

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2017055087003**

TO: Department of Enforcement
Financial Industry Regulatory Authority (FINRA)

RE: Merrill Lynch, Pierce, Fenner & Smith, Incorporated,
CRD No. 7691, and

BofA Securities, Inc.,
CRD No. 283942
Respondents

Pursuant to FINRA Rule 9216, Respondents Merrill Lynch, Pierce, Fenner & Smith, Incorporated (“Merrill”) and BofA Securities, Inc. (“BofAS”) (together, “BAML” or the “firm”)¹ submit this Letter of Acceptance, Waiver, and Consent (AWC) for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against Respondents alleging violations based on the same factual findings described in this AWC.

I.

ACCEPTANCE AND CONSENT

A. Respondents accept and consent to the following findings by FINRA without admitting or denying them:

BACKGROUND

Merrill has been a FINRA member since January 1937. Its principal place of business is New York, New York. Merrill is a broker-dealer providing a broad range of financial services including sales and trading services, retail brokerage, and wealth management services. Merrill employs approximately 28,000 registered representatives in approximately 3,800 branch offices worldwide.

BofAS has been a FINRA member since January 2018. Its principal place of business is New York, New York. BofAS is a broker-dealer providing a broad range of financial services, including sales and trading, market making, investment banking, and

¹ Culminating in May 2019, BAML’s parent company, Bank of America Corporation (“BAC”) restructured Merrill’s operations. Merrill’s institutional broker-dealer operations were transferred to BofAS, including its assets and liabilities. Trade surveillance functions that were previously aligned to Merrill’s institutional business units are now aligned to BofAS, and Merrill now has its own trade surveillance function for retail customer trading.

underwriting. BofAS employs approximately 5,400 registered individuals at approximately 150 branch offices.²

In September 2018, Merrill consented to a censure, a cross-market fine of \$125,000, and an undertaking for violations of NYSE Arca Rules 11.18(a), (b) and (c) and 11.1(b) and rules of other exchanges for failing to reasonably supervise trading activity for potential cross-product manipulation or mini-manipulation and failing to adhere to principles of good business practice in the conduct of its affairs.

OVERVIEW

From December 2015 through the present, Merrill and, since 2019, BofAS, failed to have a supervisory system reasonably designed to detect and prevent potentially manipulative trading by the firm's customers, in violation of FINRA Rules 3110(a), 3110(b), and 2010.

FACTS AND VIOLATIVE CONDUCT

BAML failed to establish and maintain a supervisory system and written supervisory procedures reasonably designed to detect potentially manipulative trading.

FINRA Rule 3110(a) requires each member to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. FINRA Rule 3110(b) requires each member to “establish, maintain and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.”

FINRA Rule 2010 requires a member, in the conduct of its business, to observe high standards of commercial honor and just and equitable principles of trade. A violation of FINRA Rule 3110 is also a violation of FINRA Rule 2010.

During the relevant period, the firm's supervisory system for detecting potentially manipulative trading through the firm's platforms was not reasonably designed. The firm relied on a number of third-party automated surveillances to surveil for potentially manipulative activity, including wash trading and prearranged trading. These surveillances were deficient in several respects.

First, the parameters in the firm's automated surveillance system were too narrow to identify potentially manipulative wash trading and prearranged trading. For example:

- a. The parameters unreasonably limited the firm's surveillance for potential wash trades to trades that (1) occurred between the same account and were executed simultaneously (or later during the relevant period, in some cases, within ten

² For more information about Merrill and BofAS, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

seconds); or (2) occurred for the same volume and price, and were reversed back to the original account (i.e., shares sent by A to B were subsequently sold back to A by B). Manipulative wash trading is not limited to trades that occur in the same account and execute simultaneously, or occur for the same volume and price and involve reversals.

b. The trade surveillance system only flagged potentially manipulative prearranged trades if the trades were reversed back to the original account (i.e., shares sent by A to B were subsequently sold back to A by B) or if they executed simultaneously. Manipulative prearranged trades are not limited to transactions that involve trade reversals or execution at the same time.

Second, the firm did not take reasonable steps during the relevant period to determine whether these parameters were reasonable or whether changes to the parameters or additional surveillances were necessary to reasonably surveil for wash trades and potentially manipulative prearranged trading. The firm could not explain why it initially selected the particular modules that it used or why it did not select other modules that were available from the vendor. Additionally, although the firm's procedures included a review process for one of its surveillance systems, the procedures provided insufficient guidance regarding how parameter change decisions should be made or documented.

Third, at certain times during the relevant period, Merrill excluded from its surveillances trading in OTC securities and warrants. Between July 2017 and October 2018, Merrill failed to have a surveillance system in place to detect wash trading, prearranged trades, matched trades or spoofing and layering in OTC securities because Merrill had failed to purchase the OTC data feed from its third-party vendor. Prior to January 2019, Merrill had no system to detect wash trading in warrants. Although Merrill's surveillance system was capable of surveilling for wash trading in warrants in 2016, because of a coding error, Merrill did not include warrants in the surveillance modules until January 2019.

Fourth, from October 2016 to August 2020, the firm failed to review alerts generated by three of its wash trading and prearranged trading surveillance patterns in equities and options. The firm did not discover the issue until August 2020, when responding to a regulatory inquiry, even though there were numerous red flags, such as internal testing results, that should have alerted the firm to the fact that these alerts were not being reviewed. Overall, the firm did not review approximately 155 alerts representing approximately 700 potentially manipulative equity trades and approximately 1,000 alerts representing approximately 125,000 potentially manipulative options trades.

Therefore, BAML violated FINRA Rules 3110(a), 3110(b), and 2010.

B. BAML also consents to the imposition of the following sanctions:

- a censure;
- a \$3 million fine, of which \$669,000 shall be paid to FINRA;³ and
- An undertaking that, within 180 days of the date of the notice of acceptance of this AWC, a member of Respondents' senior management who is a registered principal of the firm shall certify in writing that, as of the date of the certification, the firm has remediated the issues identified in this AWC and implemented a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with Rules 3110(a), 3110(b), and 2010 regarding the issues identified in this AWC. The certification shall include a narrative description and supporting exhibits sufficient to demonstrate Respondent's remediation and implementation. FINRA staff may request further evidence of Respondent's remediation and implementation, and Respondent agrees to provide such evidence. Respondents shall submit the certification to Carly Kostakos, Senior Counsel, carly.kostakos@finra.org, with a copy to EnforcementNotice@finra.org. Upon written request showing good cause, FINRA staff may extend this deadline.

Respondents agree to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondents have submitted an Election of Payment form showing the method by which they propose to pay the fine imposed.

Respondents specifically and voluntarily waive any right to claim an inability to pay, now or at any time after the execution of this AWC, the monetary sanction imposed in this matter.

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondents specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a complaint issued specifying the allegations against them;
- B. To be notified of the complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made, and to have a written decision issued; and

³ The remainder will be paid to Cboe BYX Exchange, Inc. (BYX); Cboe BZX Exchange, Inc. (BZX); Cboe EDGA Exchange, Inc. (EDGA); Cboe EDGX Exchange, Inc. (EDGX); Investors Exchange LLC (IEX); The Nasdaq Stock Market LLC (Nasdaq); and NYSE Arca, Inc. (NYSE Arca).

- D. To appeal any such decision to the National Adjudicatory Council (NAC) and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondents specifically and voluntarily waive any right to claim bias or prejudice of the Chief Legal Officer, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

Respondents further specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

Respondents understand that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondents; and
- C. If accepted:
 - 1. this AWC will become part of Respondents' permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondents;
 - 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
 - 3. FINRA may make a public announcement concerning this agreement and its subject matter in accordance with FINRA Rule 8313; and
 - 4. Respondents may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Respondents may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing

in this provision affects Respondents' right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondents' testimonial obligations in any litigation or other legal proceedings.

- D. Respondents may attach a corrective action statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that it may not deny the charges or make any statement that is inconsistent with the AWC in this statement. This statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA.

The undersigned, on behalf of Respondents, certifies that a person duly authorized to act on Respondents' behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that Respondents have agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce Respondents to submit this AWC.

August 19, 2024
Date

Merrill Lynch, Pierce, Fenner & Smith,
Incorporated
Respondent

By: Russel Francisco

Name: Russel D. Francisco

Title: Associate General Counsel, Senior VP

August 19, 2024
Date

BofA Securities, Inc.
Respondent

By: Joaquin M. Sena

Name: Joaquin M. Sena

Title: Deputy General Counsel

Reviewed by:

Michael J. Leotta

Counsel for Respondents

Michael J. Leotta

Wilmer Cutler Pickering Hale and Dorr LLP

2100 Pennsylvania Avenue NW

Washington, District of Columbia 20037

Accepted by FINRA:

Signed on behalf of the
Director of ODA, by delegated authority

August 28, 2024

Date

Carly M. Kostakos

Carly M. Kostakos

Senior Counsel

FINRA

Department of Enforcement

9509 Key West Avenue

Rockville, MD 20850