

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2021071732701**

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. 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

BofA Securities, Inc. (BofAS) has been a FINRA member since January 2018.¹ 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 underwriting. BofAS employs approximately 5,300 registered individuals at approximately 130 branch offices worldwide.

In April 2018, FINRA censured and fined BofAS \$115,000, and imposed an undertaking on the firm to revise its written supervisory procedures (WSPs) in connection with finding that it violated Rules 611(a) and (c) of Regulation National Market System (NMS) of the Securities Exchange Act of 1934 (Exchange Act Rule 611), NASD Rule 3010 and FINRA Rules 6380A and 2010 for activity that took place between September 2012 and March 2014.

¹ Merrill Lynch, Pierce, Fenner & Smith Incorporated (MLPF&S) has been a FINRA member since January 1937. In May 2019, MLPF&S reorganized into two separate entities - MLPF&S and BofAS. In this reorganization, BofAS acquired MLPF&S's institutional business. Trade surveillance functions that were previously aligned to MLPF&S's institutional business units are now aligned to BofAS, and MLPF&S now has its own trade surveillance function for retail customer trading. The conduct at issue involves only institutional customers and occurred before and after the reorganization of MLPF&S. BofAS assumed the assets and liabilities of MLPF&S's institutional business as part of the reorganization. For purposes of this AWC, Respondent will be referred to as BofAS.

In February 2018, Cboe BYX Exchange, Inc. and Cboe BZX Exchange, Inc. censured and fined BofAS a total of \$135,000 and imposed an undertaking on the firm to revise its WSPs in connection with finding that it violated Exchange Act Rule 611(c) and relevant exchange supervision rules for activity that took place between May 2011 and June 2015.²

OVERVIEW

From at least September 2014 through at least July 2023, BofAS violated Exchange Act Rules 611(a)(1), (a)(2) and (c), and FINRA Rules 6380A(a)(5)(I) and (J), and 2010 by, among other things, failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent trade-throughs of protected quotations in NMS stocks resulting from system issues and assure that its intermarket sweep orders (ISOs) complied with Regulation NMS. It also violated NASD Rule 3010 and FINRA Rules 3110 and 2010 by failing to establish and maintain a supervisory system, including WSPs, reasonably designed to achieve compliance with Exchange Act Rule 611. For these violations, the firm is censured and fined \$155,000.

FACTS AND VIOLATIVE CONDUCT

This matter originated from surveillance conducted by FINRA on behalf of itself and multiple exchanges, and from a referral from an exchange.

BofAS violated Exchange Act Rule 611.

Exchange Act Rule 611 promotes intermarket price protection by restricting “trade-throughs,” which are defined by Rule 600(b)(105) as “the purchase or sale of an NMS stock during regular trading hours, either as principal or agent, at a price that is lower than a protected bid or higher than a protected offer.”³ Trade-through protection prevents unfairness to investors and facilitates best execution of customer orders.

Rule 611(a)(1) requires trading centers⁴ to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs that do not fall within one of the exceptions set forth in Rule 611(b), and, if relying on such an exception, that are reasonably designed to assure compliance with the exception’s terms.

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

³ Rule 600(b)(105) currently includes this definition. During the period of violative conduct, September 2014 through July 2023, this definition was included in Rule 600(b)(77) (until November 2018), then Rule 600(b)(81) (until April 2021) and then Rule 600(b)(94) (until April 2024).

⁴ Rule 600(b)(106) currently defines “trading center” to include “an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.” During the period of violative conduct, this definition was included in Rule 600(b)(78) (until November 2018), then Rule 600(b)(82) (until April 2021), and then Rule 600(b)(95) (until April 2024).

Rule 611(a)(2) requires trading centers to conduct regular surveillance to ascertain the effectiveness of its Rule 611 compliance program and to take prompt action to remedy any deficiencies.

Rule 611(b) sets forth nine exceptions to the general prohibition against trade-throughs. One of these exceptions, known as the “Outbound ISO Exception,” under Rule 611(b)(6), permits trading centers to execute trade-throughs when they simultaneously route ISOs to execute against the full displayed size of any protected quotation in the NMS stock that was traded through. The Securities and Exchange Commission’s (SEC) guidance on Rule 611 supports that a delay of up to five seconds between routing an ISO and executing a block trade-through can qualify as simultaneous for application of the Outbound ISO Exception when certain circumstances are met.⁵

Rule 611(c) requires trading centers that route ISOs to take reasonable steps to establish that those ISOs meet the requirements of Rule 600(b)(47). That rule defines an ISO as a limit order for an NMS stock that meets the following requirements: (i) when routed to a trading center, the limit order is identified as an ISO; and (ii) simultaneously with the routing of the limit order identified as an ISO, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid (offer), in the case of a limit order to sell (buy) for the NMS stock with a price that is superior to the limit price of the limit order identified as an ISO.⁶

A violation of Exchange Act Rule 611 constitutes a violation of FINRA Rule 2010, which requires FINRA members “to observe high standards of commercial honor and just and equitable principles of trade” in the conduct of their business.

FINRA Rules 6380A(a)(5)(I) and (J) require that trade-throughs reported to FINRA include modifiers identifying the specific applicable exemption under Rule 611(b), including the Outbound ISO Exception. A violation of FINRA Rule 6380A is also a violation of FINRA Rule 2010.

From at least September 2014 through August 2022, BofAS executed approximately 11,089 off-exchange trade-throughs that it reported to FINRA with an Outbound ISO Exception modifier; however, systemic latency issues prevented the firm from executing the trade-throughs simultaneously. Instead, they were executed, in limited circumstances, one second or more after ISOs were routed. The intermittent delays were the unintended consequence of the firm’s programming choices for two components of its electronic order management systems that the firm had implemented by September 2014 and May 2016, respectively. Because these delays were unintentional and not for the purpose

⁵ See SEC Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS, Question 3.03 (stating that a delay of up to five seconds could be permitted so that a trading center can adjust the size of the block trade it reports after it receives ISO fills).

⁶ During the period of violative conduct, this definition was included in Rule 600(b)(30) (until November 2018), then Rule 600(b)(31) (until April 2021), and then Rule 600(b)(38) (until April 2024).

of allowing customers to obtain the benefit of better ISO pricing, the Outbound ISO Exception did not apply to these trade-throughs.

From at least January 2015 through July 2023, one of BofAS's electronic order management systems ingested and processed market data from the national exchanges for the top eight levels of quotations for each NMS stock displayed by each exchange, as part of the firm's process of taking market snapshots and routing ISOs to protected quotations. If there was no protected quote among the top eight quotations (because of a prevalence of odd lots in the direct market data feeds), the firm's electronic order management system did not route an ISO to that exchange. As a result, between June 2022 through August 2022, BofAS executed approximately 42 potential trade-throughs without routing necessary ISOs.

From at least November 2019 through June 2020, a BofAS trading desk manually executed orders outside of the national best bid and offer (NBBO) price for customer facilitations and manually executed certain position transfers outside the NBBO during market hours, resulting in off-exchange trade-throughs of NMS stocks. In November 2019, BofAS allowed approximately 47 trade-throughs as a result of this manual order execution that did not qualify for a Rule 611(b) exception.

From at least January 2021 through at least April 2021, BofAS routed ISOs with incorrect FIX tag information from the customer regarding an associated clearing firm, which resulted in exchanges rejecting 3,475 ISOs. This resulted in BofAS executing 23 trade-throughs without routing necessary ISOs.

Additionally, BofAS did not conduct regular surveillance of its Rule 611 compliance program to detect the above-referenced issues.

Therefore, from at least September 2014 through at least July 2023, BofAS violated Exchange Act Rule 611(a)(1), (a)(2) and (c), and FINRA Rules 6380A(a)(5)(I) and (J), and 2010.

BofAS' supervisory system and WSPs were not reasonably designed to comply with Exchange Act Rule 611.

FINRA Rule 3110(a), and its predecessor, NASD Rule 3010(a),⁷ require a member firm 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) and its predecessor, NASD Rule 3010(b),⁸ require a member firm to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its

⁷ FINRA Rule 3110(a) superseded NASD Rule 3010(a) on December 1, 2014.

⁸ FINRA Rule 3110(b) superseded NASD Rule 3010(b) on December 1, 2014.

associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.

A violation of NASD Rule 3010 and FINRA Rule 3110 also constitute a violation of FINRA Rule 2010.

From at least September 2014 through at least July 2023, BofAS' supervisory system was not reasonably designed to achieve compliance with Exchange Act Rule 611 because the firm's supervision process did not include a system or written procedures designed to detect and review potential trade-throughs reported with an Outbound ISO Exception modifier without simultaneously-routed ISOs. Further, the firm's WSPs did not include specific guidance for supervisors regarding how to review the validity of Exchange Act Rule 611 exception modifiers applied to trade-throughs.

From at least January 2015 through July 2023, BofAS's supervisory system and WSPs were not reasonably designed to detect and review trade-throughs that resulted from the firm's electronic order management system only ingesting and processing market data from the national exchanges for the top eight price levels of quotations for NMS stocks.

From at least November 2019 through June 2020, BofAS's supervisory system and WSPs were not reasonably designed to detect and review manually-executed trade-throughs by the firm's trading personnel on one of its trading desks.

From at least January 2021 through at least August 2022, BofAS's supervisory system and WSPs were not reasonably designed to review ISO rejection messages that national exchanges sent after BofAS routed ISOs and potential resulting trade-throughs that may have occurred as a result of those rejections.

Therefore, from at least September 2014 through at least July 2023, BofAS violated FINRA Rules 3110(a), 3110(b) and 2010, and NASD Rule 3010.

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

- a censure;
- a \$155,000 fine (resolved simultaneously with similar matters for a total fine of \$450,000).⁹

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.

⁹ Those matters were brought by Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., and The New York Stock Exchange, LLC.

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 persons duly authorized to act on Respondent's behalf have read and understands all of the provisions of this AWC and have 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.

October 10, 2025

Date

ALLISON LAYSON

BofA Securities, Inc.
Respondent

Print Name: ALLISON LAYSON

Title: Associate General Counsel

Reviewed by:

Elizabeth J. Hogan

Elizabeth J. Hogan
Counsel for Respondent
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Accepted by FINRA:

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

October 27, 2025

Date

John Sheehan

John Sheehan
Senior Counsel
FINRA
Department of Enforcement
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