

FINRA Fines Merrill Lynch \$1.05 million and orders more than \$323,000 in restitution for best execution violations in non-convertible preferred securities transactions

On April 16, 2013, FINRA announced that Merrill Lynch, the brokerage unit of Bank of America, will pay \$1.05 million in fines and more than \$323,000 in restitution for failure to provide best execution for trades involving non-convertible preferred securities executed on ML BondMarket, one of its proprietary order management systems, and for failure to have an adequate supervisory system and written supervisory procedures in place. Merrill's Letter of Acceptance, Waiver and Consent, agreed to by FINRA on April 2, 2013, also includes other sanctions due to the violations occurring over nearly five years.

ML BondMarket is one of two platforms available at Merrill Lynch for executing customer transactions in non-convertible preferred securities and was programmed to provide automated executions in transactions of 5,000 shares or less based upon published quotations. Merrill Lynch programmed a faulty pricing logic which caused ML BondMarket to only include quotes from the two primary exchanges in which the non-convertible preferred securities in question are traded. In instances where there was a better quote on a market other than the primary listing exchange, the quote was not reflected on the platform. This resulted in pricing at less than best execution levels for 12,259 trades between April 1, 2006, and

December 31, 2010. In the AWC FINRA noted that Merrill Lynch "failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions."

In addition, Merrill Lynch failed to establish and maintain a supervisory system including written supervisory procedures that were reasonably designed to ensure compliance with the firm's best execution obligations for transactions in non-convertible preferred securities executed on ML BondMarket. FINRA determined that Merrill Lynch failed to perform any post-execution review of the transactions executed on ML BondMarket even though it had received several inquiry letters from FINRA staff during the review period regarding the transactions. In addition, Merrill Lynch failed to identify the flawed pricing logic until December 2010.

With respect to the written supervisory procedures, FINRA determined that the procedures did not describe the supervisory steps to be taken for a best execution supervisory review of non-convertible preferred transactions executed on ML BondMarket.

In addition to the fines and restitution, the Letter of Acceptance, Waiver and Consent includes a censure and required revision of the written supervisory procedures in question.

The FINRA news release can be found at <https://www.finra.org/Newsroom/NewsReleases/2013/P242318>.