

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the
Continued Membership
of

IBN Financial Services, Inc.
(CRD No. 42360)

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

SD-2159

Date: August 2, 2019

I. Introduction

On April 12, 2017, IBN Financial Services, Inc. (“IBN” or the “Firm”) submitted a Membership Continuance Application (“MC-400A” or the “Application”) to FINRA’s Department of Registration and Disclosure.¹ The Application seeks to permit the Firm, a FINRA member subject to statutory disqualification, to continue its membership with FINRA notwithstanding its disqualification. A hearing was not held in this matter; rather, pursuant to FINRA Rule 9523(b), FINRA’s Department of Member Supervision (f/k/a Member Regulation) approves the Application and is filing this Notice pursuant to Rule 19h-1 of the Securities Exchange Act of 1934 (“Exchange Act”).

II. The Statutorily Disqualifying Event

IBN is subject to statutory disqualification pursuant to Section 3(a)(39)(F) of the Exchange Act, incorporating by reference Section 15(b)(4)(H)(ii), as a result of the Assurance of Discontinuance (“AOD”) issued by the New York State Attorney General (“NYAG”) dated June 3, 2016, which found that IBN violated New York General Business Law Article 23-A Section 352 et seq. and Executive Law Section 63(12), by making material misrepresentations and omissions to induce investors to purchase certain investment contracts created by another financial services firm (“VFG”).² In the AOD, IBN admitted that it failed to perform adequate due diligence on the VFG

¹ See the MC-400A Application filed with FINRA by IBN dated April 12, 2017, attached as Exhibit 1 (with attachments). The Firm requested and was granted several extensions before filing the Application and is no longer asserting that it is not subject to statutory disqualification as a result of the AOD.

² See In the Matter of Investigation of IBN Financial Services, Inc., NYAG AOD No. 16-111, dated June 3, 2016, attached as Exhibit 2.

contracts despite recognizing that they were an “unusual product.”³ As a result, IBN failed to understand fully the material features and risks of the investment before approving the product for sale by its representatives.⁴ In turn, IBN representatives either failed to disclose that, according to the contracts, sellers continued to retain complete control over their monthly pension or disability payments and could prevent payments from being made to investors, or misrepresented the effect of these contractual provisions.⁵

IBN sold seven VFG contracts to New York customers who invested a total of \$270,964.45 in order to receive aggregate benefit payments totaling \$329,094 over a number of years. In two of the seven contracts, investors stopped receiving payments, resulting in losses totaling approximately \$50,215.66. For six of the seven investment contracts, IBN earned approximately \$2,151.87 in commissions and IBN’s representatives collectively earned approximately \$10,883.42 in commissions.⁶

Because of the misconduct outlined above, the Firm is barred for a period of five years from selling, marketing, brokering or soliciting, within New York State or to New York State residents, any secondary market pension or similar investments in which the investor receives a stream of income in return for a lump sum payment.⁷ The Firm also agreed to pay \$13,035.29 in disgorgement and \$10,000 in penalties, fees, and costs.⁸

III. Background Information

IBN has been a FINRA member since 1997.⁹ According to the Application, the Firm has 25 branch offices, one of which is an Office of Supervisory Jurisdiction (“OSJ”), and employs approximately 73 registered individuals, including 28 principals, as well as 7 non-registered individuals.¹⁰

³ *Id.* at pp. 1-6.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at pp. 1-2.

⁷ *Id.* at pp. 6-7. According to the AOD, IBN and its representatives stopped selling the VFG contracts in or about June 2012. *Id.* at 6, para. 20. The five-year bar from selling similar products ends on June 3, 2021.

⁸ *Id.* at p. 7. The Firm completed payment of the disgorgement and other penalties. *See* Exhibit 1 at pp. FINRA00053-54.

⁹ Exhibit 1 at FINRA00035.

¹⁰ *Id.*

The Firm is approved to engage in the following lines of business: broker or dealer retailing corporate equity securities over-the-counter; broker or dealer selling corporate debt securities; mutual fund retailer; U.S. government securities broker; municipal securities broker; broker or dealer selling variable life insurance or annuities; solicitor of time deposits in a financial institution; broker or dealer selling gas or oil interests; put and call broker or option writer; investment advisory services; broker or dealer selling tax shelters or limited partnerships in primary distributions; broker or dealer selling tax shelters or limited partnerships in the secondary market; and private placements of securities.¹¹

A. Recent FINRA Examinations

The Firm's 2018 routine examination resulted in a Cautionary Action for four exceptions, including deficient written supervisory procedures ("WSP") related to supervision of restricted securities in customer accounts; failure to establish procedures regarding FINRA Rule 4512; failing in two instances to maintain an accurate purchase and sale blotter; and failing to evidence adequate suitability reviews of variable annuities in several sampled transactions.¹² The Firm's 2017 cycle examination resulted in a Cautionary Action for eight exceptions. Notable exceptions included deficient WSP that: 1) failed to address multi-class variable annuities ("VA") and related suitability considerations in the solicitation and sale of VA shares; 2) failed to include specific guidelines for review of correspondence, Uniform Applications for Securities Industry Registration ("Form U-4") and related public records; and 3) failed to describe how the Firm monitors its trade reporting of municipal securities for completeness and accuracy. In addition, the Firm was cited for failing to enforce its WSP requiring registered representatives to submit an updated Senior Questionnaire for transactions involving investors age 75 or older; failing to have a qualified individual conduct a branch office inspection; and making payments to unregistered persons.¹³ In the last two years, the Firm was also issued a Cautionary Action in two separate limited purpose examinations.¹⁴

B. Recent Regulatory Actions

¹¹ See printout of CRD Types of Business for IBN, attached as Exhibit 3.

¹² See FINRA Examination Disposition Letter & Examination Report, 2018 Examination of IBN, Examination No. 20180562798, and the Firm's Response, collectively attached as Exhibit 4.

¹³ See FINRA Examination Disposition Letter & Examination Report, 2017 Cycle Examination of IBN, Examination No. 20170521498, and the Firm's Response, collectively attached as Exhibit 5.

¹⁴ See FINRA Examination Disposition Letters for Examination Nos. 2018577435 (Firm cited for failing to timely file a Form U5 for representative who resigned) and 20170562044 (Firm cited for exceptions related to market order timeliness, supervision and books and records), collectively attached as Exhibit 6.

The Firm has no regulatory actions in the last two years¹⁵ and has no prior SEC Rule 19h-1 Notices.

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

IBN seeks to continue its membership with FINRA notwithstanding its statutory disqualification. The Firm represents that it has committed to taking a number of steps to comply with the sanctions set forth in the AOD and prevent recurrence of the misconduct that gave rise to its statutory disqualification. First, the Firm represents that it has stopped selling products involving the sale of secondary market pensions ("SMPs") and will focus on "name brand" larger product sponsors as alternative investments.¹⁶ To ensure that the Firm conducts robust and complete due diligence on such products, the Firm designated Howard Modell as its Due Diligence Officer ("DDO").¹⁷

In addition, IBN has agreed to the following Plan of Supervision ("the Supervisory Plan") as a condition of its continued membership with FINRA.¹⁸

1. The Firm will not sell, market, broker or solicit customers to buy secondary market pensions ("SMPs") or similar investments, including but not limited to, life settlements, viatical settlements or legal settlement funding, in which the investor receives a stream of income, and/or cash flow, and/or structured cash flow in return for a lump sum payment.
2. The Firm will not include any investment products that involve the sale of SMPs on its trading platform.
3. The Firm will discipline any associated person who violates its prohibition on selling SMPs or similar investment products. Such discipline may include suspension and/or imposition of a fine, or termination for cause.

¹⁵ See CRD Snapshot for IBN Financial Services, Inc., attached as Exhibit 7, at pp. 9-20. The Firm has only two reported disciplinary actions in its 22-year history in addition to the 2016 NYAG AOD. *Id.* The more recent of the two was a Letter of Acceptance, Waiver and Consent ("AWC") issued by FINRA in May 2017 for net capital violations for which the Firm was censured and fined \$15,000.

¹⁶ See the Firm's Letter to FINRA dated August 10, 2018, at p. 1, attached as Exhibit 8.

¹⁷ Modell has been employed in the securities industry for more than 20 years, approximately half as a principal. According to the Firm, he has a strong background in the review and analysis of alternative investments. *Id.* at p. 3, paragraph 5.

¹⁸ See Copy of Plan of Supervision executed on July 17, 2019, attached as Exhibit 9.

4. The Chief Compliance Officer (“CCO”) will document all reports received regarding references to SMPs and will note all reviews conducted and any follow-up action taken. Records of all such reviews will be maintained by the Firm’s CEO in a segregated folder for ease of review by FINRA examination staff.
5. As part of the Firm’s annual supervisory review, the CEO will specifically inquire as to any reference to SMPs that the CCO may have detected or which were reported to the CCO during the preceding year, and review any documents relating thereto.
6. The Firm will maintain a New Product Committee (“NP Committee”), which consists of the Firm’s DDO, CEO, CCO, and Chief Operating Officer (“COO”), and has the sole authority to approve a new product for sale by Firm representatives.
7. The DDO will report to the Firm’s CEO.¹⁹ As part of the new product review by the NP Committee, the CEO will review the entire product folder to ensure that the DDO has followed the Firm’s procedures in conducting due diligence. The CEO’s review of a product folder will be reflected on a checklist that will be maintained as part of the product folder. The CEO shall generally attend product meetings and his attendance at a new product meeting will be noted in writing by the DDO and maintained in the product folder.
8. The Firm’s CCO or his designee will be responsible for the supervision of the DDO. At least every two years for a period of five years from the date of the AOD, the Firm will hire outside counsel to review its due diligence procedures, discuss and consider any recommendations made by counsel, and implement the recommendations as appropriate. The Firm will obtain a written report of outside counsel’s review, and will document the Firm’s response to such report, including any revisions made to the Firm’s WSP. All related documents will be kept segregated for ease of review during any Statutory Disqualification (“SD”) FINRA examination. At the conclusion of the five-year review period, the Firm will review the due diligence procedures on an as-needed basis.
9. On an annual basis for a period of five years from the date of this Notice, the Firm will conduct a training of all registered persons on the Firm’s due diligence procedures. The Firm will maintain copies of the agenda for each of the annual trainings provided and will document attendance at such trainings.

¹⁹ The Firm represents that its CEO, Richard Carlesco, has been involved in the alternative marketplace since 1997, and has experience in reviewing and working with alternative investment products. Furthermore, IBN has been a member of Investment Program Association (“IPA”) and Alternative & Direct Investment Securities Association (“ADISA”) for many years. *See* Exhibit 8 at p. 3, paragraph 5.

V. Discussion and Recommendation

After carefully reviewing the record in this matter, FINRA approves the Firm's request to continue its membership, subject to the terms and conditions set forth below.

In evaluating the Application, Member Supervision assessed whether the Firm has, as of the date of this Notice, demonstrated that its continued membership is consistent with the public interest and does not create an unreasonable risk of harm to investors or the market.²⁰ Factors considered in Member Supervision's assessment included the nature and gravity of the statutorily disqualifying misconduct, time elapsed since its occurrence, restrictions imposed, whether there has been any intervening misconduct and the Firm's regulatory history.

Although the AOD involved serious violations of New York laws, IBN's sale of the product at issue took place more than seven years ago and was limited to seven investment contracts.²¹ Furthermore, the Firm has complied with the financial sanctions imposed, including disgorgement of the commissions that it and its representatives earned for facilitating the sale of the contracts to New York State residents.²² The Firm also represented that it ceased selling the contracts at issue in June 2012 and has revised its procedures to prohibit the sale of any investment products involving secondary market pensions and similar products.²³

In addition to discontinuing the sale of products that provide an income stream to investors in exchange for an upfront payment, the Firm has agreed to a Supervisory Plan that outlines procedures for review of potential new alternative products the Firm may offer, including an initial documented due diligence review by the Firm's due diligence officer and additional review by a "new product" committee comprised of the Firm's executive leaders. The multiple layers of review of new alternative products, which will be kept segregated and available to FINRA for review, should help prevent future misconduct involving these investment products. In addition, Member Supervision conducted a review of the Firm's regulatory history and recent examinations and finds that none of these matters should prevent the continuance of the Firm as a FINRA member.

²⁰ See FINRA By-Laws, Art. III, Sec. 3(d); *In the Matter of the Continued Membership of J.P. Morgan Securities, Inc.*, SD-1904, SD-1905, and SD-1984 (FINRA NAC 2014), quoting *Frank Kufrovich*, 55 S.E.C. 616, 624 (2002) (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"). Available at: http://www.finra.org/sites/default/files/NAC%20Statutory%20Disqualification%20Decision%20SD1904_0_0_0_0_0.pdf.

²¹ See Exhibit 2 at pp. 1-2.

²² *Id.* at p. 7; Exhibit 1 at FINRA00038.

²³ See Exhibit 2 at p. 6, para. 20 and Exhibit 8 at p. 1.

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

Based on information known to FINRA as of the date of this Notice and the Firm's representations made pursuant to the Supervisory Plan, Member Supervision is satisfied that the Firm's continued membership with FINRA will not create an unreasonable risk of harm to the market or investors. Accordingly, Member Supervision approves IBN's Application to continue its membership with FINRA.

FINRA certifies that IBN meets all qualification requirements and represents that the Firm is registered with one other self-regulatory organization, namely MSRB.²⁴ In conformity with the provisions of Rule 19h-1, the continued membership of the Firm will become effective within 30 days of the receipt of this notice by the Securities and Exchange Commission, unless otherwise notified by the Commission.

On Behalf of FINRA,

A handwritten signature in black ink, appearing to read "Marcia E. Asquith", written over a horizontal line.

Marcia E. Asquith
Executive Vice President and Corporate Secretary

²⁴ See CRD printout for IBN Financial Services, Inc., entitled "Organization Registration Status," attached as Exhibit 10; see also Exhibit 1 at FINRA00035.

Exhibits

1. MC-400A Application filed by IBN Financial Services, Inc. (with attachments).
2. NYAG AOD No. 16-111, executed between IBN and NYAG on June 3, 2016.
3. Printout of CRD Types of Business for IBN.
4. FINRA Examination Disposition Letter & Examination Report, 2018 Routine Examination of IBN, Examination No. 20180562798, and the Firm's Response.
5. FINRA Examination Disposition Letter & Examination Report, 2017 Cycle Examination of IBN, Examination No. 20170521498, and the Firm's Response.
6. FINRA Examination Disposition Letters for Examination Nos. 2018577435 and 20170562044.
7. CRD Snapshot for IBN Financial Services Inc.
8. IBN's Letter to FINRA dated August 10, 2018.
9. IBN's Letter Consenting to the Plan of Supervision executed on July 17, 2019.
10. Printout of CRD Organization Registration Status for IBN.