

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the
Continued Membership
of
Great Point Capital LLC
(CRD No. 114203)
with
FINRA

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

SD-2099

Date: March 24, 2017

I. Introduction

On February 22, 2016, Great Point Capital LLC (“Great Point” or the “Firm”) submitted a Membership Continuance Application (“MC-400A” or the “Application”) to FINRA’s Department of Registration and Disclosure (“RAD”).¹ 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(b), FINRA’s Department of Member Regulation (“Member Regulation”) approves the Firm’s Application pursuant to Rule 19h-1 of the Securities Exchange Act of 1934 (the “Exchange Act”).

II. The Statutorily Disqualifying Event Underlying the Application

Great Point is subject to a statutory disqualification, as that term is defined in Section 3(a)(39)(F) of the Exchange Act, as a result of a FINRA Order Accepting Offer of Settlement (“the Order”), dated December 11, 2015, for willfully violating Section 10(b) of the Exchange Act and Rule 10b-5, and Rule 17a-4(b)(4) thereunder, NASD Rules 2110 and 2120, and FINRA Rules 2010 2020, 3110 and 4511.² The Firm and its former

¹ See the MC-400A Application filed with FINRA by Great Point Capital LLC, as well as related documents, dated February 18, 2016 (attached as Attachment 1).

² See FINRA’s Order Accepting Offer of Settlement, Disciplinary Proceeding No. 20080148227-02, December 11, 2015 (attached as Attachment 2).

president, Michael Scott Olson (“Olson”), were named as respondents in the Order.³ FINRA found that the Firm, acting through two Great Point proprietary traders, executed a series of small, progressively higher-priced orders for multiple securities during the two minutes leading up to the NASDAQ Opening Cross, and the ten minutes leading up to the NASDAQ Closing Cross, on numerous occasions during a five-year period. These orders were intended to, and did, inflate the price of each security so that the Firm could obtain advantageous pricing on imbalance-only sell orders. By intentionally or recklessly raising the reported price of each security, the Firm, acting through its traders, artificially influenced and distorted the market price level of each security at issue and conveyed false information to the market as to the demand for each security. In addition, the Order noted that the Firm and Olson knew, or should have known, of red flags suggesting that the Firm’s traders were engaged in manipulative activity. By failing to heed the red flags, the Firm and Olson thus failed to reasonably supervise their trading activity and failed to establish and maintain a system to supervise the trading activities of the Firm’s proprietary traders that was reasonably designed to detect and prevent them from engaging in potentially manipulative, or otherwise improper, trading activity prior to the opening and closing cross, including the failure to establish, maintain and enforce reasonable written supervisory procedures (“WSPs”) regarding trading activity prior to the Opening and Closing Cross, in violation of NASD Rules 2110 and 3010 and FINRA Rule 2010.⁴

The Firm and Olson also knowingly failed to retain trader-to-trader electronic communications for a period of almost five years, resulting in findings that the Firm willfully violated Exchange Act Rule 17a-4(b) (4) and that both violated NASD Rules 2110 and 3110 and FINRA Rules 2010 and 4511.

As a result of its misconduct, the Firm was censured, fined \$1,100,000 (of which \$50,000 is joint and several with Olson), and ordered to comply with various undertakings.⁵ At

³ Olson was barred from associating with a FINRA member in a principal capacity. The Firm has represented that Olson’s supervisory registrations have been terminated and he only serves in the capacity of a General Securities Representative. *See* email dated August 9, 2016 from Gabriel Mengin, President of Great Point Capital, LLC, to Lorraine Lee-Stepney, of FINRA (attached as Attachment 3), and an excerpt from the records of the Central Registration Depository (“CRD”), reflecting that Olson’s principal registrations have been terminated (attached as Attachment 4).

⁴ There were also findings that the Firm and Olson violated NASD Rules 2110 and 3010, and FINRA Rule 2010 for failing to supervise potential “layering” activity occurring through a customer account and for failing to establish, maintain and enforce a reasonable system of supervision, including WSPs, with respect to short sale transactions.

⁵ The Firm is currently subject to an installment payment plan. An initial payment of \$262,500 was made on January 15, 2016. FINRA’s Finance Department has confirmed that Great Point is current on its

the time, Great Point was also prohibited from trading in the NASDAQ continuous book while simultaneously trading in the same security on the opposite side of the market during the NASDAQ opening or closing cross process until the Firm submitted proof that it had implemented the recommendations of the independent consultant with respect to its supervisory deficiencies.⁶ The undertakings included retaining an independent consultant to conduct a comprehensive review of the adequacy of the Firm's policies, systems, controls, procedures (written and otherwise) and training relating to potentially manipulative trading activity, including but not limited to, trading in connection with the NASDAQ Opening and Closing Cross, "Layering" and "Spoofing" activity, retention and supervision of electronic communications, and short sale orders and transactions. The Firm has complied with the undertakings by retaining an independent consultant and implementing the consultant's recommendations.⁷ Great Point remains subject to disqualification because the disqualifying event is a willful violation of the federal securities laws and a sanction remains in effect because the monetary fine is still outstanding. The Firm will remain disqualified until the fine is paid in full.⁸

III. Background Information about Great Point

Great Point has been a member of FINRA f/k/a NASD since 2001.⁹ The Firm has five branch offices, three of which are Offices of Supervisory Jurisdiction ("OSJs"), and employs 101 registered representatives, six registered principals and 17 non-registered individuals.¹⁰ The Firm engages in the following types of business lines:¹¹ broker or dealer retailing corporate equity securities over-the-counter (BDR); put and call broker or dealer or option writer (PCB); non-exchange member arranging for transactions in listed

payment plan. See the Firm's Installment Payment Plan Agreement and Amortization Schedule dated March 17, 2016 (attached as Attachment 5).

⁶ Staff from FINRA's Department of Market Regulation have represented that this conditional prohibition is no longer in place.

⁷ MCD Consulting's One Year Update of Great Point Capital Trading Supervisory Structure Review, dated December 22, 2016; Great Point Capital Trading Supervisory Structure Review, dated October 9, 2015; and Implementation Report from MCD Consulting dated February 2, 2016 (collectively attached as Attachment 6).

⁸ If the Firm continues to pay in accordance with the payment schedule, its final payment will be paid on January 15, 2020. See page 6 of Attachment 5.

⁹ Attachment 1 at p. 80.

¹⁰ *Id.*

¹¹ See CRD Excerpt: Types of Business (attached as Attachment 7).

securities by exchange member (NEX); trading securities for own account (TRA); private placements of securities (PLA); effects transactions in commodity futures, commodities, commodity options as broker for others or dealer for own account. The Firm also engages in proprietary futures trading as other non-securities business.

A. Recent Regulatory Actions

Great Point has consented to four FINRA Letters of Acceptance, Waiver and Consent (“AWC”). In the most recent AWC, (“2015 AWC”) the Firm was sanctioned in December 2015 for failing to timely report in the Order Audit Trail System (“OATS”), Reportable Order Events during various periods in 2013, 2014 and 2015, each a distinct violation of FINRA Rule 7450; allowing as many as 49 registered persons to engage in equity trading without a Series 55 license, in violation of NASD Rule 1032(f); and maintaining a deficient written supervisory system with respect to OATS reporting and registration of associated persons that did not provide for supervision reasonably designed to achieve compliance with the federal securities laws and FINRA Rules, a violation of FINRA Rule 2010, NASD Rule 3010 and FINRA Rule 3110.¹² For these violations, the Firm was censured, fined \$150,000¹³ and ordered to comply with undertakings to revise the Firm’s WSPs.

In the other AWCs, among other violations, the Firm was cited for the following¹⁴: violating NASD Rules 2110 and 3010 and Regulation SHO (“Reg SHO”) for maintaining a supervisory system that was not reasonably designed to achieve compliance with respect to applicable federal securities laws and regulations concerning manipulation, wash trading, pre-opening quotations and trading. Great Point was censured in connection with each AWC, ordered to pay fines ranging from \$10,000 to \$175,000, as well as disgorgement in one instance, and ordered to undertake to revise its WSPs in another instance. With the exception of the 2015 AWC, all fines levied against the Firm, in the other AWCs, have been paid.

¹² See FINRA AWC No. 20130386301-01 (December 18, 2015) (attached as Attachment 8).

¹³ Great Point is subject to an Installment Payment Plan for the fine from the 2013 AWC # 20130386301-01. FINRA’s Finance Department has confirmed that Great Point is current on its payment plan. See the Firm’s Installment Payment Plan Agreement and Amortization Schedule dated May 24, 2016 (attached as Attachment 9).

¹⁴ See AWC No. 2005000174101 (February 26, 2008); AWC No. 20060050531-01 (March 30, 2009); AWC No. 20090181584-01 (June 10, 2011); and AWC No. 20060051571-02 (April 9, 2012) (collectively attached as Attachment 10).

In addition to the above FINRA actions, the Firm also entered into a Consent Order with the State of Nevada Office of the Secretary of State Securities Division in September 2015 (“Nevada Consent Order”).¹⁵ In the Nevada Order, the Firm was cited for transacting business as a broker-dealer in the state of Nevada two weeks prior to being approved to do so. The Firm was ordered to comply with the Nevada Uniform Securities Act, pay a civil penalty of \$25,000 and administrative cost and fees related to the investigation.

B. Recent Routine Examinations

Over the past four years, FINRA has conducted two Sales Practice examinations of Great Point. The Firm’s most recent examination concluded in October 2015.¹⁶ Nine exceptions were noted during this examination, which resulted in a Cautionary Action against the Firm. The most notable exceptions were the Firm’s failure to implement and enforce its WSPs with regard to obtaining and recording information about a customer’s investment profile, in violation of FINRA Rule 3110(b) and failure to establish and maintain a system to supervise the activities of a registered representative, in that the individual was able to review his own activity as a registered principal, in violation of FINRA Rule 3110(a).

The Firm’s 2013 examination also resulted in a Cautionary Action for four exceptions.¹⁷ The most notable were the Firm’s failure to conduct annual inspections of a branch office for three years, in violation of NASD Rule 3010(c)(1)(A), and its failure to adequately address trading in proprietary accounts in that the Firm could not evidence rejected order requests, in violation of NASD Rule 3010(b)(1).

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

Great Point seeks to continue its membership with FINRA notwithstanding FINRA’s Order that rendered it statutory disqualified.

¹⁵ See the Nevada Consent Order (September 2, 2015) (attached as Attachment 11).

¹⁶ See Examination Disposition Letter & Examination Report, 2015 Cycle Examination of Great Point Capital, LLC, Examination No. 20150436515 (April 7, 2016 & February 29, 2016) (attached as Attachment 12).

¹⁷ See Examination Disposition Letter & Examination Report, 2013 Cycle Examination of Great Point Capital, LLC, Examination No. 20130350524 (August 7, 2013 & June 27, 2013) (attached as Attachment 13).

Pursuant to Exchange Act Rule 19h-1(c)(4) and FINRA Rule 9523(b), the Firm has agreed to the following plan of supervision (the “Supervisory Plan”)¹⁸:

1. The written supervisory procedures for Great Point Capital, LLC will be amended to state that Michael Scott Olson (CRD # 3021448) will not act in any supervisory capacity. He will neither have the responsibility, ability or authority to affect the conduct of associated persons of the Firm, nor will he be involved in the management of the Firm.
2. During the period of its statutory disqualification, and within 3 years of the date of hire, the Firm will not hire any registered representatives whose disciplinary history reflects any regulatory actions, arbitration awards and arbitration settlements, for which the basis was a sales practice violation;
3. The Firm will continue to implement and comply with the recommendations from the independent consultant’s report. Documents and notes related to the Firm’s compliance will be copied and maintained and kept segregated for ease of review during any statutory disqualification examination; and
4. On a weekly basis or sooner, the Firm will review exceptions reports run that week on all trading activities conducted by its proprietary traders. Any trading exceptions will be promptly reviewed by the Chief Compliance Officer (“CCO”) or his designee under his supervision. The Firm’s Compliance Department, at the direction of the CCO, will prepare a memorandum on each exception. The memorandum will document and describe the independent review and resolution, by the CCO or his designee under his supervision of the exception, including, documentation that all material issues identified in the exceptions reports have been either resolved or appropriately disclosed in the Firm’s exception alert platform. A written record of the exceptions and the resulting review/resolutions process will be stored in the Firm’s exception alert platform during the entire time that the Firm is subject to this heightened supervisory plan. The records will be kept segregated and made available for review during any statutory disqualification examination.

Following the approval of the Firm’s continued membership in FINRA, FINRA intends to utilize its examination and surveillance processes to monitor the Firm’s continued compliance with the standards prescribed by FINRA Rule 9523. FINRA will examine the Firm during either the first year following the filing of the Rule 19h-1 Notice or,

¹⁸ See the Firm’s consent to the plan of supervision (attached as Attachment 14).

alternatively, during the Firm's regularly scheduled cycle examination, to ensure that Great Point is complying with the agreed upon plan of supervision. After the initial examination, the determination of whether to subject the plan to further review will be driven by FINRA's overall risk-based assessment of the Firm.

V. Discussion

After carefully reviewing the entire record in this matter, which includes remedial actions taken by the Firm to address deficiencies noted in the Order,¹⁹ FINRA approves the Firm's request to continue its membership in FINRA, subject to the terms and conditions as set forth in the aforementioned plan of supervision.

When evaluating a membership continuance application for a firm, we assess whether the statutorily disqualified firm that is seeking to continue its membership in FINRA has demonstrated that its continued membership is in the public interest and does not create an unreasonable risk of harm to investors or the markets.²⁰ Factors that bear on FINRA's assessment include the nature and gravity of the statutorily disqualifying misconduct, the restrictions imposed, whether there has been any intervening misconduct, and the potential for future regulatory problems.

With these standards in mind, we noted that Great Point appears to have taken steps to address the misconduct in the Order and to prevent its reoccurrence. As part of the undertakings, Great Point was ordered to retain an independent consultant that would review and submit a written report. Based on MCD's recommendations, Great Point represents that it has adopted and implemented the following recommendations:²¹

- 1) Subscribed to the NASDAQ SMARTS system to enhance its monitoring of excess cancels and potential spoofing conduct. By utilizing SMARTS, the Firm is able to closely monitor instances of excessive cancellation of orders, potential spoofing transactions, wash sales and Reg SHO compliance;

¹⁹ Id.

²⁰ See e.g., [Frank Kufrovich, 55 S.E.C. 616, 623 \(2002\)](#); [William J. Haberman, 53 S.E.C. 1024, 1027 \(1998\)](#), *aff'd*, [205 F.3d 1345 \(8th Cir. 2000\)](#) (Table).

²¹ Attachment 1 at p. 140 – 144.

- 2) With respect to imbalance orders, the Firm has amended its WSPs to evidence the utilization of SMARTS to monitor activity at the opening and closing of trading in order to detect potential order imbalance violative conduct; and
- 3) The Firm has also adopted electronic mail retention and review procedures as outlined in MCD's report.

The Order is recent and involves serious violations of federal rules and regulations, however, the undertakings contained therein address necessary changes to the Firm's procedures and compliance functions and appear to be reasonably designed to prevent and deter similar misconduct in the future. Additionally, the plan of supervision will continue to provide oversight of the Firm's compliance in the relevant areas for a number of years.

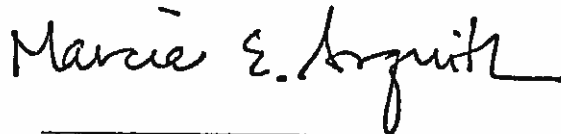
Following the approval of the Firm's continued membership in FINRA, FINRA intends to utilize its examination and surveillance processes to monitor the Firm's continued compliance with the standards prescribed by Exchange Act Rule 19h-1 and FINRA Rule 9523.

Accordingly, based on the information known to FINRA as of the date of this notice, we do not believe that Great Point's continued membership in FINRA will create an unreasonable risk of harm to the market or investors.

Thus we approve the Firm's Application to continue its membership with FINRA as set forth herein. FINRA certifies that the Firm meets all qualification requirements and represents that the Firm is registered with several other self-regulatory organizations ("SROs") including: BATS-YX, BATS-ZX, EDGA, EDGX and NQX.

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

On Behalf of FINRA,



Marcia E. Asquith
Senior Vice President and Corporate
Secretary

List of Attachments

1. The MC-400A Application filed with FINRA by Great Point Capital LLC, as well as related documents, dated February 18, 2016.
2. FINRA's Order Accepting Offer of Settlement, Disciplinary Proceeding No. 20080148227-02, December 11, 2015.
3. Email dated August 9, 2016 from Gabriel Mengin, President of Great Point Capital, LLC, to Lorraine Lee-Stepney, of FINRA.
4. CRD Excerpt: Michael Olson's current registrations with Great Point.
5. The Firm's Installment Payment Plan Agreement and Amortization Schedule dated March 17, 2016.
6. MCD Consulting's One Year Update of Great Point Capital Trading Supervisory Structure Review, dated December 22, 2016; Great Point Capital Trading Supervisory Structure Review, dated October 9, 2015; and Implementation Report from MCD Consulting dated February 2, 2016.
7. CRD Excerpt: Types of Business.
8. FINRA AWC No. 20130386301-01 (December 18, 2015).
9. The Firm's Installment Payment Plan Agreement and Amortization Schedule dated May 24, 2016.
10. AWC No. 2005000174101 (February 26, 2008); AWC No. 20060050531-01 (March 30, 2009); AWC No. 20090181584-01 (June 10, 2011); and AWC No. 20060051571-02 (April 9, 2012).
11. The Nevada Consent Order (September 2, 2015).
12. Examination Disposition Letter & Examination Report, 2015 Cycle Examination of Great Point Capital, LLC, Examination No. 20150436515 (April 7, 2016 & February 29, 2016).
13. Examination Disposition Letter & Examination Report, 2013 Cycle Examination of Great Point Capital, LLC, Examination No. 20130350524 (August 7, 2013 & June 27, 2013).
14. The Firm's consent to the plan of supervision, executed by the Firm's President, Gabriel Mengin, on March 22, 2017.