

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2019061061701**

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

RE: BofA Securities, Inc. (Respondent)
Member Firm
CRD No. 283942

Pursuant to FINRA Rule 9216, Respondent BofA Securities, Inc. ("BofAS" or "the firm") submits 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 Respondent alleging violations based on the same factual findings described in this AWC.

I.

ACCEPTANCE AND CONSENT

A. Respondent accepts and consents to the following findings by FINRA without admitting or denying them:

BACKGROUND

BofAS has been a FINRA member since 2018 and is headquartered in New York, New York. It is a full-service broker-dealer providing a broad range of financial services including sales and trading services, market making, investment banking, and underwriting. The firm also sponsors and operates an Alternative Trading System (ATS) known as Instinct-X.¹ BofAS employs approximately 5,000 registered representatives in approximately 130 branch offices.²

OVERVIEW

From January 2014 through February 2022, BofAS published inaccurate data in 107 monthly reports it was required to publish pursuant to Regulation NMS Rule 605 (Rule 605 reports). Of these 107 reports, 98 were for its broker-dealer and nine for Instinct-X (MLIX). As a result, BofAS violated Rule 605 and FINRA Rule 2010.

¹ Merrill Lynch, Pierce, Fenner & Smith Incorporated (MLPF&S), CRD No. 7691, has been a FINRA member since 1937. In May 2019, MLPF&S reorganized into two separate entities—MLPF&S and BofAS. The legacy institutional sales and trading business of MLPF&S, including the assets and liabilities of its market making functions and the ATS, transitioned to BofAS in that reorganization.

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

From January 2014 to November 2021, BofAS did not have a supervisory system, including written supervisory procedures (WSPs), that was reasonably designed to achieve compliance with Rule 605. Through this conduct, BofAS violated NASD Rule 3010 and FINRA Rules 3110 and 2010.³

FACTS AND VIOLATIVE CONDUCT

This matter originated from an investigation conducted by FINRA's Market Regulation Department.

BofAS published 107 inaccurate monthly reports of order executions.

In June 2005, the Securities and Exchange Commission adopted Regulation NMS, which established new rules designed to modernize and strengthen the regulatory structure of the U.S. equities markets. Regulation NMS Rule 605 (formerly Rule 11Ac1-5 of the Securities Exchange Act of 1934)⁴ requires market centers to disclose certain order execution information, facilitating the uniform public disclosure of order execution information.

Rule 605 requires a market center that trades NMS securities to make available to the public monthly electronic reports containing uniform statistical measures of execution quality. Those measures include categorization of covered orders⁵ executed or canceled by security, order type, and order size. Rule 605 also requires the classification of order types, including marketable limit orders and inside-the-quote limit orders. A violation of Rule 605 is also a violation of FINRA Rule 2010, which states that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."

From January 2014 through February 2022, the firm had two market centers, its broker-dealer (MLCO) and its ATS (MLIX), for which it was required to report separate statistical information concerning order executions under Rule 605. From January 2014 through April 2021, BofAS published statistical information concerning order executions for MLCO and MLIX together on its publicly available Rule 605 monthly reports for MLCO rather than in separate reports for each market center, and classified MLIX executions as "away executed shares" in that report. Further, as a result of the combined report, the firm inaccurately categorized certain mid-point peg immediate or cancel

³ FINRA Rule 3110 superseded NASD Rule 3010 on December 1, 2014.

⁴ Regulation NMS, among other things, renumbered certain SEC rules, including former Rule 11Ac1-5.

⁵ A covered order is defined in Regulation NMS Rule 600(b)(22) as "any market order or any limit order (including immediate-or-cancel orders) received by a market center during regular trading hours at a time when a national best bid and national best offer is being disseminated, and, if executed, is executed during regular trading hours, but shall exclude any order for which the customer requests special handling for execution, including, but not limited to, orders to be executed at a market opening price or a market closing price, orders submitted with stop prices, orders to be executed only at their full size, orders to be executed on a particular type of tick or bid, orders submitted on a 'not held' basis, orders for other than regular settlement, and orders to be executed at prices unrelated to the market price of the security at the time of execution."

orders in order type categories other than the inside-the-quote order type category, and certain immediate or cancel orders within the market order type category rather than the marketable limit order type category. The firm implemented a separate stand-alone report for MLIX in April 2021 that prevents these types of issues from recurring.

Moreover, from January 2014 through February 2022, various technological issues caused the firm to publish inaccurate Rule 605 reports for MLCO. First, from January 2014 through April 2021, the firm misclassified orders based on inaccurate order quantities that did not reflect a reduction for prior executions. Second, from April 2019 through April 2021, the firm did not properly attribute executions to the correct canceled-and-replaced order, misclassified orders using incorrect quotations within the same second, and misclassified some inside-the-quote orders as at-the-quote orders (as a result of some areas of the firm reporting in milliseconds and other areas of the firm, and the firm's Rule 605 vendor, reporting in seconds). Third, from May 2021 through February 2022, the firm excluded certain reportable executions from the MLCO report. For instance, some reportable orders were excluded because of a broken linkage in the firm's smart order router that caused some orders filled by MLIX to not be reflected accurately, or at all, in the MLCO report, and others were excluded because of missing or incorrect order IDs that resulted in the receipt of fills not being linked to the original order.

Finally, from April 2021 to October 2021, three inaccuracies occurred within the firm's new, stand-alone MLIX 605 report. These inaccuracies were the result of coding errors that caused the firm to exclude certain reportable, executed orders from the MLIX report.

In total, from January 2014 through February 2022, the firm published 98 inaccurate monthly Rule 605 reports of order executions by MLCO and nine inaccurate monthly Rule 605 reports of order executions by MLIX, for a total of 107 inaccurate Rule 605 reports.

Therefore, the firm violated Regulation NMS Rule 605 and FINRA Rule 2010.

BofAS's supervisory system was not reasonably designed to achieve compliance with Regulation NMS Rule 605.

FINRA Rule 3110(a), like its predecessor NASD Rule 3010(a), provides, in part, that "[e]ach member shall 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." A violation of Rule 3110 is also a violation of FINRA Rule 2010.

From January 2014 to November 2021, the firm's supervisory system, including its written procedures, was not reasonably designed to achieve compliance with Regulation NMS Rule 605. During that time, the firm had no system to check the accuracy of the order executions it reported on its Rule 605 report. Although the firm implemented surveillances to check the accuracy of particular aspects of its Rule 605 reports in April

2021, it was not until November 2021 that the firm implemented a system that checks for a broader set of inconsistencies and potentially missing information

Therefore, the firm violated NASD Rule 3010(a) and FINRA Rules 3110(a) and 2010.

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

- a censure; and
- a \$325,000 fine.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Respondent specifically and voluntarily waives 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

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a complaint issued specifying the allegations against it;
- 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
- 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, Respondent specifically and voluntarily waives any right to claim bias or prejudgment 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.

Respondent further specifically and voluntarily waives 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

Respondent understands 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 Respondent; and
- C. If accepted:
 - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondent;
 - 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. Respondent 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. Respondent 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 Respondent's 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 Respondent's testimonial obligations in any litigation or other legal proceedings.
- D. Respondent may attach a corrective action statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands 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 Respondent, certifies that a person duly authorized to act on Respondent's 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 Respondent has 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 Respondent to submit this AWC.

July 6, 2022
Date

J. David Montague for
BoFA Securities, Inc.
Respondent

Print Name: J. David Montague

Title: Associate General Counsel

Reviewed by:

Elizabeth Hogan
Elizabeth Hogan
Counsel for Respondent
McGuireWoods LLP
888 16th Street N.W., Ste. 500
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Accepted by FINRA:

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

7/14/22
Date

Shawn R. Mallon
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