



DISCIPLINARY DECISION
Cboe BZX Exchange, Inc.
File No. URE 13-05
BofA Securities, Inc.

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

Applicable Rules

- Section 17(a) of the Securities Exchange Act of 1934 and Exchange Act Rule 17a-3-Records to be Made by Certain Exchange Members, Brokers and Dealers;
- BZX Rules 3.2 – Violations Prohibited; 4.1 – Requirements, 5.1 – Written Procedures, and 11.21 – Input of Accurate Information

Sanction

A censure to BofA Securities, Inc. and a fine of \$1,925,000 for the Cboe Exchanges, of which \$673,750 is allocated to BZX.¹

Effective Date

November 16, 2022

/s/ Greg Hoogasian

Greg Hoogasian, CRO, EVP

¹ This settlement is part of a \$2,750,000 total settlement the Firm reached with BZX; Cboe BYX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc. (collectively, the “Cboe Exchanges”); the Nasdaq Stock Market LLC; the New York Stock Exchange, LLC; and NYSE Arca, Inc., which was coordinated through the Cross-Market Regulation Working Group (“CMRWG”) of the U.S. Subgroup of the Intermarket Surveillance Group (“ISG”). Of this total fine, \$1,925,000 is allocated to the Cboe Exchanges.

Cboe BZX Exchange, Inc.
LETTER OF CONSENT
File No. URE 13-05¹

In the Matter of:

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

Subject

Pursuant to the provisions of Cboe BZX Exchange, Inc. (“BZX” or the “Exchange”) Rule 8.3 – Expedited Proceeding, BofA Securities, Inc., formerly known as Merrill Lynch, Pierce, Fenner & Smith Incorporated (“MLPFS”), (hereinafter referred to as “BofAS” or the “Firm”) submits 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 or the Securities Exchange Act of 1934, as amended (“Exchange Act”) and Exchange Act 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, the Firm was acting as a registered Broker-Dealer and was an Exchange Member. The Firm’s registrations remain in effect.²
2. This matter originated from orders the Firm entered on the Exchange between March 2014 and October 2021 (the “Review Period”). As a result, Exchange Regulatory Staff investigated the Firm’s order marking activity during the Review Period.³

VIOLATIVE CONDUCT

¹ This matter relates to Exchange File No. USRI-9863-05 and FINRA Star No. 20200656625.

² In May 2019, Merrill, Lynch, Pierce, Fenner & Smith, Incorporated (“MLPFS”) reorganized into two separate entities—MLPFS and BofA Securities, Inc. (“BofAS”). The legacy institutional sales and trading business of MLPFS, including its assets and liabilities, transitioned to BofAS in that reorganization.

³ The Financial Industry Regulatory Authority, Inc’s (“FINRA”) Market Regulation Department referred a portion of the activity at Issue in this matter to the Exchange.

Applicable Rules

3. During all relevant periods herein, the following rules were in full force and effect: BZX Rules 3.2 – Violations Prohibited, 4.1 – Requirements, Rule 5.1 – Written Procedures, and 11.21 – Input of Accurate Information; and Section 17(a) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) and Rule 17a-3 – Records to Be Made by Certain Exchange Members, Brokers and Dealers, thereunder.
4. During all relevant periods herein, BZX Rule 3.2 provided in pertinent part that no Member shall engage in conduct in violation of the Exchange Act, the rules or regulations thereunder, or BZX Rules.
5. During all relevant periods herein, BZX Rule 4.1 provided that each Member “shall make and keep books, accounts, records, memoranda, and correspondence in conformity with Section 17 of the Exchange Act and the rules thereunder, with all other applicable laws and the rules, regulations and statements of policy promulgated thereunder,” and with BZX Rules.
6. During all relevant periods herein, BZX Rule 5.1 provided that each Member must “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 BZX Rules.
7. During all relevant periods herein, BZX Rule 11.21 provided that each Member “shall input accurate information into the System, including, but not limited to, whether the Member acted in a Principal, Agent, or Riskless Principal capacity for each order entered.”
8. During all relevant periods herein, Section 17(a)(1) of the Exchange Act provided that every member of an exchange “shall make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Securities and Exchange Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.”
9. During all relevant periods herein, Rule 17a-3(a)(6) of the Exchange Act provided that each member shall make and keep a “memorandum of each brokerage order and of any other instruction, given or received, for the purchase or sale of

a security . . . whether executed or unexecuted.” This memorandum must show, among other things, the terms and conditions of the order.

Inaccurate Order Capacity Reporting and Books and Records

10. During the Review Period, the Firm entered approximately 4,382,417,376 orders on BZX marked with the “Principal” capacity code when they should have been marked with the “Agency” capacity code. Approximately 848,595 mismarked orders were caused by a programming logic error within the Firm’s gateway systems. The remaining 4,381,568,781 mismarked orders were in connection with the Firm’s Sponsored Access arrangements and the Firm’s entry of orders on BZX with inaccurate codes of “Principal” on orders sent by the Firm’s Sponsored Participants. As a result of the Firm’s mismarking of orders, the Firm’s books and records contained inaccurate information as to the correct capacity on each such order.
11. The acts, practices, and conduct described in Paragraph 10 constitute violations of BZX Rules 3.2, 4.1, and 11.21, and Section 17(a) of the Exchange Act and Rule 17a-3 thereunder, in that the Firm submitted orders with an inaccurate capacity to BZX and failed to maintain accurate books and records relating to the capacity of such orders.

Supervision

12. During the Review Period, the Firm did not have any written supervisory procedures or supervisory processes in place to ensure compliance with BZX rules that requires orders submitted to BZX are marked with accurate Agency or Principal capacity codes.
13. The acts, practices and conduct described in Paragraph 12 constitute violations of BZX Rule 5.1, in that the Firm’s supervisory system, including its WSPs, was not reasonably designed to assure compliance with BZX Rule 11.21’s capacity reporting requirements.

SANCTIONS

14. The Firm does not have any prior relevant disciplinary history related to the submission of orders with an inaccurate capacity to BZX.
15. In light of the alleged rule violations described above, the Firm consents to the imposition of the following sanctions:

- a. A censure; and
- b. A monetary fine for the Cboe Exchanges in the amount of \$1,925,000, of which \$673,750 is allocated to BZX.⁴

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 BZX 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 further waives any claim that a person violated the ex parte prohibitions of BZX Rule 8.16, in connection with such person's participation in discussions regarding the terms and conditions of this Letter of Consent, or other consideration of this Letter of Consent, including its acceptance or rejection.

The Firm agrees to pay the monetary sanction upon notice that this Letter of Consent has been accepted and that such payment is 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 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 BZX 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 BZX or any other regulator against the Firm. The Letter of Consent will be published on a website maintained by the Exchange in accordance with BZX 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

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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: November 9, 2022

BofA Securities, Inc.

By: 

Name: J. David Montague

Title: Associate General Counsel