

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

Interactive Brokers LLC,

Respondent.

CFTC Docket No. 20-25

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7:20 am, Aug 10, 2020

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

I. INTRODUCTION

The Commodity Futures Trading Commission (“Commission”) has reason to believe that Interactive Brokers LLC (“Interactive Brokers”), a registered futures commission merchant (“FCM”), has violated Commission Regulations (“Regulations”) 42.2 and 166.3, 17 C.F.R. §§ 42.2, 166.3 (2019). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Interactive Brokers engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of an administrative proceeding, Interactive Brokers 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, Interactive Brokers consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”) and acknowledges service of this Order.¹

¹ Interactive Brokers consents to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Interactive Brokers does not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. Interactive Brokers does not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

II. FINDINGS

The Commission finds the following:

A. SUMMARY

From June 2014 through November 2018 (the “Relevant Period”), Interactive Brokers failed to diligently supervise its employees’ handling of several commodity trading accounts held at Interactive Brokers that were the subject of recent enforcement actions and nonpublic investigations initiated by the Commission. The account holders involved in those matters include Haena Park (“Park”), Nathan Schleifer (“Schleifer”), and Hyun Joo (a/k/a Grace) Hong (“Grace Hong”), along with two additional individuals (“Customer A” and “Customer B”) against whom the Commission has not filed charges to date. Interactive Brokers’ failure to provide sufficient oversight of its employees’ handling of these accounts contributed to its failure to maintain an adequate anti-money laundering (“AML”) program and to conduct appropriate customer monitoring. As a result, Interactive Brokers employees failed to identify or adequately investigate certain indicia of suspicious activity in the accounts at issue that, according to Interactive Brokers’ own compliance procedures and given its knowledge of each customer’s background and trading patterns, should have prompted the filing of Suspicious Activity Reports (“SARs”) with appropriate authorities. In each matter, Interactive Brokers failed to file a SAR when it had a duty to do so.

In three of the underlying matters, unbeknownst to Interactive Brokers, the account holders used their accounts at Interactive Brokers to defraud investors of millions of dollars. Moreover, in several of the matters, Interactive Brokers learned, through responding to a subpoena or other request from a government authority, that the account holder was under investigation by a regulator or law enforcement agency but did not adequately conduct its own investigation to determine whether to file a SAR.

As these failures reflect, Interactive Brokers lacked a reasonably designed process for conducting investigations of account activity and making SAR determinations. Interactive Brokers also failed to ensure that its officers, employees, and agents followed its established policies and procedures with respect to customer surveillance. By virtue of this conduct, Interactive Brokers engaged in acts and practices that violated Regulations 42.2 and 166.3, 17 C.F.R. §§ 42.2, 166.3 (2019).

B. RESPONDENT

Interactive Brokers LLC is registered with the Commission as an FCM that maintains its principal place of business at One Pickwick Plaza, Greenwich, Connecticut 06830. Interactive Brokers has been registered with the Commission since December 2, 1994. Interactive Brokers is also a Forex Dealer Member of the National Futures Association (“NFA”).

C. FACTS

1. **Interactive Brokers Failed to Implement Reasonably Designed Policies and Procedures to Detect and Cause the Reporting of Suspicious Transactions.**

Interactive Brokers had an AML program in effect during the Relevant Period that consisted of written supervisory procedures (“WSPs”), among other components. Interactive Brokers’ WSPs relating to the filing of SARs incorporated the requirements of regulations promulgated by the Financial Crimes Enforcement Network (“FinCEN”), including FinCEN Regulation 1026.320, 31 C.F.R. § 1026.320 (2019), which dictates when FCMs such as Interactive Brokers must file SARs. The WSPs also identified specific “red flags” that could necessitate the filing of a SAR. Some of the red flags that Interactive Brokers compliance personnel were expected to detect and investigate included situations where a customer’s account had “inflows of funds or other assets well beyond the known income or resources of the [c]ustomer,” or where a customer’s transactions and/or volume of aggregate activity were “inconsistent with the expected purpose of the account” or were “unusual and unexpected” in comparison with other market participants.

In the event that Interactive Brokers compliance personnel detected any suspicious activity, the WSPs required them to promptly notify designated officers in the compliance department. The WSPs required those officers to perform additional due diligence and evaluate whether to file a SAR, taking into consideration Interactive Brokers’ “knowledge of the [c]ustomer’s business practices, trading activity[,] and trading patterns” and “all of the facts and circumstances relating to the particular customer and the particular transaction.”

While Interactive Brokers maintained these basic written policies, it failed to commit adequate resources to its AML program during the Relevant Period to ensure that it was reasonably equipped to monitor, detect, escalate, and report suspicious activity in practice. In particular, Interactive Brokers failed to employ a sufficient number of compliance analysts to adequately review dozens of lengthy surveillance reports for suspicious activity across Interactive Brokers’ customer base. In addition, although the WSPs represented that these various reports were “designed to identify potential trading rule violations, including manipulative practices[,]” Interactive Brokers had no mechanism to combine information generated by the reports to identify patterns and trends across them over time. As a result, analysts searched for relevant information manually across systems and spreadsheets, including the number of times an account had appeared on a particular report and whether an account was appearing on multiple reports. Likewise, to identify if an account holder had been the subject of previous investigations, regulatory inquiries, or SAR filings, analysts had to search through internal communications and then contact the Interactive Brokers staff involved in any prior investigation to understand what documentation was utilized and what conclusions were reached. Given the size and nature of Interactive Brokers’ business, these procedures limited the ability of analysts to recognize the full scope of a customer’s activity and led them to overlook facts and circumstances that amounted to red flags.

In addition, Interactive Brokers had no policies or procedures in place requiring that compliance personnel document steps taken and decisions made during the investigative and

SAR consideration process. Consequently, other than analysts' notes on the surveillance reports themselves or in emails escalating potentially suspicious activity, Interactive Brokers staff failed to keep complete and detailed written records when conducting investigations and making SAR filing determinations. The lack of documentation reflected the absence of a comprehensive, standardized procedure for opening, conducting, escalating, and concluding investigations.

2. Interactive Brokers Failed to Diligently Supervise Its Employees' Handling of the Accounts at Issue and Failed to Timely Report Suspicious Activity to the Appropriate Authorities.

As a result of the deficiencies in Interactive Brokers' process for monitoring customer accounts, Interactive Brokers failed to detect and/or report instances of suspicious activity during the Relevant Period, in the matters described below.

a. Park

i. The Commission's Action Against Park

On June 2, 2016, the Commission filed a complaint in the U.S. District Court for the Southern District of New York against Park and her companies, Phaetra Capital GP LLC, Phaetra Capital Management LP, and Argenta Group LLC (collectively, the "Park Entities"), that resulted in the entry of a consent permanent injunction. *CFTC v. Park*, No. 1:16-cv-04120 (S.D.N.Y. Feb. 7, 2018), ECF No. 50. The order found that from at least January 2010 through June 2016, Park and the Park Entities fraudulently induced fifty members of the public to invest over \$23 million in an unregistered commodity pool that traded futures contracts as well as leveraged or margined retail off-exchange foreign currencies. *Id.* at 7.²

The order further found that Park transferred the funds contributed by pool participants into a personal trading account maintained in her own name at Interactive Brokers, where she traded on behalf of the pool. In total, Park deposited \$21 million of pooled funds into her Interactive Brokers account, and she sustained losses in seventy-four of the ninety-one months that she traded. Unbeknownst to Interactive Brokers, Park also withdrew and misappropriated funds not lost in trading for her personal use. Her trading losses, including commissions and fees, ultimately totaled nearly \$19 million, which constituted 99% of the pooled funds remaining in her Interactive Brokers account after the withdrawals. *Id.* at 8.³

² On December 3, 2018, the court entered an Opinion and Order in the Commission's case further requiring the Park Entities to pay nearly \$23 million in restitution to defrauded investors (less amounts paid by Park towards the restitution amount ordered in the criminal action). *CFTC v. Park*, No. 16-cv-4120 (VEC), 2018 WL 6324810, at *3-5 (Dec. 3, 2018).

³ On July 8, 2016, Park was indicted in a related criminal proceeding in the U.S. District Court for the Southern District of New York. Indictment, *United States v. Park*, No. 1:16-cr-00473 (S.D.N.Y. July 8, 2016), ECF No. 9. She pleaded guilty to one count of commodities fraud and was subsequently sentenced to a three-year term of imprisonment and ordered to pay \$23 million in restitution, reflecting the net loss to the victims of her scheme. Judgment in a Criminal Case,

ii. *Interactive Brokers Failed to Diligently Supervise its Employees' Handling of Park's Account and Failed to Promptly Report Her Activities.*

At the time that Park opened her account at Interactive Brokers, she executed account opening documents in which she represented to Interactive Brokers that she was self-employed as an “at home trader” and had no other sources of income. She also represented that her net worth was between \$5 million and \$10 million.

Over the course of Park's trading at Interactive Brokers, the money flowing into her account increased significantly. For example, in 2012, Park made several deposits into her account totaling \$2.7 million. Thereafter, in 2013, 2014, and 2015, Park deposited \$2.6 million, \$3.4 million, and \$7.9 million into the account, respectively. These amounts, when taken together, exceeded Park's stated net worth as originally disclosed in her account opening documents and were of a size that suggested she may have been trading using funds provided by third parties. Simultaneously, Park significantly increased her trading in her Interactive Brokers account and sustained substantial losses. For example, in 2012, 2013, 2014, and 2015, Park lost \$2.5 million, \$2.2 million, \$2.3 million, and \$7.8 million, respectively.

Park's account regularly appeared on various surveillance reports generated by Interactive Brokers' compliance department. In particular, at least five times between October 2014 and January 2016, Park was included in a monthly report identifying all customers who had more than six withdrawals and/or deposits in a given month. Interactive Brokers' WSPs instructed compliance analysts to review this report in the context of other activity in the account and information known about the customer to determine if the activity was suspicious. By September 2014, the cumulative deposits into Park's account totaled approximately \$10.2 million, exceeding her stated net worth of \$10 million.

In addition, at least a dozen times between January 2013 and December 2015, Park appeared on a report that identified account holders whose losses exceeded a certain percentage of their stated liquid net worth. The report was run monthly and searched for data over the prior six months. Each time Park appeared on this report, Interactive Brokers compliance staff conducted only a cursory review of her trading activity without verifying the source of the funds Park deposited into her account. Interactive Brokers staff also failed to fully and accurately document the items they reviewed in concluding that Park's trading activity did not require further investigation or monitoring.

By November 2014, Park's cumulative losses totaled \$9.6 million, and her cumulative deposits totaled nearly \$10.7 million. At that point, the flow of funds into her account relative to her stated net worth, and her lack of regard for the profitability of her trades, were indicia suggesting that she may have been pooling the funds of third parties—transactions in which

Park, No. 1:16-cr-00473 (S.D.N.Y. July 11, 2017), ECF No. 43, and Amended Order of Restitution, *Park*, No. 1:16-cr-00473 (S.D.N.Y. October 1, 2019), ECF No. 55.

Interactive Brokers should not have expected Park to engage. Park also appeared on multiple surveillance reports in subsequent months that should have prompted a review of her account. Pursuant to Interactive Brokers' WSPs and FinCEN Regulation 1026.320, 31 C.F.R. § 1026.320 (2019), Interactive Brokers should have recognized her account activity as suspicious and filed a SAR by no later than February 2015, but it failed to do so.

b. Schleifer

i. The Commission's Action Against Schleifer

On April 12, 2016, the Commission filed and settled fraud and related charges against Schleifer and his company, Galileo Trading, LLC ("Galileo"). *In re Galileo Trading, LLC*, CFTC No. 16-14, 2016 WL 1534231 (Apr. 2, 2016). From 2009 through 2014, Schleifer and Galileo fraudulently solicited at least \$1.8 million from multiple individuals for the stated purpose of managing futures trading accounts at Interactive Brokers on their behalf. Despite representing that he was an experienced commodities trader and that he had a profitable trading history, between 2008 and 2014, none of the accounts Schleifer managed at Interactive Brokers were profitable. *Id.* at *1-2. In settling the Commission's charges against them, Schleifer and Galileo agreed to pay approximately \$1.2 million in restitution to defrauded customers, a \$420,000 civil monetary penalty, and \$38,022 in disgorgement of ill-gotten gains. *Id.* at *7-8.

ii. Interactive Brokers Failed to Diligently Supervise its Employees' Handling of Schleifer's Accounts and Failed to Promptly Report His Activities.

Galileo had registered with the Commission as a Commodity Pool Operator ("CPO") and a Commodity Trading Advisor ("CTA") in 2004, and Schleifer registered with the Commission as an Associated Person ("AP") of Galileo that same year. Schleifer did not disclose his registration to Interactive Brokers when he opened personal trading accounts at the firm in 2008, and Interactive Brokers did not otherwise detect Schleifer's registration as an AP of a CPO/CTA at any point during the life of his personal accounts or the accounts of his customers.

Interactive Brokers conducted an investigation of Schleifer's accounts in 2014 after receiving a grand jury subpoena from the Manhattan District Attorney's Office related to his trading activities. For at least a year at that point, Schleifer had been marketing himself on a public website for Galileo that touted the fact he was registered with the Commission and discussed his trading of futures, equities, and options contracts. Interactive Brokers failed to detect Galileo's website and failed to detect that Schleifer had lied on his account opening documents with respect to his registration status. Interactive Brokers also received a request from the Commission for information related to Schleifer in October 2014.

The WSPs instructed Interactive Brokers' employees to file continuing-activity SARs where suspicious activity continued, and did not include an exception for circumstances where a law enforcement agency was investigating the matter. Nevertheless, Interactive Brokers failed to file a SAR regarding Schleifer's trading activities following its receipt of the grand jury subpoena and the Commission's request, based on Interactive Brokers' employees' erroneous

belief that a SAR did not have to be filed when a government agency was aware of the conduct in question, and he continued trading for several managed accounts after that point. In 2016, Interactive Brokers learned that the Commission had ordered Schleifer to pay restitution and penalties in connection with his investment scheme but still did not file a SAR at that time.

c. Grace Hong

i. *The Commission's Action Against Grace Hong*

On June 1, 2017, the Commission filed a complaint against Grace Hong and her husband, Sung (a/k/a Lawrence or Laurence) Hong (“Lawrence Hong” and together with his wife, the “Hong”), in the U.S. District Court for the Western District of Washington. That case resulted in a default order. *CFTC v. Pishon Holding LLC*, No. 17-cv-00847, 2018 WL 6812655 (W.D. Wash. Dec. 27, 2018), ECF No. 68. The order found that the Hong fraudulently solicited more than \$11 million from customers for the purpose of trading futures contracts via their company, Pishon Holding, LLC (“Pishon”), and misappropriated more than \$1.2 million in customer funds. Additionally, the Hong misrepresented the success of their trading history and the advisor fees Pishon would charge customers. They also failed to inform customers that Lawrence Hong had previously pleaded guilty to wire fraud and served thirty-three months in prison in connection with an earlier investment scheme. *Id.* at *3-6.

The order further found that based on the Hong's fraudulent representations and omissions, their customers opened and funded twelve futures trading accounts at Interactive Brokers and authorized Pishon to control the trading in those accounts. While the Hong had told investors that fees would only be taken from profits, they included a clause in their customer investment agreements that permitted Pishon to receive a “performance fee” equal to 25% of each customer's quarterly account value, regardless of whether the account was profitable. Per the customer agreements, Interactive Brokers withdrew the performance fee from client accounts and transferred the funds to an account held in Pishon's name. The Hong then transferred the funds to Pishon's bank account for their personal use. *Id.* at *5-7.⁴

ii. *Interactive Brokers Failed to Diligently Supervise its Employees' Handling of Pishon's Accounts.*

By early 2017, some of Pishon's customers began contacting Interactive Brokers' customer service department with questions and concerns about their accounts. In one instance, a representative of a church group that held an account with Pishon noticed that Pishon had

⁴ The Hong were separately arrested and indicted in a parallel criminal proceeding in the U.S. District Court for the Western District of Washington in which they ultimately pleaded guilty to multiple counts. Plea Agreements, *United States v. Hong*, No. 17-cr-00163 (W.D. Wash. Mar. 27 and 30, 2018), ECF Nos. 85 and 88. In October 2018, Lawrence Hong was sentenced to a 180-month prison term, and Grace Hong was sentenced to a 72-month prison term. The court in the criminal matter also ordered that the Hong pay nearly \$13 million in restitution. Judgments, *Hong*, No. 17-cr-00163 (W.D. Wash. Oct. 11, 2018), ECF Nos. 130 and 132.

charged the account approximately \$57,000 in fees over one quarter. The customer contacted Interactive Brokers in February 2017 to inquire about the management fees Pishon had charged to the group's account.

One of Interactive Brokers' customer service representatives reviewed the account and explained to the representative that the group was being charged an annualized percentage of 25% of the account's net liquidation value applied on a quarterly basis. The Interactive Brokers representative commented that the fees appeared abnormally high, that the typical advisor rate was between 0.5% and 2.5% of an account's value, and that the group should consider terminating its relationship with Pishon. Although during the Relevant Period customer service representatives were required to participate in AML training, Interactive Brokers had no written policies or procedures in place to address the training of customer service representatives or any other functions outside of the compliance department in the identification of suspicious activity. Despite flagging the abnormally high rate to the customer and the Interactive Brokers employee's knowledge that Pishon was charging such excessive fees, the employee failed to escalate Pishon's activities for further review.

d. Customer A

i. Interactive Brokers Failed to Diligently Supervise its Employees' Handling of Customer A's Account and Failed to Promptly Report Their Activities.

In January 2015, Customer A opened a personal trading account at Interactive Brokers. Eight months later, CME Group ("CME") sent a request to Interactive Brokers for information regarding order placement activity by Customer A. Customer A had been placing very large market orders that frequently traded through numerous price levels and may have caused futures prices to fluctuate. Customer A's transactions incurred repeated and significant losses. Later in 2015, CME opened a formal investigation into Customer A's trading activity and notified Interactive Brokers' Chief Compliance Officer of that fact in writing.

Interactive Brokers proceeded to conduct its own review of Customer A's trading activity and found that Customer A manually placed large market orders in index futures, which due to their immense size, would execute through the liquidity in the open order book and cause adverse movements in the market price of the contract being traded. Interactive Brokers also identified multiple instances where Customer A had violated the margin requirements applicable to their account. When Customer A represented to Interactive Brokers that Customer A was not attempting to manipulate or disrupt the market, Interactive Brokers discussed with Customer A alternative order types that would allow Customer A to achieve the same outcome with less disruption to the market. However, Customer A did not continue to use these order types and Interactive Brokers allowed Customer A to continue trading without filing a SAR.

In the first two years of trading with Interactive Brokers, Customer A deposited tens of millions of dollars and had almost as much in trading losses. Customer A's account appeared on multiple surveillance reports and alerts generated by Interactive Brokers' compliance department during that period. In addition, the volume of Customer A's transactions was unusual compared

to other market participants—a red flag identified by Interactive Brokers’ WSPs as requiring investigation and escalation.

However, Interactive Brokers did not timely file a SAR in connection with Customer A when it had reason to suspect that a SAR was warranted.

e. Customer B

i. Interactive Brokers Failed to Diligently Supervise its Employees’ Handling of Customer B’s Accounts and Failed to Promptly Report Their Activities.

In 2013, Customer B opened one of several accounts at Interactive Brokers. A few years prior, Customer B had been fined by the Securities and Exchange Commission (“SEC”) for defrauding mutual fund shareholders and served time in prison following a parallel criminal proceeding. At the time that Customer B opened their first account, Interactive Brokers lacked appropriate risk-based procedures for conducting customer due diligence, nor did Interactive Brokers place Customer B on a watch list for any enhanced ongoing monitoring.

In or around August 2018, Customer B embarked on a new trading strategy and began accumulating VIX futures contracts in various maturities. By mid-October 2018, Customer B’s positions in VIX contracts were unusually large for the market. Around that time, Interactive Brokers’ risk department began communicating with Customer B about implementing position limits and ultimately instructed Customer B to drastically trim their positions. By the end of October 2018, Customer B moved half of their account balances to another FCM.

Customer B’s accumulation of such a large position constituted a red flag warranting further investigation under Interactive Brokers’ WSPs. The WSPs instructed employees to promptly notify senior officers in the compliance department if a customer’s transactions and/or volumes of aggregate activity were unusual and unexpected in comparison with the volumes of similarly situated businesses. The WSPs further provided that if Interactive Brokers personnel knew that a customer had “a questionable background” or was “the subject of news reports indicating possible criminal, civil, or regulatory violations,” those circumstances would constitute an additional red flag requiring investigation. Moreover, on or about October 22, 2018, the NFA sent a request for information to Interactive Brokers on behalf of the Cboe Futures Exchange regarding the nature of Customer B’s accounts and their trading strategies.

Notwithstanding the NFA inquiry, Interactive Brokers failed to conduct an AML investigation to determine whether, in light of Customer B’s trading patterns, and their regulatory and criminal background, a SAR should be filed.

3. Interactive Brokers’ Remediation

The Commission recognizes that since the commencement of its investigation, Interactive Brokers has engaged in remedial measures relating to its AML program. Interactive Brokers represents that it has enhanced its internal controls designed to detect suspicious activity, as detailed in Part V.F., below.

III. LEGAL DISCUSSION

A. **Interactive Brokers Failed to Create an Adequate Supervisory System and to Diligently Supervise its Officers, Employees, and Agents in Violation of Regulation 166.3.**

Regulation 166.3, 17 C.F.R. § 166.3 (2019), imposes on every Commission registrant (except associated persons who have no supervisory duties) an affirmative duty to “diligently supervise the handling by its partners, officers, employees and agents . . . 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.” A violation of Regulation 166.3 is an independent violation for which no underlying violation is necessary. *See, e.g., In re Collins*, CFTC No. 94-13, 1997 WL 761927, at *10 (Dec. 10, 1997) (“It is well settled that a violation under Rule 166.3 is ‘an independent and primary violation for which no underlying violation is necessary.’” (citation omitted)); *In re GNP Commodities, Inc.*, CFTC No. 89-1, 1992 WL 201158, at *17 n.11 (Aug. 11, 1992) (“Rule 166.3 establishes failure to supervise as an independent and primary violation” (citation omitted)), *aff’d in part and modified sub nom. Monieson v. CFTC*, 996 F.2d 852 (7th Cir. 1993).

For a registrant to fulfill its duties under Regulation 166.3, it must both design an adequate program of supervision and ensure that the program is followed. *See GNP Commodities*, 1992 WL 201158, at *17-19 (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). As a result, 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 FCStone, LLC*, CFTC No. 15-21, 2015 WL 2066891, at *3 (May 1, 2015) (consent order) (citing *In re Murlas Commodities, Inc.*, CFTC No. 85-29, 1995 WL 523563, at *9 (Sept. 1, 1995)). 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 Ass’n*, CFTC No. 88-18, 1992 WL 74261, at *14 (Apr. 1, 1992).

As set forth above, Interactive Brokers both failed to adopt an adequate supervisory system and failed to perform its supervisory duties diligently in violation of Regulation 166.3. First, Interactive Brokers failed to create sufficient policies and procedures for documenting, monitoring, and reporting suspicious trading practices as required by the Bank Secrecy Act (“BSA”) and for training personnel to identify transactions or issues that warranted investigation. Second, Interactive Brokers failed to diligently supervise its employees to ensure compliance with existing written policies regarding the investigation of account activity. As a result, Interactive Brokers violated Regulation 166.3.

B. **Interactive Brokers Failed to Timely File SARs in Violation of Regulation 42.2.**

Section 4g(a) of the Commodity Exchange Act (the “Act”), 7 U.S.C. § 6g(a) (2018), requires FCMs (among others) to “make such reports as are required by the Commission

regarding transactions and positions of such [FCM], and the transactions and position of the customer thereof[.]” Section 8a(5) of the Act, 7 U.S.C. § 12a(5) (2018), authorizes the Commission “to make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of [the Act].” Relying on the Commission’s authority under Sections 4g and 8a of the Act, among other provisions, the Commission issued Regulation 42.2, 17 C.F.R. § 42.2 (2019), which in relevant part requires every FCM to “comply with the applicable provisions of the Bank Secrecy Act and the regulations promulgated by the Department of the Treasury under that Act at 31 CFR chapter X[.]” Accordingly, Regulation 42.2 requires compliance with the regulations promulgated by FinCEN, a bureau of the Department of the Treasury, under the BSA. Those regulations include FinCEN Regulation 1026.320, 31 C.F.R. § 1026.320 (2019), which, as stated above, dictates in what circumstances an FCM such as Interactive Brokers must file SARs.

FinCEN Regulation 1026.320(a)(1)–(2) requires FCMs to file a report of any suspicious transaction if the transaction is conducted (or attempted) through the FCM, involves funds of at least \$5,000, and the FCM “knows, suspects, or has reason to suspect that the transaction[.]” among other things:

- (i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;
- (ii) Is designed, whether through structuring or other means, to evade any requirements of [Chapter X] or of any other regulations promulgated under the Bank Secrecy Act;
- (iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the FCM or [introducing broker in commodities (“IB–C”)] knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or
- (iv) Involves use of the FCM or IB–C to facilitate criminal activity.

A suspicious transaction must be reported by filing a SAR “no later than 30 calendar days after the date of the initial detection by the reporting FCM . . . of facts that may constitute a basis for filing a SAR[.]” 31 C.F.R. § 1026.320(b)(3). An FCM may delay filing for an additional thirty days if no suspect is identified on the date of the initial detection, but filing may not occur more than sixty days after the initial detection. *Id.* FCMs must also implement and maintain a written AML program that includes, among other things, appropriate risk-based procedures for conducting ongoing customer due diligence. *Id.* § 1026.210(b)(5)(i)–(ii). Those procedures must include but not be limited to “(i) [u]nderstanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (ii) [c]onducting ongoing

monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.” *Id.*

SARs “assist law enforcement in detecting whether transactions have ‘no apparent or lawful purpose,’ or involve ‘funds derived from illegal activity,’ ‘structuring or other means’ of evading requirements of the BSA, or the ‘facilitat[ion] of illegal activity.’” *SEC v. Alpine Sec. Corp.*, 308 F. Supp. 3d 775, 796 (S.D.N.Y. 2018) (alteration in original) (quoting 31 C.F.R. § 1023.320(a)(2)), *appeal docketed*, No. 19-3272 (2d Cir. Oct. 10, 2019) (addressing the SEC’s enforcement of SAR filing and recordkeeping requirements against broker-dealers pursuant to SEC Rule 17a-8, 17 C.F.R. § 240.17a-8 (2019)). The reporting requirements set out in the BSA “are not casual,” but rather, “[t]he SAR framework allocates scarce government resources to protect public security by placing the burden of compliance, and of distilling a wide range of possibly relevant information into a SAR narrative, on [regulated entities].” *Id.* at 799-800.

Here, Interactive Brokers had reason to suspect that the transactions at issue had no business or lawful purpose, were not the sort in which the particular customers would normally be expected to engage, and/or involved the use of Interactive Brokers to facilitate criminal activity. As a result, Interactive Brokers had a duty to file SARs in each matter within thirty days after it initially detected facts, as detailed above, that may have constituted a basis for filing a SAR. By failing to do so, Interactive Brokers violated Regulation 42.2.

IV. FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, Interactive Brokers failed to: (1) adequately supervise its officers, employees, and agents in violation of Regulation 166.3, 17 C.F.R. § 166.3 (2019); and (2) failed to file SARs when it had a duty to do so in violation of Regulation 42.2, 17 C.F.R. § 42.2 (2019).

V. OFFER OF SETTLEMENT

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

- A. Acknowledges 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 a 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 (2018) and 28 U.S.C. § 2412 (2018), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. pt. 148 (2019), 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, tit. II, §§ 201-253, 110 Stat. 847, 857-74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and
 8. Any claims of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, including this Order;
- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Interactive Brokers 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 Interactive Brokers violated Regulations 42.2 and 166.3, 17 C.F.R. §§ 42.2, 166.3 (2019);
 2. Orders Interactive Brokers to cease and desist from violating Regulations 42.2 and 166.3;
 3. Orders Interactive Brokers to pay a civil monetary penalty in the amount of eleven million five hundred thousand dollars (\$11,500,000), plus post-judgment interest, within ten days of the date of entry of this Order; and
 4. Orders Interactive Brokers and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order, including, but not limited to, Interactive Brokers' undertaking to pay disgorgement in the amount of seven hundred six thousand two hundred fourteen dollars and sixty-seven cents (\$706,214.67), plus post-judgment interest according to the terms set forth below; and
- F. Represents that since the commencement of the Commission's investigation, Interactive Brokers has engaged in substantial remedial measures relating to its AML program, including enhancing its internal controls designed to detect suspicious activity through, among other things:

1. The reorganization of Interactive Brokers' compliance department and the hiring of dozens of new AML-dedicated staff to perform customer surveillance functions, including senior personnel with regulatory and law-enforcement backgrounds;
2. The engagement of outside consultants to conduct various reviews, assessments, and independent testing of Interactive Brokers' AML program;
3. Updated training at onboarding and on a recurring basis concerning surveillance systems and processes;
4. Enhanced policies and procedures related to investigations of customer conduct;
5. The development and ongoing implementation of a new case management system and new surveillance reports; and
6. Engaged an outside consultant to conduct the annual independent audit of its AML program.

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

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Interactive Brokers and its successors and assigns shall cease and desist from violating Regulations 42.2 and 166.3, 17 C.F.R. §§ 42.2, 166.3 (2019).
- B. Interactive Brokers shall pay a civil monetary penalty in the amount of eleven million five hundred thousand dollars (\$11,500,000) ("CMP Obligation") within ten days of the date of the entry of this Order. If the CMP Obligation is not paid in full within ten days of the date of 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 (2018).

Interactive Brokers shall pay the CMP Obligation and any post-judgment interest 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:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
Division of Enforcement
6500 S. MacArthur Blvd.
HQ Room 181
Oklahoma City, OK 73169
(405) 954-6569 office

(405) 954-1620 fax
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Interactive Brokers shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Interactive Brokers shall accompany payment of the CMP Obligation with a cover letter that identifies Interactive Brokers as the payer and the name and docket number of this proceeding. Interactive Brokers 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, DC 20581.

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

1. Public Statements: Interactive Brokers 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 on behalf of Interactive Brokers 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 Interactive Brokers': (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Interactive Brokers and its successors and assigns shall comply with this agreement, and 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. Disgorgement: Interactive Brokers agrees to pay disgorgement in the amount of seven hundred six thousand two hundred fourteen dollars and sixty-seven cents (\$706,214.67) ("Disgorgement Obligation") within ten days of the date of the entry of this Order. If the Disgorgement Obligation is not paid in full within ten days of the date of entry of this Order, then post-judgment interest shall accrue on the Disgorgement 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 (2018).

To effect payment of the Disgorgement Obligation by Interactive Brokers and the distribution of disgorged funds, the Commission appoints the NFA as "Monitor." The Monitor shall receive payment of the Disgorgement Obligation and any post-judgment interest from Interactive Brokers and make distributions as set forth below. Because the Monitor is not being specially compensated for these services, and these services are outside the normal duties of the Monitor, it shall not be liable for any action or inaction arising from its appointment as Monitor, other than actions involving fraud.

Interactive Brokers shall pay the Disgorgement Obligation and any post-judgment interest under this Order by electronic funds transfer, or U.S. postal money order,

certified check, bank cashier's check, or bank money order to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606, under cover of a letter that identifies Interactive Brokers as the payer, the name and docket number of this proceeding, and the amount and method of payment. Interactive Brokers shall simultaneously transmit copies of the cover letter and the form of payment to the Director, Division of Enforcement, and the Chief Financial Officer, at Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

The Commission will provide to the Monitor a list of Park's customers to whom the disgorged funds should be paid, their last-known addresses, and the estimated amounts owed by Park to each of them. The Monitor shall distribute disgorgement funds to those customers in an equitable manner as determined by the Monitor. The Monitor shall oversee the distribution of funds of the Disgorgement Obligation and shall have the discretion to defer distribution until such time as it may deem appropriate. In the event that the amount of payments of the Disgorgement Obligation to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost of making a disgorgement distribution is impractical, the Monitor may, in its discretion, treat such disgorgement payments as civil monetary penalty payments, which the Monitor shall forward to the Commission following the instructions for the CMP Obligation as set forth in Section VI.B above. To the extent any funds accrue to the U.S. Treasury for satisfaction of Interactive Brokers' Disgorgement Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth in this Order.

Nothing herein shall be construed in any way to limit or abridge the rights of any customers of Park that exist under state or common law.

3. Cooperation, In General: Interactive Brokers shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement ("Division"), in this action, and in any current or future Commission investigation or action related thereto ("Commission Related Matters"). Interactive Brokers shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, the subject matter of this action ("Subject Related Matters"). Interactive Brokers' cooperation shall continue for a period of five years from the date of the entry of this Order, or until any Commission Related Matters or Subject Related Matters are concluded, whichever is longest.
4. Independent Consultant: In the course of the Division's investigation, Interactive Brokers enlisted the services of an independent consultant ("Outside Consultant #1"), to review and evaluate Interactive Brokers' AML program and the supervisory issues raised herein and to make recommendations for improvement with respect to the matters assessed ("Outside Consultant #1's Recommendations"). Interactive Brokers recently retained a separate consultant

(“Outside Consultant #2”) to assess Interactive Brokers’ implementation of Outside Consultant #1’s Recommendations, all 107 of which Interactive Brokers has adopted. Interactive Brokers shall continue to retain Outside Consultant #2 at its own expense for the purposes of generating a report, as outlined below, and shall facilitate Outside Consultant #2’s efforts by making available to Outside Consultant #2 all relevant Interactive Brokers records and personnel, whether located in the United States or any other location.

- a. On a quarterly basis, Outside Consultant #2 shall submit to the Division a report reflecting Interactive Brokers’ status as to implementing each of Outside Consultant #1’s recommendations, as well as making related recommendations, where necessary, for improvements in Interactive Brokers’ internal controls, policies, procedures (written and otherwise), systems, and training related to achieving compliance with Regulations 42.2 and 166.3. Any costs associated with the submission of quarterly reports shall be borne by Interactive Brokers.
- b. Upon completion of its review, and by no later than 365 days from the date of the entry of this Order, Outside Consultant #2 shall submit a written report to Interactive Brokers and the Division (the “Confidential Report”) assessing Interactive Brokers’ compliance with and implementation of Outside Consultant #1’s Recommendations, including any additional recommendations. The Confidential Report shall include a description of the review performed and the conclusions reached.
- c. Interactive Brokers shall fully implement all of Outside Consultant #1’s Recommendations and any additional recommendations made by Outside Consultant #2 within 120 days after receiving the Confidential Report. If implementation cannot be accomplished within 120 days following receipt of the Confidential Report, Interactive Brokers must present a specific timetable and plan to the Division for its acceptance.
- d. Within 120 days after receiving the Confidential Report, or any longer time period approved in writing by the Division, Interactive Brokers shall provide Outside Consultant #2 and the Division with a written Implementation Report, certified by an officer of Interactive Brokers, attesting to, containing documentation of, and setting forth the details of Interactive Brokers’ implementation of all of Outside Consultant #1’s Recommendations and any additional recommendations made by Outside Consultant #2. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Division may make reasonable requests for further evidence of compliance, and Interactive Brokers agrees to provide such evidence.

- e. Interactive Brokers shall not terminate its relationship with Outside Consultant #2 before the completion of the requirements set forth in this Order without the Division's prior written approval.
 - f. Interactive Brokers shall cooperate with Outside Consultant #2 and Outside Consultant #2 shall have the authority to take such reasonable steps, in its view, as may be necessary to be fully informed about the operations of Interactive Brokers within the scope of this review, including full access to all information, files, books, records, and personnel Outside Consultant #2 deems necessary to perform its duties. Interactive Brokers shall require Outside Consultant #2 to report to the Division on its activities as the Division may request and shall place no restrictions on Outside Consultant #2's communications with the Division. Further, upon request, Interactive Brokers shall make available to the Division any and all communications between Outside Consultant #2 and Interactive Brokers and documents reviewed by Outside Consultant #2 in connection with this review.
 - g. The Commission's acceptance of Interactive Brokers' Offer and entry of this Order shall not be construed as the Commission's approval of any policy or practice reviewed by Outside Consultant #1 or Outside Consultant #2 and/or implemented based on the recommendation of Outside Consultant #1 or Outside Consultant #2.
 - h. Interactive Brokers shall not be in and shall not have an attorney-client relationship with Outside Consultant #2 and shall not seek to invoke the attorney-client privilege or other doctrine or privilege to prevent Outside Consultant #2 from transmitting any information, reports, or documents to the Division. Any person engaged to assist Outside Consultant #2 in the performance of its duties pursuant to this Order shall not, without prior written consent from the Division, enter into any employment, consultant, attorney-client, auditing, or other professional relationship with Interactive Brokers or any of Interactive Brokers' present or former affiliates, directors, officers, employees, or agents for the period of Outside Consultant #2's engagement and for a period of two years after the engagement; provided, however, that nothing herein shall prevent Outside Consultant #2 from serving in a consulting role pursuant to an agreement with the Financial Industry Regulatory Authority, Inc. (FINRA).
 - i. Upon written request showing good cause, Division staff may extend any of the procedural dates set forth above except the period of engagement of the Outside Consultants.
5. Partial Satisfaction: Interactive Brokers understands and agrees that any acceptance by the Commission of any partial payment of Interactive Brokers' CMP Obligation or Disgorgement 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.

6. Change of Address/Phone: Until such time as Interactive Brokers satisfies in full its Disgorgement Obligation and CMP Obligation as set forth in this Order, Interactive Brokers shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten calendar days of the change.

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

By the Commission.



Robert N. Sidman
Deputy Secretary of the Commission
Commodity Futures Trading Commission

Dated: August 10, 2020