

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

Interactive Brokers LLC,

Respondent.

CFTC Docket No. 12-27

**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 in or about January 2008 to at least January 2012 (the “Relevant Period”), Interactive Brokers LLC (“Interactive” or “Respondent”) violated Section 4g of the Commodity Exchange Act (“Act”), 7 U.S.C. § 6g (2006 & Supp. III 2009) and Commission Regulations (“Regulations”) 17.00, 17.01, and 166.3, 17 C.F.R. §§ 17.00, 17.01, 166.3 (2012). 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

III.

The Commission finds the following:

A. SUMMARY

Interactive is registered with the Commission as a futures commission merchant (“FCM”). As an FCM, Interactive is required to (i) submit large trader reports to the Commission daily reflecting “reportable positions” for “special accounts” pursuant to Section 4g of the Act, 7 U.S.C. § 6g (2006 & Supp. 2009), and Regulations 15.01(b) and 17.00, 17 C.F.R. §§ 15.01(b) and 17.00 (2012) and (ii) identify account holders and entities exercising trading control over each “special account” on a Form 102 and update that information as necessary, pursuant to Regulation 17.01, 17 C.F.R. § 17.01 (2012). In order for data to accurately represent the size of all positions under common control, FCMs must aggregate accounts for purposes of determining special account status and reporting pursuant to 17 C.F.R. § 17.00(b). The Commission uses this information in order to evaluate potential market risks and monitor compliance with speculative position limits, among other uses.

Interactive repeatedly failed to aggregate positions for related accounts that it reported to the Commission in its daily large trader submissions. Commission staff notified Interactive on more than 20 occasions from 2010 – 2011 that Interactive’s large trader reports erroneously reported separate positions that should have been aggregated in violation of Section 4g of the Act and Regulations 17.00 and 17.01. Interactive primarily supervised the aggregation aspect of its large trader reporting using an automated system that lacked functionality sufficient to aggregate certain accounts owned and/or controlled by the same traders. Moreover, Interactive failed to take reasonable steps to correct its automated system, in violation of Regulation 166.3, 17 C.F.R. § 166.3 (2012), after it learned that the system was failing to aggregate certain accounts.

In addition, Interactive failed to file updated Form 102s when large traders opened related accounts or changed information concerning their trading accounts, as required by Regulation 17.01(g). Interactive failed to supervise the employees responsible for submitting Form 102s, in violation of Regulation 166.3, because Interactive did not instruct them to submit updated Form 102s to the Commission and did not provide a means by which its employees could determine when an updated Form 102 was required.

B. RESPONDENT(S)

Interactive Brokers LLC is an electronic brokerage firm headquartered in Greenwich, Connecticut. It is registered with the Commission as an FCM and has more than 190,000 customer accounts. Interactive operates exclusively online; it does not have physical branch offices or specific representatives who accept orders. It is a member firm of the New York Stock Exchange, and it is regulated by the U.S. Securities and Exchange Commission and the Commission.

findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

C. FACTS

1. Statutory Background

The Commission operates a comprehensive large trader reporting system by which it collects information on market participants as part of its market surveillance responsibilities. Under Regulation 15.00(p) and (r), “special accounts” are commodity futures or options accounts in which there are “reportable positions” of futures or options owned or controlled by traders that equal or exceed reporting levels as designated in Regulation 15.03(b). If, at the daily market close, an FCM, clearing member or foreign broker (a “Firm”) carries a special account with a reportable position in any single futures or option expiration month, then pursuant to Sections 4g and 4i of the Act and Regulations 15.01(b) and 17.00(a), that Firm is required to report to the Commission that trader’s entire position in all futures or options expiration months in that commodity as set forth in Regulation 17.00.

In order to determine which traders currently hold positions above the level set by the Commission for purposes of large trader reporting, Firms must aggregate accounts that are under common ownership or trading control. 17 C.F.R. § 17.00(b). Moreover, Firms must report those aggregated positions to the Commission under one reporting number so that the data accurately represents the size of the positions under common control. The Commission’s market surveillance system depends on Firms properly aggregating related accounts; a Firm’s failure to aggregate related accounts may allow traders to hold positions in excess of speculative limits and to exercise market power without detection.

For each new account listed on a large trader report, Firms must identify the account holder and entity exercising trading control over the account, among other information, on a Form 102 pursuant to Regulation 17.01, 17 C.F.R. § 17.01. In order to ensure that the Commission has current information, a Firm is required under Regulation 17.01(g) to update the information contained on a Form 102 account in special account status within three business days after it learns that the data submitted to the Commission has changed.

2. Interactive’s Large Trader Reporting Violations

In reviewing Interactive’s large trader reports and requesting additional information from individual traders, Commission staff found that Interactive’s large trader reports repeatedly failed to aggregate related accounts. On several occasions, Interactive incorrectly reported related accounts on the large trader reports under separate reporting numbers, thereby indicating to the Commission that the accounts were controlled by different traders.

Commission staff formally notified Interactive of this problem with respect to certain client accounts in November 2007 after Commission staff audited Interactive’s large trader reporting. In response, Interactive agreed to correct specific account aggregation errors and informed Commission staff that it would enhance its related accounts programing to ensure that accounts are appropriately aggregated automatically. Yet, the aggregation reporting problems that Commission staff identified in the 2007 audit persisted for several years. From 2010 – 2011 alone, Commission staff notified Interactive on more than 20 occasions that Interactive

erroneously reported separate positions that should have been aggregated in violation of Section 4g of the Act, 7 U.S.C. § 6g, and Regulations 17.00 and 17.01, 17 C.F.R. §§ 17.00, 17.01.

Interactive primarily supervised the aggregation aspect of its large trader reporting by relying on an automated system of algorithms intended to identify related accounts and, on occasion, by reviewing specific accounts in its Cleared Accounts Supervision System. However, Interactive's automated system failed to aggregate (or identify for manual review) accounts on several occasions that shared basic commonalities, such as the same account holder or same tax identification number. Interactive's senior staff was aware of the audit and of each instance in which Commission staff identified accounts that appeared related and should be aggregated. Yet, Interactive did not take action sufficient to correct the deficiencies in its aggregation system.

Interactive's New Accounts Group is responsible for submitting all Form 102s to the Commission when an account reached "special account" status for the first time. Commission staff contacted the New Accounts Group on a regular basis and requested it to submit revised Form 102s when Commission staff learned that the information provided on the previous Form 102 was no longer accurate. In each instance, Interactive provided the Form 102 requested, but Interactive never instructed or equipped its employees to notify the Commission of changes to the information contained on Form 102s, as required by Regulation 17.01, 17 C.F.R. § 17.01, before the Commission specifically asked it to do so.

IV.

LEGAL DISCUSSION

A. Interactive Violated Section 4g of the Act and Regulations 17.00 and 17.01 By Submitting Inaccurate Large Trader Reports and Form 102s.

Section 4g(a) of the Act requires FCMs to provide large trader reports to the Commission and provides, in pertinent part:

Every person registered ... as a futures commission merchant ... shall make such reports as are required by the Commission regarding the transactions and positions of such person, and the transactions and positions of the customer thereof, in commodities for future delivery on any board of trade in the United States or elsewhere, and in any significant price discovery contract traded or executed on an electronic trading facility or any agreement, contract, or transaction that is treated by a derivatives clearing organization, whether registered or not registered, as fungible with a significant price discovery contract. . . .

7 U.S.C. § 6g(a). Reports made to the Commission pursuant to Section 4g(a) must be accurate. *See Matter of Bielfeldt*, CFTC No. 96-1, 1999 WL 68636, at *8 (CFTC Feb. 12, 1999).

Promulgated under the authority conferred by Section 4g of the Act, Regulation 17.00(a) of the Commission's Regulations requires each FCM to submit a daily report to the Commission

for all “special accounts” carried by the FCM. 17 C.F.R. § 17.00(a)(1) (2012). In doing so, Regulation 17.00(b) requires FCMs to aggregate accounts if any person holds, has a financial interest in, or controls more than one account. 17 C.F.R. § 17.00(b) (1)-(3). Regulation 17.01 requires FCMs to submit a Form 102 providing information concerning a special account, including accounts related by ownership or trading control. 17 C.F.R. § 17.01.

In at least 20 instances from January 2010 through November 2011, Interactive failed to aggregate positions in related accounts that it reported to the Commission in its daily large trader submission. Some of the accounts that Interactive failed to aggregate involved simple commonalities in ownership and/or trading control, such as the same account holder or same tax identification number. Interactive violated Section 4g of the Act and Regulations 17.00(b) and 17.01 on at least 20 different occasions.

B. Interactive Failed to Supervise Diligently The Handling and Reporting of Accounts in Violation of Commission Regulation 166.3, 17 C.F.R. § 166.3 (2012)

Regulation 166.3 requires, *inter alia*, that each Commission registrant (except APs who have no supervisory duties) diligently supervise the handling of all commodity interest accounts carried, operated, advised or introduced by the registrant and all other activities of its partners, officers, employees and agents relating to its business as a Commission registrant. 17 C.F.R. § 166.3 (2012). A violation under Regulation 166.3 is an independent and primary 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).

In order to prove a violation of Regulation 166.3, the Division must demonstrate that either (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 Sep. 1, 1995). Evidence of underlying violations of the Act or Regulations “is probative of a firm’s failure to supervise, if the violations which occurred are of a type which should be detected by a diligent system of supervision, either because of the nature of the violations or because the violations have occurred repeatedly.” *In re Paragon Futures Assoc.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,266 at 38,850 (CFTC Apr. 1, 1992).

A firm fails to supervise when it is aware of wrongdoing and does not take action to stop it. *See CFTC v. Trinity Fin. Group Inc.*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,179 at 46,635 (CFTC Sept. 29, 1997), *aff’d in relevant part, vacated in part and remanded sub nom. CFTC v. Sidoti*, 178 F.3d 1132, at 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”); *In re GNP Commodities, Inc.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,360 at 39,219 (CFTC Aug. 11, 1992), *aff’d in part and rev’d in part sub nom. Monieson v. CFTC*, 996 F.2d 852, 862 (7th Cir. 1993) (FCM’s president “did not supervise diligently when he dismissed complaints out of hand and never got around to ordering a thorough in-house investigation or any other action”).

1. Interactive Failed to Supervise Diligently Because It Lacked an Adequate System for Aggregating Related Accounts and Failed To Enhance That System In Response to Known Errors.

Interactive failed to supervise diligently, in violation of Regulation 166.3, because it lacked an adequate system to aggregate related accounts. Interactive's primary means of supervising its aggregation responsibilities was to task Interactive employees with designing a series of algorithms intended to identify related accounts using an automated system. However, Interactive's automated system lacked functionality sufficient to identify and aggregate accounts on several occasions that shared basic commonalities, such as identical account holders or identical tax identification numbers. Interactive's system resulted in repeated aggregation errors and did not constitute an adequate supervisory system for complying with Interactive's aggregation responsibilities. Moreover, Interactive did not incorporate a sufficient personnel-based system to catch omissions, and instead it only responded to notices it received from Commission staff in aggregating accounts.

In addition, Interactive failed to diligently supervise because it delayed in enhancing its system in response to known and repeated errors. Interactive's legal and compliance departments were regularly informed of the aggregation errors that Commission staff had identified. In 2007 Interactive assured the Commission that it would review and enhance its related accounts programming to ensure that accounts were appropriately aggregated, but Interactive's aggregation errors continued. Interactive did not make sufficient improvements to its aggregation system despite repeated notices from Commission staff. In sum, Interactive failed to develop and install procedures for the detection and correction of aggregation errors and, therefore, violated Regulation 166.3.

2. Interactive Failed to Supervise Diligently The Employees Responsible for Providing Updated Form 102s To The Commission.

Interactive violated Regulation 166.3 by failing to inform its employees that they were responsible for submitting updated Form 102s whenever Interactive was notified that a customer changed information concerning an account in "special account" status, pursuant to Regulation 17.01(g). Interactive's New Accounts Group submitted all Form 102s to the Commission, and Commission staff contacted Interactive's New Accounts Group on a regular basis to request that it submit updated Form 102s when Commission staff learned that the information provided on the previous Form 102 was no longer accurate. In each instance, Interactive provided a new Form 102, as requested, but it did not develop any procedure by which Interactive's New Accounts Group, or any other group, would identify changes to accounts in "special account" status and alert the Commission to those changes.

Moreover, Interactive failed to diligently supervise because it did not provide its employees with the means to determine when an updated Form 102 was necessary under Regulation 17.01(g). Interactive's New Accounts Group had no way to learn when an existing account holder in "special account" status changed its account information because the New Accounts Group was not notified of such changes. As such, Interactive repeatedly failed to comply with Regulation 17.01(g) and did not adequately supervise the employees responsible for doing so.

V.

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, Interactive Brokers LLC violated Section 4g of the Act, 7 U.S.C. § 6g (2006 & Supp. III 2009) and Commission Regulations 17.00, 17.01 and 166.3, 17 C.F.R. §§ 17.00, 17.01; 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 Section 4g, of the Act, 7 U.S.C. § 6g (2006 & Supp. III 2009), and Commission Regulations 17.00, 17.01 and 166.3, 17 C.F.R. §§ 17.00, 17.01; and 166.3 (2012);
 2. orders Respondent to cease and desist from violating Section 4g of the Act, 7 U.S.C. § 6g (2006 & Supp. III 2009), and Commission Regulations 17.00, 17.01, and 166.3, 17 C.F.R. §§ 17.00, 17.01, and 166.3 (2012);
 3. orders Respondent to pay a civil monetary penalty in the amount of \$700,000, plus post-judgment interest;
 4. orders Respondent to comply with the conditions and undertaking consented to in the Offer and as set forth in Part VII C 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 Section 4g of the Act, 7 U.S.C. § 6g (2006 & Supp. III 2009), and Commission Regulations 17.00, 17.01, and 166.3, 17 C.F.R. §§ 17.00, 17.01, and 166.3 (2012). This cease and desist order shall be stayed until September 1, 2012 or until Respondent certifies its compliance as provided in Section C, whichever is earliest.²
- B. Respondent shall pay a civil monetary penalty in the amount of seven hundred thousand dollars (\$700,000) within ten (10) days of the date of entry of this Order (the "CMP Obligation"). If the CMP Obligation is not paid in full within ten (10) days of the entry of this order, then 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 this Order pursuant to 28 U.S.C. § 1961 (2006). Respondent shall pay the CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is

² Respondent has represented to Commission staff that it is in the midst of enhancing and testing its proprietary systems, and that process will be completed by September 1, 2012.

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, and to the Director of Enforcement at the same address.

C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:

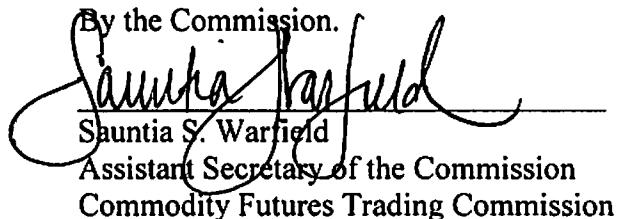
1. Certified Statement of Compliance: Respondent shall provide a sworn statement signed by an officer or director of Interactive to the Division of Enforcement on or before September 1, 2012 affirming that (i) Interactive has completed enhancements to its systems / procedures (both technological and personnel-based) for aggregating accounts, and (ii) Interactive has tested those systems / procedures and has determined, to the best of Interactive's knowledge, that they enable Interactive to comply with Section 4g of the Act and Commission Regulation 17.00(b).
2. Public Statements: Respondent agrees that neither it nor any of its successors and assigns, 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 and 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.

D. 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.

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

By the Commission,



Sauntia S. Warfield
Assistant Secretary of the Commission
Commodity Futures Trading Commission

Dated: July 25, 2012