

**NYSE ARCA, INC.
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2017055087008**

TO: NYSE Arca, Inc.

RE: Merrill Lynch, Pierce, Fenner & Smith, Incorporated, and BofA Securities, Inc.,
Respondents
CRD No. 7691 and CRD No. 283942

During the period between December 2015 and July 2019, Merrill Lynch, Pierce, Fenner & Smith, Incorporated, and during the period between July 2019 to the present, BofA Securities, Inc. (together, the “Relevant Period”), failed to establish, maintain, and enforce a supervisory system and written supervisory procedures that were reasonably designed to detect and prevent potentially manipulative trading, in violation of NYSE Arca Rules 11.18(b) and (c) (Supervision). Consent to a censure and a fine of \$333,000 (resolved simultaneously with similar matters for a total fine of \$3,000,000).¹

* * *

Pursuant to Rule 10.9216 of the NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) Code of Procedure, Merrill Lynch, Pierce, Fenner & Smith, Incorporated (“Merrill”) and BofA Securities (“BofAS”) (together, “BAML” or the “Firm”)² 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, NYSE Arca will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

I. ACCEPTANCE AND CONSENT

A. BAML hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NYSE Arca, or to which NYSE Arca is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by NYSE Arca:

¹ Those matters were brought by FINRA, The Nasdaq Stock Market, LLC, Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., and Investors Exchange, LLC.

² 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.

BACKGROUND AND JURISDICTION

1. Merrill became registered as an Equities Trading Permit (“ETP”) holder with NYSE Arca in October 1958. 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. Merrill’s registration with NYSE Arca was terminated on July 27, 2019.³
2. BofAS became registered as an ETP holder with NYSE Arca in March 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 underwriting. BofAS employs approximately 5,400 registered individuals at approximately 150 branch offices.

VIOLATIONS

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

3. NYSE Arca Rule 11.18(b)⁴ provides that each ETP Holder “must establish and maintain a system to supervise the activities of its associated persons and the operations of its business. Such system must be reasonably designed to ensure compliance with applicable federal securities laws and regulations and NYSE Arca Rules.” NYSE Arca Rule 11.18(c) requires an ETP Holder to “establish, maintain and enforce written procedures to supervise the business in which it engages and to supervise the activities of its associated persons that are reasonably designed to ensure compliance with applicable federal securities laws and regulations, and with NYSE Arca Rules.”
4. 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.
5. *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

³ The Exchange retains jurisdiction over the Firm pursuant to NYSE Arca Rule 10.1(b).

⁴ Prior to August 17, 2017, the rules involved in this matter were called NYSE Arca Equities rules. All rule references herein are to the NYSE Arca rules that are currently in effect.

executed simultaneously (or later during the Relevant Period, in some cases, within ten 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.
6. *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.
7. *Third*, 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.
8. *Fourth*, from October 2016 to July 2019, 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.
9. Therefore, during the Relevant Period, the Firm failed to establish, maintain, and enforce a supervisory system and written supervisory procedures that were reasonably designed to ensure compliance with applicable federal securities laws and regulations and NYSE Arca rules relating to potentially manipulative trading.
10. As a result, BAML violated NYSE Arca Rule 11.18(b) and (c).

RELEVANT PRIOR DISCIPLINARY HISTORY

11. 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.

SANCTIONS

B. The Firm also consents to the imposition of the following sanctions:

1. **Censure and a joint and several fine in the amount of \$333,000 (resolved simultaneously with similar matters for a total fine of \$3 million).**⁵

The Firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. The Firm has submitted a Method of Payment Confirmation form showing the method by which it will pay the fine imposed.

The Firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

The sanctions imposed herein shall be effective on a date set by NYSE Regulation staff.

II. WAIVER OF PROCEDURAL RIGHTS

The Firm specifically and voluntarily waives the following rights granted under the NYSE Arca Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the Firm;
- B. To be notified of the Formal 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 Exchange's Board of Directors and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the Firm specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Regulatory Officer of NYSE Arca; the Exchange's Board of Directors, Disciplinary Action Committee ("DAC"), and Committee for Review ("CFR"); any Director, DAC member, or CFR member; Counsel to the Exchange Board of Directors or CFR; any other NYSE Arca

⁵ Those matters were brought on behalf of FINRA, The Nasdaq Stock Market, LLC, Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., and Investors Exchange, LLC.

employee; or any Regulatory Staff as defined in Rule 10.9120 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 acceptance or rejection of this AWC.

The Firm further specifically and voluntarily waives any right to claim that a person violated the ex parte communication prohibitions of Rule 10.9143 or the separation of functions prohibitions of Rule 10.9144, 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

The Firm understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed by NYSE Regulation, and accepted by the Chief Regulatory Officer of NYSE Arca pursuant to NYSE Arca Rule 10.9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the Firm; and
- C. If accepted:
 1. The AWC shall be sent to each Director and each member of the Committee for Review via courier, express delivery or electronic means, and shall be deemed final and shall constitute the complaint, answer, and decision in the matter, 10 days after it is sent to each Director and each member of the Committee for Review, unless review by the Exchange Board of Directors is requested pursuant to NYSE Arca Rule 10.9310(a)(1)(B);
 2. This AWC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by the Exchange, or any other regulator against the Firm;
 3. NYSE Arca shall publish a copy of the AWC on its website in accordance with NYSE Arca Rule 10.8313;
 4. NYSE Arca may make a public announcement concerning this agreement and the subject matter thereof in accordance with NYSE Arca Rule 10.8313; and
 5. The Firm 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. The Firm may not take any position in any proceeding brought by or on behalf of the Exchange, or to which the Exchange is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Firm's (i) testimonial obligations; or (ii) right to take legal or

factual positions in litigation or other legal proceedings in which the Exchange is not a party.

- D. A signed copy of this AWC and the accompanying Method of Payment Confirmation form delivered by email, facsimile or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy.
- E. The Firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. Any such statement does not constitute factual or legal findings by the Exchange, nor does it reflect the views of NYSE Regulation or its staff.

The Firm certifies that, in connection with each of the Exchange's requests for information in connection with this matter, the Firm made a diligent inquiry of all persons and systems that reasonably had possession of responsive documents and that all responsive documents have been produced or identified in a privilege log. In agreeing to the AWC, the Exchange has relied upon, among other things, the completeness of the document productions and the privilege log.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its 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 it 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 herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the Firm to submit it.

August 19, 2024

Date

Merrill Lynch, Pierce, Fenner & Smith,
Incorporated,
Respondent

By: Russel Francisco

Russel D. Francisco
Associate General Counsel, Senior VP

August 19, 2024

Date

BofA Securities, Inc.,
Respondent

By: Joaquin M. Sena

Joaquin M. Sena
Deputy General Counsel

Reviewed by:

Michael J. Leotta

Michael J. Leotta
Wilmer Cutler Pickering Hale and Dorr LLP
2100 Pennsylvania Avenue NW
Washington D.C. 20037
Counsel for Respondents

Accepted by FINRA

August 19, 2024

Date

Carly M. Kostakos

Carly M. Kostakos
Senior Counsel
FINRA, Department of Enforcement

Signed on behalf of NYSE Arca, Inc., by
delegated authority from its Chief
Regulatory Officer