

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2019063152203**

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) 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 became a FINRA member in January 2018. BofAS is headquartered in New York, New York, and has approximately 5,400 registered representatives in almost 150 branch offices. BofAS 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 Inc. (MLPF&S) reorganized into two separate entities—MLPF&S and BofAS. In this reorganization, BofAS acquired MLPF&S's institutional business, including its U.S. Treasury business.¹

OVERVIEW

From October 2014 through February 2021, BofAS, through two former traders, one of whom was also a supervisor and desk head, engaged in 717 instances of “spoofing,” a type of fraudulent trading that involves the use of non-bona fide orders to create a false appearance of market activity on one side of the market to induce other market

¹ The majority of the conduct at issue occurred prior to the reorganization of MLPF&S. MLPF&S (CRD No. 7691) has been a FINRA member since 1937. BofAS assumed the assets and liabilities of MLPF&S's institutional business, including its U.S. Treasury business, as part of the reorganization. Thus, for purposes of this AWC, Respondent will be referred to as BofAS. For more information about BofAS, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

participants to execute against bona fide orders entered on the opposite side of the market in the same security or a correlated product. Therefore, BofAS violated FINRA Rule 2010.

From at least October 2014 through September 2022, BofAS failed to establish and maintain a supervisory system reasonably designed to detect spoofing. BofAS did not have a supervisory system to detect spoofing in the U.S. Treasury markets until November 2015. Thereafter, until mid-2019, BofAS's surveillance was designed to detect spoofing by trading algorithms, not manual spoofing by its traders. In addition, until at least December 2020, BofAS's surveillance did not capture orders its traders entered into up to eight trading systems provided by external venues. BofAS also did not supervise for potential cross-product spoofing in the U.S. Treasury markets throughout the relevant period. Therefore, BofAS violated NASD Rule 3010 and FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from BofAS self-disclosing to FINRA approximately 20 instances of potential spoofing.

Spoofing violates FINRA Rule 2010.

FINRA Rule 2010 provides that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.”

Spoofing is a type of fraudulent trading that involves displaying a non-bona fide order (i.e., an order that the trader does not intend to have executed) in a security to induce other market participants to execute against an order on the opposite side of the market in the same security or a correlated product. Spoofing may deceive other market participants into trading at a time, price, or quantity that they otherwise would not have. Spoofing is inconsistent with high standards of commercial honor and just and equitable principles of trade, and therefore violates FINRA Rule 2010.

Trading in the U.S. Treasury markets

U.S. Treasury securities are debt instruments of the U.S. government issued through public auctions and subsequently traded in the secondary, or “cash,” market. As of July 2023, outstanding U.S. Treasury securities were valued at \$25.1 trillion. U.S. Treasury securities range in maturity from U.S. Treasury Bills (as short as four weeks) to U.S. Treasury Bonds (up to 30 years).

U.S. Treasury futures contracts allow a buyer and seller to agree upon a price for future delivery of a U.S. Treasury security. For example, the Ultra Treasury Bond futures contract (Ultra T-Bond) requires delivery of a U.S. Treasury Bond with a remaining maturity of at least 25 years. Accordingly, the price of the Ultra T-Bond is closely correlated with the price of the on-the-run (most recent issue) 30-year U.S. Treasury Bond (30-year Bond).

The U.S. Treasury cash and futures markets were highly liquid during the relevant period. For example, in 2018, the daily notional value of U.S. Treasury securities traded was \$547 billion and U.S. Treasury futures traded was \$477 billion.

The displayed market depth at the bid and offer in both the cash and futures markets is known as the “stack.” The stack shows the quantities displayed at various prices. The highest bid and the lowest offer constitute the best, or “inside,” market. The “top” of the stack refers to the quantities available at the inside prices. Both U.S. Treasury securities and futures trade on narrow bid–offer spreads, usually with only a few cents separating the best bid and offer prices.

Participants consider the “balance” between displayed bid and offer quantity on both sides of the stack to determine whether the next transaction will likely occur at the best bid or offer or whether the price is likely to change. For example, when the stack for the 30-year Bond is imbalanced with significantly more displayed quantity on the best bid versus the best offer, certain market participants may reasonably believe there is more demand than supply and that the price is likely to rise for the 30-year Bond and the correlated Ultra T-Bond. Participants may therefore (1) increase the best bid and best offer prices or (2) enter buy orders priced aggressively to execute against resting sell orders already in the stack (known as “crossing the spread”) because the best offer price appears favorable given the anticipated increase in price.

U.S. Treasury market participants can fully display the quantity of their orders or enter them as “iceberg” orders with only a portion of the quantity displayed. For example, an iceberg order to purchase \$50 million par value of the 30-year Bond might display only \$1 million in quantity to the market. Market participants frequently use iceberg orders to manage order exposure and mitigate the price impact that can result from entering fully displayed orders that imbalance the stack. Iceberg orders are themselves permissible, but if used improperly, they can facilitate deceptive trading by concealing the participant’s true trading interest. In a spoofing scheme, for example, an iceberg order with a small displayed quantity may be paired with a large, fully displayed order on the opposite side of the market to create the appearance of an imbalanced stack.

BofAS, through two former traders, engaged in spoofing in the U.S. Treasury markets.

BofAS was a market maker in the secondary market for U.S. Treasury securities throughout the relevant period. At times, BofAS traders sought to buy a security on the best bid and sell it on the best offer, retaining the bid–offer spread. They also aimed to hedge the risks associated with market making and often traded in U.S. Treasury futures for hedging purposes.

From October 2014 through February 2021, BofAS, through a former supervisor and a former junior trader acting separately, engaged in 717 instances of spoofing in U.S. Treasury securities. This trading activity occurred on the secondary market, where institutional and other market participants trade U.S. Treasury securities through electronic trading platforms. The supervisor engaged in 523 instances of spoofing, first as head of the firm’s U.S. Treasury desk and then as head of the firm’s Americas Linear

Rates business. In the latter role, he oversaw multiple desks, including the U.S. Treasury desk. Separately, the junior trader engaged in 194 instances of spoofing.² The supervisor who engaged in spoofing was the junior trader's second-level supervisor.

The 717 instances of spoofing are comprised of (a) 525 instances of spoofing in a U.S. Treasury security to induce opposite-side executions in the same security, and (b) 192 instances of cross-product spoofing in a U.S. Treasury security to induce opposite-side executions in a correlated U.S. Treasury futures contract. The spoofing by the two former BofAS traders generally followed the same pattern:

- The BofAS trader entered a bona fide order in a U.S. Treasury security or futures contract, usually at the inside price and as an iceberg order with only the minimum size displayed (i.e., one "lot," which corresponds to \$1 million par value of a U.S. Treasury security or one U.S. Treasury futures contract).
- The BofAS trader entered a large non-bona fide order on the opposite side of the market in the relevant U.S. Treasury security,³ almost always fully displayed and at or above \$50 million par value (or 50 lots) and frequently much larger. The non-bona fide order created a false appearance of market depth and interest on one side of the market and therefore tended to create the appearance of an imbalanced stack.
- Anticipating price movement based on the imbalanced stack, market participants on the other side of the spread from BofAS's bona fide order responded by executing at BofAS's price or a price even more favorable to BofAS.
- The BofAS trader cancelled the large non-bona fide order, usually before it could receive any executions. If the non-bona fide order received executions, only a small fraction of the total quantity executed before the BofAS trader cancelled it.

Examples of Spoofing

Same-Product Spoofing

BofAS, through the supervisor and junior trader, engaged in 525 instances of spoofing in a U.S. Treasury security to induce opposite-side executions in the same security. For example, on May 13, 2019, the BofAS junior trader entered a fully displayed non-bona fide order to buy \$250 million par value of the 10-year U.S. Treasury note. In so doing, the BofAS trader imbalanced the stack and created a false appearance of

² After BofAS became aware of approximately 20 instances of potential spoofing by the junior trader, BofAS terminated him in August 2019. In September 2021, the junior trader entered into an AWC with FINRA for violating FINRA Rule 2010.

³ The relevant U.S. Treasury security refers to (a) the same security as the bona fide order or (b) a security correlated with the futures contract in the bona fide order.

more demand to induce favorable executions of a bona fide iceberg order to sell the 10-year note:

- At 06:53:07, the BofAS trader entered a bona fide iceberg order to sell \$65 million par value of the 10-year note at the inside offer price of \$99.5781, with instructions to display \$1 million of the order on each of the two trading venues to which it was routed. Over the next 17 seconds, BofAS's order received no executions.
- At 06:53:24, the BofAS trader entered a fully displayed non-bona fide order to buy \$250 million par value of the 10-year note at the inside bid price of \$99.5625. The order increased the inside bid quantity from \$61 million to \$311 million—an increase of 409 percent.
- Within the next six seconds, BofAS received a full execution of its bona fide \$65 million sell order at the favorable inside offer price of \$99.5781.
- Two seconds later, at 06:53:32, the BofAS trader cancelled the non-bona fide \$250 million buy order, which was live for only eight seconds and received no executions.

The large non-bona fide buy order induced other market participants to (1) increase bid-offer prices and (2) enter buy orders priced aggressively to execute against BofAS's sell order already in the stack. As a result, the bona fide sell order executed at the favorable inside offer price.

Cross-Product Spoofing

BofAS, through the supervisor, also engaged in 192 instances of spoofing in a U.S. Treasury security to induce executions in a correlated U.S. Treasury futures product. For example, on October 9, 2019, the BofAS supervisor engaged in four instances of cross-product spoofing within just 93 seconds. Specifically, the BofAS supervisor entered a series of four non-bona fide orders to buy the 30-year Bond to induce executions of two bona fide iceberg orders to sell the correlated Ultra T-Bond at the best offer price (\$193.65625). While the BofAS supervisor displayed the full quantity (\$50 million par value or 50 lots) of each non-bona fide order, he entered each bona fide order as an iceberg, with just one contract or lot (\$193,656 notional value) displayed.⁴ Each \$50 million non-bona fide order established the best bid of \$103.75 for the 30-year Bond and created an imbalanced stack. Within one second of entering each non-bona fide order, BofAS received favorable executions on a bona fide order and cancelled the non-bona fide order as follows:

- The BofAS supervisor entered the first non-bona fide order at 16:33:18.873 and cancelled it at 16:33:19.656. During those 783 milliseconds, the supervisor sold

⁴ Notional value as used in this AWC refers to market price multiplied by contract size.

22 Ultra T-Bond contracts at the favorable offer price (\$193.65625) for a total notional value of approximately \$4.2 million.

- The BofAS supervisor entered the second non-bona fide order at 16:33:34.306 and cancelled it at 16:33:35.226. During those 920 milliseconds, the supervisor sold 44 Ultra T-Bond contracts at the favorable offer price (\$193.65625) for a total notional value of approximately \$8.5 million.
- The BofAS supervisor entered the third non-bona fide order at 16:33:42.772 and cancelled it at 16:33:43.665. During those 893 milliseconds, the supervisor sold 33 Ultra T-Bond contracts at the favorable offer price (\$193.65625) for a total notional value of approximately \$6.4 million.
- The BofAS supervisor entered the fourth non-bona fide order at 16:34:50.482 and cancelled it at 16:34:51.448. During those 966 milliseconds, the supervisor sold 14 Ultra T-Bond contracts at the favorable offer price (\$193.65625) for a total notional value of approximately \$2.7 million.

In total, over 93 seconds, the BofAS supervisor displayed four large non-bona fide orders to buy the 30-year Bond—none of which were live for more than a second, and all of which went unexecuted. The non-bona fide orders induced other market participants to (1) enter buy orders priced aggressively to execute against BofAS's Ultra T-Bond sell orders already in the stack and (2) raise their bids so BofAS could sell the Ultra T-Bond at its offer price. As a result, the bona fide orders received favorable executions totaling 113 contracts, on average within 344 milliseconds of the entry of the non-bona fide orders.

BofAS, through two former traders, violated FINRA Rule 2010 by engaging in spoofing in the U.S. Treasury markets.

BofAS failed to reasonably supervise for spoofing in the U.S. Treasury markets.

FINRA Rule 3110(a), like its predecessor NASD Rule 3010(a), requires a member 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.⁵ A violation of FINRA Rule 3110 or NASD Rule 3010 is also a violation of FINRA Rule 2010.

From at least October 2014 through September 2022, BofAS's written policies and procedures prohibited spoofing, but its supervisory system was not reasonably designed to achieve compliance with securities laws and regulations and FINRA rules prohibiting spoofing for several reasons.

⁵ FINRA Rule 3110 superseded NASD Rule 3010 on December 1, 2014.

First, prior to November 2015, BofAS did not conduct any surveillance or supervisory reviews for spoofing in the U.S. Treasury markets.

Second, until mid-2019, BofAS surveilled only for spoofing by trading algorithms, not manual spoofing by its traders, in U.S. Treasury securities. BofAS designed its sole spoofing report to detect only algorithmic spoofing by setting an order cancellation threshold of 250 milliseconds or less. The cancellation threshold was too narrow to capture any of the 717 instances of manual spoofing here.

Third, through at least December 2020, BofAS did not surveil for potential U.S. Treasury spoofing through orders its traders entered into up to eight trading systems provided by external venues. BofAS's surveillance was limited to potential spoofing orders entered into its proprietary order routing system, even though its traders could directly enter and cancel U.S. Treasury orders into up to eight other systems.

Finally, prior to October 2022, BofAS did not conduct any surveillance or supervisory reviews for potential cross-product spoofing in the U.S. Treasury markets, like the 192 cross-product instances of spoofing here.

In addition to the 717 instances of spoofing by the two former traders, FINRA's analysis of BofAS's trading identified almost 280 additional instances of trading activity in U.S. Treasury securities that bore some indicia of potential spoofing during the relevant period. Due to the supervisory deficiencies described above, BofAS's supervisory system did not identify these trades as potential instances of spoofing warranting further review.

BofAS began remediating the supervisory deficiencies described above in mid-2019 and completed remediation in October 2022. BofAS's remediation included: (a) expanding its surveillance to capture potential manual spoofing in U.S. Treasury securities in mid-2019; (b) implementing surveillance for potential U.S. Treasury spoofing through orders its traders entered outside of its proprietary order routing system beginning in December 2020; (c) enhancing its anti-manipulation policies, procedures, and training with additional guidance and examples beginning in mid-2019; (d) increasing the number and expertise of staff dedicated to surveillance since 2021; and (e) implementing cross-product spoofing surveillance in the U.S. Treasury markets in October 2022.

By failing to reasonably supervise for spoofing activity in the U.S. Treasury markets, BofAS violated NASD Rule 3010 and FINRA Rules 3110 and 2010.

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

- a censure and
- a \$24 million 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.

October 19, 2023

Date

ALLISON LAYSON

BofA Securities, Inc.
Respondent

Print Name: ALLISON LAYSON

Title: Associate General Counsel

Reviewed by:

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Nader S. Raja

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Accepted by FINRA:

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

November 29, 2023

Date

Shanyn Gillespie

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Date

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