



Jeffery Ding  
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**Via Certified Mail, Return Receipt Requested (7019 0700 0000 1796 3480), First Class Mail and Email ([allison.layson@bofa.com](mailto:allison.layson@bofa.com), [nkelly@mcguirewoods.com](mailto:nkelly@mcguirewoods.com), [ehogan@mcguirewoods.com](mailto:ehogan@mcguirewoods.com))**

June 26, 2024

Allison Layson, Associate General Counsel  
BofA Securities, Inc.  
c/o Noreen Kelly  
McGuireWoods LLP  
1251 Avenue of the Americas  
20th Floor  
New York, NY 10020-1104

**RE: Payment of Fine in Connection with Executed Letter of Consent  
FINRA Matter No. 2020067485612**

Dear Ms. Layson:

Enclosed is an executed copy of the Letter of Consent (“LOC”), signed by Allison Layson, Associate General Counsel at BofA Securities, Inc. (the “Firm”), and countersigned by Edward Deitzel, Executive Vice President and Chief Regulatory Officer, for the Business Conduct Committee, at the MIAX Emerald, LLC (“MIAX Emerald”) on **June 26, 2024**. Please consider this correspondence as notice to the Firm that this LOC has been accepted, and as a result, the Firm must promptly remit payment of the agreed upon sanction. Please make the payment to MIAX Emerald, LLC.

Allison Layson

June 26, 2024

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Pursuant to Miami International Securities Exchange, LLC Rule 1011, made applicable to MIAX Emerald in Chapter X of the MIAX Emerald Rulebook, after seven calendar days' notice in writing, the Exchange may summarily suspend a Member that fails to pay promptly a fine when such fine becomes finally due and payable.

If you have any questions regarding this matter, please contact me at (646) 315-7372.

Sincerely,

*Jeffery Ding*

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Jeffery Ding  
Senior Counsel  
Department of Enforcement, FINRA

Enclosure

cc: Larry O'Leary, VP Regulation, Miami International Securities Exchange, LLC  
(via e-mail to [lolarey@miaxoptions.com](mailto:lolarey@miaxoptions.com))

*This letter is issued on behalf of the MIAX Emerald, LLC, by FINRA Department of Enforcement pursuant to a grant of authority to FINRA. Accordingly, this constitutes a letter by the MIAX Emerald, LLC.*

**MIAX EMERALD, LLC  
LETTER OF CONSENT  
NO. 2020067485612**

TO: MIAX Emerald, LLC  
c/o Department of Enforcement  
Financial Industry Regulatory Authority (“FINRA”)

RE: BofA Securities, Inc., Respondent  
Broker-Dealer  
CRD No. 283942

Pursuant to Rule 1003 of the Rules of MIAX Emerald, LLC (“MIAX Emerald”), BofA Securities, Inc. (“BOFA” or the “firm”) submits this Letter of Consent (“LOC”) for the purpose of proposing a settlement of the alleged rule violations described below. This LOC is submitted on the condition that, if accepted, MIAX Emerald will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. The firm 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 MIAX Emerald, or to which MIAX Emerald 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 MIAX Emerald:

**BACKGROUND**

The firm has been a member of MIAX Emerald, LLC (“MIAX Emerald”) since March 2019. The firm 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.

The firm does not have any relevant disciplinary history.

**SUMMARY**

From October 2019 to December 2022, BOFA failed to accurately record transmission times for 76,820 manual options orders routed to various options exchanges, including MIAX Emerald. By failing to record or accurately record order transmission times, BOFA violated Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-3 thereunder, and MIAX Emerald Rule 800.

Additionally, from October 2019 to April 2023, the firm violated MIAX Emerald Rule 300 by failing to establish, maintain, and enforce written procedures, and a system for applying such procedures, to assure the accurate recording of order transmission times.

### **FACTS AND VIOLATIVE CONDUCT**

1. This matter originated from the 2021 cycle examination of the firm conducted by FINRA's Department of Market Regulation on behalf of MIAX Emerald and other options exchanges.

#### ***Recordkeeping Violations***

2. The recordkeeping provisions of the federal securities laws and MIAX Emerald rules are designed to ensure that regulators have access to important information about securities transactions. Access to complete and accurate transaction records is essential for effective regulation of broker-dealers by MIAX Emerald and other self-regulatory organizations.
3. Exchange Act §17(a) and Rule 17a-3(a)(6)(i) thereunder, require broker-dealers, such as BOFA, to create a memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. The memorandum must show, among other things, the time of order entry.<sup>1</sup>
4. MIAX Emerald Rule 800 provides, in relevant part, that “[e]ach Member shall make, keep current and preserve such books and records as the Exchange may prescribe and as may be prescribed by the Exchange Act and the rules and regulations thereunder.”
5. From October 2019 through December 2022, the firm failed to accurately record transmission times for options orders manually routed to floor brokers and other third-party brokers for execution. Instead of recording the time that the firm transmitted the order for execution as the transmission time, the firm recorded the time that the broker to which an order was routed acknowledged the order to the firm. This acknowledgment time, however, did not accurately reflect the actual transmission time. During that period, the firm maintained an inaccurate transmission time for an estimated 76,820 manually-routed options orders executed on MIAX Emerald and other options exchanges. Of those 76,820 orders, approximately .64 percent were executed on MIAX Emerald.
6. Accordingly, BOFA violated Exchange Act § 17(a) and Rule 17a-3 thereunder, and MIAX Emerald Rule 800.

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<sup>1</sup> Rule 17a-3(a)(6) defines the time of order entry as “the time when the member, broker or dealer transmits the order or instruction for execution.”

*Supervision Violations*

7. MIAX Emerald Rule 300, provides that “[n]o Member shall engage in conduct in violation of the Exchange Act, the By-Laws or the Rules of the Exchange, or the Rules of the Clearing Corporation insofar as they relate to the reporting or clearance of any Exchange Transaction, or any written interpretation thereof. Every Member shall so supervise persons associated with the Member as to assure compliance therewith.”
  8. From in or about October 2019 to in or about April 2023, the firm failed to establish, maintain, and enforce written supervisory procedures, and a system for applying such procedures, reasonably designed to prevent and detect violations of MIAX Emerald Rule 800, and Exchange Act § 17(a) and Rule 17a-3 thereunder insofar as the firm did not implement a supervisory system and procedures designed to check the accuracy of order transmission times until May 2023.
  9. Accordingly, BOFA violated MIAX Emerald Rule 300.
- B. The firm also consents to the imposition of the following sanctions:
1. Censure; and
  2. A total fine in the amount of \$725,000 (\$19,300 payable to MIAX Emerald).<sup>2</sup>

Acceptance of this Letter of Consent is conditioned upon acceptance of parallel settlement agreements in this matter between the firm and each of the following self-regulatory organizations: BOX Exchange LLC, Cboe Exchange, Inc., Cboe C2 Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGX Exchange, Inc., MIAX PEARL, LLC, Miami International Securities Exchange, LLC, The Nasdaq Options Market, LLC, Nasdaq ISE, LLC, Nasdaq GEMX, LLC, Nasdaq Phlx LLC, NYSE American, Inc., and NYSE Arca, Inc.

The firm agrees to pay the monetary sanction upon notice that this LOC has been accepted and that such payment is due and payable. It has submitted an Election of Payment form showing the method by which it proposes to 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 MIAX Emerald.

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<sup>2</sup> The remainder of the fine shall be allocated to BOX Exchange LLC, Cboe Exchange, Inc., Cboe C2 Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGX Exchange, Inc., MIAX PEARL, LLC, Miami International Securities Exchange, LLC, The Nasdaq Options Market, LLC, Nasdaq ISE, LLC, Nasdaq GEMX, LLC, Nasdaq Phlx LLC, NYSE American, Inc., and NYSE Arca, Inc. for similar violations.

## II.

### WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under MIAX Emerald Rules:

- A. To have a Statement of Charges issued specifying the allegations against the firm;
- B. To be notified of the Statement of Charges 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 MIAX Emerald'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 prejudice of the Chief Regulatory Officer ("CRO"), as well as the Business Conduct Committee ("BCC"), in connection with participation in discussions regarding the terms and conditions of this LOC, or other consideration of this LOC, including acceptance or rejection of this LOC.

The firm further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of MIAX Emerald Rule 1006, in connection with such person's or body's participation in discussions regarding the terms and conditions of this LOC, or other consideration of this LOC, including its acceptance or rejection.<sup>3</sup>

## III.

### OTHER MATTERS

The firm understands that:

- A. Submission of this LOC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the CRO and the BCC, pursuant to MIAX Emerald Rule 1003;
- B. If this LOC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
- C. If accepted:

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<sup>3</sup> Chapter X of MIAX Emerald's Rulebook incorporates the rules contained in Chapter X of the Miami International Securities Exchange, LLC's Rulebook, including Rule 1006.

1. This LOC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by MIAX Emerald or any other regulator against the firm;
  2. This AWC will be published on a website maintained by MIAX Emerald; and
  3. 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 LOC or create the impression that the LOC is without factual basis. The firm may not take any position in any proceeding brought by or on behalf of MIAX Emerald, or to which MIAX Emerald is a party, that is inconsistent with any part of this LOC. 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 MIAX Emerald is not a party.
- D. The firm may attach a Corrective Action Statement to this LOC 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 LOC in this Statement. This Statement does not constitute factual or legal findings by MIAX Emerald, nor does it reflect the views of MIAX Emerald 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 LOC and has been given a full opportunity to ask questions about it; that it has agreed to the LOC'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.

April 18, 2024

Date

Respondent  
BofA Securities, Inc.

By: ALLISON LAYSON

Name: Allison Layson

Title: Associate General Counsel

Reviewed by:

Noreen Kelly

Noreen A. Kelly  
Counsel for Respondent  
McGuireWoods LLP  
1251 Avenue of the Americas  
New York, NY 10020  
(212) 548-7025

Elizabeth Hogan

Elizabeth J. Hogan  
Counsel for Respondent  
McGuireWoods LLP  
888 16<sup>th</sup> St. N.W.  
Washington, DC 20006  
(202) 828-2818

Accepted by MIAX Emerald, LLC:

6-26-2024  
Date



Edward Deitzel  
Executive Vice President and  
Chief Regulatory Officer  
MIAX Emerald, LLC

Decision of the Business Conduct Committee:

Accept       Decline

6-26-2024  
Date



By: Edward Deitzel  
For the Business Conduct Committee



