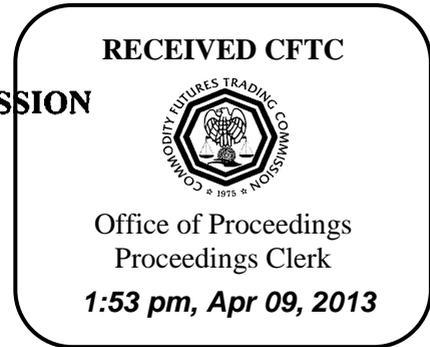


UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION



_____)
In the Matter of:)
)
 Interactive Brokers LLC,)
)
 Respondent.) **CFTC Docket No.** 13-19
)
)
 _____)

ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTIONS 6(c) AND 6(d) OF THE COMMODITY EXCHANGE ACT, AS AMENDED,
MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS

I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that from at least January 2008 to April 2011, Interactive Brokers LLC (“IB” or “Respondent”) violated Commission Regulations (“Regulations”) 1.32(a) and 166.3 and from September 2011 to May 2012, violated Regulations 1.49(b), 1.49(e)(i), and 166.3. Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, as Amended, Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledge service of this Order.¹

¹ Respondent consents to the entry of this Order and to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Respondent does not consent to the use of the Offer, or the findings or conclusions in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this Order. Nor does Respondent consent to the use of the Offer or this Order, or the findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

III.

The Commission finds the following:

A. SUMMARY

From at least January 2008 through April 2011, IB failed to prepare, on a currency-by-currency basis, daily computations of the amount of customer funds required by the Commodity Exchange Act (“Act”) and Regulations to be on deposit and the amount of customer funds actually on deposit in segregated accounts. Rather, IB only prepared such segregation calculations on an overall, US Dollar (“USD”)-equivalent basis, in violation of Regulation 1.32(a). Additionally, from September 21, 2011 to May 8, 2012, IB covered a portion of its USD commodity futures and options customer obligations with Japanese yen and Swiss francs to maximize its interest earnings and failed to hold sufficient USD in segregated accounts in the United States to meet all USD-denominated obligations, in violation of Regulation 1.49(b) and Regulation 1.49(e)(i). Finally, from January 2008 until May 2012, IB failed to maintain adequate policies and procedures to supervise its officers, employees, and agents to ensure compliance with Regulations 1.32 and 1.49 as required by Regulation 166.3. IB discovered and self-reported the violations of Regulation 1.49 to the Commission on May 10, 2012. During the time period of the violations of Rule 1.49, IB had *excess* segregated funds on deposit in customer segregated accounts (including USD plus other currencies) of between \$ 48.4 MM and \$ 455.3 MM.

B. RESPONDENT

Interactive Brokers LLC is a brokerage firm headquartered in Greenwich, Connecticut. It has been registered with the Commission as a futures commission merchant (“FCM”) since December 1994 and as a Retail Foreign Exchange Dealer (“RFED”) since April 2012, and has more than 140,000 customer accounts. IB operates exclusively online; it does not have branch offices that customers visit or specific representatives assigned to customer accounts. It is a member firm of the New York Stock Exchange, and it is regulated by the U.S. Securities Exchange Commission and the Commission. IB conducts business on U.S. and non-U.S. exchanges and its U.S. and non-U.S. customers transact business in 19 different currencies.

C. FACTS

From at least January 2008 until at least April 4, 2011, IB failed to compute as of the close of business each day, on a currency-by-currency basis, the amount of customer funds required by the Act and Regulations to be on deposit and the amount of customer funds on deposit in segregated accounts on behalf of commodity and options customers. Rather, IB only prepared such segregation calculations on an overall, USD-equivalent basis, in violation of Regulation 1.32(a).

From September 21, 2011 to May 8, 2012, IB covered a portion of its USD commodity futures and options customer obligations with Japanese yen and Swiss francs. It did not do so at the request of any of its commodity customers but rather to maximize its interest earnings, in violation of Regulation 1.49(b). As a result, IB did not retain enough USD in segregation to

meet its USD denominated obligations to its commodity customers, in violation of Regulation 1.49(e). The shortfall in USD requirement ranged from approximately \$90 million to \$300 million during that time. IB discovered and self-reported the violations of Regulation 1.49 to the Commission on May 10, 2012. During the time period of the violations of Rule 1.49, IB had excess segregated funds on deposit in customer segregated accounts (including USD plus other currencies) of between \$ 48.4 MM and \$ 455.3 MM.

Prior to May 9, 2012, IB did not have procedures in place to ensure compliance with Regulations 1.49 and 1.32. In fact, IB was not aware of its obligations under Regulation 1.49 until May 2012. Moreover, IB further failed to adequately train and diligently supervise its officers, employees, and agents to ensure compliance with Regulations 1.32 and 1.49, in violation of Regulation 166.3. IB independently implemented corrective measures after discovering the violations; and IB cooperated with the Division in investigating the circumstances.

IV.

LEGAL DISCUSSION

A. Failure to Conduct Daily Currency-by-Currency Calculations

Regulation 1.32(a), 17 C.F.R. § 1.32(a) (2012), requires FCMs to compute as of the close of each business day, on a currency-by-currency basis:

- (1) The total amount of customer funds on deposit in segregated accounts on behalf of commodity and option customers;
- (2) The amount of such customer funds required by the Act and these regulations to be on deposit in segregated accounts on behalf of commodity and option customers; and
- (3) The amount of the FCM's residual interest in such customer funds.

From January 2008 to April 2011, IB violated Regulation 1.32(a) because it failed to compute as of the close of business each day, on a currency-by-currency basis, the amount of customer funds required by the Act and Regulations to be on deposit and the amount of customer funds on deposit in segregated accounts on behalf of commodity futures or options customers.

B. Failure to Maintain Sufficient USD Denominated Customer Deposits

Regulation 1.49(b), 17 C.F.R. § 1.49(b) (2012), requires an FCM's obligations to its commodity futures or options customers to be denominated in: (i) the USD; (ii) a currency in which funds were originally deposited or converted at the request of the customer; or (iii) a currency in which funds accrued to the customer as a result of trading on a designated contract market or registered derivatives transaction execution facility.

Regulation 1.49(e)(i), 17 C.F.R. § 1.49(e)(i) (2012), further requires FCMs as of the close of each business day, to hold in segregated accounts sufficient USD, held in the United States, to meet all USD obligations on behalf of commodity futures or option customers.

From September 21, 2011 to May 8, 2012, IB covered a portion of its USD commodity futures and options customer deposits with Japanese yen and Swiss francs. Because IB covered a portion of its USD customer deposits with foreign currencies and this currency conversion was not done at the request of its commodity customers, IB violated Regulation 1.49(b). Additionally, because IB did not retain enough USD in segregation, held in the United States, to meet its USD denominated obligations to its commodity customers, IB violated Regulation 1.49(e)(i) as well.

C. Failure to Supervise

Regulation 166.3, 17 C.F.R. § 166.3 (2012), requires –

Each Commission registrant, except an associated person who has no supervisory duties, must diligently supervise the handling by its partners, officers, employees and agents (or other persons occupying a similar status or performing a similar function) of all commodity interest accounts carried, operated, advised or introduced by the registrant and all other activities of its partners, officers, employees, and agents (or other persons occupying a similar status or performing a similar function) relating to its business as a registrant.

A violation under Regulation 166.3 is an independent violation for which no underlying violation is necessary. *See In re Collins*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,194 at 45,744 (CFTC Dec. 10, 1997).

A violation of Regulation 166.3 is demonstrated by showing either that: (1) the registrant's supervisory system was generally inadequate; or (2) the registrant failed to perform its supervisory duties diligently. *In re Murlas Commodities*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,485 at 43,161 (CFTC Sept. 1, 1995); *In re GNP Commodities, Inc.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,360 at 39,219 (CFTC Aug. 11, 1992) (providing that, even if an adequate supervisory system is in place, Regulation 166.3 can still be violated if the supervisory system is not diligently administered), *aff'd sub nom. Monieson v. CFTC*, 996 F.2d 852 (7th Cir. 1993); *In re Paragon Futures Ass'n*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,266 at 38,850 (CFTC Apr. 1, 1992) (“The focus of any proceeding to determine whether Rule 166.3 has been violated will be on whether [a] review [has] occurred and, if it did, whether it was diligent”); *Samson Refining Co. v. Drexel Burnham Lambert, Inc.* [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,596 at 36,566 (CFTC Feb. 16 1990) (noting that, under Regulation 166.3, an FCM has a “duty to develop procedures for the detection and deterrence of possible wrongdoing by its agents”)(internal quotation omitted). Evidence of violations that “should be detected by a diligent system of supervision, either because of the nature of the violations or because the violations have occurred repeatedly” is probative of a failure to supervise. *In re Paragon Futures*, ¶ 25,266 at 38,850; *CFTC v. Sidoti*, 178 F.3d 1132, 1137 (11th Cir. 1999) (defendant was liable for failure to supervise because he “knew of specific instances of misconduct, yet failed to take reasonable steps to correct the problems”).

Prior to May 9, 2012, IB did not have procedures in place to ensure compliance with Regulations 1.49 and 1.32. IB further failed to adequately train and diligently supervise its officers, employees, and agents to ensure compliance with Regulations 1.32 and 1.49. IB thereby failed to supervise diligently its officers, employees, and agents and did not have sufficient procedures in place to detect and deter the violations of the Regulations found herein, in violation of Regulation 166.3.

V.

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that from January 2008 to April 2011, IB violated Regulations 1.32(a) and 166.3, 17 C.F.R. §§ 1.32(a) and 166.3 (2012), and from September 2011 to May 2012, IB violated Regulations 1.49(b), 1.49(e)(i), and 166.3, 17 C.F.R. §§ 1.49(b), 1.49(e)(i), and 166.3 (2012).

VI.

OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it, without admitting or denying the findings and conclusions herein:

- A. Acknowledges receipt of service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waives:
 1. the filing and service of a complaint and notice of hearing;
 2. a hearing;
 3. all post-hearing procedures;
 4. judicial review by any court;
 5. any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 6. any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2012), relating to, or arising from, this proceeding;

7. any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; and
 8. any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;
- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer;
- E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. makes findings by the Commission that Respondent violated Regulations 1.32(a), 1.49(b), 1.49(e)(i), and 166.3, 17 C.F.R. §§ 1.32(a), 1.49(b), 1.49(e)(i), and 166.3 (2012);
 2. orders Respondent to cease and desist from violating Regulations 1.32(a), 1.49(b), 1.49(e)(i), and 166.3, 17 C.F.R. §§ 1.32(a), 1.49(b), 1.49(e)(i), and 166.3 (2012);
 3. orders Respondent to pay a civil monetary penalty in the amount of \$225,000, plus post-judgment interest;
 4. orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VII of this Order.

Upon consideration, the Commission has determined to accept the Offer.

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Regulations 1.32(a), 1.49(b), 1.49(e)(i), and 166.3, 17 C.F.R. §§ 1.32(a), 1.49(b), 1.49(e)(i), and 166.3 (2012).
- B. Respondent shall pay a civil monetary penalty in the amount of two hundred and twenty-five thousand dollars (\$225,000) (the "CMP Obligation"). Post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of the Order pursuant to 28 U.S.C. § 1961 (2006). Respondent shall pay this civil monetary penalty by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

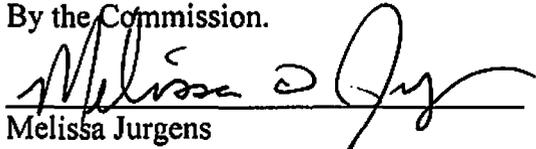
Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables --- AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

If payment is to be made by electronic funds transfer, Respondent shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. **Public Statements:** Respondent agrees that neither it nor any of its successors or assigns, or agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and its successors or assigns shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement.
 2. **Partial Satisfaction:** Respondent understands and agrees that any acceptance by the Commission of partial payment of Respondent's CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
 3. **Change of Address/Phone:** Until such time as Respondent satisfies in full its CMP Obligation as set forth in this Consent Order, Respondent shall provide written notice to the Commission by certified mail of any change to his telephone number and mailing address within ten (10) calendar days of the change.

The provisions of this Order shall be effective as of this date.

By the Commission.

A handwritten signature in black ink, appearing to read "Melissa Jurgens", written over a horizontal line.

Melissa Jurgens
Secretary of the Commission
Commodity Futures Trading Commission

Dated: April 9, 2013