

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the  
  
Continued Membership  
  
of  
  
Scotia Capital (USA) Inc.  
(CRD No. 2739)

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

SD-2360

**April 12, 2024**

**I. Introduction**

On June 6, 2023, Scotia Capital (USA) Inc. (“SCUSA” or “Firm”) submitted a Membership Continuance Application (“MC-400A Application” or “Application”) to FINRA’s Credentialing, Registration, Education, and Disclosure (“CRED”) Department.<sup>1</sup> The Application seeks permission for the Firm, a FINRA member, to continue its membership with FINRA notwithstanding its statutory disqualification. A hearing was not held in this matter; rather, pursuant to FINRA Rule 9523(b), FINRA’s Department of Member Supervision (“FINRA,” “Member Supervision,” or “Department”) approves the Application and is filing this Notice pursuant to Rule 19h-1 of the Securities Exchange Act of 1934 (“Exchange Act” or “SEA”).

**II. The Statutorily Disqualifying Event**

The Firm is subject to statutory disqualification, as that term is defined in Section 3(a)(39)(F) of the Exchange Act, incorporating by reference Sections 15(b)(4)(D) and (E), as a result of a May 11, 2023 Order issued by the Securities and Exchange Commission (“SEC” or “Commission”) finding SCUSA willfully violated Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) and failed reasonably to supervise its employees with a view to preventing or detecting certain of its employees’ aiding and abetting violations of Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder (“SEC Order”).<sup>2</sup>

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<sup>1</sup> See MC-400A Application and related attachments compiled by CRED, with a cover memorandum dated June 9, 2023, attached as Exhibit 1.

<sup>2</sup> See SEC Order, *In re Scotia Capital (USA) Inc.*, Exchange Act Release No. 97477 (May 11, 2023), attached as Exhibit 2.

According to the SEC Order, from at least January 2020 to December 2021, SCUSA employees sent and received off-channel communications that related to the Firm's business, and a majority of these written communications was not maintained or preserved by the Firm.<sup>3</sup> Further, supervisors who were responsible for preventing this misconduct among junior employees routinely communicated off-channel using their personal devices, and, in so doing, failed to comply with Firm policies by communicating using non-Firm approved methods on their personal devices about the Firm's broker-dealer business.<sup>4</sup>

The Firm was censured, ordered to cease and desist from committing or causing any future violations, ordered to pay a civil money penalty of \$7.5 million, and ordered to comply with undertakings.<sup>5</sup> The Firm represented that it paid the penalty on May 12, 2023<sup>6</sup> and is in compliance with the undertakings.<sup>7</sup>

### **III. Remedial Measures<sup>8</sup>**

According to the Application, the Firm undertook remedial measures prior to the issuance of the SEC Order, including enhancing its policies and procedures, increasing training concerning the use of approved communications methods, enhancing surveillance efforts, and implementing technological improvements.

SCUSA represented that prior to the issuance of the SEC Order, it adopted an updated Voice & Electronic Communications Standard in connection with the prohibition of unapproved and off-platform communication channels that clarified the definition of Business Communications. The Firm further represented that it began issuing "restricted" phones that prevented users from downloading unapproved applications, including text messaging, SMS and WhatsApp.

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The SEC Order also triggered disqualification under Rules 262(a)(4), 506(d)(1)(iv), and 602(c)(3) of the Securities Act of 1933 and Rule 503(a)(4)(ii) of Regulation Crowdfunding. On May 11, 2023, the SEC granted a waiver from the application of the disqualification provisions of these Rules. *See In re Certain Broker-Dealer Practices*, Securities Act Release No. 11182 (May 11, 2023), attached as Exhibit 3.

<sup>3</sup> See Exhibit 2 at p. 2.

<sup>4</sup> *Id.*

<sup>5</sup> See Exhibit 2 at pp. 6-11.

<sup>6</sup> See Exhibit 1 at FINRA000142, Response 4. See also Firm's Discovery Response dated October 27, 2023, attached as Exhibit 4 at FINRA p. 2.

<sup>7</sup> See Exhibit 1 at FINRA00151, (internal Appendix C). See also Exhibit 4 at FINRA p. 2-3.

<sup>8</sup> See Exhibit 1 at FINRA000151-152.

#### IV. Firm Background

The Firm has been a FINRA member since January 1940.<sup>9</sup> It is headquartered in New York, New York, with four branches (three of which are Offices of Supervisory Jurisdiction).<sup>10</sup> The Firm employs approximately 706 registered representatives (including 172 registered principals), 67 operations professionals and 124 non-registered fingerprint employees.<sup>11</sup> The Firm employs one individual who is subject to statutory disqualification.<sup>12</sup>

SCUSA is approved to engage in the following lines of business:<sup>13</sup> exchange member engaged in exchange commission business other than floor activities; broker or dealer selling corporate debt securities; underwriter or selling group participant (corporate securities other than mutual funds); put and call broker or dealer or option writer; trading securities for own account; private placements of securities; engages in other securities business; effects transactions in commodity futures, commodities, commodity options as broker for others or dealer for own account; engages in other non-securities business; prime broker for U.S. listed cash equity securities, DTC eligible securities and U.S. treasury securities; margin lending including extending credit to its prime brokerage customers against all securities eligible under Regulation T; M&A; sales and divestitures; recapitalizations; strategic alternatives; fairness opinions and valuations; produces and distributes equities research; and broker in the sale of commercial paper.

The Firm is a member of the following self-regulatory organizations (“SROs”): Cboe BYX Exchange, Inc. (“BYX”); Cboe BZX Exchange, Inc. (“BZX”); Cboe EDGA Exchange, Inc. (“EDGA”); Cboe EDGX Exchange, Inc. (“EDGX”); Investors Exchange LLC (“IEX”); NYSE American LLC (“NYSE American”); NYSE Arca, Inc. (“NYSE Arca”); NYSE Chicago, Inc. (“NYSE Chicago”); Nasdaq ISE, LLC (“ISE”); The Nasdaq Stock Market LLC (“Nasdaq”); New York Stock Exchange LLC (“NYSE”);<sup>14</sup> The Depository Trust Company (“DTC”); National Securities Clearing Corporation (“NSCC”); and Fixed Income Clearing Corporation Government Securities Division (“FICC-GOV”).<sup>15</sup>

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<sup>9</sup> See CRD Excerpt – Organization Registration Status, attached as Exhibit 5 at p. 1.

<sup>10</sup> Verified by FINRA staff through a review of information contained in CRD, last performed on March 20, 2024.

<sup>11</sup> *Id.*

<sup>12</sup> James Preston Morris (“Morris”) (CRD No. 1632951) (New York, NY Branch Office). *See also* Appendix A.

<sup>13</sup> See CRD Excerpts – Types of Business and Other Business Descriptions, collectively attached as Exhibit 6.

<sup>14</sup> See Exhibit 5.

<sup>15</sup> Membership in these organizations was verified by FINRA staff through a search of public member

### **Recent Examinations**

In the past two years, FINRA completed two routine examinations (one on behalf of other SROs) of the Firm that resulted in the issuance of Cautionary Action Letters (“CAL(s)”). FINRA also completed one additional non-routine examination that resulted in a CAL.

#### **A. FINRA Routine and Spin-Off Examinations**

On April 21, 2023, FINRA completed a routine examination of the Firm on behalf of BYX, BZX, EDGA, EDGX, IEX, NYSE Arca, NYSE Chicago, and ISE that resulted in a CAL from BYX for one exception related to the Firm’s failure to adequately maintain written supervisory policies and procedures reasonably designed to ensure compliance with Order Entry Requirements - Capacity in violation of BZX Rule 5.1.<sup>16</sup> The Firm acknowledged the exception and responded that it provided updated Written Supervisory Procedures (“WSPs”) that detail a quarterly review for compliance with Order Entry Requirements and the Firm is in the process of updating its review procedures which it plans to finalize by March 31, 2023.<sup>17</sup> FINRA continued its review of the Firm’s RSA Exchange Traded Fund (ETF) under another matter,<sup>18</sup> which resulted in three additional CALs issued to the Firm on behalf of BZX, BYX, EDGX, EDGA, IEX, NYSE Arca, and NYSE Chicago on February 9, 2024.<sup>19</sup> These CALs all related to the Firm’s failure to establish, maintain, and enforce written procedures for supervising the activities of its associated persons to ensure compliance with Section 5(b)(2) of the Securities Act of 1933 and the various SROs’ rules regarding the delivery of prospectuses in connection with ETF transactions.<sup>20</sup> The Firm acknowledged the BZX, BYX, EDGX, EDGA, NYSE Arca, and NYSE Chicago CALs in writing.<sup>21</sup> A written response to the IEX CAL was not required.<sup>22</sup>

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directories, last performed on March 20, 2024.

<sup>16</sup> See Disposition Letter for Examination No. 20220734165 dated April 21, 2023, Examination Report dated December 22, 2022, and Firm Response dated January 23, 2023, collectively attached as Exhibit 7.

<sup>17</sup> *Id.* at FINRA p. 7.

<sup>18</sup> *Id.* at FINRA p. 1.

<sup>19</sup> See BZX, BYX, EDGX, EDGA CAL No. 20220770993 dated February 9, 2024; IEX CAL No. 20220770993 dated February 9, 2024; NYSE Arca and NYSE Chicago CAL No. 20220770993 dated February 9, 2024; Firm’s NYSE Arca and NYSE Chicago Response dated February 15, 2024; and Firm’s BZX, BYX, EDGX, EDGA Response dated February 16, 2024, collectively attached as Exhibit 8.

<sup>20</sup> *Id.* at FINRA pp. 1, 3, and 5.

<sup>21</sup> *Id.* at FINRA pp. 7-9.

<sup>22</sup> *Id.* at FINRA p. 4.

On April 19, 2023, FINRA completed a routine examination of the Firm that resulted in six exceptions for which the Firm was issued a CAL.<sup>23</sup> The Firm was cautioned for: 1) failure to establish and maintain an adequate supervisory system to review for margin security concentration charges that impact the customer reserve formula; 2) failure to complete certain data fields reported to Consolidated Audit Trail (CAT); 3) failure to accurately report 69 orders to the CAT; 4) failure to establish adequate written supervisory policies and procedures for ensuring compliance with the CAT; 5) failure to establish and maintain adequate written supervisory policies and procedures reasonably designed to ensure compliance with CAT Clock Synchronization; and 6) failure to prominently include the Firm's required disclosure in its research reports and take adequate corrective action in response to the SEC's 2016 finding related to the Firm's research reports.<sup>24</sup> The Firm acknowledged the exceptions, responded that it took timely action to remediate the issues, and represented that it would implement corrective measures, including drafting new procedures and implementing new oversight and controls.<sup>25</sup> Additionally, FINRA continued its review of the Firm's Reporting on Non-Cash Stock Borrow Transactions under another matter,<sup>26</sup> which resulted in the issuance of a CAL to the Firm on June 20, 2023 for failure to properly match and accurately report cash financing and non-cash financing transactions.<sup>27</sup> The Firm acknowledged the examination exceptions and noted that it promptly implemented an allocation process to better distinguish between cash and non-cash stock borrow and loan transactions and the related collateral for affiliate transactions and updated its relevant processes and procedures.<sup>28</sup>

#### B. FINRA Non-Routine Examinations

On July 1, 2022, FINRA issued a CAL to the Firm for failure to provide supervision reasonably designed to achieve compliance with FINRA Rule 2121 in violation of FINRA Rule 3110.<sup>29</sup> According to the CAL, the Firm's supervisory review of markdowns was

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<sup>23</sup> See Disposition Letter for Examination No. 20220734164 dated April 19, 2023, Examination Report dated December 22, 2022, and Firm Responses dated January 23, 2023 and February 8, 2023, collectively attached as Exhibit 9.

<sup>24</sup> *Id.* at FINRA pp. 5-9.

<sup>25</sup> *Id.* at FINRA pp. 11-20.

<sup>26</sup> *Id.* at FINRA p. 2.

<sup>27</sup> See Disposition Letter for Examination No. 20220763975 dated June 20, 2023, Examination Report dated May 3, 2023, and Firm Response dated May 18, 2023, collectively attached as Exhibit 10.

<sup>28</sup> *Id.* at FINRA p. 8.

<sup>29</sup> See CAL for Examination No. 20210706111 dated July 1, 2022 and Firm Response dated July 29, 2022, collectively attached as Exhibit 11.

deficient in that it did not consider transactions that were priced below the TRACE prints and the Firm's WSPs did not include all levels of the waterfall as detailed in FINRA Rule 2121(.02)(b).<sup>30</sup> The Firm acknowledged the CAL and noted that it corrected the alert rules to capture pricing variances and was revising its WSPs and policies and procedures to address the noted deficiencies.<sup>31</sup>

### **Regulatory Actions**

The Firm has been the subject of three recent disciplinary actions resulting in one Letter of Acceptance, Waiver, and Consent ("AWC") entered into with FINRA; one order issued by the Commodity Futures Trading Commission ("CFTC"); and one Disciplinary Notice issued by ICE Futures U.S., in addition to the order issued by the SEC that resulted in the instant Application.

#### **A. FINRA Action**

On October 12, 2022, the Firm entered into an AWC with FINRA related to the Firm's inaccurate reporting of approximately 2,400 short interest positions in violation of FINRA Rules 4560 and 2010 and failure to establish and maintain a supervisory system including WSPs, reasonably designed to achieve compliance with FINRA Rule 4560.<sup>32</sup> Consequently, the Firm consented to a censure and a fine in the amount of \$300,000,<sup>33</sup> which was paid on October 18, 2022.<sup>34</sup>

#### **B. CFTC Action**

On May 11, 2023, the CFTC issued an order finding that SCUSA violated Section 4g of the Commodity Exchange Act ("Act") (7 U.S.C. § 6g) and Regulations 1.31, 1.35 and 166.3 (17 C.F.R. §§ 1.31, 1.35, 166.3 (2022)).<sup>35</sup> These violations were based on the same misconduct underlying the SEC Order that is the subject of the Firm's Application. The Firm was ordered to cease and desist from violating the above cited sections of the Act and Commission Regulations, to pay (jointly and severally) a \$15 million fine, and to comply with various undertakings pertaining to the Firm's preservation of records related to

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<sup>30</sup> *Id.* at FINRA p. 1.

<sup>31</sup> *Id.* at FINRA p. 3.

<sup>32</sup> See FINRA AWC No. 2019061945201 dated October 12, 2022, attached as Exhibit 12.

<sup>33</sup> *Id.* at p. 3.

<sup>34</sup> See Form U6, attached as Exhibit 13.

<sup>35</sup> See CFTC Order, *In re Scotia Capital USA Inc. et al.*, CFTC Docket No. 23-25 (May 11, 2023), attached as Exhibit 14, at p. 8. FINRA has determined that this is not a disqualifying event.

electronic communications.<sup>36</sup> The Firm represented that it paid the fine on May 11, 2023, engaged a Compliance Consultant in accordance with the CFTC Order, and submitted the consultant's report to the CFTC as required.<sup>37</sup>

### C. ICE Futures Action

On March 16, 2022, SCUSA settled charges brought by ICE Futures U.S. for failing to comply with a) Exchange Rule 6.15(a) when it failed to submit to the Exchange large trader positions on reportable customer positions and b) Exchange Rule 4.01(a) when it failed to have proper processes for reporting large trader positions.<sup>38</sup> The Firm agreed to pay a monetary penalty of \$60,000, which was paid on March 21, 2022.<sup>39</sup>

### V. **Prior SEA Rule 19h-1 Notices**

The Firm has not been subject to prior SEA Rule 19h-1 or 19d-1 Notices.

### VI. **The Firm's Proposed Continued Membership with FINRA Plan of Heightened Supervision**

The Firm seeks to continue its membership with FINRA notwithstanding its status as a disqualified member. The Firm has agreed to the following Plan of Heightened Supervision as a condition of its continued membership with FINRA ("Supervision Plan" or "Plan"):<sup>40</sup>

Scotia Capital (USA) Inc. (the "Firm") is subject to statutory disqualification pursuant to 3(a)(39)(F) of the Securities Exchange Act of 1934, which incorporates by reference Sections 15(b)(4)(D) & (E), as a result of an order issued by the U.S. Securities and Exchange Commission dated May 11, 2023, which found that the Firm willfully violated Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-4(b)(4) thereunder. The SEC Order also found that the Firm failed to reasonably supervise its employees within the meaning of Section 15(b)(4)(E).

For the purpose of this Supervision Plan, the term "Digital Communication Channels" means all written electronic methods of communication used to conduct Firm business, including but not limited to, text messaging platforms, whether sent via SMS messaging, iMessage, or other messaging services such as WhatsApp; direct messaging platforms

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<sup>36</sup> *Id.* at pp. 9-13.

<sup>37</sup> *See* Exhibit 4 at pp. 2-3.

<sup>38</sup> *See* ICE Futures U.S. Disciplinary Notice, Case No. 2020-032 (March 16, 2022), attached as Exhibit 15.

<sup>39</sup> *See* Exhibit 4 at FINRA p. 56.

<sup>40</sup> *See* Executed Consent to Plan of Heightened Supervision dated March 6, 2024, attached as Exhibit 16.

including X f/k/a “Twitter,” Instagram, LinkedIn, Slack, or Bloomberg Messaging; non-Firm domain email accounts; and any other written electronic business-related correspondence. “Digital Communication Channels” encompass platforms used to exchange messages with internal or external stakeholders using either a personal or Firm-provided device.

For the purpose of this Supervision Plan, the term “Off-Channel Communications” means all business-related written electronic messages sent on Digital Communication Channels that are not captured by Firm surveillance and record-keeping systems.

In consenting to this Supervision Plan, the Firm agrees to the following:

1. The Firm shall comply with all of the undertakings outlined in the Securities and Exchange Commission (“SEC” or “Commission”) Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, *In re Scotia Capital (USA) Inc.*, Exchange Act Release No. 97477 (May 11, 2023) (“SEC Order”).
2. The Firm shall maintain copies of all correspondence between the Firm and Commission staff relating to the SEC Order, including documenting when Commission staff grants extensions to the deadlines set forth in the SEC Order. The Firm shall maintain copies of all such correspondence in a readily accessible place for ease of review by FINRA staff.
3. The Firm shall provide FINRA’s Statutory Disqualification Group with copies of all certifications submitted to the SEC upon completion of the undertakings as specified in the SEC Order. The Firm shall maintain copies of all certifications in a readily accessible place for ease of review by FINRA staff.
4. The Firm shall maintain copies of all reports and supporting documentation submitted to SEC staff in accordance with the SEC Order, as well as any other documentation needed to evidence the status and completion of each of the undertakings outlined in the SEC Order. The Firm shall maintain copies of such documentation in a readily accessible place for ease of review by FINRA staff.
5. Within six months of the SEC’s Letter of Acknowledgement (“LOA”) in this matter, to the extent that it has not already done so within the past six months, and on at least an annual basis thereafter, for a term of six years from the date of the LOA, the Firm shall conduct training for all associated persons regarding the Digital Communication Channels that the Firm has approved for business communication, along with the Firm’s current policies regarding retention of business-related electronic communications. The Firm shall maintain a record of



- individual completion of said training and a copy of said training materials in a readily accessible place for ease of review by FINRA staff.
6. The Firm shall conduct the training described in item number 5 above for all new hires, within 65 days from the date of commencement of new hire training, for a term of six years from the date of the LOA. The Firm shall retain a record of all new hire training, including a copy of all written training materials, and keep said record(s) in a readily accessible place for ease of review by FINRA staff.
  7. Within 90 days of the LOA, the Firm shall, to the extent that it has not already done so, establish and maintain a written list(s) of all Digital Communication Channels that its associated persons are permitted to use to communicate about Firm business. The list(s) shall be circulated to all of the Firm's associated persons at least on a semi-annual basis, for a term of six years from the date of the LOA. The Firm shall require that all associated persons obtain written approval for use of any Digital Communication Channels to communicate about Firm business that are not already on the approved list(s) maintained by the Firm. The Firm shall maintain a record of all requests and approvals or rejections of each request, including the date of the requests and the Firm's decision. The Firm shall maintain copies of such requests and decisions in a readily accessible place for ease of review by FINRA staff.
  8. The Firm shall require all associated persons to disclose on at least a semi-annual basis, for a term of six years from the date of the LOA, any unapproved Digital Communication Channels he/she is using to communicate about Firm business. The Firm shall retain records of such disclosures in a readily accessible place for ease of review by FINRA staff.
  9. Subject to Paragraph 7 above, the Firm shall prohibit associated persons from using Off-Channel Communications.
  10. Within 90 days of the LOA, the Firm shall, to the extent that it has not already done so, develop a process whereby, in the event that an associated person sends or receives an Off-Channel Communication, the Off-Channel Communication is submitted to the Firm and retained in compliance with relevant securities laws and regulations. For a term of six years from the date of the LOA, the Firm shall maintain a record of all such Off-Channel Communications, including a record of the Firm's receipt of the communication, in a readily accessible place for ease of review by FINRA staff.
  11. Within 90 days of the LOA, the Firm shall, to the extent that it has not already done so, develop and maintain written supervisory policies and procedures detailing the Firm's processes for disciplining associated persons who use Off-Channel Communications to communicate about Firm business. When the Firm uses the disciplinary process, the Firm shall document each instance. The Firm shall retain

records of such written supervisory policies and procedures and records of the disciplinary processes and each outcome.

12. All requested documents and certifications under this Supervision Plan shall be sent directly to FINRA's Statutory Disqualification Group at [SDMailbox@FINRA.org](mailto:SDMailbox@FINRA.org).
13. The Firm shall obtain written approval from FINRA's Statutory Disqualification Group prior to changing any provision of the Supervision Plan.
14. The Firm shall submit any proposed changes or other requested information under this Supervision Plan to FINRA's Statutory Disqualification Group at [SDMailbox@FINRA.org](mailto:SDMailbox@FINRA.org).

## **VII. Discussion**

After carefully reviewing the entire record in this matter, FINRA approves the Firm's request to continue its membership with FINRA, subject to the terms and conditions set forth herein. In evaluating SCUSA's Application, FINRA assessed whether the Firm has demonstrated that its continued membership is consistent with the public interest and does not create an unreasonable risk of harm to investors or the markets. *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"). Typically, factors that bear on FINRA's assessment include, among other things, the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, the Firm's regulatory history, and whether there has been any intervening misconduct.

As of the date of this Notice, FINRA has determined that the Firm's continued membership is consistent with the public interest and does not create an unreasonable risk of harm to investors or the markets. While the SEC Order identified serious violations of securities laws, the Firm was not expelled or suspended, nor were any limitations placed on SCUSA's securities activities. Although the SEC Order triggered certain disqualifications from exemptions from registration available under the Securities Act of 1933 ("Securities Act"), specifically Regulations A, D and E of the Securities Act and Regulation Crowdfunding, the SEC granted the Firm a waiver from the application of the disqualification provisions of Rules 262(a)(4)(ii), 506(d)(1)(iv)(B), and 602(c)(3) of the Securities Act and Rule 503(a)(4)(ii) of Regulation Crowdfunding. Moreover, the full amount of the civil monetary penalty was promptly paid, and the Firm promptly paid the sums owed to the CFTC based on an order with similar findings as the disqualifying one. Additionally, the Firm represented that it is in compliance with the ordered undertakings.

Member Supervision also acknowledges that within the SEC Order the Commission considered the Firm's prompt remedial actions and cooperation with the Commission when

determining to accept the Offer of Settlement. Specifically, the Commission acknowledged that SCUSA revised its policies and procedures, increased training, enhanced surveillance efforts and implemented technological improvements in an effort to address the risk of staff engaging in off-channel communications.<sup>41</sup> In the Application, the Firm represented that the SEC Order resulted from the Firm's self-disclosure after an internal investigation into the use of personal devices by its employees. In addition, the Firm adopted an updated Voice & Electronic Communications Standard in connection with the prohibition of unapproved and off-platform communication channels and implemented an accepted definition of "Business Communications" and issued "restricted" phones that prevented users from downloading unapproved applications, including text messaging, SMS and WhatsApp.

In evaluating the Firm's Application, FINRA notes that SCUSA's regulatory history is limited and there are no additional disqualifying orders. Member Supervision further notes that, as of the date of this Notice, the Firm has paid all fines and complied with all undertakings ordered by the SEC. Additionally, in response to SCUSA's recent examinations findings and exceptions, the Firm took steps to resolve them, including by taking immediate corrective action by implementing new oversight and controls and updating its procedures and Written Supervisory Procedures.

FINRA is further reassured by the controls set in place by the Firm's Supervision Plan which bolsters the undertakings outlined in the SEC Order and will continue to provide oversight of the Firm and compliance with its remaining undertakings. In accordance with the Plan, the Firm agreed to conduct annual training for all associated persons, including new hires, regarding the Firm's approved digital communication methods and record retention policies for electronic communications. Further, the Plan calls for the Firm to maintain a list of approved digital communication methods that associated persons are permitted to use for Firm business and to circulate that list to its associated persons semi-annually. The Plan requires the Firm's associated persons to obtain written approval to use digital communication channels not already approved. The Plan prohibits the use of off-channel communications and requires associated persons to semi-annually disclose any unapproved digital communication methods they are using for Firm business; they must also forward any off-channel communications that may have taken place to the Firm for retention purposes. These provisions will help to ensure that the Firm is aware of the communication methods being used by associated persons so that it can appropriately monitor, capture, and retain those communications. Additionally, the Plan mandates that the Firm develop policies and procedures for disciplining associated persons who use unapproved communication methods for Firm business and segregate all certifications, reports, and supporting documentation submitted to the SEC regarding compliance with the undertakings, for ease of review by FINRA staff to ensure ongoing compliance.

The Department is further reassured by the progress the Firm has made on the undertakings

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<sup>41</sup> See Exhibit 2 at p. 5.

required by the SEC. Specifically, the Firm retained a compliance consultant who reviewed the Firm's policies, procedures, and training. The consultant drafted a report of recommendations and submitted it to the SEC. The Firm is in the process of developing action plans to adopt and implement those recommendations.

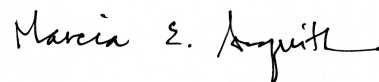
Following the approval of the Firm's continued membership in FINRA, FINRA also intends to utilize its examination and surveillance processes to monitor the Firm's continued compliance with the standards prescribed by Exchange Act Rule 19h-1 and FINRA Rule 9523.

Thus, FINRA is satisfied, based on the foregoing and on the Firm's representations made pursuant to the Supervision Plan, 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, FINRA approves SCUSA's Application to continue its membership with FINRA.

FINRA certifies that the Firm meets all qualification requirements and represents that the Firm is registered with several other SROs including BYX; BZX; EDGA; EDGX; IEX NYSE American; NYSE Arca; NYSE Chicago; NYSE; ISE; Nasdaq; DTC; NSCC; and FICC-GOV. The SROs have been provided with the terms and conditions of SCUSA's proposed continued membership, and they concur with FINRA.

In conformity with the provisions of Rule 19h-1 of the Exchange Act, 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 SEC.

On Behalf of FINRA,



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Marcia E. Asquith  
Executive Vice President & Corporate Secretary

**APPENDIX A**

**Statutory Disqualified Individual  
Associated with Scotia Capital (USA) Inc.**

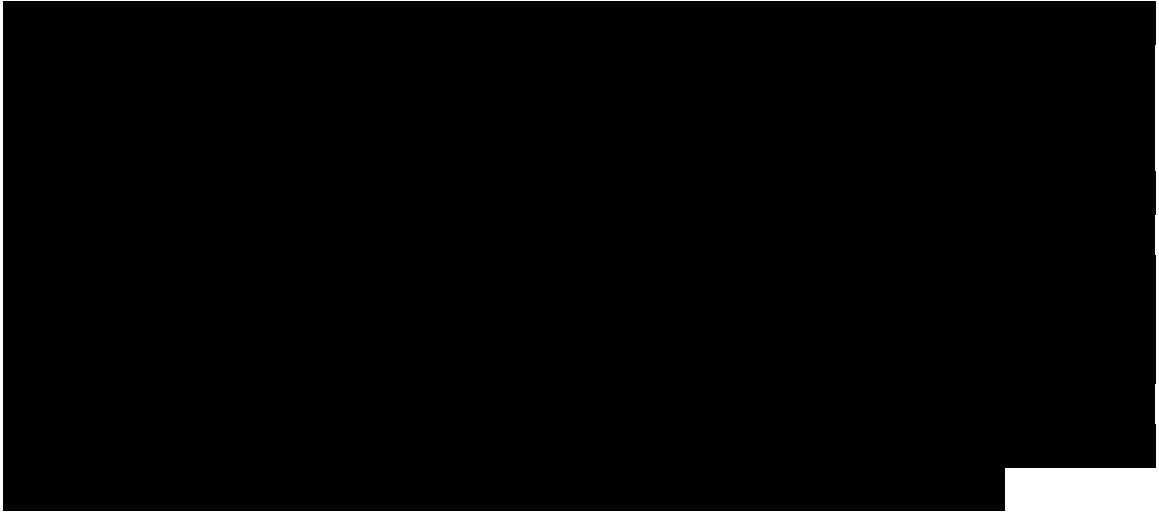


EXHIBIT  
SD-2360

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2. SEC Order, *In re Scotia Capital (USA) Inc.*, Exchange Act Release No. 97477 (May 11, 2023).
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12. FINRA AWC No. 2019061945201 dated October 12, 2022.
13. Form U6.

14. CFTC Order, *In re Scotia Capital USA Inc. et al.*, CFTC Docket No. 23-25 (May 11, 2023).
15. ICE Futures U.S. Disciplinary Notice, Case No. 2020-032 (March 16, 2022).
16. Executed Consent to Plan of Heightened Supervision, dated March 6, 2024.

## **Exhibit A**

### **Plan of Heightened Supervision**

Scotia Capital (USA) Inc. (the “Firm”) is subject to statutory disqualification pursuant to Section 3(a)(39)(F) of the Securities Exchange Act of 1934, which incorporates by reference Sections 15(b)(4)(D) & (E), as a result of an order issued by the U.S. Securities and Exchange Commission (“SEC” or “Commission”) dated May 11, 2023, which found that the Firm willfully violated Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-4(b)(4) thereunder (“SEC Order”). The SEC Order also found that the Firm failed reasonably to supervise its employees within the meaning of Section 15(b)(4)(E).

In consenting to this Supervision Plan<sup>1</sup> (“Supervision Plan”), the Firm agrees to the following:

1. The Firm shall comply with all the undertakings outlined in the SEC Order.
2. The Firm shall maintain copies of all correspondence between the Firm and Commission staff relating to the SEC Order, including documenting when Commission staff grants extensions to the deadlines set forth in the SEC Order. The Firm shall maintain copies of all such correspondence in a readily accessible place for ease of review by FINRA staff.
3. The Firm shall maintain copies of all reports and supporting documentation submitted to SEC staff in accordance with the SEC Order, as well as any other documentation needed to evidence the status and completion of each of the undertakings outlined in the SEC Order. The Firm shall maintain copies of such documentation in a readily accessible place for ease of review by FINRA staff.
4. The Firm shall provide FINRA’s Statutory Disqualification Group with copies of all certifications submitted to the SEC upon completion of the undertakings as specified under paragraph 35 of the SEC Order.
5. This Supervision Plan shall take effect on the date the Firm executes its consent to this Supervision Plan. The Supervision Plan shall be in effect until FINRA’s receipt of the Firm’s final certifications required by the SEC Order, after which time the Supervision Plan and its provisions thereto will expire.
6. All requested documents and certifications under this Supervision Plan shall be sent directly to FINRA’s Statutory Disqualification Group at [SDMailbox@FINRA.org](mailto:SDMailbox@FINRA.org).
7. The Firm shall obtain written approval from FINRA’s Statutory Disqualification Group prior to changing any provision of the Supervision Plan.

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<sup>1</sup> This Supervision Plan supersedes the Firm’s previous Supervision Plan executed on March 6, 2024.



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8. The Firm shall submit any proposed changes or other requested information under this Supervision Plan to FINRA's Statutory Disqualification Group at [SDMailbox@FINRA.org](mailto:SDMailbox@FINRA.org).