



**U.S. Department of Justice**

Criminal Division

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*Fraud Section*

*Washington, D.C. 20005*

June 25, 2019

Reginald J. Brown, Esq.  
Wilmer Cutler Pickering Hale and Dorr LLP  
1875 Pennsylvania Avenue NW  
Washington, DC 20006

Re: Merrill Lynch Commodities, Inc. Criminal Investigation

Dear Mr. Brown:

The United States Department of Justice, Criminal Division, Fraud Section (the "Fraud Section"), and Merrill Lynch Commodities, Inc. ("MLCI"), pursuant to authority granted by MLCI's Board of Directors, enters into this Non-Prosecution Agreement ("Agreement"). As indicated below, MLCI's ultimate parent ("MLCI Parent"), pursuant to authority granted by MLCI Parent's Board of Directors, is also undertaking certain obligations under this Agreement.

1. The Fraud Section enters into this Agreement based on the individual facts and circumstances presented by this case, including those described below:

(a) MLCI did not receive voluntary disclosure credit because it did not voluntarily and timely disclose to the Fraud Section the conduct described in the Statement of Facts attached hereto as Attachment A ("Statement of Facts");

(b) MLCI received credit for its cooperation with the Fraud Section's investigation, including collecting, analyzing, and organizing voluminous evidence and information for the Fraud Section;

(c) by the conclusion of the investigation, MLCI provided to the Fraud Section all relevant facts known to it, including information about the individuals involved in the conduct described in the attached Statement of Facts and conduct disclosed to the Fraud Section prior to the Agreement;

(d) MLCI and MLCI Parent engaged in remedial measures prior to the commencement of the Fraud Section's investigation of the conduct set forth in the attached Statement of Facts (Attachment A) and thereafter, including enhancing their compliance program and internal controls designed to detect and deter spoofing and other manipulative conduct through, among other things, (i) enhanced policies and procedures relating to ethical behavior, prohibited conduct, and escalation of potential misconduct; (ii) updated routine and ongoing training concerning appropriate market conduct; (iii) improved transaction monitoring and communication

surveillance systems and processes; (iv) investment in enhanced transaction monitoring technology; (v) enhanced reviews of the compliance control framework by the internal audit functions; and (vi) dedicating significant resources to improving their systems and controls;

(e) MLCI and MLCI Parent have enhanced and have committed to continuing to enhance their compliance program and internal controls, including ensuring that their compliance program satisfies the minimum elements set forth in Attachment B to this Agreement (Corporate Compliance Program);

(f) based on MLCI and MLCI Parent's remediation and the state of their compliance program, and their agreement to report to the Fraud Section as set forth in Attachment C to this Agreement (Corporate Compliance Reporting), the Fraud Section determined that an independent compliance monitor was unnecessary;

(g) the nature and seriousness of the offense conduct, including the adverse impact on the integrity of the markets for precious metals and precious metals futures contracts;

(h) MLCI has no prior criminal history; and

(i) MLCI and MLCI Parent (on behalf of itself and through its subsidiaries and affiliates) have agreed to cooperate with the Fraud Section as set forth in Paragraph 5, below.

2. MLCI admits, accepts, and acknowledges that it is responsible under United States law for the acts of its officers, directors, employees, and agents as set forth in the attached Statement of Facts (Attachment A), and stipulates that the facts described therein are true and accurate. MLCI also admits, accepts, and acknowledges that the facts described in the attached Statement of Facts constitute a violation of law, specifically commodities fraud, in violation of Title 18, United States Code, Section 1348(1).

3. MLCI and MLCI Parent expressly agree that they shall not, through present or future attorneys, officers, directors, employees, agents or any other person authorized to speak for MLCI or MLCI Parent make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by MLCI set forth above or the facts described in the attached Statement of Facts. MLCI and MLCI Parent agree that if they, or any of their subsidiaries or affiliates, issue a press release or hold any press conference in connection with this Agreement, MLCI and MLCI Parent shall first consult the Fraud Section to determine (a) whether the text of the release or proposed statements at the press conference are true and accurate with respect to matters relating to this Agreement; and (b) whether the Fraud Section has any objection to the release.

4. MLCI and MLCI Parent's obligations under this Agreement shall have a term of 3 years from the date on which the Agreement is executed (the "Term"). MLCI and MLCI Parent agree, however, that, in the event the Fraud Section determines, in its sole discretion, that MLCI or MLCI Parent has knowingly violated any provision of this Agreement or has failed to completely perform or fulfill each of their obligations under this Agreement, an extension or extensions of the Term may be imposed by the Fraud Section, in its sole discretion, for up to a

total additional time period of one year, without prejudice to the Fraud Section's right to proceed as provided in the breach provisions of this Agreement below. Any extension of the Agreement extends all terms of this Agreement, including the terms of the reporting requirement in Attachment C, for an equivalent period. Conversely, in the event the Fraud Section finds, in its sole discretion, that there exists a change in circumstances sufficient to eliminate the need for the reporting requirement in Attachment C, and that the other provisions of this Agreement have been satisfied, the Agreement may be terminated early.

5. MLCI and MLCI Parent shall cooperate fully with the Fraud Section in any and all matters relating to the conduct described in this Agreement and the attached Statement of Facts and other conduct under investigation by the Fraud Section at any time during the Term. At the request of the Fraud Section, MLCI and MLCI Parent shall also cooperate fully with other domestic or foreign law enforcement and regulatory authorities and agencies in any investigation of MLCI, MLCI Parent, their subsidiaries or affiliates, or any of their present or former officers, directors, employees, agents, and consultants, or any other party, in any and all matters relating to the conduct described in this Agreement and the attached Statement of Facts and other conduct under investigation by the Fraud Section at any time during the Term. MLCI's and MLCI Parent's cooperation pursuant to this Paragraph is subject to applicable law and regulations, as well as valid claims of attorney-client privilege or attorney work product doctrine; however, MLCI and MLCI Parent must provide to the Fraud Section a log of any information or cooperation that is not provided based on an assertion of law, regulation, or privilege, and MLCI and MLCI Parent bear the burden of establishing the validity of any such an assertion. MLCI and MLCI Parent agree that their cooperation shall include, but not be limited to, the following:

(a) MLCI and MLCI Parent shall truthfully disclose all factual information with respect to their activities, those of their subsidiaries and affiliates, and those of their present and former directors, officers, employees, agents, and consultants, including any evidence or allegations and internal or external investigations, about which MLCI and MLCI Parent has any knowledge or about which the Fraud Section may inquire. This obligation of truthful disclosure includes, but is not limited to, the obligation of MLCI and MLCI Parent to provide to the Fraud Section, upon request, any document, record or other tangible evidence about which the Fraud Section may inquire of MLCI and MLCI Parent.

(b) Upon request of the Fraud Section, MLCI and MLCI Parent shall designate knowledgeable employees, agents or attorneys to provide to the Fraud Section the information and materials described above on behalf of MLCI and MLCI Parent. It is further understood that MLCI and MLCI Parent must at all times provide complete, truthful, and accurate information.

(c) MLCI and MLCI Parent shall use their best efforts to make available for interviews or testimony, as requested by the Fraud Section, present or former officers, directors, employees, agents and consultants of MLCI and MLCI Parent. This obligation includes, but is not limited to, sworn testimony before a federal grand jury or in federal trials, as well as interviews with domestic or foreign law enforcement and regulatory authorities. Cooperation under this Paragraph shall include identification of witnesses who, to the knowledge of MLCI and MLCI Parent, may have material information regarding the matters under investigation.

(d) With respect to any information, testimony, documents, records or other tangible evidence provided to the Fraud Section pursuant to this Agreement, MLCI and MLCI Parent consent to any and all disclosures to other governmental authorities, including United States authorities and those of a foreign government, of such materials as the Fraud Section, in its sole discretion, shall deem appropriate.

(e) In addition, during the Term, should MLCI or MLCI Parent learn of any evidence or allegation of actual or potential violations of the wire fraud statute (18 U.S.C. § 1343), the securities and commodities fraud statute (18 U.S.C. § 1348), or the anti-spoofing provision of the Commodity Exchange Act (7 U.S.C. § 6c(a)(5)(C)) in the Commodities Business, MLCI or MLCI Parent shall promptly report such evidence or allegation to the Fraud Section. The “Commodities Business” refers to MLCI Parent’s Global Markets’ Commodities Business, whose function is to conduct wholesale, principal trading and sales of commodities in relevant markets, as commodity is defined in section 1a(9) of the Commodity Exchange Act. On the date that the Term expires, MLCI, by the President of MLCI and the Chief Financial Officer of MLCI, will certify to the Fraud Section that MLCI has met its disclosure obligations pursuant to this Agreement. Each certification will be deemed a material statement and representation by MLCI to the executive branch of the United States for purposes of 18 U.S.C. §§ 1001 and 1519.

6. MLCI and MLCI Parent represent that they have implemented and will continue to implement a compliance and ethics program designed to prevent and detect violations of federal wire and securities and commodities fraud laws (including 18 U.S.C. §§ 1343, 1348) and the anti-spoofing provision of the Commodity Exchange Act (7 U.S.C. § 6c(a)(5)(C)) throughout the Commodities Business, including with respect to their subsidiaries, affiliates, agents, and joint ventures (to the extent that MLCI or MLCI Parent manages or controls such joint ventures), including, but not limited to, the minimum elements set forth in Attachment B (Corporate Compliance Program). In addition, MLCI and MLCI Parent agree that they will report to the Fraud Section annually during the Term regarding remediation and implementation of the compliance measures described in Attachment B. These reports will be prepared in accordance with Attachment C (Corporate Compliance Reporting).

7. In order to address any deficiencies in their internal controls, policies, and procedures, MLCI and MLCI Parent represent that they have undertaken, and will continue to undertake in the future, in a manner consistent with all of their obligations under this Agreement, a review of their existing internal controls, policies, and procedures regarding compliance with federal wire and securities and commodities fraud laws (including 18 U.S.C. §§ 1343, 1348) and the anti-spoofing provision of the Commodity Exchange Act (7 U.S.C. § 6c(a)(5)(C)) as they relate to the Commodities Business. Where necessary and appropriate, MLCI and MLCI Parent agree to modify their existing compliance program in order to ensure that they maintain a rigorous compliance program that incorporates relevant internal controls, as well as policies and procedures, designed to effectively detect and deter violations of federal wire and securities and commodities fraud laws (including 18 U.S.C. §§ 1343, 1348) and the anti-spoofing provision of the Commodity Exchange Act (7 U.S.C. § 6c(a)(5)(C)) in the Commodities Business. The compliance program, will include, but not be limited to, the minimum elements set forth in Attachment B.

8. MLCI agrees to pay \$25,000,000, which represents the combined appropriate criminal fine, forfeiture, and restitution amounts in this matter (the “Criminal Monetary Amount”), to the United States no later than ten (10) business days after the Agreement is fully executed pursuant to payment instructions provided by the Fraud Section in its sole discretion.

9. MLCI acknowledges that no tax deduction may be sought in connection with the payment of any part of this Criminal Monetary Amount. MLCI shall not seek or accept directly or indirectly reimbursement or indemnification from any source with regard to the Criminal Monetary Amount, or disgorgement amounts that MLCI pays pursuant to any other agreement entered into with an enforcement authority or regulator concerning the facts set forth in the attached Statement of Facts.

10. The Fraud Section agrees, except as provided herein, that it will not bring any criminal or civil case (except for criminal tax violations, as to which the Fraud Section does not make any agreement) against MLCI, MLCI Parent, or any of their present or former subsidiaries or affiliates relating to any of the conduct described in the attached Statement of Facts, or any conduct on the Metals desk of MLCI and its affiliates (as it relates to precious metals) prior to the date of this Agreement relating to: (1) placing orders with no intent to execute in connection with futures or options trading; (2) frontrunning in connection with futures trading; or (3) market manipulation in connection with futures or options trading. The Fraud Section, however, may use any information related to the conduct described in the attached Statement of Facts against MLCI: (a) in a prosecution for perjury or obstruction of justice; (b) in a prosecution for making a false statement; (c) in a prosecution or other proceeding relating to any crime of violence; or (d) in a prosecution or other proceeding relating to a violation of any provision of Title 26 of the United States Code. This Agreement does not provide any protection against prosecution for any future conduct by MLCI, MLCI Parent, or any of their present or former subsidiaries or affiliates. In addition, this Agreement does not provide any protection against prosecution of any individuals, regardless of their affiliation with MLCI, MLCI Parent, or any of their present or former subsidiaries or affiliates.

11. If, during the Term: (a) MLCI commits any felony under U.S. federal law; (b) MLCI or MLCI Parent provides in connection with this Agreement deliberately false, incomplete, or misleading information, including in connection with their disclosure of information about individual culpability; (c) MLCI or MLCI Parent fails to cooperate as set forth in this Agreement; (d) MLCI or MLCI Parent fails to implement and maintain a compliance program as set forth in this Agreement and Attachment B; or (e) MLCI or MLCI Parent otherwise fails to completely perform or fulfill each of MLCI’s or MLCI Parent’s obligations under the Agreement, regardless of whether the Fraud Section becomes aware of such a breach after the Term is complete, MLCI and MLCI Parent, and their subsidiaries and affiliates, shall thereafter be subject to prosecution for any federal criminal violation of which the Fraud Section has knowledge, including, but not limited to, the conduct described in the attached Statement of Facts, which may be pursued by the Fraud Section in the U.S. District Court for Northern District of Illinois or any other appropriate venue. Determination of whether MLCI or MLCI Parent has breached the Agreement and whether to pursue prosecution of MLCI shall be in the Fraud Section’s sole discretion. Any such prosecution may be premised on information provided by MLCI, MLCI Parent or their personnel. Any such prosecution relating to the conduct described in the attached Statement of Facts or

relating to conduct known to the Fraud Section prior to the date on which this Agreement was signed that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against MLCI, MLCI Parent, or their subsidiaries or affiliates, notwithstanding the expiration of the statute of limitations, between the signing of this Agreement and the expiration of the Term plus one year. Thus, by signing this Agreement, MLCI and MLCI Parent agree that the statute of limitations with respect to any such prosecution that is not time-barred on the date of the signing of this Agreement shall be tolled for the Term plus one year. In addition, MLCI and MLCI Parent agree that the statute of limitations as to any violation of U.S. federal law that occurs during the Term will be tolled from the date upon which the violation occurs until the earlier of the date upon which the Fraud Section is made aware of the violation or the duration of the Term plus five years, and that this period shall be excluded from any calculation of time for purposes of the application of the statute of limitations.

12. In the event the Fraud Section determines that MLCI or MLCI Parent has breached this Agreement, the Fraud Section agrees to provide MLCI and MLCI Parent with written notice of such breach prior to instituting any prosecution resulting from such breach. Within thirty days of receipt of such notice, MLCI and MLCI Parent shall have the opportunity to respond to the Fraud Section in writing to explain the nature and circumstances of such breach, as well as the actions MLCI and MLCI Parent has taken to address and remediate the situation, which explanation the Fraud Section shall consider in determining whether to pursue prosecution of MLCI, MLCI Parent, or their subsidiaries or affiliates.

13. In the event that the Fraud Section determines that MLCI or MLCI Parent has breached this Agreement: (a) all statements made by or on behalf of MLCI, MLCI Parent, or their subsidiaries or affiliates to the Fraud Section or to the Court, including the attached Statement of Facts, and any testimony given by MLCI, MLCI Parent, or their subsidiaries or affiliates before a grand jury, a court, or any tribunal, or at any legislative hearings, whether prior or subsequent to this Agreement, and any leads derived from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings brought by the Fraud Section against MLCI, MLCI Parent, or their subsidiaries or affiliates; and (b) MLCI, MLCI Parent, or their subsidiaries and affiliates shall not assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that any such statements or testimony made by or on behalf of MLCI, MLCI Parent, or their subsidiaries or affiliates prior or subsequent to this Agreement, or any leads derived therefrom, should be suppressed or are otherwise inadmissible. The decision whether conduct or statements of any current director, officer or employee, or any person acting on behalf of, or at the direction of, MLCI, MLCI Parent, or their subsidiaries or affiliates will be imputed to MLCI or MLCI Parent for the purpose of determining whether MLCI or MLCI Parent has violated any provision of this Agreement shall be in the sole discretion of the Fraud Section.

14. Except as may otherwise be agreed by the parties in connection with a particular transaction, MLCI and MLCI Parent agree that in the event that, during the Term, they undertake any change in corporate form, including if they sell, merge, or transfer business operations that are material to MLCI's or MLCI Parent's consolidated operations, as they exist as of the date of this Agreement, whether such sale is structured as a sale, asset sale, merger, transfer, or other change in corporate form, they shall include in any contract for sale, merger, transfer, or other change in

corporate form a provision binding the purchaser, or any successor in interest thereto, to the obligations described in this Agreement. The purchaser or successor in interest must also agree in writing that the Fraud Section's ability to breach under this Agreement is applicable in full force to that entity. MLCI and MLCI Parent agree that the failure to include these provisions in the transaction will make any such transaction null and void. MLCI and MLCI Parent shall provide notice to the Fraud Section at least thirty (30) days prior to undertaking any such sale, merger, transfer, or other change in corporate form. If the Fraud Section notifies MLCI and MLCI Parent prior to such transaction (or series of transactions) that it has determined that the transaction(s) have the effect of circumventing or frustrating the enforcement purposes of this Agreement, as determined in the sole discretion of the Fraud Section, MLCI and MLCI Parent agree that such transaction(s) shall not be consummated. In addition, if at any time during the Term MLCI or MLCI Parent engages in a transaction(s) that has the effect of circumventing or frustrating the enforcement purposes of this Agreement, the Fraud Section may deem it a breach of this Agreement pursuant to the breach provisions of this Agreement. Nothing herein shall restrict MLCI or MLCI Parent from indemnifying (or otherwise holding harmless) the purchaser or successor in interest for penalties or other costs arising from any conduct that may have occurred prior to the date of the transaction, so long as such indemnification does not have the effect of circumventing or frustrating the enforcement purposes of this Agreement, as determined by the Fraud Section.

15. This Agreement is binding on MLCI, MLCI Parent, and the Fraud Section but specifically does not bind any other component of the Department of Justice, other federal agencies, or any state, local or foreign law enforcement or regulatory agencies, or any other authorities, although the Fraud Section will bring the cooperation of MLCI and MLCI Parent and their compliance with their other obligations under this Agreement to the attention of such agencies and authorities if requested to do so by MLCI and MLCI Parent.

16. It is further understood that MLCI, MLCI Parent, and the Fraud Section may disclose this Agreement to the public.

17. This Agreement sets forth all the terms of the agreement between MLCI, MLCI Parent, and the Fraud Section. No amendments, modifications or additions to this Agreement shall be valid unless they are in writing and signed by the Fraud Section, the attorneys for MLCI and MLCI Parent, and duly authorized representatives of MLCI and MLCI Parent.

Sincerely,

ROBERT A. ZINK  
Acting Chief, Fraud Section  
Criminal Division  
United States Department of Justice

Date: 6/25/19

BY: Ankush Khardori  
Ankush Khardori  
Avi Perry  
Trial Attorneys

AGREED AND CONSENTED TO:

Date: 25<sup>th</sup> June 2019

BY: Mark Elliott  
Mark Elliott  
Secretary and Vice President  
Merrill Lynch Commodities, Inc.

Date: 6/25/19

BY: David G. Leitch  
David G. Leitch  
Global General Counsel  
Bank of America Corporation

Date: 6/25/19

BY: Reginald J. Brown  
Reginald J. Brown  
Counsel for Merrill Lynch Commodities, Inc. and  
Bank of America Corporation



## **ATTACHMENT A**

### **STATEMENT OF FACTS**

The following Statement of Facts is incorporated by reference as part of the Non-Prosecution Agreement (the “Agreement”) between the United States Department of Justice, Criminal Division, Fraud Section (the “Fraud Section”) and Merrill Lynch Commodities, Inc. (“MLCI”). MLCI hereby stipulates that the following facts and conclusions of law are true and accurate. MLCI admits, accepts, and acknowledges that it is responsible for the acts of its officers, directors, employees, and agents as set forth below.

#### **MLCI and the Relevant Traders**

1. During the relevant period, MLCI, together with affiliates, operated global commodities trading businesses that included the trading of precious metals futures contracts and related products. MLCI was and remains an indirectly held, wholly owned subsidiary of Bank of America Corporation (“BAC”).

2. Edward Bases was employed as a precious metals trader at MLCI from approximately June 2010 until approximately November 2015, and was based in New York, New York. Bases traded precious metals futures contracts and related products in his capacity as a precious metals trader at MLCI.

3. John Pacilio was employed as a precious metals trader at MLCI from approximately October 2007 until approximately June 2011. Pacilio traded precious metals futures contracts and related products in his capacity as a precious metals trader at MLCI.

4. Trader 1, whose identity is known to the parties, was employed as a precious metals trader at an affiliate of MLCI from approximately June 2007 until approximately December 2013,

and was based in London, United Kingdom. Trader 1 traded precious metals futures contracts and related products in his capacity as a precious metals trader.

5. In addition to Bases, Pacilio, and Trader 1, MLCI and its affiliates employed other individuals as precious metals traders at desks in the United States, the United Kingdom, and elsewhere (collectively, the “Precious Metals Traders”). The Precious Metals Traders traded precious metals futures contracts and related products.

### **Market Background and Definitions**

6. A “futures contract” is a standardized, legally binding agreement that, once executed, obligates the parties to the contract to buy or sell a specific product or financial instrument in the future. That is, the buyer and seller of a futures contract agree on a price at the time of execution for a product or financial instrument to be delivered (by the seller) in exchange for money (to be provided by the buyer) on a future date.

7. Futures contracts are traded on markets designated and regulated by the United States Commodity Futures Trading Commission.

8. The CME Group Inc. (“CME Group”) is a commodities marketplace made up of several exchanges, including COMEX. COMEX, a wholly-owned subsidiary of CME Group, is a “registered entity” with the United States Commodity Futures Trading Commission.

9. COMEX utilizes an electronic trading system called Globex, which allows market participants to trade futures contracts from anywhere in the world. The CME Group operates Globex using computer servers located in Chicago and Aurora, Illinois.

10. Traders using Globex can place orders in the form of “bids” to buy or “offers” to sell one or more futures contracts at various prices, or “levels.”

11. Trading on Globex is conducted electronically using a visible “order book” that displays quantities of anonymous orders (*i.e.*, offers to sell futures contracts and bids to buy futures contracts).

12. An order is “filled” or “executed” when a buyer’s bid price and a seller’s offer price match for a particular contract.

13. The minimum price increment at which a futures contract can trade on COMEX is called a “tick,” and the value of a tick for each contract is set by COMEX.

14. A “lot” is the par quantity of a commodity deliverable under a particular commodity contract.

15. Futures contracts trade on set, periodic expiration cycles (*i.e.*, monthly or quarterly).

16. An “iceberg” order is a type of order that traders can place when trading precious metals futures contracts on COMEX. In an iceberg order, the total amount of the order is divided into a portion of a certain pre-set quantity that is visible to other market participants, and a portion of the order (*i.e.*, the remainder of the order) that is not visible. Whenever the visible portion of the order is filled, the same, pre-set quantity of the remaining, hidden portion automatically becomes visible; this process repeats until the entire remainder of the order is either executed or canceled.

17. Precious metals futures contracts include gold, silver, platinum, and palladium futures contracts, which are contracts for the delivery of gold, silver, platinum, and palladium, respectively, in the future at an agreed-upon price. The gold, silver, platinum, and palladium futures contracts are traded on COMEX, using the Globex system.

18. “Spoofing” is the act of bidding or offering with the intent, at the time the bid or offer is placed, to cancel the bid or offer before execution.

**The Scheme to Defraud Precious Metals Market Participants**

19. During the period from at least 2008 through 2014 (the “relevant period”), Bases, Pacilio, Trader 1, and one or more other Precious Metals Traders schemed to deceive other precious metals market participants by injecting materially false and misleading information into the precious metals futures market that indicated increased supply or demand, in order to induce those market participants to buy or to sell precious metals futures contracts at prices, quantities, and times that they likely would not have otherwise, in order to make money and avoid losses for those Precious Metals Traders and the financial institutions that employed them.

20. Bases, Pacilio, Trader 1, and one or more other Precious Metals Traders placed one or more visible orders for precious metals futures contracts on one side of the market that, at the time they placed the orders, they intended to cancel before execution (the “Fraudulent Orders”). Over the relevant period, Bases, Pacilio, and Trader 1 each placed at least hundreds of Fraudulent Orders.

21. By placing the Fraudulent Orders, Bases, Pacilio, Trader 1, and one or more other Precious Metals Traders intended to inject false and misleading information (*i.e.*, orders they did not intend to execute) into the market to create the false impression of increased supply or demand.

22. This false and misleading information would, at times, cause other market participants to buy and to sell futures contracts at quantities, prices, and times that they otherwise likely would not have, because, among other things, market participants reacted to the apparent increase in supply or demand.

23. Bases, Pacilio, Trader 1, and one or more other Precious Metals Traders placed Fraudulent Orders to buy, which created the false impression in the market of increased demand, which was intended to drive commodity futures prices up.

24. Bases, Pacilio, Trader 1, and one or more other Precious Metals Traders placed Fraudulent Orders to sell, which created the false impression in the market of increased supply, which was intended to drive commodity futures prices down.

25. Bases, Pacilio, Trader 1, and one or more other Precious Metals Traders placed lower visible quantity orders, often in the form of iceberg orders, on the opposite side of the market that they intended to execute (the “Primary Orders”).

26. Bases, Pacilio, Trader 1, and one or more other Precious Metals Traders placed Fraudulent Orders with an intent to artificially move the prevailing price in a manner that would increase the likelihood that one or more of their Primary Orders would be filled.

27. Bases, Pacilio, Trader 1, and one or more other Precious Metals Traders intended to, attempted to, and frequently did, cancel the Fraudulent Orders before any part of the Fraudulent Orders were executed.

28. In submitting and communicating about the Fraudulent Orders and Primary Orders, Bases, Pacilio, Trader 1, and one or more other Precious Metals Traders transmitted, and caused to be transmitted, wire communications from outside the State of Illinois into and through the Northern District of Illinois.

29. For instance, on or about November 16, 2010, Pacilio placed approximately six Fraudulent Orders to buy approximately 250 silver futures contracts at various prices, in order to

facilitate the execution of a Primary Order placed by Pacilio. Pacilio canceled all six Fraudulent Orders in less than 2.8 seconds without receiving any fills.

30. While engaging in the trading activity described in Paragraph 29, Pacilio acknowledged that it was his intent to engage in the use of Fraudulent Orders in an electronic “chat” conversation with other traders at MLCI or its affiliates, including Bases and Trader 1. Among other things, Pacilio wrote, “guys the algos are really geared up in here. if you spoof this it really moves.” Pacilio went on to explain that he “put in selling at 48 in silver. i bid 45 for 200. 46 and 47 for 20 each and got filled.”

31. As another example, Pacilio engaged in trading on or about February 11, 2011, in which he placed approximately three Fraudulent Orders to sell approximately 550 silver futures contracts at an approximate price of \$29.975, with an approximate total value of \$82,431,250, in order to facilitate the execution of a Primary Order by Trader 1. Pacilio canceled all three Fraudulent Orders in less than 1.2 seconds without receiving any fills.

32. Pacilio acknowledged in an electronic “chat” conversation with other traders at MLCI or its affiliates, including Bases and Trader 1, that it was his intent to “push[]” the market through the trading activity described in Paragraph 31 and that Trader 1 did not need to “spoof it” because Pacilio was placing Fraudulent Orders himself:

Pacilio:	that was me pushing it
Pacilio:	dont do it yourself. i will help you
Pacilio:	dont spoof it
Pacilio:	what did you get 70 lots there?
Trader 1:	Ok

Trader 1:                   Yep

33.     On or about June 10, 2011, as another example, Bases placed approximately four Fraudulent Orders to sell approximately 40 gold futures contracts at an approximate price of \$1,535.40, with an approximate total value of \$6,141,600, and five Fraudulent Orders to sell approximately 50 gold futures contracts at an approximate price of \$1,535.30, with an approximate total value of \$7,676,500, in order to facilitate the execution of a Primary Order by Trader 1. Bases canceled all nine Fraudulent Orders in less than 2.9 seconds, including canceling two Fraudulent Orders in less than one second, without receiving any fills.

34.     On or about February 9, 2012, as another example, Bases placed approximately three Fraudulent Orders to buy approximately 30 gold futures contracts at an approximate price of \$1,747.30, with an approximate total value of \$5,241,900, in order to facilitate the execution of a Primary Order by Trader 1. Bases canceled all three Fraudulent Orders in less than 1.5 seconds without receiving any fills.

35.     On or about January 10, 2014, as another example, Bases placed approximately four Fraudulent Orders to buy approximately 40 gold futures contracts at an approximate price of \$1,245.10, with an approximate total value of \$4,980,400, in order to facilitate the execution of a Primary Order placed by Bases. Bases canceled all four Fraudulent Orders in less than 1.5 seconds without receiving any fills.

36.     During the relevant period, Bases, Pacilio, Trader 1, and one or more other Precious Metals Traders placed hundreds of Primary Orders and thousands of Fraudulent Orders.

### **The Effects of the Scheme to Defraud**

37. As stated above, Bases, Pacilio, Trader 1, and one or more other Precious Metals Traders, in placing Fraudulent Orders, exposed other market participants that were trading precious metals futures contracts, including other financial institutions, to a risk of loss by inducing those market participants to buy and sell precious metals futures contracts at quantities, prices, and times that they otherwise likely would not.

38. In addition, the Fraudulent Orders placed by Bases, Pacilio, Trader 1, and one or more other Precious Metals Traders exposed MLCI to losses in the form of: (a) monetary trading losses associated with the trading risk that the Fraudulent Orders would be executed, thus requiring MLCI to unwind precious metals futures positions at a loss; (b) costs and expenses incurred through investigations, litigation, and proceedings arising from the underlying conduct, including the penalty and forfeiture amount being paid pursuant to the non-prosecution agreement; and (c) reputational harm relating to the conduct of Bases, Pacilio, Trader 1, and one or more other Precious Metals Traders.

39. During the events described in the foregoing Statement of Facts and through today, day-to-day operational losses and expenses (and gains) have rolled up to monthly, quarterly, and annual BAC financial statements. These include the investigative and litigation costs, as well as losses and fines, associated with the Department of Justice's investigation concerning the conduct described in the Statement of Facts. BAC was and remains a financial institution within the definition of 18 U.S.C. § 20.



## **ATTACHMENT B**

### **CORPORATE COMPLIANCE PROGRAM**

In order to address any deficiencies in the internal controls, compliance code, policies, and procedures regarding compliance with the wire fraud statute (18 U.S.C. § 1343), the securities and commodities fraud statute (18 U.S.C. § 1348), and the anti-spoofing provision of the Commodity Exchange Act (7 U.S.C. § 6c(a)(5)(C)) (collectively, the “Relevant Laws”) in MLCI Parent’s Global Markets’ Commodities Business (the “Commodities Business”), Merrill Lynch Commodities, Inc. (“MLCI”) and its ultimate parent (“MLCI Parent”) agree to conduct, in a manner consistent with all of their obligations under this Agreement, appropriate reviews of their existing internal controls, policies, and procedures concerning the Commodities Business.

Where necessary and appropriate, MLCI and MLCI Parent agree to modify their existing compliance program, including internal controls, compliance policies, and procedures, in order to ensure that they maintain a compliance program that is designed to effectively detect and deter violations of the Relevant Laws in the Commodities Business. At a minimum, this should include, but not be limited to, the following elements to the extent they are not already part of MLCI and MLCI Parent’s existing internal controls, compliance code, policies, and procedures:

#### **High-Level Commitment**

1. MLCI and MLCI Parent will ensure that their directors and senior management provide strong, explicit, and visible support and commitment to their policies against violations of the Relevant Laws and existing internal controls, policies, and procedures in the Commodities Business.

### **Policies and Procedures**

2. MLCI and MLCI Parent will develop and promulgate clearly articulated and visible corporate policies against violations of the Relevant Laws in the Commodities Business, which policy shall be memorialized in a written compliance code.

3. MLCI and MLCI Parent will develop and promulgate compliance policies and procedures designed to reduce the prospect of violations of the Relevant Laws and compliance code in the Commodities Business, and will take appropriate measures to encourage and support the observance of ethics and compliance policies and procedures against violation of the Relevant Laws by personnel at all levels of MLCI and MLCI Parent in the Commodities Business. These policies and procedures shall apply to all directors, officers, and employees in the Commodities Business. MLCI and MLCI Parent shall notify all such employees that compliance with the policies and procedures is the duty of individuals at all levels of MLCI and MLCI Parent.

### **Periodic Risk-Based Review**

4. MLCI and MLCI Parent will develop these compliance policies and procedures on the basis of a periodic risk assessment addressing the Relevant Laws as they relate to the Commodities Business.

5. MLCI and MLCI Parent shall review their compliance policies and procedures no less than annually and update them as appropriate to ensure their continued effectiveness.

### **Proper Oversight and Independence**

6. MLCI and MLCI Parent will assign responsibility to one or more senior corporate executives of MLCI and MLCI Parent with oversight of the Commodities Business for the implementation and oversight of their compliance code, policies, and procedures. Such corporate official(s) shall have the authority to report directly to independent monitoring bodies, including

internal audit, MLCI and MLCI Parent's Boards of Directors, or any appropriate committee of their Boards of Directors, and shall have an adequate level of autonomy from management as well as sufficient resources and authority to maintain such autonomy.

### **Training and Guidance**

7. MLCI and MLCI Parent will implement mechanisms designed to ensure that their compliance code, policies, and procedures are effectively communicated to all directors, officers, and employees in the Commodities Business. These mechanisms shall include: (a) periodic training for all Commodities Business directors and officers, all employees in positions of leadership or trust, positions that require such training (*e.g.*, internal audit, sales, legal, compliance, finance); and (b) corresponding certifications by all such directors, officers, employees, agents, and business partners, certifying compliance with the training requirements.

8. MLCI and MLCI Parent will maintain, or where necessary establish, an effective system for providing guidance and advice to directors, officers, and employees of the Commodities Business.

### **Internal Reporting and Investigation**

9. MLCI and MLCI Parent will maintain, or where necessary establish, an effective system for internal and, where possible, confidential reporting by, and protection of, directors, officers, employees, and, where appropriate, agents and business partners concerning violations of the Relevant Laws in the Commodities Business and those aspects of the corporate compliance program related thereto.

10. MLCI and MLCI Parent will maintain, or where necessary establish, an effective and reliable process with sufficient resources for responding to, investigating, and documenting allegations of violations of the Relevant Laws or their compliance code, policies, and procedures.

### **Enforcement and Discipline**

11. MLCI and MLCI Parent will implement mechanisms designed to effectively enforce their compliance code, policies, and procedures as they relate to the Commodities Business, including appropriately incentivizing compliance and disciplining violations.

12. MLCI and MLCI Parent will institute appropriate disciplinary procedures to address, among other things, violations of the Relevant Laws, and their compliance code, policies, and procedures by their directors, officers, and employees in the Commodities Business. Such procedures should be applied consistently and fairly, regardless of the position held by, or perceived importance of, the director, officer, or employee. MLCI and MLCI Parent shall implement procedures to ensure that where misconduct is discovered in the Commodities Business, reasonable steps are taken to remedy the harm resulting from such misconduct, and to ensure that appropriate steps are taken to prevent further similar misconduct, including assessing the internal controls, compliance code, policies, and procedures and making modifications necessary to ensure the overall compliance program is effective.

### **Mergers and Acquisitions**

13. MLCI and MLCI Parent will develop and implement policies and procedures for mergers and acquisitions requiring that MLCI and MLCI Parent conduct appropriate risk-based due diligence on potential new Commodities business entities, including appropriate due diligence by legal, accounting, and compliance personnel.

14. MLCI and MLCI Parent will ensure that their compliance code, policies, and procedures apply as quickly as is practicable to newly acquired Commodities businesses or entities merged with MLCI or MLCI Parent and will promptly (a) train the directors, officers, employees, agents, and business partners consistent with Paragraph 8 above; and (b) where warranted, conduct

an audit of all newly acquired or merged businesses as quickly as practicable concerning compliance with the Relevant Laws.

### **Monitoring and Testing**

15. MLCI and MLCI Parent will conduct periodic reviews and testing of its compliance code, policies, and procedures designed to evaluate and improve their effectiveness in preventing and detecting violations of the Relevant Laws and their code, policies, and procedures in the Commodities Business.

**ATTACHMENT C**  
**REPORTING REQUIREMENTS**

Merrill Lynch Commodities, Inc. (“MLCI”) and MLCI’s ultimate parent (“MLCI Parent”) agree that they will report to the Fraud Section periodically, at no less than twelve-month intervals during a three-year term, regarding remediation and implementation, where necessary and appropriate, of the compliance program and internal controls, policies, and procedures described in Attachment C. During this three-year period, MLCI and MLCI Parent shall: (1) conduct an initial review and submit an initial report, and (2) conduct and prepare at least two (2) follow-up reviews and reports, as described below:

1. By no later than one year from the date this Agreement is executed, MLCI and MLCI Parent shall submit to the Fraud Section a written report setting forth a complete description of their remediation efforts to date, their proposals reasonably designed to improve MLCI and MLCI Parent’s internal controls, policies, and procedures for ensuring compliance with the wire fraud statute (18 U.S.C. § 1343), the securities and commodities fraud statute (18 U.S.C. § 1348), and the anti-spoofing provision of the Commodity Exchange Act (7 U.S.C. § 6c(a)(5)(C)) (collectively, the “Relevant Laws”) in MLCI Parent’s Global Markets’ Commodities Business (the “Commodities Business”), and the proposed scope of the subsequent reviews. The report shall be transmitted to “Deputy Chief, Securities and Financial Fraud Unit, United States Department of Justice, Criminal Division, Fraud Section, 1400 New York Avenue, NW, Washington, DC 20530.” MLCI and MLCI Parent may extend the time period for issuance of the report with prior written approval of the Fraud Section.

2. MLCI and MLCI Parent shall undertake at least two follow-up reviews and reports, incorporating the Fraud Section’s views on MLCI and MLCI Parent’s prior reviews and reports,

to further monitor and assess whether their policies and procedures are reasonably designed to detect and prevent violations of the Relevant Laws in the Commodities Business.

3. The first follow-up review and report shall be completed by no later than one year after the initial report is submitted to the Fraud Section. The second follow-up review and report shall be completed and delivered to the Fraud Section no later than thirty days before the end of the Term.

4. The reports will likely include proprietary, financial, confidential, and competitive business information. Moreover, public disclosure of the reports could discourage cooperation, impede pending or potential government investigations and thus undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except as otherwise agreed to by the parties in writing, or except to the extent that the Fraud Section determines in its sole discretion that disclosure would be in furtherance of the Fraud Section's discharge of its duties and responsibilities or is otherwise required by law.

5. MLCI and MLCI Parent may extend the time period for submission of any of the follow-up reports with prior written approval of the Fraud Section.