

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Continued Membership
of
Interactive Brokers LLC
with
FINRA

Notice Pursuant to
Rule 19h-1
Securities Exchange Act
of 1934

SD-2121

December 17, 2019

I. Introduction

On June 23, 2016, Interactive Brokers LLC (“IB LLC” or the “Firm”) submitted a Membership Continuance Application (“MC-400A” or “the Application”) to FINRA’s Department of Registration and Disclosure. The Application seeks to permit the Firm, a FINRA member subject to a statutory disqualification, to continue its membership with FINRA. A hearing was not held in this matter. Rather, pursuant to FINRA Rule 9523(a), FINRA’s Department of Member Supervision (“Member Supervision”) recommends that the Chairperson of the Statutory Disqualification Committee, acting on behalf of the National Adjudicatory Council, approve the Firm’s continued membership with FINRA pursuant to the terms and conditions set forth below.

For the reasons explained below, we approve the Application.

II. The Statutorily Disqualifying Event

The Firm is subject to a statutory disqualification because of an Enforceable Undertaking issued by the Australian Securities and Investments Commission (“ASIC”) on December 15, 2014 (the “Disqualifying Undertaking”).¹ Pursuant to the Disqualifying Undertaking, the Firm admitted that, from July 2010 until August 2013, it offered margin-lending facilities without obtaining the requisite amendment to its license

¹ Section 3(a)(39)(F) of the Securities Exchange Act of 1934 (“Exchange Act”), which incorporates by reference Exchange Act Section 15(b)(4)(G), provides that a member firm is subject to statutory disqualification if a foreign financial regulatory authority has found that it has “[v]iolated any foreign statute or regulation regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade.” See 15 U.S.C. § 78o(b)(4)(G)(ii). ASIC is a foreign financial regulatory authority under the Exchange Act. See 15 U.S.C. § 78c(a)(52).

as required by Australian law. The Firm also acknowledged concerns by ASIC that during this same period, the Firm engaged in margin lending activities without making proper suitability assessments. The Disqualifying Undertaking required the Firm to pay in Australian dollars (AUD) \$100,000 to the Australian Financial Rights Legal Centre. It also required the Firm to refund approximately AUD \$1.5 million in fees and commissions to retail customers and to engage an independent consultant to certify that the Firm properly calculated and paid all customer refunds. The Firm complied with all of the Disqualifying Undertaking's requirements.

The Firm stated that it failed to seek an amendment to its license because it relied on incorrect legal advice. The Firm began winding down its margin lending facility business in October 2013. As of the date of the Disqualifying Undertaking, the Firm was no longer engaged in this business.

III. Background Information

A. The Firm

The Firm is based in Greenwich, Connecticut, and has been a FINRA member since 1995. As of July 2019, the Firm has six branch offices, five of which are Offices of Supervisory Jurisdiction ("OSJs"). It employs 353 registered representatives and 88 registered principals. The Firm does not employ anyone subject to statutory disqualification.

B. Recent Routine Examinations

In February 2019, FINRA issued the Firm a Cautionary Action in connection with the Firm's 2018 routine examination. FINRA cited the Firm for exceptions pertaining to: (1) the Firm's publication of an online video containing five statements and claims that FINRA staff deemed to be exaggerated or unwarranted under FINRA rules; and (2) the publication of another video without prior FINRA approval that contained options-specific statements that FINRA staff deemed did not, among other things, adequately reflect the risks attendant to options transactions. The Firm responded in writing to the exceptions noted in the Cautionary Action.

In October 2018, FINRA issued the Firm a Cautionary Action in connection with a market surveillance sweep examination. The Cautionary Action cited the Firm for failing to report to the Real-time Transaction Reporting System purchase and sale transactions effected in municipal securities, and failing to provide documentation that it performed supervisory reviews as set forth in its written supervisory procedures ("WSPs"). The Firm responded in writing to the exceptions noted in the Cautionary Action.

In April 2018, FINRA issued the Firm a Cautionary Action in connection with its 2017 routine examination. The Cautionary Action cited the Firm for the following exceptions: (1) failing to ensure that clearing agreements with three foreign custodians

contained language that customer assets were free of liens; (2) failing to timely sign a custody agreement with its Australian affiliate so that securities purchased in customer margin accounts would be free of liens; (3) failing to adequately consider if debit balances in two foreign customers' omnibus accounts should be excluded from its customer reserve formula computation; and (4) failing to timely file a Uniform Termination Notice for Securities Industry Registration for 11 terminated employees. The Firm responded in writing to the exceptions noted in the Cautionary Action.

FINRA's 2017 routine examination also resulted in certain exceptions being referred for further investigation. FINRA staff referred to FINRA's Department of Enforcement ("Enforcement") three exceptions related to the Firm paying commissions to unregistered foreign finders. Staff referred to FINRA's AML Investigations Unit another exception relating to the Firm failing to establish and implement adequate Anti-Money Laundering ("AML") controls. These matters are being investigated and remain open. Another exception that FINRA staff referred to Enforcement, which related to the Firm's failure to comply with regulatory requirements concerning the termination of employees registered with MIAX, was resolved through a Minor Rule Violation Plan Letter.²

In March 2018, and in connection with the SEC's examination of the Firm for the period from July 1, 2016, through June 30, 2017, the SEC identified several weaknesses and deficiencies in the Firm's controls related to the potential distribution of unregistered securities and AML compliance procedures concerning the deposit and liquidation of microcap securities, as well as other inadequacies in the Firm's AML Compliance Program. The Firm responded in writing to the SEC's deficiency letter, and represented that it enhanced its procedures to address the deficiencies noted.

C. Recent Regulatory Actions

In the past two years, the Firm has been subject to regulatory actions by FINRA, a state securities commission, and several other regulators.³

In February 2019, the New Jersey Bureau of Securities and the Firm entered into a consent order. Without admitting or denying the allegations, the Firm agreed to findings that it failed to perform an adequate background check on a customer during the

² In connection with the 2017 examination, FINRA issued the Firm two other Minor Rule Violation Plan Letters for violations of NYSE MKT and NYSE Arca rules.

³ For the Application, we agree with Member Supervision's focus on the Firm's regulatory actions that occurred in the past two years, and discuss these matters herein. Although we limit our discussion to recent regulatory actions, Member Supervision represents that the Firm has complied with required undertakings in connection with regulatory matters occurring several years prior to July 2017.

account opening process, which constituted a failure to reasonably supervise under New Jersey law. The customer, who had been permanently barred by the National Futures Association, subsequently transferred ill-gotten gains from a fraudulent scheme into his accounts opened at the Firm. The New Jersey Bureau of Securities fined the Firm \$100,000 and ordered that it review and revise, as necessary, its procedures concerning customer account opening procedures.⁴

In August 2018, FINRA accepted a Letter of Acceptance, Waiver and Consent (“AWC”) from the Firm for violations of Rules 201 and 204 of Regulation SHO of the Exchange Act, NASD Rule 3010, and FINRA Rules 3110 and 2110. Without admitting or denying the allegations, the Firm consented to findings that for a period of approximately three years, the Firm: failed to establish, maintain, and enforce a supervisory system, including WSPs, reasonably designed to achieve compliance with the requirements of Regulation SHO; repeatedly ignored red flags indicating to the Firm that its Regulation SHO supervisory systems and procedures were unreasonable; and failed to timely remediate the deficiencies with its supervisory systems and procedures. FINRA censured the Firm and fined it \$5.5 million.

In April 2018, the Firm consented to OneChicago Regulatory Oversight Committee findings that it violated OneChicago rules by entering orders into its system without the intent to execute transactions. OneChicago fined the Firm \$10,000.

In November 2017, ASIC issued an Infringement Notice to the Firm, alleging that it enabled orders that may have amounted to market manipulation by a customer and failed to have systems and WSPs in place to detect potential manipulative trading by a customer. ASIC fined the Firm \$250,000.⁵

In October 2017, FINRA accepted, on behalf of itself and several other self-regulatory organizations (“SROs”), seven AWCs and one Offer of Settlement and Consent from the Firm. Without admitting or denying the allegations, the Firm consented to findings that it violated FINRA rules, various SRO rules, and Reg NMS Rule 611 of the Exchange Act in connection with the routing of Intermarket Sweep Orders in 2014 and 2015. Specifically, these matters found that the Firm’s routing system failed to capture protected quotations for all relevant market centers, and found that the Firm failed to establish and maintain a supervisory system that was reasonably designed to achieve compliance with the applicable rules. The Firm was censured and fined a total of \$70,000.

⁴ The consent order states that the Firm has “enhanced its supervisory procedures including many other due diligence processes.”

⁵ ASIC noted that the Firm “has subsequently undertaken significant steps to prevent recurrence of this conduct.”

IV. The Firm's Proposed Continued Membership with FINRA and Proposed Supervisory Plan

The Firm seeks to continue its membership with FINRA notwithstanding the Disqualifying Undertaking, which renders the Firm statutorily disqualified. In support, the Firm represents that it complied with the terms of the Disqualifying Undertaking and no longer engages in the margin lending business to Australian customers (and has not since 2013). The Firm has also agreed to the following plan of supervision ("Supervision Plan") as a condition of its continued membership with FINRA:

1. For the first two years following the Firm's Exchange Act Rule 19h-1 approval, IB LLC will retain documentation evidencing the Firm's compliance with all provisions relating to the Disqualifying Undertaking. Such documentation shall be segregated for ease of review during any statutory disqualification examination;
2. IB LLC must notify its FINRA Regulatory Coordinator, if IB LLC reengages in the business of offering margin-lending facilities in Australia;
3. Following the Firm's Exchange Act Rule 19h-1 approval, IB LLC must submit proof to FINRA, via its FINRA Regulatory Coordinator, that it has complied with all Australian registration and licensing requirements if it reengages in offering margin-lending facilities in Australia and segregate such proof for ease of review during any statutory disqualification examination; and
4. Following the Firm's Exchange Act Rule 19h-1 approval, prior to offering securities margin-lending facilities in any jurisdiction which requires registration as a securities margin lender separate from any securities broker registration, and in which IB LLC did not and does not as of the Firm's Exchange Act Rule 19h-1 approval have a client in that jurisdiction with margin capabilities, IB LLC must submit proof to FINRA, via its FINRA Regulatory Coordinator, that it has complied with such securities margin-lending registration and/or licensing requirements. Such documentation shall be segregated for ease of review during any statutory disqualification examination.

Following the approval of the Firm's continued membership in FINRA, Member Supervision represents that FINRA intends to utilize its examination and surveillance processes to assess the Firm's continued compliance with the standards prescribed by Exchange Act Rule 19h-1 and FINRA Rule 9523.

V. Discussion

Member Supervision recommends approving the Firm's request to continue its membership in FINRA. After carefully reviewing the entire record in this matter, we approve the Application.

In evaluating an application like this, we assess whether the statutorily disqualified firm seeking to continue its membership in FINRA has demonstrated that its continued membership is consistent with the public interest and does not create an unreasonable risk of harm to the market or investors. *See* FINRA By-Laws, Art. III, Sec. (3)(d); *cf. Frank Kufrovich*, 55 S.E.C. 616, 624 (2002) (holding that FINRA "may deny an application by a firm for association with a statutorily-disqualified individual if it determines that employment under the proposed plan would not be consistent with the public interest and the protection of investors"). Factors that bear on our assessment include the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, and whether there has been any intervening misconduct.

We recognize that the Disqualifying Undertaking involved serious violations of foreign securities rules and regulations. We note, however, that the violative conduct occurred in 2013, more than six years ago. We further note that the Firm complied with all of the Disqualifying Undertaking's terms, and it represents that it is no longer engaged in margin lending to Australian customers. Further, ASIC did not expel or suspend the Firm, and the record does not show that it followed up the Disqualifying Undertaking with further administrative action against the Firm. Moreover, the Firm has not engaged in similar misconduct since the Disqualifying Undertaking and has consented to a Supervision Plan that will help to ensure that such misconduct does not recur.

We further find that although the Firm has recent regulatory history, the record shows that it has taken corrective actions to address the noted deficiencies. We have also considered that the Firm has complied with undertakings imposed by regulators prior to July 2017. We agree with Member Supervision that the Firm's history should not prevent it from continuing as a FINRA member, and conclude that, notwithstanding its regulatory history, the continued membership of the Firm is in the public interest and does not present an unreasonable risk of harm to the market or investors.

At this time, we are satisfied, based in part upon the Firm's representations, Member Supervision's representations concerning, among other things, FINRA's future monitoring of the Firm, and the record currently before us, that the Firm's continued membership in FINRA is consistent with the public interest and does not create an unreasonable risk of harm to the market or investors. Accordingly, we approve the Firm's Application to continue its membership in FINRA as set forth herein.⁶ In

⁶ FINRA certifies that the Firm meets all qualification requirements and represents that it is registered with MSRB, BOX Exchange LLC, MIAX Emerald, LLC, MIAX

conformity with the provisions of Exchange Act Rule 19h-1, the continued membership of the Firm will become effective within 30 days of the receipt of this notice by the SEC, unless otherwise notified by the SEC.

On Behalf of the National Adjudicatory Council,

Jennifer Mitchell Piorko
Vice President and Deputy Corporate Secretary

PEARL, LLC, Miami International Securities Exchange, LLC, and NYSE Arca, Inc., as well as the following self-regulatory organizations and exchanges that concur with the Firm's proposed continued membership: Investors' Exchange LLC; Cboe BZX Exchange; Cboe BYX Exchange; Cboe EDGA Exchange; Cboe EDGX Exchange; Nasdaq BX, Inc.; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; Nasdaq MRX, LLC; Nasdaq PHLX LLC; The Nasdaq Stock Market, LLC; NYSE Chicago, Inc.; NYSE National, Inc.; NYSE American LLC; New York Stock Exchange LLC; and DTCC, NSCC, and FICC.