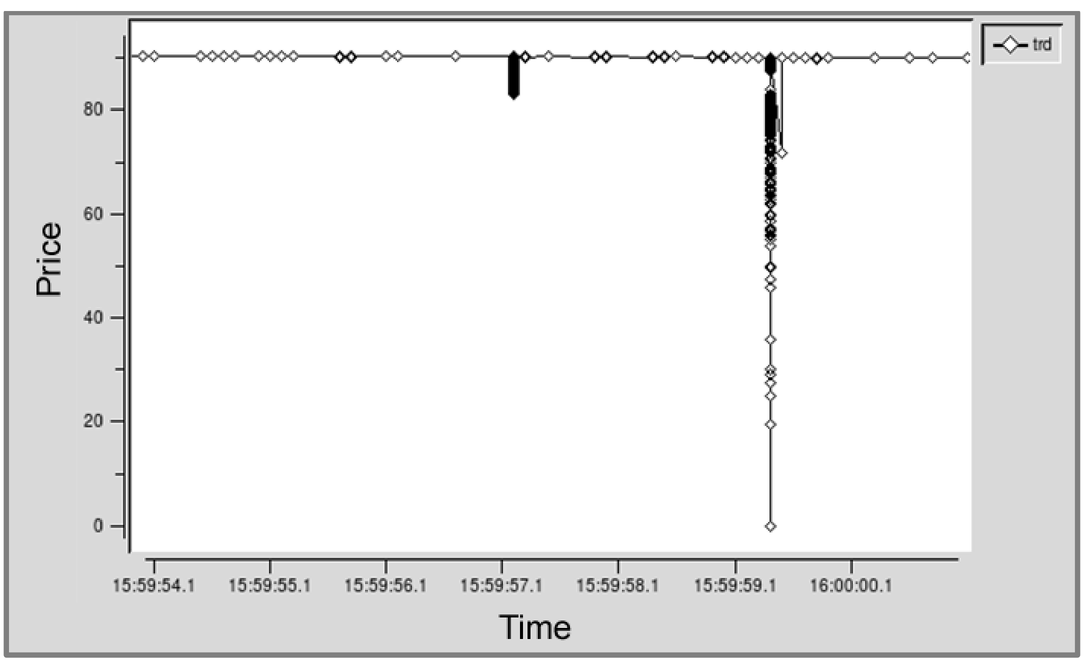
25. On April 22, 2013, the price of Google Inc. common stock (symbol "GOOG") fell by approximately 3% in less than a second, after a Merrill Lynch institutional trader entered an order to sell 50,070 shares of GOOG at the market (to hedge a customer swap order), after the client had incorrectly submitted an order to sell on swap 50,070 shares instead of 5,700 shares. Merrill Lynch's financial risk management controls, which at that time consisted of a single order quantity threshold of 10 million shares, a single order notional value of $100 million, and no price limit controls for market orders, failed to prevent the erroneous order from reaching the market.

26. On April 25, 2013, the price of Qualys, Inc. common stock (symbol "QLYS") fell by more than 99% in less than 2 seconds, after a Merrill Lynch trader erroneously entered an institutional customer order to sell 381,020 shares of QLYS using a Merrill Lynch algorithm intended for a different order, which, in turn, routed the order using an algorithm that executes orders immediately and exhausts liquidity at each price level until an order is complete. At that time, Merrill Lynch's financial risk management controls consisted of a single order quantity threshold of 5 million shares, a single order notional value of $250 million, and no price limit controls for market orders, failed to prevent the erroneous order from reaching the market. The order was approximately 483% of the average daily trading volume in QLYS over the trailing 20-day period. The following graph demonstrates the rapid decline in QLYS's price on the morning of April 25, 2013, from over $11.00 to $0.00 in just one second:



27. On May 14, 2013, the price of Bonanza Creek Energy Inc. common stock (symbol "BCEI") rose by approximately 19% in less than 2 seconds, after a Merrill Lynch institutional trader, intending to route a 75,000 share buy order to a Merrill Lynch position trader for handling, instead routed the order to an algorithm that began executing the order immediately. The order was not blocked from reaching the market by Merrill Lynch's 15c3-5 financial risk management controls, which at that time consisted of a single order quantity threshold of 25 million shares, a single order notional value of $500 million, and no price limit controls for market orders. The order was approximately 15% of the average daily trading volume in BCEI over the trailing 20-day period.

28. On May 17, 2013, the price of Anadarko Petroleum Corporation common stock (symbol "APC") dropped by more than 99% in less than a second, due to erroneous orders that Merrill Lynch sent to the market. Specifically, on May 17, 2013, a Merrill Lynch institutional trader entered a principal market order to sell 400,000 shares of APC in the last minute of regular market trading. Within seconds, the trader became concerned that a portion of the order was not being executed and entered a new market order to sell an additional 150,000 shares of APC without canceling the first order. Consequently, the trader sent more shares than intended to the market; and the price of APC stock then plunged, falling dramatically before rebounding. The orders were not blocked by Merrill Lynch's Rule 15c3-5 financial risk management controls, which at that time consisted of a single order quantity threshold of 10 million shares, a single order notional value of $250 million, and no price limit controls for market orders. Merrill Lynch had additional legacy order entry controls designed to block orders that exceeded share and notional value limits in place, but the APC orders were well below the thresholds that Merrill Lynch had set for those blocks as well. The following graph demonstrates the trade prices in APC during the final second of the trading day on May 17, 2013, as execution prices dropped from over $90.00 to just $0.01:



29. On June 11, 2013, the price of Prologis Inc. common stock (symbol "PLD") rose by approximately 21% in less than a second, after a Merrill Lynch institutional trader inadvertently sent a customer order to buy 72,000 shares of PLD to the market for immediate execution rather than to be executed over the course of the day, as the customer had instructed. At the time of the order, Merrill Lynch's Rule 15c3-5 financial risk management controls consisted of a single order quantity threshold of 5 million shares and a single order notional value of $250 million.

30. On June 18, 2013, the price of Ares Commercial Real Estate Corporation common stock (symbol "ACRE") rose by approximately 22% in less than a second, as a result of erroneous orders that Merrill Lynch sent to the market. Specifically, on June 18, 2013, a Merrill Lynch sales trader entered an order to buy 61,022 shares of ACRE on behalf of a customer, using an algorithm to fill the order, but neglected to enter a limit price to the order as was intended. Merrill Lynch's Rule 15c3-5 financial risk management controls, which at the time consisted of a single order quantity threshold of 25 million shares, a single order notional value of $500 million, and no price limit controls for market orders, failed to prevent the erroneous order from reaching the market. The order was approximately 120% of the average daily volume in ACRE over the trailing 20-day period.

31. On June 17, 2014, the price of Zebra Technologies Corporation common stock (symbol "ZBRA") rose by approximately 11% in less than a minute, after a Merrill Lynch customer inadvertently sent a market order to buy 1,006,020 shares of ZBRA using a Merrill Lynch trading algorithm, instead of sending the order in smaller pieces to various alternative trading systems as was intended. The order size triggered an alert within Merrill Lynch's trading systems, which paused the order for trader review. A Merrill Lynch trader then attempted to contact the customer by telephone to confirm the trade instructions, but when he could not reach the customer the trader submitted the order for execution. The buy order then began executing in the marketplace, causing the share price of ZBRA stock to rise by ten percent, which triggered a new alert within Merrill's trading systems. The trader saw the alert and again attempted to contact the customer. After the customer did not respond, the trader permitted the order to continue executing. Merrill Lynch's Rule 15c3-5 financial risk management controls for that customer, which at the time consisted of a single order quantity threshold of 25 million shares, a single order notional value of $150 million, and no price limit controls for market orders, failed to prevent the erroneous order from reaching the market. The order was approximately 217% of the average daily volume in ZBRA over the trailing 20-day period.

F. Merrill Lynch Failed to Establish Timely the Capital/Credit Thresholds and Related Controls

32. On June 27, 2011, the Commission extended from July 14, 2011, to November 30, 2011, the deadline for brokers and dealers to establish risk management controls and supervisory procedures to prevent the entry of orders that would exceed appropriate pre-set credit and capital limits. Merrill Lynch failed to meet the November 2011 deadline to establish risk management controls to prevent the entry of orders that would exceed appropriate pre-set credit and capital

limits for all of its trading desks within its institutional cash equities and derivative businesses.[7] Merrill Lynch's core cash desk within the institutional cash equites business failed to establish such risk management controls until February 2012, while the portfolio desk failed to establish those controls until March 2012. None of the trading desks associated with the institutional derivatives business established risk management controls that were reasonably designed to prevent orders that would exceed pre-set capital limits until May 2012.

G. Merrill Lynch Failed to Implement Timely the Market Access Rule for Fixed Income Securities

33. On June 27, 2011, the Commission also extended from July 14, 2011, to November 30, 2011, the deadline within which brokers and dealers were required to implement all aspects of the Market Access Rule with regard to fixed income securities. Merrill Lynch, however, failed to establish controls that were reasonably designed to prevent orders that would exceed pre-set capital-based thresholds or implement controls that were reasonably designed to prevent the entry of erroneous orders for fixed income securities until June 30, 2012.[8] Merrill Lynch did not put in place erroneous order limits for all systems associated with fixed income securities until April 30, 2012, and did not implement all capital and erroneous order controls associated with fixed income securities into the relevant systems until June 30, 2012. Furthermore, Merrill Lynch did not establish written supervisory procedures applicable to fixed income securities to monitor compliance with the Market Access Rule until July 2012.

H. Merrill Lynch Failed to Review Adequately the Effectiveness of its Controls and Procedures Required by the Market Access Rule

34. Merrill Lynch conducted periodic, including annual reviews of its risk management controls pursuant to written supervisory procedures. During its periodic reviews, Merrill Lynch verified that the controls and procedures that were in place functioned as expected. However, the reviews did not consider whether the high thresholds for Merrill Lynch's erroneous order controls, detailed above, were effective, and therefore reasonably designed to prevent the entry of erroneous orders. In addition, Merrill Lynch made no adjustments to the design or settings of the controls despite being aware of weaknesses revealed by erroneous orders it sent that caused severe price swings in the affected securities. Merrill Lynch did not respond to red flags or consider whether the repeated failure to prevent erroneous orders revealed shortcomings in its system of controls. Merrill Lynch did not review adequately the effectiveness of its risk management controls and procedures with regard to erroneous orders until May 2013, following the erroneous orders described in Paragraph 28 above and after Commission staff had contacted Merrill Lynch.

[7] Merrill Lynch identified this failure during its 2012 annual review of its compliance with the Market Access Rule.

[8] Merrill Lynch also identified this failure during its 2012 annual review of its compliance with the Market Access Rule.

I. Merrill Lynch's 2013 and 2014 CEO Market Access Rule Certifications

35. In June 2013, following the incident involving Anadarko Petroleum (discussed above) and after the staff's investigation had begun, Merrill Lynch's co-CEOs signed the 2013 Market Access Rule certification. The 2013 certification was limited in that it asserted that, in light of regulatory inquiries, it did not extend to the firm's controls to prevent the entry of erroneous orders.

36. Merrill Lynch did not conduct its CEO certification process on an annual basis in 2014. One of Merrill Lynch's co-CEOs did not sign Merrill Lynch's 2014 Market Access Rule certification until November 2014, while the other co-CEO signed the certification in December 2014. These certifications occurred more than seventeen months after the firm's 2013 certification process, which, as discussed above, did not comply with Rule 15c3-5's requirement for such certifications.

J. Merrill Lynch's Enhancements to its Financial Risk Management Controls

37. In May 2013, after Merrill Lynch had become aware of the Commission staff's investigation regarding its market access controls, Merrill Lynch began making enhancements to its financial risk management controls for the prevention of the entry of erroneous orders. In June 2013, Merrill Lynch significantly lowered the quantity and notional value limits in many of its trading channels. By September 2013, Merrill Lynch had added financial risk management controls to a number of its trading channels.

LEGAL ANALYSIS

A. Market Access Rule: Section 15(c)(3) of the Exchange Act and Rule 15c3-5

38. Section 15(c)(3) of the Exchange Act prohibits a broker or dealer from effecting any securities transaction in contravention of the rules and regulations the Commission prescribes as necessary or appropriate in the public interest, or for the protection of investors, to provide safeguards with respect to the financial responsibility and related practices of broker-dealers. Rule 15c3-5 requires broker-dealers with access to trading securities directly on an exchange or ATS, including those providing sponsored or direct market access to customers or other persons, to implement specific risk management controls and supervisory procedures to manage financial, regulatory, and other relevant risks. Merrill Lynch violated Section 15(c)(3) and Exchange Act Rule 15c3-5, as described below.

B. Credit and Capital Thresholds

39. Exchange Act Rule 15c3-5(b) requires that a broker or dealer with market access establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of its market access activity. Exchange Act Rule 15c3-5(c)(1)(i) requires that a broker's or dealer's risk management controls be reasonably designed to limit systematically the financial exposure of the broker or dealer by, among other things, preventing the entry of orders that would exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker or dealer, and, where appropriate, more finely tuned by sector, security, or otherwise. Merrill Lynch

violated Rule 15c3-5(b) and (c)(1)(i) by failing to establish controls that were reasonably designed to prevent the entry of orders that would exceed such limits for several of its trading desks for months after the compliance date of the Market Access Rule. Specifically, Merrill Lynch's core cash desk within its cash equities business failed to establish an aggregate capital credit threshold and related controls until February 2012, and its portfolio desk failed to implement a capital/credit threshold and related controls until March 2012. Moreover, none of the trading desks associated with Merrill Lynch's derivatives business unit established aggregate capital limits and related controls until May 2012.

C. Erroneous Order Controls

40. Exchange Act Rule 15c3-5(c)(1)(ii) requires that a broker's or dealer's risk management controls be reasonably designed to limit systematically the financial exposure of the broker or dealer by, among other things, preventing the entry of erroneous orders that exceed appropriate price or size parameters on an order-by-order basis or over a short period of time, or that indicate duplicative orders. Merrill Lynch violated Rule 15c3-5(b) and (c)(1)(ii) by failing to have controls that were reasonably designed to prevent the entry of erroneous orders. The limits that Merrill Lynch established to prevent erroneous orders in many of its trading channels were set at such high levels that they failed to prevent many erroneous orders from reaching the market. These unreasonably high limits, along with the lack of other controls in many of Merrill Lynch's trading channels, resulted in Merrill Lynch sending erroneous orders to the market. In a number of instances, the erroneous orders sent to the market by Merrill Lynch abruptly caused the prices of the affected stocks to fluctuate dramatically, thereby harming the integrity of trading on the securities markets.

D. Fixed Income Securities

41. Merrill Lynch failed until seven months after the November 30, 2011, Market Access Rule compliance date for fixed income securities, to implement controls that were reasonably designed to prevent orders that would exceed pre-set capital-based thresholds or the entry of erroneous orders. Merrill Lynch violated Rule 15c3-5(b), (c)(1)(i), and (c)(1)(ii) because the firm did not complete the process of establishing capital and erroneous order controls for fixed income securities until June 30, 2012, and did not establish written supervisory procedures to monitor compliance with the Market Access Rule with regard to fixed income securities until July 2012.

E. Regular Reviews

42. Exchange Act Rule 15c3-5(e) requires that a broker or dealer providing market access establish, document, and maintain a system for regularly reviewing the effectiveness of the risk management controls and supervisory procedures required by Rule 15c3-5(b) and (c) and for promptly addressing any issues. Rule 15c3-5(e)(1) requires that the broker or dealer review, no less frequently than annually, the business activity of the broker or dealer in connection with market access to assure the overall effectiveness of such risk management controls and supervisory procedures. Rule 15c3-5(c)(1)(ii) requires controls reasonably designed to "[p]revent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative

orders." The Final Rule Release states: "Rule 15c3-5 is designed to ensure that broker-dealers appropriately control the risks associated with market access, so as not to jeopardize their own financial condition, that of other market participants, the integrity of trading on the securities markets, and the stability of the financial system."[9] The Final Rule Release further states that, specifically with respect to Rule 15c3-5(c)(1), that "pre-trade controls should protect broker-dealers providing market access, as well as their customers and other market participants, by blocking orders that do not comply with applicable risk management controls from being routed to a securities market" and that an example of such a control would be, "a systemic, pre-trade control reasonably designed to reject orders that are not reasonably related to the quoted price of the security [that] would help prevent erroneously-entered orders from reaching the market."[10]

43. Merrill Lynch violated the requirement of Rule 15c3-5(e) that it regularly review the effectiveness of the risk management controls and supervisory procedures required by Rule 15c3-5(b) and (c) and promptly address any issues. Instead of evaluating whether its controls were reasonably designed to prevent the entry of erroneous orders, Merrill Lynch improperly limited its reviews to consideration of whether the controls in place operated, as intended, to limit only franchise-level risk for Merrill Lynch. As a result, Merrill Lynch did not evaluate whether its controls operated effectively to prevent the entry of erroneous orders. Merrill Lynch failed to incorporate into its review the risk that arose from the entry of erroneous orders. The extremely high limits in Merrill Lynch's erroneous trade controls allowed erroneous orders to enter the market on several notable occasions thereby revealing the weaknesses of these controls. Merrill Lynch failed, as part of its review, to identify and promptly address the obvious issues regarding the effectiveness of its erroneous order controls.

F. CEO Certifications

44. Exchange Act Rule 15c3-5(e)(2) requires the Chief Executive Officer (or equivalent officer) of a broker-dealer providing market access to certify annually that its risk management controls and supervisory procedures comply with the Market Access Rule. Merrill Lynch violated Rule15c3-5(e)(2) because the firm's 2013 certification expressly did not cover risk management controls and supervisory procedures to prevent the entry of erroneous orders, and the firm's 2014 certification was not timely. In adopting the Market Access Rule, the Commission emphasized the importance of the annual CEO certification, stating that it was "critical" that a broker-dealer "review and certify the efficacy of its controls and procedures at regular intervals."[11]

45. In June 2013, Merrill Lynch's co-CEOs signed the 2013 market access certification, which, as noted above, specified that the certification did not cover Rule 15c3-5's requirements for controls to prevent the entry of erroneous orders. Neither the language of

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[9] Risk Management Controls for Brokers or Dealers with Market Access, 75 Fed. Reg. 69791, 69792 (Nov. 15, 2010) ("Final Rule Release").

[10] *Id*. at 69801, 69802.

[11] *Id.* at 69811.

Market Access Rule itself nor the Rule's adopting release contemplates such a limitation on the required certification. Indeed, Rule 15c3-5(e)(2) requires the CEO or an equivalent officer of a broker or dealer to certify regarding the broker's or dealer's market access controls and procedures to prevent the entry of erroneous orders.[12]

46. Merrill Lynch's CEO certification for 2014 did not satisfy the Rule's requirement that such certifications be made on an annual basis. One of Merrill Lynch's co-CEOs signed the 2014 market access certification in November 2014, more than seventeen months after the prior year certification was signed. The other co-CEO signed the certification in December 2014.

47. Based on the foregoing, the Commission finds that Merrill Lynch willfully[13] violated Section 15(c)(3) of the Exchange Act and Rule 15c3-5(b), (c)(1)(i), (c)(1)(ii), and (e) thereunder.

REMEDIAL EFFORTS

48. In determining to accept the Offer, the Commission considered remedial acts undertaken by Merrill Lynch.

IV.

In view of the foregoing, the Commission deems it necessary and appropriate in the public interest, and for the protection of investors, to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act and Section 203(e) of the Advisers Act, it is hereby ORDERED that:

A. Respondent Merrill Lynch cease and desist from committing or causing any violations and any future violations of Section 15(c)(3) of the Exchange Act and Rule 15c3-5 thereunder.

B. Respondent Merrill Lynch is censured.

C. Respondent Merrill Lynch shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $12,500,000 ($12.5 million) to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange

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[12] *See also In the Matter of Knight Capital Americas LLC*, Exchange Act Release No. 70694 (Oct. 16, 2013) (Knight Capital Americas LLC violated subsection (e)(2) of Rule 15c3-5 when the certification signed by Knight's CEO did not state that Knight's controls and supervisory procedures complied with those provisions of the rule but instead stated that Knight had in place "processes" to comply with the rule).

[13] A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "'also be aware that he is violating one of the Rules or Acts.'" *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

D. Such payment must be made in one of the following ways: (1) Respondent Merrill Lynch may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request; (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Merrill Lynch as a Respondent in these proceedings and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Antonia Chion, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Brent J. Fields
Secretary

Exhibit A: Stock Price and Volume Change

Stock (Ticker Symbol)	Date of Trading Event	Start of Trading Event through Height/Depth of Event	Price Preceding Event	Price at Height/Depth of Event	Approximate Price % Change	Number of Shares Traded by Merrill Lynch	Approximate % of Average Daily Volume (Preceding 20 Days)
Tyco International Ltd. (TYC)	9/19/2012	10:18:38 a.m. - 10:18:39 a.m.	$54.85	$56.90	4%	200,000	5%
Diageo PLC (DEO)	11/7/2012	3:45:47 p.m. - 3:45:49 p.m.	$115.02	$132.10	14%	115,500	29%
Wisdom Tree LargeCap Growth Fund (ROI)	11/27/2012	9:30:00 a.m. - 9:30:29 a.m.	$39.48	$35.97	-9%	19,662	775%
SPDR Barclay Emerging Markets Local Bond (EBND)	12/5/2012	9:24:34 - 9:24:34 a.m.	$32.29*	$35.11	9%	50,000	28%
Granite Construction, Inc. (GVA)	1/2/2013	11:45:56 a.m. - 11:45:57 a.m.	$34.45	$30.12	-13%	48,600	18%
PPG Industries, Inc. (PPG)	1/18/2013	3:00:50 p.m. - 3:00:51 p.m.	$141.99	$127.25	-10%	300,000	10%
Parcira Pharmaceuticals (PCRX)	2/1/2013	3:38:17 p.m. - 3:38:18 p.m.	$20.97	$18.18	-13%	43,813	11%
Anixter International, Inc. (AXE)	3/8/2013	11:48:51 a.m. - 11:48:52 a.m.	$69.76	$60.90	-12%	91,524	16%
Google, Inc. (GOOG)	4/22/2013	9:37:11 a.m. - 9:37:12 a.m.	$795.93	$775.00	-3%	50,070	2%

Stock (Ticker Symbol)	Date of Trading Event	Start of Trading Event through Height/Depth of Event	Price Preceding Event	Price at Height/Depth of Event	Approximate Price % Change	Number of Shares Traded by Merrill Lynch	Approximate % of Average Daily Volume (Preceding 20 Days)
Qualys, Inc. (QLYS)	4/25/2013	9:35:38 a.m. - 9:35:39 a.m.	$11.13	$0.00	-99%	381,020	483%
Bonanza Creek Energy (BCEI)	5/14/2013	3:40:05 p.m. - 3:40:06 p.m.	$37.66	$44.91	19%	75,700	15%
Anadarko Petroluem Corp. (APC)	5/17/2013	3:59:59 p.m. - 3:59:59 p.m.	$90.24	$0.01	-99%	203,320	6%
Prologis, Inc. (PLD)	6/11/2013	9:11:48 a.m. - 9:11:48 a.m.	$38.03	$46.14	21%	72,000	2%
Ares Commerical Real Estate Corporation (ACRE)	6/18/2013	3:58:53 p.m. - 3:58:54 p.m.	$15.18	$18.65	22%	61,022	120%
Zebra Technologies Corp. (ZBRA)	6/17/2014	15:59:03 p.m. – 15:59:51 p.m.	$78.42	$87.75	11%	1,006,020	217%

* The first trade of the day was involved in the event. The price preceding the event is the prior day's closing price.