

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20100225820**

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA") 0 05/07/12 10:10:15 FIN

RE: Interactive Brokers LLC, Respondent
CRD No. 36418

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Interactive Brokers LLC, submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against Respondent alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

Interactive Brokers LLC ("Interactive" or the "Firm") has been a member of FINRA since 1995 and its registration remains in effect. Interactive is an online global broker specializing in electronic order routing to execute and process transactions in securities, futures and options to more than 80 electronic exchanges and trading venues around the world. The Firm does not conduct any proprietary trading and acts entirely in an agency capacity for its customers.

OVERVIEW

Between September 22, 2008 and October 8, 2008 (the "Relevant Period"), Interactive executed 4,996 short sales of financial institution securities, on behalf of customers, in contravention of the Securities and Exchange Commission's September 18, 2008 Emergency Order. In addition, between October 17, 2008 and December 31, 2011, the Firm violated Regulation SHO Rule 204T(a) and Rule 204(a) by failing to effect timely buy-ins prior to the opening of the market on the trading date following the settlement date with respect to approximately

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34,000 short sale positions and also failed to implement a supervisory system reasonably designed to achieve compliance with Rule 204T(a) and Rule 204(a) in violation of NASD Conduct Rules 3010(a), 2110 and FINRA Conduct Rule 2010.

FACTS AND VIOLATIVE CONDUCT

A. Interactive Executes Customer Short Sale Orders in Contravention of a Securities and Exchange Commission Emergency Order

The Securities and Exchange Commission ("SEC"), pursuant to its authority under Section 12(k)(2) of the Securities and Exchange Act of 1934 (the "Exchange Act"), issued an emergency order on September 18, 2008 (the "September Emergency Order")¹ prohibiting short selling in "any publicly traded securities" of the 799 financial firms identified in the appendix to the September Emergency Order. The September Emergency Order was effective immediately and was to terminate at 11:59 p.m. on October 2, 2008.

On Sunday, September 21, 2008, the SEC amended the September Emergency Order (the "Amended Order").² The Amended Order required each exchange to designate which of their listed securities were subject to the short selling ban. The New York Stock Exchange ("NYSE") and NASDAQ Stock Market ("NASDAQ") published their "no short-sale lists" (i.e., lists of financial firms covered by the short selling ban) by posting them on their websites and emailing them to interested parties beginning on the morning of September 22, 2008.

As a result of the enactment of the September Emergency Order and the Amended Order and pursuant to Section 12(k)(2) of the Exchange Act, broker-dealers were prohibited from selling short the listed securities of any company identified in the appendix to the September Emergency Order and the daily "no short-sale lists" issued by each exchange (each a "Covered Security" and collectively, "Covered Securities"), barring the limited exceptions detailed in the respective Orders cited above. The September Emergency Order, as amended, remained in effect through October 8, 2008.³

During the Relevant Period, the Firm executed 4,996 customer short sales in the securities of 180 financial services firms covered by the September Emergency Order. The Firm obtained commissions totaling approximately \$6,000 for effecting these short sale transactions.

¹ Exchange Act Release No. 34-58592 (September 18, 2008).

² Exchange Act Release No. 34-58611 (September 21, 2008)

³ Exchange Act Rel. No. 58723 (October 2, 2008).

Section 12(k)(4) provides that “[n]o member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security in contravention of an order of the Commission under this subsection unless such order has been stayed, modified, or set aside...” In addition, the September Emergency Order and the Amended Order provided that “all persons are prohibited from short selling any publicly traded securities of any Included Financial Firm.” These prohibited securities were listed in the appendix to the September Emergency Order and were also contained in the daily “no short-sale lists” issued by each exchange in accordance with the Amended Order.

NASD Conduct Rule 2110 provides that “[a] member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.”

As a result of the conduct described above, the Firm violated Section 12(k) of the Exchange Act which requires that brokers and dealers comply with orders promulgated by the SEC. This violative conduct also constitutes a violation of NASD Conduct Rule 2110.

B. Rule 204T(a) and Rule 204(a) of Regulation SHO - Interactive Fails to Effect Timely Buy-Ins Prior to the Market Opening for Approximately 32,000 Fail-to-Deliver Positions

On September 17, 2008, the SEC issued an emergency order pursuant to Section 12(k) of the Exchange Act enacting temporary Rule 204T to Regulation SHO.⁴ On October 14, 2008 the SEC adopted Rule 204T as an interim final temporary Rule to remain in effect from October 17, 2008 through July 31, 2009.⁵ Rule 204T(a) required that participants of a registered clearing agency either deliver securities by settlement date, or in connection with short sales transactions, purchase or borrow securities to close out the fail-to-deliver positions by no later than the beginning of regular trading hours on the trading day following the settlement date, i.e., trade date plus four days (“T+4”).

On July 31, 2009, the SEC adopted Rule 204(a) of Regulation SHO under the Exchange Act, making permanent its interim Rule (204T) imposing close-out requirements on short sales.⁶ Rule 204, as did Rule 204T, in relevant part, requires that market participants, like Interactive, that have “[a] fail to deliver position at a registered clearing agency in any equity security for a long or short sale transaction in that equity security...shall, by no later than the beginning of regular trading hours on the settlement day following the settlement date, immediately close out its fail-to-deliver position...” Therefore, as with Rule

⁴ Exchange Act Release No. 34-58572 (September 17, 2008)

⁵ Exchange Act Release No. 34-58773 (October 17, 2008)

⁶ Rule 204, when made permanent on July 31, 2009, remained substantially the same with only limited modifications.

204T(a), Rule 204(a) requires that fail-to-deliver positions resulting from short sales are required to be closed out no later than the beginning of regular trading hours (9:30 a.m.) on T+4.

1. The Firm formulated a policy that was inconsistent with Rule 204T(a)

Prior to Rule 204T(a)'s enactment on October 17, 2008, the Firm devised a policy that did not mandate that fail-to-deliver positions resulting from short sale transactions be closed out no later than the time of the market's open on T+4. The Firm's policy permitted the close-out of fail-to-deliver positions resulting from short sales to occur shortly after the market's open; generally within minutes after the market's open.

2. The Firm violated Regulation SHO Rule 204T(a) and Rule 204(a) by failing to effect timely buy-ins prior to the opening of the market on T+4 with respect to approximately 34,000 fail-to-deliver positions.

Between October 17, 2008 and December 31, 2011, the Firm failed to timely close out its fail-to-deliver positions in approximately 34,000 short sale positions: 1) approximately 30,000 between October 17, 2008 and June 2, 2010; and 2) approximately 4,000 between June 3, 2010 and December 31, 2011.

Accordingly, during the period of October 17, 2008 through July 30, 2009, the Firm violated Rule 204T(a) and, during the period between July 31, 2009 and December 31, 2011, the Firm violated Rule 204(a). This also constituted violations of NASD Conduct Rule 2110 and FINRA Conduct Rule 2010.⁷

3. The Firm violated NASD Rule 3010(a) by failing to implement adequate supervisory procedures that were reasonably designed to achieve compliance with Rule 204T and Rule 204(a) of Regulation SHO.

NASD Rule 3010(a) requires firms to "establish and maintain a system to supervise activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD rules."

The Firm failed to put into place a supervisory system that was reasonably designed to achieve compliance with Rule 204T(a) and Rule 204(a) between October 17, 2008 and December 31, 2011.

The Firm's policy relating to Rule 204T(a) and Rule 204(a) did not require that buy-in transactions closing out fail-to-deliver positions resulting from short sales occur no later than at the market's open on T +4. The Firm's policy permitted the

⁷ Respondent violated FINRA Conduct Rule 2010 for all violative conduct engaged in between December 15, 2008 through December 31, 2011

close-out of fail-to-deliver positions resulting from short sales to occur shortly after the market's open; generally within minutes after the market's open.

In May 2010, FINRA notified the Firm that its policy relating to Rule 204T(a) and Rule 204(a) was deficient because it did not mandate that all fail-to-deliver positions resulting from short sale transactions be closed out no later than the market's open on T+4. After FINRA notified the Firm of its deficiency, it took steps to address the problem and correct its supervisory controls.

However, the Firm's supervisory controls remained deficient because, between June 3, 2010 and December 31, 2011, the Firm failed to timely execute the buy-ins closing out fail-to-deliver positions in short sales on approximately 4,000 occasions.

Accordingly, the Firm failed to implement an adequate supervisory system to achieve compliance with Rule 204T(a) and Rule 204(a) between October 17, 2008 and December 31, 2011 in violation of NASD Conduct Rules 3010(a), 2110 and FINRA Conduct Rule 2010.

B. Respondent also consents to the imposition of the following sanctions:

A censure and a fine in the amount of \$550,000 which includes the disgorgement of approximately \$6,000.00 in commissions received.

Respondent agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. Respondent has submitted an Election of Payment form showing the method by which Respondent proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim that Respondent is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

A. To have a Complaint issued specifying the allegations against me;

- B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

Respondent further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

Respondent understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against me; and
- C. If accepted:
 - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Respondent;

2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondent's disciplinary record;
3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
4. Respondent may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Respondent may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects Respondent's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that Respondent may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that the Firm has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the Firm to submit it.

Date:

May 4, 2012

Respondent

Interactive Brokers LLC

Reviewed by:

David M. Battan, Esq.
General Counsel
Interactive Brokers LLC
1725 I Street, N.W. Suite 300
Washington, D.C., 20006
Accepted by FINRA:

6-6-12
Date

Signed on behalf of the
Director of ODA, by delegated authority



Richard R. Best

Chief Counsel

FINRA Department of Enforcement

One World Financial Center

200 Liberty Street, 11th Floor

New York, New York 10281

Phone: (646) 315-7386

Fax: (646) 315-7425