BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Continued Membership of Industrial and Commercial Bank of China Financial Services LLC with FINRA	Notice Pursuant to Rule 19h-1 Securities Exchange Act of 1934 SD-2249 July 9, 2021

I. Introduction

On July 18, 2019, Industrial and Commercial Bank of China Financial Services LLC ("ICBCFS" or the "Firm") submitted to FINRA a Membership Continuance Application ("MC-400A" or "the Application"). 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") recommended 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 statutory disqualification because of a June 20, 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

[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.

New York fined the Firm $3,259,980, and assessed it another $400. The Firm has paid all amounts under the Disqualifying Plea.

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 May 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 discontinued its pre-release ADR business in 2016. The Firm further represents that the individual responsible for the misconduct underlying the Disqualifying Plea left the Firm in 2016.

III. Background Information

A. The Firm

The Firm is based in New York City, and has been a FINRA member since 2004. The Firm is a wholly owned subsidiary of Industrial and Commercial Bank of China Limited. According to the Firm's Central Registration Depository ("CRD"®) record, it has one branch office (which is an Office of Supervisory Jurisdiction ("OSJ")). The Firm employs 56 registered representatives, 28 of whom are registered principals, 12 operations professionals, and 32 non-registered fingerprinted persons. The Firm does not employ anyone subject to statutory disqualification.

B. Recent Examinations

FINRA has conducted two routine examinations and three non-routine examinations of the Firm in the past two years.

1. Routine Examinations

FINRA conducted a routine examination of the Firm in June 2019. FINRA did not identify any exceptions in connection with this examination.

In December 2018, FINRA conducted an examination of the Firm, on behalf of Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Investors' Exchange LLC, and NYSE Arca, Inc. This examination resulted in an April 2019 Cautionary Action in which FINRA cited the Firm for failing to: (1) conduct a branch inspection of its OSJ; (2) review outside brokerage accounts for new hires and send, or timely send, notifications to executing member firms; (3) maintain required notification forms for brokers with outside brokerage accounts; and (4) maintain an adequate process to timely recall security loaned transactions. The Firm responded in writing to the exceptions noted in the Cautionary Action.

2. Non-Routine Examinations

In September 2019, FINRA issued the Firm a Cautionary Action in which it cited the Firm for failing to report accounts in connection with its large options positions report ("LOPR") and maintain procedures to ensure the accuracy of its LOPR against the Firm's books and records. The Firm responded in writing to the exceptions noted in the Cautionary Action.

In April 2019, FINRA issued the Firm a Cautionary Action in which it cited the Firm for failing to deliver positions and failing to close out fail-to-deliver positions, in violation of Exchange Act Regulation SHO, and failing to maintain a supervisory system reasonably designed to achieve compliance with Regulation SHO. The Firm responded in writing to the exceptions noted in the Cautionary Action.

In April 2019, FINRA issued the Firm another Cautionary Action in which it cited the Firm for making improper Options Clearing Corporation adjustments to close options positions. The Firm responded in writing to the exceptions noted in the Cautionary Action.

C. Regulatory Actions

In June 2019, the SEC issued an order against the Firm for misconduct similar to the misconduct underlying the Disqualifying Plea (the "2019 SEC Order"). The 2019 SEC Order cited the Firm for its improper practices involving the pre-release of ADRs. Specifically, from at least September 2011 until December 2015, 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 violation of Section 17(a)(3) of the Securities Act of 1933 ("Securities Act"). 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.[2] For this misconduct, the SEC

[2] Because the 2019 SEC Order contained findings that the Firm failed to supervise individuals who violated federal securities laws pursuant to Exchange Act Section 15(b)(4)(E), it is subject to statutory disqualification based upon the 2019 SEC Order. *See* Exchange Act Section 3(a)(39)(F) (incorporating by reference Exchange Act Section 15(b)(4)(E)). The Firm, however, was not required to undergo a FINRA eligibility proceeding in connection with the 2019 SEC Order because the sanctions are no longer in effect based upon the Firm's paying the monetary penalties. *See FINRA Regulatory Notice 09-19*, 2009 FINRA LEXIS 68, at *11-12 (Apr. 2009) (providing that for statutory

[Footnote continued on next page]

censured the Firm, ordered that it cease and desist from committing or causing any violations and any future violations of Securities Act Section 17(a)(3), ordered it to disgorge $23,985,439 (plus prejudgment interest of $4,458,491), and imposed a money penalty of $14,391,262. The Firm paid all amounts due under the 2019 SEC Order.

In May 2018, FINRA accepted a Letter of Acceptance, Waiver and Consent ("AWC") from the Firm for violations of Exchange Act Sections 15(c) and 17(a), Exchange Act Rules 15c3, 17a-4, and 17a-5, and FINRA Rules 4511, 3310, 3010, 2010, and 1021. Without admitting or denying the allegations, the Firm consented to findings that it: (1) failed to establish and maintain an anti-money laundering ("AML") program that was reasonably designed to detect and report potentially suspicious transactions with respect to penny stocks; (2) failed to conduct appropriate AML independent testing; (3) performed inaccurate segregation calculations and committed possession or control violations; (4) had customer reserve hindsight deficiencies on three occasions in 2014; (5) inaccurately computed customer reserve formulas; (6) improperly used three foreign custody accounts without first requesting the SEC to designate the custodial accounts as good control locations; (7) filed inaccurate FOCUS reports; (8) employed an individual who worked as a financial and operations limited principal but who lacked the appropriate registration; and (9) failed to establish and maintain a supervisory system and written supervisory procedures governing compliance with the possession or control provisions of Exchange Act Section 15(c) and Exchange Act Rule 15c3-3. FINRA censured the Firm, fined it $5.3 million, and ordered it to complete undertakings (which included retaining an independent consultant to review the Firm's AML program). The Firm complied with the undertakings and paid the fine.

In May 2018, the SEC issued an order concerning the same misconduct addressed in FINRA's May 2018 AWC (the "May 2018 SEC Order"). The SEC found that the Firm willfully violated Section 17(a) of the Exchange Act and Exchange Act Rule 17a-8 by failing to file suspicious activity reports ("SARs"). In addition, the SEC found that the Firm willfully violated Section 17(a) of the Exchange Act and Exchange Act Rule 17a-4(j) by failing to promptly produce certain documents during the SEC's investigation.[3] The SEC censured the Firm, ordered it to cease and desist from

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disqualifications involving an order such as the 2019 SEC Order where the sanctions are no longer in effect, a Membership Continuance Application is not required).

[3] Based upon the May 2018 SEC Order, the Firm is subject to statutory disqualification pursuant to Exchange Act Section 3(a)(39)(F), which incorporates by reference Section 15(b)(4)(D), for willful violations of the Exchange Act. The Firm paid the penalty imposed by the SEC. Consequently, a Membership Continuance Application was not required under FINRA rules as there are no sanctions in effect. *See FINRA Regulatory Notice 09-19*, 2009 FINRA LEXIS 68, at *11-12 (Apr. 2009).

committing or causing any violations and any future violations of Exchange Act Section 17(a) and Exchange Act Rules 17a-8 and 17a-4(j), and ordered it to pay a civil money penalty in the amount of $860,000. The Firm paid the penalty in full.

In January 2018, the SEC issued an order against the Firm for willfully violating Rule 204(a) of Regulation SHO (the "January 2018 SEC Order").[4] The SEC found that, from April 2013 until August 2016, the Firm failed to close out certain Continuous Net Settlements fails to deliver. The SEC censured the Firm, ordered it to cease and desist from committing or causing any violations and any future violations of Rule 204(a) of Regulation SHO, and ordered it to pay a civil money penalty in the amount of $1.25 million. The Firm paid the penalty in full.

In September 2016, FINRA accepted an AWC from the Firm for violations of FINRA Rules 4560, 3110, and 2010 and NASD Rule 3010. Without admitting or denying the allegations, the Firm consented to findings that it submitted to FINRA inaccurate short interest position reports and failed to establish and maintain a supervisory system reasonably designed to achieve compliance with FINRA rules. FINRA censured the Firm, fined it $32,500, and ordered it to revise its WSPs to address these deficiencies. The Firm complied with the undertakings and paid the fine.

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 2016. The Firm also represents that the individual responsible for the misconduct left the Firm in 2016 and that it fully cooperated with the U.S. Department of Justice during its investigation of the Firm.[5]

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[4] Based upon the January 2018 SEC Order, the Firm is subject to statutory disqualification pursuant to Exchange Act Section 3(a)(39)(F), which incorporates by reference Section 15(b)(4)(D), for willful violations of the Exchange Act. The Firm paid the penalty imposed by the SEC. Consequently, a Membership Continuance Application was not required under FINRA rules as there are no sanctions in effect. *See FINRA Regulatory Notice 09-19*, 2009 FINRA LEXIS 68, at *11-12 (Apr. 2009).

[5] Similarly, the SEC noted that the Firm cooperated with it in connection with the 2019 SEC Order and the January 2018 SEC Order and considered the Firm's cooperation and remedial actions in accepting the Firm's settlement offers. Further, in connection with the 2019 SEC Order, the SEC noted that during its investigation and in addition to exiting the pre-release ADR business, the Firm appointed new senior management and enhanced its compliance program and department.

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

1. ICBCFS will amend its Compliance Manual and Written Supervisory Procedures to state that it does not engage in pre-release ADR business. If the Firm were to seek to reengage in this line of business, it must first alert FINRA's Department of Member Supervision, Risk Monitoring;

2. ICBCFS will provide an annual attestation to FINRA's Risk Monitoring Department affirming it is not engaged in pre-release ADR business. The Firm will maintain documentation of such attestations in a segregated file for ease of review by FINRA staff during FINRA examinations;

3. If the Firm reengages in pre-release ADR business, ICBFS will implement a mandatory annual training for all employees on the Sherman Antitrust Act, 15 U.S.C. § 1. This training will include, but not be limited to, topics such as bid rigging in connection with pre-release ADRs. New personnel must complete this training within 120 days of date of hire. The Firm will maintain documentation of the completion of such trainings in a segregated file for ease of review by FINRA staff during FINRA examinations;

4. The Firm represented that the individual responsible for the day-to-day dealings of ADR pre-release transactions during the period of violative conduct separated from the Firm in 2016. If the Firm were to again seek to employ this individual, it must notify FINRA's Risk Monitoring Department;

5. ICBCFS must obtain written approval from FINRA's Statutory Disqualification Group ("SD Group") prior to changing any provisions of this Plan; and

6. The Firm will submit any proposed changes or other requested information under this Plan to FINRA's SD Group at SDMailbox@FINRA.org.

If the Firm's request to continue its membership in FINRA is approved, 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"). In reviewing the Application, we have considered whether the 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 id.* 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 six 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 individual involved is no longer employed at the Firm. Further, similar misconduct has not reoccurred, and the Firm has consented to the Supervision Plan, which should help prevent recurrence.

We also find that, although the Firm has recent regulatory history, the 2019 SEC Order involved misconduct similar to the misconduct underlying the Disqualifying Plea, and the May 2018 SEC Order involved misconduct similar to the misconduct underlying FINRA's May 2018 AWC. Further, the record shows that the Firm has taken corrective actions to address the issues underlying these matters, has complied with all required undertakings and, in certain instances, enhanced its compliance program and department to help ensure that similar misconduct does not reoccur. 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.

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.[6] In 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,

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Jennifer Mitchell Piorko
Vice President and Deputy Corporate Secretary

[6] FINRA certifies that the Firm meets all qualification requirements and represents that it is registered with the Municipal Securities Rulemaking Board and NYSE Arca, Inc., as well as the following self-regulatory organizations and exchanges that concur with the Firm's proposed continued membership: Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Investors Exchange LLC, MEMX LLC, NYSE American LLC, NYSE Chicago, Inc., NYSE National, Inc., the New York Stock Exchange, Nasdaq BX, Inc., Nasdaq PHLX LLC, Nasdaq Stock Market, and DTCC, NSCC, and FICC.