

**NATIONAL FUTURES ASSOCIATION  
BEFORE THE  
BUSINESS CONDUCT COMMITTEE**

FILED

APR 14 2022

NATIONAL FUTURES ASSOCIATION  
LEGAL DOCKETING

In the Matter of:

INTERACTIVE BROKERS LLC  
(NFA ID #258600),

Respondent.

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NFA Case No. 22-BCC-004

**COMPLAINT**

Having reviewed the investigative report submitted by the Compliance Department of National Futures Association (NFA) and having found reason to believe that NFA Requirements are being, have been or are about to be violated and that the matter should be adjudicated, NFA's Business Conduct Committee (Committee) issues this Complaint against Interactive Brokers LLC (Interactive).

**ALLEGATIONS**

**JURISDICTION**

1. At all times relevant to this Complaint, Interactive was a futures commission merchant (FCM) Member of NFA. As such, Interactive was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof.

**BACKGROUND**

2. Interactive has been a registered FCM Member since December 1994. The firm is headquartered in Greenwich, Connecticut.
3. In April 2012, the firm became approved as a Forex Dealer Member (FDM) and a forex firm. Interactive is also a registered securities broker-dealer.

4. Interactive is an electronic discount brokerage firm offering online trading to retail customers primarily trading futures, options, and securities, as well as proprietary and non-customer trading.
5. The firm also provides customers with the ability to trade over-the-counter spot forex (forex). According to Interactive's website, the firm had approximately 23,000 customer forex accounts as of December 31, 2021.
6. This Committee has issued three prior Complaints against Interactive since 2006. Most recently, in December 2020, the Committee issued a warning letter to Interactive regarding the firm's failure to comply promptly with a September 2020 Member and Associate Responsibility Action (collectively referred to as the "MRA/ARA") that NFA's Executive Committee had issued against a commodity trading advisor (CTA) Member and its owner. The MRA/ARA alleged, among other things, that the CTA's owner misappropriated proceeds from a loan obtained from former clients of the CTA and used the money to fund futures and other trading in his personal account at Interactive. The Committee's warning letter involved Interactive not taking prompt steps to prevent the CTA's owner from violating the MRA/ARA until the business day following its receipt of the MRA/ARA.
7. The letter warned Interactive that the Committee would consider issuing a Complaint against the firm if similar conduct were to occur in the future (*i.e.*, a failure to cooperate promptly and fully with NFA, in violation of NFA Compliance Rule 2-5).
8. As alleged in more detail below, NFA recently found that Interactive failed to comply with NFA's forex requirements and failed to diligently supervise its employees and agents in the conduct of their forex activities on behalf of the firm.

## APPLICABLE RULES

9. NFA Compliance Rule 2-36(e) requires Forex Dealer Members to diligently supervise their employees and agents in the conduct of their forex activities for or on behalf of the Forex Dealer Member.
10. NFA Compliance Rule 2-36(s)(5) defines "straight-through processing" as when a Forex Dealer Member automatically executes (without human intervention and without exception) an offsetting position to a customer order with another counterparty prior to providing an execution to the customer order.
11. NFA Compliance Rule 2-43(a)(1), in pertinent part, prohibits Forex Dealer Members from canceling an executed customer order or adjusting a customer account in a manner that would have a direct or indirect effect of changing the price of an executed order except when (i) the cancellation or adjustment is favorable to the customer and done as part of a settlement of a customer complaint to favorably adjust customer orders that were adversely affected by circumstances beyond the customer's control and that are unrelated to market price movements; or (ii) a Forex Dealer Member exclusively uses straight-through processing, as defined in NFA Compliance Rule 2-36(s)(5), and that counterparty cancels or adjusts the price at which the position was executed.
12. NFA Compliance Rule 2-48 obligates each Forex Dealer Member to file a daily electronic report of trade data with NFA.

## COUNT I

### **VIOLATIONS OF NFA COMPLIANCE RULE 2-43(a)(1): IMPROPERLY CANCELING RETAIL CUSTOMER FOREX ORDERS.**

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13. The foregoing paragraphs are realleged as if fully stated herein.

14. As described above, Interactive has been approved as an FDM since April 2012. Under its FDM business model, Interactive maintains an electronic trading platform that offers its retail customers the ability to enter orders for forex trading.
15. At all times relevant to this Complaint, Interactive's forex business model worked in the following way. When a customer enters an order for a forex transaction with Interactive, the firm executes the transaction by entering into an offsetting transaction with one of its affiliates, or with a third-party liquidity provider, or with another customer who had entered an order into Interactive's system.
16. Through its business model, Interactive processed some of its retail customer transactions using straight-through processing where, as defined under NFA Compliance Rules, the firm entered into an offsetting trade with a third-party counterparty (*i.e.*, a bank or other liquidity provider). However, Interactive also "auto-matched" customers' orders with other customer orders the firm held on its system and, therefore, the firm did not exclusively use a straight-through processing model as defined under NFA Compliance Rule 2-36(s)(5).
17. As required under NFA Compliance Rule 2-48, Interactive submitted a daily report to NFA on October 30, 2020. The report consisted of files for, among other things, trades, orders, market events, and any cancellations or adjustments made to customers' trades that occurred on the previous trading day.
18. The firm's October 30 report included a "busted" USD/CAD trade and mentioned in a note accompanying the report that the firm had "busted" other trades. Therefore, NFA requested additional information from the firm.

19. NFA's review of the October 30 report ultimately determined Interactive had reported the "busted" USD/CAD trade to NFA in error, while the other "busted" trades Interactive had mentioned were not reportable to NFA since the trades did not involve retail customers or the affected customers were trading through a foreign affiliate of Interactive (*e.g.*, Interactive Brokers Canada Inc.).
20. In responding to NFA's questions about the "busted" trades, Interactive represented that the firm used straight-through processing exclusively for its retail customers but also indicated the firm "auto-matched" customers when prices were best and allowed for matching. The firm also stated Interactive relied on NFA Compliance Rule 2-43(a)(1) in the event the firm needed to "bust" retail customer transactions made (*i.e.*, executed) that were favorable to the customer.
21. Because Interactive "auto-matched" customers orders, the firm did not operate exclusively utilizing straight-through processing. Consequently, Interactive could not rely on Compliance Rule 2-43(a)(1)(ii) to "bust" retail customer transactions due to erroneous prices.
22. NFA sent a letter to Interactive on May 10, 2021 informing the firm that Interactive could not rely on Compliance Rule 2-43(a)(1)(ii) to "bust" any retail customer transactions, including those for which Interactive used straight-through processing or those where the firm "auto-matched" one customer order with another customer order, since the firm did not operate exclusively utilizing straight-through processing.
23. NFA's letter explained that when NFA's Board of Directors adopted Compliance Rule 2-43(a)(1)(ii), and more specifically when it made a technical amendment to

the Rule in 2009, the Board emphasized that the first and necessary condition for adjusting erroneous prices under Rule 2-43(a)(1)(ii) was that the FDM must exclusively operate a straight-through processing business model. (Emphasis added.)

24. NFA's letter also made clear that the 2009 Board amendment was designed to clarify that the provision in current Rule 2-43(a)(1)(ii) does not apply unless all of the FDM's retail forex business is done under a straight-through processing model. (Emphasis added.) NFA's letter concluded by notifying Interactive that its business model precluded the firm from relying on Compliance Rule 2-43(a)(1)(ii) to cancel or adjust a transaction with a retail customer.
25. A member of Interactive's compliance department sent NFA an e-mail on May 10, 2021 confirming the firm had received the letter. NFA also spoke to the same staff member the next day, who did not disagree during the call with NFA's position.
26. Approximately two months later, Interactive submitted a daily report that reflected the firm had canceled transactions in the USD/CAD pair on July 19, 2021 involving eight customer accounts.
27. Upon further review, NFA determined the cancellations did not meet either exception under NFA Compliance Rule 2-43(a)(1) because the cancellations were not favorable to the affected customers and Interactive did not exclusively use straight-through processing.
28. The cancellations also contradicted NFA's May 10, 2021 letter directing Interactive not to rely on NFA Compliance Rule 2-43(a)(1)(ii) to "bust" retail

customer transactions since the firm did not operate exclusively using straight-through processing.

29. Based on these findings, NFA questioned Interactive about its apparent violation of NFA Compliance Rule 2-43(a)(1). In its initial response to NFA, the firm explained that it believed, based on two prior discussions the firm had with NFA staff in 2013 and 2018, that it was permitted to rely on Rule 2-43(a)(1)(ii). However, neither of those situations dealt with the specific straight-through processing issue addressed in NFA's May 10, 2021 letter.
30. On October 6, 2021, NFA sent a letter to Interactive requiring a written explanation about how Interactive reconciled its decision to cancel the July 2021 transactions given NFA's clear directive two months earlier that the firm was not permitted to rely on Compliance Rule 2-43(a)(1)(ii) to "bust" any retail customer transactions since it did not exclusively operate a straight-through processing business model.
31. In an October 29, 2021 letter responding to NFA, Interactive's counsel explained the firm had started internal discussions regarding compliance with NFA Compliance Rule 2-43(a)(1) after receiving NFA's May 2021 letter and that a "ticket" had been "created" in Interactive's project management system to address the question. Nonetheless, the firm did not timely investigate or address the issue.
32. Despite NFA bringing the cancellation issue to Interactive's attention in May 2021, the firm did not take prompt remedial action to ensure it did not violate NFA's forex requirements.

33. As a result, the firm canceled retail customer orders in July 2021, which cancellations were prohibited under NFA's forex requirements since the cancellations were not favorable to the affected customers and because Interactive did not exclusively use straight-through processing.
34. By reason of the foregoing acts and omissions, Interactive is charged with violating NFA Compliance Rule 2-43(a)(1).

### COUNT II

#### VIOLATION OF NFA COMPLIANCE RULE 2-36(e): FAILURE TO SUPERVISE.

35. The foregoing paragraphs are realleged as if fully stated herein.
36. Under NFA Compliance Rule 2-36(e), Interactive is required to diligently supervise its employees and agents in the conduct of their forex activities for or on behalf of the firm.
37. However, Interactive failed to take prompt and adequate remedial action after NFA brought the straight-through processing issue to its attention in May 2021.
38. The firm's October 29, 2021 letter to NFA, discussed above, stated internal discussions regarding compliance with Compliance Rule 2-43(a)(1) began after the firm received NFA's May 2021 letter. The letter also stated Interactive created a "ticket" in its project management system to address questions about Interactive's reliance on the Rule for retail customer trade "busts" and adjustments.
39. Despite these actions, Interactive failed to implement prompt and effective measures to ensure the firm did not rely on NFA Compliance Rule 2-43(a)(1) for any trade "busts" and adjustments involving retail customers after being notified



by NFA in May 2021 that the firm's business model prohibited Interactive's reliance on the rule.

40. NFA's October 6, 2021 letter, discussed above, also directed the firm to provide adjustments – totaling less than \$20,000 – to the customers adversely affected by the improper July 2021 trade cancellations and to notify NFA of the amount and date of the adjustments by October 20, 2021.
41. Interactive never objected to or notified NFA that the firm disagreed with the directive to provide credits or adjustments to these customers. However, Interactive did not ensure that the firm complied promptly with this directive from NFA.
42. The deadline in NFA's October 6 letter passed, without Interactive notifying NFA of the amount and date of the adjustments. Therefore, NFA contacted the firm in January 2022 to inquire about the status of the adjustments.
43. On January 25, more than three months after the deadline, Interactive posted credits to the accounts of the customers negatively impacted by the July 2021 trade cancellations.
44. Due to the failures described above, Interactive failed to adequately supervise its employees in the conduct of its forex activities to ensure compliance with the relevant NFA requirements.
45. By reason of the foregoing acts and omissions, Interactive is charged with violating NFA Compliance Rule 2-36(e).

## **PROCEDURAL REQUIREMENTS**

### **ANSWER**

You must file a written Answer to the Complaint with NFA within thirty days of the date of the Complaint. The Answer shall respond to each allegation in the Complaint by admitting, denying, or averring that you lack sufficient knowledge or information to admit or deny the allegation. An averment of insufficient knowledge or information may only be made after a diligent effort has been made to ascertain the relevant facts and shall be deemed to be a denial of the pertinent allegation.

The place for filing an Answer shall be:

National Futures Association  
300 South Riverside Plaza  
Suite 1800  
Chicago, Illinois 60606  
Attn: Legal Department-Docketing

E-Mail: [Docketing@nfa.futures.org](mailto:Docketing@nfa.futures.org)

Failure to file an Answer as provided above shall be deemed an admission of the facts and legal conclusions contained in the Complaint. Failure to respond to any allegation shall be deemed an admission of that allegation. Failure to file an Answer as provided above shall be deemed a waiver of hearing.

### **POTENTIAL PENALTIES, DISQUALIFICATION, AND INELIGIBILITY**

At the conclusion of the proceedings conducted in connection with the issuance of this Complaint, NFA may impose one or more of the following penalties:

- (a) expulsion or suspension for a specified period from NFA membership;
- (b) bar or suspension for a specified period from association with an NFA Member;
- (c) censure or reprimand;

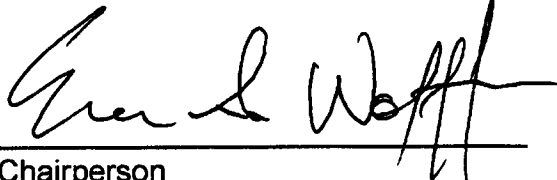
- (d) a monetary fine not to exceed \$500,000 for each violation found; and
- (e) order to cease and desist or any other fitting penalty or remedial action not inconsistent with these penalties.

The allegations in this Complaint may constitute a statutory disqualification from registration under Section 8a(3)(M) of the Commodity Exchange Act. A respondent in this matter who applies for registration in any new capacity, including as an AP with a new sponsor, may, after opportunity for hearing, be denied registration or conditionally registered based on the pendency of this proceeding.

Pursuant to CFTC Regulation 1.63, penalties imposed in connection with this Complaint may temporarily or permanently render a Respondent who is an individual ineligible to serve on disciplinary committees, arbitration panels and governing boards of a self-regulatory organization, as that term is defined in CFTC Regulation 1.63.

**NATIONAL FUTURES ASSOCIATION  
BUSINESS CONDUCT COMMITTEE**

Dated: 4/14/2022

By:   
Chairperson

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