BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Continued Membership of Banca IMI Securities Corp. with FINRA	Notice Pursuant to Rule 19h-1 Securities Exchange Act of 1934 SD-2246 Date: December 19, 2019

I. Introduction

On May 18, 2019, Banca IMI Securities Corp. ("Banca IMI" 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 a May 14, 2019 guilty plea for felony conspiracy under the Sherman Antitrust Act (the "Disqualifying Plea").[1] Pursuant to the Disqualifying Plea, the U.S. District Court for the Southern District of New York fined the Firm $2,207,107, and assessed it another $400. The Firm has paid all amounts under the Disqualifying Plea.

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[1] Section 3(a)(39)(F) of the Securities Exchange Act of 1934 ("Exchange Act") provides that a member firm is subject to statutory disqualification if it has been convicted of any offense specified in Exchange Act Section 15(b)(4)(B), or any other felony, within the past 10 years. Exchange Act Section 15(b)(4)(B) covers any felony or misdemeanor involving or arising from, among other things, the purchase or sale of any security or the conduct of the business of a broker-dealer.

The Disqualifying Plea was based upon a complaint filed against the Firm by the U.S. Department of Justice, which alleged that the Firm violated the Sherman Antitrust Act. Specifically, the complaint alleged that, from at least as early as March 2012 through August 2014, the Firm and its co-conspirators knowingly entered into and engaged in a conspiracy to suppress and eliminate competition by rigging their bids to U.S. depository banks for the rates they would pay to borrow pre-release American Depository Receipts ("ADRs").

As described below, the Firm represents that it has discontinued its pre-release ADR business and its entire stock lending business. The Firm further represents that it terminated the employment of the individuals responsible for the misconduct underlying the Disqualifying Plea.

III. Background Information

A. The Firm

The Firm is based in New York City, and has been a FINRA member since 1987. The Firm is indirectly owned by Intesa Sanpaolo SpA, an Italian bank. The Application states that the Firm has one Office of Supervisory Jurisdiction ("OSJ"). It employs 28 registered representatives and 12 registered principals. The Firm does not employ anyone subject to statutory disqualification.

B. Recent Routine Examinations

FINRA conducted a financial and operations examination of the Firm in early 2019. FINRA did not identify any exceptions in connection with this examination.

In 2018, FINRA conducted an examination of the Firm, on behalf of the NYSE Arca Equities Exchange. That examination resulted in an April 2019 Cautionary Action, in which FINRA cited the Firm for the following exceptions: (1) failing to properly register nine associated persons; (2) failing to establish and maintain its written supervisory procedures ("WSPs") with respect to certain NYSE Arca Equities rules; and (3) failing to disclose an indirect owner on its Uniform Application for Broker-Dealer Registration. The Firm responded in writing to the exceptions noted in the Cautionary Action.

FINRA conducted a routine cycle examination of the Firm in 2017. FINRA did not identify any exceptions in connection with this examination.

C. Recent Regulatory Actions[2]

In August 2017, the SEC issued an order against the Firm for misconduct similar to the misconduct underlying the Disqualifying Plea (the "2017 SEC Order"). The 2017 SEC Order cited the Firm for its improper practices involving the pre-release of ADRs. Specifically, from at least January 2011, the Firm had pre-release agreements with four depositaries. Contrary to standard practices, associated persons on the Firm's securities lending desk had an ongoing practice of obtaining, and then lending, pre-released ADRs from depositaries without taking reasonable steps to determine whether the requisite number of ordinary shares were owned and custodied by the person on whose behalf the pre-released ADRs were being obtained, in willful violation of Section 17(a)(3) of the Securities Act of 1933. Further, the SEC found that the Firm failed to reasonably supervise its associated persons, in violation of Exchange Act Section 15(b)(4)(E), because it failed to establish and implement effective policies and procedures to address whether its associated persons had complied with the Firm's obligations with respect to pre-release transactions.[3] For its misconduct, the SEC censured the Firm, ordered it to disgorge $18,048,483 (plus prejudgment interest of $2,362,538), and imposed a money penalty of $15 million. The Firm paid all amounts due under the 2017 SEC Order.

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 Plea, which renders the Firm statutorily disqualified. In support, the Firm represents that it discontinued its pre-release ADR business in August 2015 and its stock lending business in September 2016. The Firm further represents that it terminated the individuals responsible for the misconduct underlying the Disqualifying Plea, and that it voluntary assisted the U.S. Department of Justice and provided it with information during

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[2] 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. Further, other than an undertaking to revise its WSPs related to the Firm's Order Audit Trail System reporting, which FINRA imposed upon the Firm in 2003, FINRA is aware of no other undertakings imposed upon the Firm.

[3] Because the Firm willfully violated federal securities laws and failed to supervise individuals who violated those laws, it is subject to statutory disqualification based upon the 2017 SEC Order. *See* Exchange Act Section 3(a)(39)(F) (incorporating by reference Exchange Act Sections 15(b)(4)(D) and (E)). The Firm, however, was not required to undergo a FINRA eligibility proceeding in connection with the 2017 SEC Order because the Firm affirmed, to FINRA, that the sanctions were satisfied and are no longer in effect. *See FINRA Regulatory Notice 09-19*, 2009 FINRA LEXIS 68, at *11-12 (Apr. 2009) (providing that for statutory disqualifications involving orders such as these, a Membership Continuance Application is not required).

its investigation of the Firm.[4] Finally, the Firm represents that, among other things, it voluntarily appointed new directors after the events giving rise to the Disqualifying Plea, voluntarily hired a new and experienced chief executive officer and chief compliance officer, and implemented new antitrust compliance training and compliance policies.

The Firm has also agreed to the following plan of supervision ("Supervision Plan") as a condition of its continued membership with FINRA:

1. Banca IMI has represented that it discontinued its pre-release ADR business in August 2015. If the Firm were to seek to reengage in this practice or engage in this line of business, it must first file an application as provided for in FINRA Rule 1017 and obtain FINRA's approval;

2. Banca IMI has represented that it discontinued its stock lending business in September 2016. If the Firm were to seek to reengage in this practice or engage in this line of business, it must first file an application as provided for in FINRA Rule 1017 and obtain FINRA's approval;

3. The Firm has represented that it terminated the employment of the persons responsible for the stock lending business, which led to the statutorily disqualifying event. If the Firm were to seek to again employ those persons, it must notify FINRA, in writing, of its intention to do so;

4. The Firm will segregate all documentation related to the foregoing provisions in a separate file for FINRA's review during any statutory disqualification examination; and

5. For the duration of Banca IMI's statutory disqualification, the Firm must obtain prior approval from Member Supervision if it wishes to change any provisions of this plan. The Firm will submit any proposed changes or other requested information under this Plan to FINRA Statutory Disqualification Program @ SDMailbox@FINRA.org.

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

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[4] Similarly, the SEC noted that the Firm cooperated with it in connection with the 2017 SEC Order and also considered the Firm's remedial actions in accepting the Firm's settlement offer.

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"). In reviewing the Application, we have considered whether the particular felony at issue, examined in light of the circumstances related to the felony and other relevant facts and circumstances, creates an unreasonable risk of harm to the market or investors. *See Kufrovich*, 55 S.E.C. at 625-26. We assess the totality of the circumstances in reaching a judgment about the Firm's future ability to engage in the securities industry in a manner that comports with FINRA's requirements for high standards of commercial honor and just and equitable principles of trade in the conduct of its business. 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 Plea involved serious violations of federal antitrust laws and was recent. We note, however, that the violative conduct underlying the Disqualifying Plea occurred from 2012 until August 2014, more than five years ago. We further note that the Firm represents that it is no longer engaged in the business underlying the Disqualifying Plea, and that the individuals involved are no longer employed at the Firm. Further, the Firm took remedial steps to help ensure that similar misconduct does not recur, similar misconduct has not recurred, and the Firm has consented to the Supervision Plan, which should further that goal.

We further find that although the Firm has recent regulatory history in connection with the 2017 SEC Order (which involved misconduct similar to the misconduct underlying the Disqualifying Plea), the record shows that it has taken corrective actions to address the issues underlying that order. 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, and considering the totality of the circumstances, 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.

VI. Conclusion

At this time, we are satisfied, based in part upon the Firm's representations, Member Supervision's representations, 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.[5] In conformity with the provisions of Exchange Act Rule 19h-1, the continued membership

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[5] FINRA certifies that the Firm meets all qualification requirements and represents that it is registered with The Nasdaq Stock Market, LLC, New York Stock Exchange LLC, and DTCC, NSCC, and FICC, which concur with the Firm's proposed 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,

Alan Lawhead
Vice President and Director – Appellate Group