



**DISCIPLINARY DECISION**  
**Cboe EDGX Exchange, Inc.**  
**File No. URE-12-07/Star No. 20170550870-07**  
**Merrill Lynch, Pierce, Fenner & Smith, Incorporated**  
**and BofA Securities, Inc.**

Pursuant to Exchange Rule 8.3, attached to and incorporated as part of this Decision is a Letter of Consent.

**Applicable Rule**

- Exchange Rule 5.1 – Written Procedures.

**Sanction**

A censure and a monetary fine in the amount of \$333,000.

**Effective Date**

August 20, 2024

/s/ Greg Hoogasian

Greg Hoogasian, CRO, EVP

**Cboe EDGX Exchange, Inc.**  
**LETTER OF CONSENT**  
**File No. URE-12-07/Star No. 2017055087007**

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In the Matter of:

Merrill Lynch, Pierce, Fenner & Smith, Incorporated  
One Bryant Park  
New York, NY, 10036

and

BofA Securities, Inc.  
One Bryant Park  
New York, NY, 10036

Subjects

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Pursuant to the provisions of Cboe EDGX Exchange, Inc. (“EDGX” or the “Exchange”) Rule 8.3 - Expedited Proceeding, Merrill Lynch, Pierce, Fenner & Smith, Incorporated (“Merrill”) and BofA Securities, Inc. (“BofAS”) (together, “BAML” or the “Firm”)<sup>1</sup> submit this Letter of Consent for the purpose of proposing a settlement of the alleged rule violations described below.

The Firm neither admits nor denies that violations of Exchange Rules have been committed, and the stipulation of facts and findings described herein do not constitute such an admission.

**BACKGROUND**

1. During all relevant periods herein, Merrill and, from September 2018, BofAS, were acting as registered Broker-Dealers and were Exchange Members. The Firm’s registrations remain in effect.<sup>2</sup>
2. This matter originated from cross-market surveillance conducted by FINRA and EDGX.

**VIOLATIVE CONDUCT**

**Applicable Rule**

3. During all relevant periods herein, the following rule was in full force and effect: Exchange Rule 5.1 - Written Procedures.

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<sup>1</sup> Culminating in May 2019, BAML’s parent company, Bank of America Corporation 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.

<sup>2</sup> Merrill requested that EDGX terminate its registration in June 2019. Approval of this termination is awaiting the conclusion of this investigation.

4. During all relevant periods herein, Exchange Rule 5.1 provided “Each Member shall establish, maintain and enforce written procedures which will enable it to supervise properly the activities of associated persons of the Member and to assure their compliance with applicable securities laws, rules, regulations and statements of policy promulgated thereunder, with the rules of the designated self-regulatory organization, where appropriate, and with Exchange Rules.”

#### **Supervision for Potentially Manipulative Trading**

5. From December 2015 through the present (the “Relevant Period”), the Firm failed to establish and maintain a supervisory system, including written supervisory procedures, that was reasonably designed to detect and prevent potentially manipulative trading.
6. First, the parameters in the Firm’s automated surveillance system were too narrow to identify potentially manipulative wash trading and prearranged trading absent additional controls. For example:
  - i. 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 seconds); or (2) occurred for the same volume and price, and were reversed back to the original account (i.e., shares sold by A to B were subsequently sold back to A by B). This was unreasonable because 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.
  - ii. The trade surveillance system only flagged potentially manipulative prearranged trades if the trades were reversed back to the original account (i.e., shares sold by A to B were subsequently sold back to A by B) or if the trades executed simultaneously. This was unreasonable because manipulative prearranged trading is not limited to transactions that involve trade reversals or orders that execute at the same time.
7. 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.
8. 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 starting in January 2016, because of a coding error, Merrill did not include warrants in the surveillance modules until January 2019.
9. 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.

10. Finally, due to a systems issue, one of the Firm's controls designed to detect potentially manipulative trading failed to automatically generate on certain days and, although the Firm employed an interim process to manually generate the report, the interim process failed to generate the report in a reasonable amount of time for certain dates. Specifically, as of December 2, 2022, the report had not yet been generated for approximately 16 dates in 2020 and approximately 66 dates in 2022.
11. The acts, practices, and conduct described in Paragraphs 5 through 10 constitute violations of EDGX Rule 5.1 by the Firm, in that the Firm failed to establish, maintain, and enforce a supervisory system, including written supervisory procedures, that was reasonably designed to prevent and detect potentially manipulative trading.

### **SANCTIONS**

12. In September 2018, Merrill consented to a censure, a cross-market fine of \$125,000 to be paid to BOX Options Exchange LLC, The NASDAQ Options Market LLC, Nasdaq GEMX, LLC, Nasdaq PHLX LLC, Miami International Securities Exchange, LLC, Nasdaq ISE LLC, NYSE American LLC, and NYSE Arca, Inc., and an undertaking for violations of exchange rules 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.
13. In light of the alleged rule violations described above, and the prior relevant disciplinary history, the Firm consents to the imposition of the following sanctions:
  - a. A censure; and
  - b. A monetary fine in the amount of \$333,000.

If this Letter of Consent is accepted, the Firm acknowledges that it shall be bound by all terms, conditions, representations, and acknowledgements of this Letter of Consent, and, in accordance with the provisions of Exchange Rule 8.3, waives the right to review or to defend against any of these allegations in a disciplinary hearing before a Hearing Panel. The Firm further waives the right to appeal any such decision to the Board of Directors, the U.S. Securities and Exchange Commission, a U.S. Federal District Court, or a U.S. Court of Appeals.

The Firm waives any right to claim bias or prejudgment of the Chief Regulatory Officer ("CRO") in connection with the CRO's participation in discussions regarding the terms and conditions of this Letter of Consent, or other consideration of this Letter of Consent, including acceptance or rejection of this Letter of Consent.

The Firm agrees to pay the monetary sanction(s) upon notice that this Letter of Consent has been accepted and that such payment(s) are due and payable. 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(s) imposed in this matter.

The Firm understands that submission of this Letter of Consent is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the CRO, pursuant to Exchange Rule 8.3. If the Letter of Consent is not accepted, it will not be used as evidence to prove any of the allegations against the Firm.

The Firm understands and acknowledges that acceptance of this Letter of Consent will become part of its disciplinary record and may be considered in any future actions brought by the Exchange or any other regulator against the Firm. The Letter of Consent will be published on a website maintained by the Exchange in accordance with Exchange Rule 8.18.

The Firm understands that it may not deny the charges or make any statement that is inconsistent with the Letter of Consent. The Firm may attach a Corrective Action Statement to this Letter of Consent that is a statement of demonstrable corrective steps taken to prevent future misconduct. Any such statement does not constitute factual or legal findings by the Exchange, nor does it reflect the views of the Exchange or its staff.

**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 Letter of Consent and has been given a full opportunity to ask questions about it; that it has agreed to the Letter of Consent's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce the Firm to submit it.**

Date: August 19, 2024

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

By: [Redacted Signature]

Name: Russel D. Francisco

Title: Associate General Counsel – Senior Vice President

Date: August 19, 2024

**BofA Securities, Inc.**

By: [Redacted Signature]

Name: Joaquin M. Sena

Title: Deputy General Counsel