

**NASDAQ PHLX LLC
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2020067485602**

TO: Nasdaq Phlx LLC
c/o Department of Enforcement
Financial Industry Regulatory Authority (“FINRA”)

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

Pursuant to Rule 9216 of Nasdaq Phlx LLC (“Phlx”) Code of Procedure,¹ BofA Securities, Inc., (the “firm” or “BOFA”) 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, Phlx will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent 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 Phlx, or to which Phlx 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 Phlx:

BACKGROUND

The firm has been a member of Phlx since October 2018, and a member of FINRA since January 2018. The firm’s Phlx and FINRA registrations remain in effect. Before May 2019, the firm’s institutional and retail broker-dealer business was conducted by Merrill Lynch, Pierce, Fenner & Smith Incorporated (MLPFS), CRD No. 7691. MLPFS became a member of Phlx in March 1959 and its registration terminated in January 2022. Phlx retains jurisdiction over MLPFS’s conduct pursuant to Phlx Rule General 5, Section 1(c).

MLPFS has been a member of FINRA since January 1937 and its registration is still in effect. In May 2019, MLPFS reorganized into two separate entities, MLPFS and BOFA. The legacy institutional sales and trading business of MLPFS, including its assets and liabilities, transitioned to BOFA.

¹ The Nasdaq Stock Market LLC Rules General 5 Section 9000 et al. are incorporated by reference into Phlx Rule General 5, Section 3, and are thus Phlx Rules and thereby applicable to Phlx members, member organizations, persons associated with member organizations, and other persons subject to Phlx’s jurisdiction.

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 has no relevant disciplinary history.

SUMMARY

From at least October 2012 to October 2019, BOFA failed to record transmission times for as many as 120,960 manual options orders routed to various options exchanges, including Phlx. 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 Phlx. 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 Phlx Rules 760 and Options 6E, Section 1.²

Additionally, from October 2012 to April 2023, the firm violated Phlx Rules 748 and General 9, Section 20,³ and Phlx Rules 707, Options 9, Section 1, and General 9, Section 1(c)⁴ by failing to establish, maintain, and enforce written procedures, and a system for applying such procedures, to ensure the accurate recording of order transmission times.

FACTS AND VIOLATIVE CONDUCT

1. This matter originated from 2019 and 2021 cycle examinations of the firm conducted by FINRA's Department of Market Regulation on behalf of Phlx and other options exchanges.

Recordkeeping Violations

2. The recordkeeping provisions of the federal securities laws and Phlx 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 Phlx 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

² As of February 3, 2020, Phlx Rule 760 was renumbered to Options 6E, Section 1.

³ As of February 3, 2020, Phlx Rule 748 was renumbered to General 9, Section 20.

⁴ As of February 3, 2020, Phlx Rule 707 was renumbered to Options 9, Section 1. As of January 22, 2021, Phlx Rule Options 9, Section 1 was renumbered to Phlx General 9, Section 1(c).

or unexecuted. The memorandum must show, among other things, the time of order entry.⁵

4. Phlx Rule 760, and subsequently Options 6E, Section 1, requires member organizations to 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 in or about October 2012 through October 2019, BOFA did not have a system to record the transmission times of options orders that traders manually routed to a floor broker or to a third-party broker for execution. Thus, the firm manually routed an estimated 120,960 options orders to Phlx and other options exchanges that lacked order transmission times. Of these 120,960 orders, approximately 18.6 percent were executed on Phlx.
6. From October 2019 through December 2022, the firm failed to accurately record transmission times for options orders manually routed to Phlx floor brokers or 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 to Phlx and other options exchanges. Of those 76,820 orders, approximately 10.4 percent were executed on Phlx.
7. Accordingly, BOFA violated Exchange Act § 17(a) and Rule 17a-3 thereunder, and Phlx Rules 760 and Options 6E, Section 1, during the relevant period.

Supervisory Violations

8. Phlx Rule 748, and subsequently General 9, Section 20, requires members to “establish, maintain, and enforce written supervisory procedures, and a system for applying such procedures, to supervise the types of business(es) in which the member or member organization engages in and to supervise the activities of all registered representatives, employees, and associated persons. The written supervisory procedures and the system for applying such procedures shall reasonably be designed to prevent and detect, insofar as practicable, violations of the applicable securities laws and regulations, including the By-Laws and Rules of the Exchange.”
9. Phlx Rule 707, and subsequently Options 9, Section 1 and General 9, Section 1(c), requires members, member organizations, and persons associated with or employed by a member or member organizations to not engage in conduct inconsistent with just and equitable principles of trade.

⁵ 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.”

10. From in or about October 2012 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 Phlx Rule 760, and subsequently Options 6E, Section 1, and Exchange Act § 17(a) and Rule 17a-3 thereunder insofar as the firm did not establish or implement supervisory systems or procedures designed to check the accuracy of order transmission times until May 2023.

11. Accordingly, BOFA violated Phlx Rule 748, subsequently General 9, Section 20, and Phlx Rule 707, subsequently Options 9, Section 1 and General 9, Section 1(c), during the relevant period.

B. The firm also consents to the imposition of the following sanctions:

1. A censure; and
2. A total fine in the amount of \$725,000 (\$100,300 payable to Phlx).⁶

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

The firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. The firm has submitted a Payment Information 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 FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under Phlx's Code of Procedure:

⁶ The remainder of the fine shall be allocated to Cboe Exchange, Inc., Cboe C2 Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGX Exchange, Inc., The Nasdaq Options Market LLC, Nasdaq GEMX, LLC, Nasdaq ISE, LLC, NYSE American LLC, NYSE Arca, Inc., Miami International Securities Exchange, LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, and BOX Exchange LLC.

- A. To have a Formal Complaint issued specifying the allegations against the firm;
- B. To be notified of the Formal 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 Exchange Review Council 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 prejudgment of the Chief Regulatory Officer, the Exchange Review Council, or any member of the Exchange Review Council, 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 acceptance or rejection of this AWC.

The firm further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of 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

The firm 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 FINRA's Department of Enforcement and the Exchange Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs ("ODA"), pursuant to Phlx Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
- C. If accepted:
 - 1. This AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by Phlx or any other regulator against the firm;

2. Phlx may release this AWC or make a public announcement concerning this agreement and the subject matter thereof in accordance with Phlx Rule 8310 and IM-8310-3;⁷ 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 AWC or create the impression that the AWC is without factual basis. The firm may not take any position in any proceeding brought by or on behalf of Phlx, or to which Phlx is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which Phlx is not a party.
- D. The firm may attach a Corrective Action Statement to this AWC 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 AWC in this Statement. This Statement does not constitute factual or legal findings by Phlx, nor does it reflect the views of Phlx or its staff.

⁷ Series 8000 of Nasdaq Rules are incorporated by reference into Phlx General 5, Section 2, and are thus Phlx Rules and thereby applicable to Phlx members, member organizations, persons associated with member organizations, and other persons subject to Phlx's jurisdiction.

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 AWC and has been given a full opportunity to ask questions about it; that the firm 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 herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

BofA Securities, Inc.
Respondent

April 25, 2024
Date

By: ALLISON LAYSON

Name: Allison Layson

Title: Associate General Counsel

Reviewed by:

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Accepted by Phlx:

April 29, 2024
Date

Jeffery Ding
Jeffery Ding
Senior Counsel
Department of Enforcement

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