

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2018059109401**

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) became a FINRA member in January 2018. BofAS is headquartered in New York, New York, and has approximately 5,000 registered individuals in approximately 130 branch offices. It is a full-service broker-dealer providing a range of financial services including sales and trading, market making, investment banking, and underwriting.

In May 2019, Merrill Lynch, Pierce, Fenner & Smith Incorporated (MLPF&S) reorganized into two separate entities – MLPF&S and BofAS. In this reorganization, BofAS acquired MLPF&S's institutional business.¹

On December 22, 2014, MLPF&S entered into AWC No. 2012032249301 in which FINRA found that, from May 2012 through November 2013, the firm (with Merrill Lynch Professional Clearing Corp.) violated FINRA Rule 2360(b)(5) by failing to include reportable positions in their Large Options Positions Reporting system (LOPR) submissions and by including inaccurate data in their LOPR submissions. The firms failed to report accounts acting in concert and reported in concert positions but failed to identify them as such for a period of over three years. MLPF&S reported two million positions with incorrect account types and 171,400 positions with incorrect addresses for almost four

¹ The majority of the conduct at issue occurred prior to the reorganization of MLPF&S. MLPF&S has been a FINRA member since 1937. BofAS assumed the assets and liabilities of MLPF&S's institutional business as part of the reorganization. Thus, for purposes of this AWC, Respondent will be referred to as BofAS.

years, among other violations.² MLPF&S also violated NASD Rule 3010 and FINRA Rule 2010 by failing to establish a reasonable system of supervision, including a system of follow-up and review, to achieve compliance with FINRA Rule 2360(b). The firms consented to a censure, a fine of \$5,796,000, and a supervisory undertaking.

On December 15, 2016, MLPF&S entered into AWC No. 20150439998, in which FINRA found that, between January 1, 2015 and September 1, 2015, MLPF&S exceeded the relevant position limit in two different securities for two different customers for five days in violation of FINRA Rule 2360(b)(3). The firm consented to a censure and fine of \$30,000 (\$20,000 for position limits violations and \$10,000 for related supervisory violations).

OVERVIEW

From January 2009 through October 2020, BofAS failed to report over-the counter (OTC) options positions to the LOPR in more than 7.4 million instances, in violation of FINRA Rules 2360(b)(5) and 2010.

Additionally, 26 of the positions that BofAS failed to report to the LOPR violated applicable OTC position limits. The positions were over the applicable limit from one to 24 days and ranged from 20% to 2,900% over the limit, in violation of FINRA Rules 2360(b)(3) and 2010.

Finally, from January 2014 through October 2020, the firm's supervisory system was not reasonably designed to achieve compliance with FINRA Rule 2360(b), in violation of NASD Rule 3010, and FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's identification of a LOPR reporting issue through its Trading and Financial Compliance Examinations Group's quarterly OTC Exercise Limit Review.

Background – LOPR Reporting

FINRA requires member firms to report large options positions to the LOPR.³ FINRA uses LOPR information to surveil for potentially manipulative behavior, including attempts to corner the market in the underlying equity, leverage an option position to affect the price, or move the underlying equity to change the value of a large option position. The accuracy of LOPR reporting is essential to FINRA's surveillance. It is particularly important with respect to the OTC options market because there is no independent source of data for

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

³ The Options Clearing Corporation (OCC) hosts the LOPR system and collects and disseminates all LOPR data for the U.S. options exchanges and FINRA.

regulators to review OTC options.

FINRA Rule 2360(b)(5) requires member firms to report to the LOPR each customer or firm account, that, acting alone or in-concert, has established an aggregate position of 200 or more option contracts on the same side of the market covering the same underlying security or index. The report must identify the account holder and the total number of option contracts for each options class comprising the reportable position and must include other information as prescribed by FINRA.

FINRA Rule 2360(b)(3) controls position limits for conventional equity options and prohibits a firm or an individual from establishing an options position in excess of an allowable limit. For the option contracts involved in this matter, the applicable position limit identified in FINRA Rule 2360(b)(3)(iii) was, depending on the option, either 25,000 or 50,000 contracts.

A violation of FINRA Rule 2360(b) is also a violation of FINRA Rule 2010, which requires “[a] member, in the conduct of its business, [to] observe high standards of commercial honor and just and equitable principles of trade.”

BofAS failed to report OTC options positions to the LOPR

From January 2009 to October 2020, BofAS failed to report OTC options positions to the LOPR in more than 7.4 million instances.⁴

BofAS failed to report OTC options positions to the LOPR, including positions in non-U.S. currencies and positions resulting from certain transactions between and among BofAS affiliates, due to several logic errors in its internal reporting system. In total, these errors resulted in the firm failing to report OTC positions in 7,165,239 million instances.

After FINRA staff alerted the firm to positions that it failed to report to the LOPR, the firm engaged a consultant to investigate the underlying causes of the LOPR reporting issue identified by FINRA, to determine whether there were any similar issues with the LOPR reporting logic requiring remediation, and to determine the total number of instances of unreported OTC LOPR positions for the relevant period. The firm’s review of its LOPR logic revealed three additional types of transactions as not reported to the LOPR that it disclosed to FINRA.

First, the firm’s LOPR reporting system misclassified the counterparty to certain OTC options transactions as a broker-dealer. The firm did not report those positions because transactions with broker-dealer counterparties are excluded from OTC LOPR reporting. Here, however, the counterparty was a bank and not a broker-dealer. The firm failed to report OTC positions to the LOPR in 74,580 instances as a result of this error.

⁴ An “instance” occurs where a firm fails to report, or inaccurately reports, a position for one day. The number of instances is determined by multiplying a given reportable position by the number of trade dates that the position was not reported or was reported inaccurately.

Second, the firm failed to report OTC options positions to the LOPR as required where the firm acted as an intermediary between U.S.-based customers and its foreign broker- dealer affiliate.⁵

Third, in some instances, the affiliate's "Country" field in the firm's LOPR reporting system was different than the affiliate's "Country of Incorporation" field, which caused the system to incorrectly designate the counterparty as foreign and the OTC option position as not LOPR reportable.

As a result of the second and third issues, the firm failed to report OTC options positions to the LOPR in 176,004 instances.⁶

Therefore, BofAS violated FINRA Rules 2360(b)(5) and 2010.

BofAS LOPR positions were over the applicable OTC position limit

Twenty-six of the positions not timely reported to the LOPR due to the reporting failures referenced above were over the applicable OTC position limit (either 25,000 or 50,000 contracts). In most of the instances, the firm was over the position limit on one side of the market and a customer was over the position limit on the other side. These positions, which were in 13 different securities, were over the limit from one to 24 days,⁷ and ranged from 20% to 2,900% over the limit.

Therefore, BofAS violated FINRA Rules 2360(b)(3) and 2010.

BofAS failed to establish and maintain a supervisory system reasonably designed to comply with Rule 2360(b)

FINRA Rule 3110(a), like its predecessor NASD Rule 3010(a), requires that FINRA members 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.⁸

From January 2014 to October 2020, BofAS failed to establish a supervisory system reasonably designed to achieve compliance with the firm's LOPR reporting obligations. The firm did not have reasonably designed controls or methods to determine whether positions were reported or not. The firm had a periodic review tool to ensure the accuracy of its

⁵ Securities Exchange Act Rule 15a-6 requires the application of U.S. regulatory rules to positions effected by U.S. broker-dealers.

⁶ BofAS subsequently reported the open positions affected by this issue to the LOPR and updated the reference data that caused the underreporting.

⁷ Most of the positions were established before they were reported to the LOPR. Therefore, the number of days over the limit for the positions could be longer.

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

LOPR reporting. That tool, however, failed to detect whether there were positions that should have been reported to the LOPR but were not. The firm also failed to test its LOPR reporting system and the periodic review tool to determine whether they were reasonably designed to accurately capture the positions BofAS was required to report.

In addition, the firm's supervisory system was not reasonably designed to identify instances where OTC options positions exceeded applicable limits. BofAS had alerts to identify position limit breaches, including an alert that triggered if a position was at or above 75% of the applicable position limit. These alerts, however, did not consider positions from certain transactions of foreign affiliates, causing the positions to appear to be below the applicable limit.

Therefore, BofAS violated NASD Rule 3010 and FINRA Rules 3110 and 2010.

SANCTIONS CONSIDERATION

In connection with this matter, FINRA considered, among other factors, that BofAS engaged an independent consultant to investigate the causes of the LOPR reporting failures, corrected those underlying causes, determined the number of unreported OTC LOPR positions going back to January 2009, promptly remediated those failures, and provided substantial assistance to FINRA during its investigation.

FINRA further considered that in addition to remediating the LOPR reporting issues arising from this review, BofAS subsequently implemented an enhanced LOPR reporting platform that includes numerous data quality checks (both pre- and post-LOPR submission), exception reports, periodic reviews of reporting logic, and a review of rejected submissions.⁹

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

- a censure;
- a \$5,000,000 fine; and
- a certification signed by an officer and principal of the firm that, as of October 31, 2022, BofAS has established, maintains, and enforces supervisory procedures, including written procedures, reasonably designed to achieve compliance with FINRA Rule 2360.

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.

⁹ The firm expects to complete the implementation of the new reporting platform and associated supervisory procedures by October 31, 2022.

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.

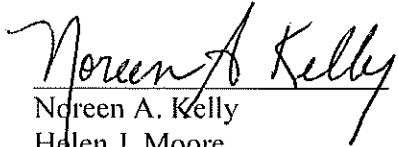
July 23, 2022
Date

J. David Montague for
BofA Securities, Inc.
Respondent

Print Name: J. David Montague

Title: Associate General Counsel

Reviewed by:



Noreen A. Kelly
Helen J. Moore
Counsel for Respondent
McGuireWoods LLP
1251 Avenue of the Americas
20th Floor
New York, NY 10020-1104

Accepted by FINRA:

September 9, 2022
Date

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



Seema Chawla
Senior Counsel
FINRA
Department of Enforcement
120 W. 12th Street, Suite 800
Kansas City, MO 64015