

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Continued Membership
of
BTIG, LLC
with
FINRA

Notice Pursuant to
Rule 19h-1
Securities Exchange Act
of 1934

SD-2325

Date: October 25, 2023

I. Introduction

On May 25, 2022, BTIG, LLC (the “Firm”) submitted to FINRA a Membership Continuance Application (“MC-400A” or “the Application”). The Application seeks to permit the Firm, a FINRA member subject to a statutory disqualification, to continue its membership with FINRA. A hearing was not held in this matter. Rather, pursuant to FINRA Rule 9523(a), FINRA’s Department of Member Supervision (“Member Supervision”) recommended that the Chairperson of the Statutory Disqualification Committee, acting on behalf of the National Adjudicatory Council, approve the Firm’s continued membership with FINRA pursuant to the terms and conditions set forth below.

For the reasons explained below, we approve the Application.

II. The Statutorily Disqualifying Event

The Firm is subject to a statutory disqualification because of a May 2, 2022 final judgment (the “Final Judgment”) entered by the United States District Court for the Southern District of New York. The Final Judgment permanently enjoined the Firm from violating Rules 200(g) and 203(b)(1) of Regulation SHO under the Securities Exchange Act of 1934 (“Exchange Act”).¹ Pursuant to the Final Judgment, the Firm was ordered to pay \$694,354, composed of disgorgement of \$315,048, prejudgment interest of \$64,258, and a civil penalty of \$315,048. The Firm paid these amounts in full.

¹ Exchange Act Section 3(a)(39)(F), which incorporates by reference Exchange Act Section 15(b)(4)(C), provides that a member firm is subject to statutory disqualification if it is enjoined from, among other things, engaging or continuing to engage in any conduct or practice as a broker-dealer or investment adviser, or in connection with the purchase or sale of any security.

The Final Judgment is based on a May 2021 complaint filed against the Firm by the SEC (the “SEC Complaint”). The SEC Complaint alleged that from December 2016 through July 2017, the Firm mismarked as “long” or “short exempt” over 90 sale orders from a single hedge fund customer that was not deemed to own the shares of the securities that it sold. The SEC Complaint further alleged that the Firm failed to borrow and locate shares before executing the short sales.

III. Background Information

A. The Firm

The Firm is based in San Francisco, California and has been a FINRA member since 2002. According to the Firm’s Central Registration Depository (“CRD”®) record, it has 14 branch offices, 10 of which are Offices of Supervisory Jurisdiction. CRD shows that the Firm employs 519 registered representatives, 126 of whom are registered principals. The Firm currently employs one statutorily disqualified individual.²

B. Recent Examinations and Regulatory History

1. Recent Examinations

In January 2023, FINRA issued the Firm a Cautionary Action, which cited it for the following deficiencies: improperly calculating transactions in U.S. currency, failing to comply with its special selling efforts in certain deals, and erroneously reporting transactions in U.S. dollars that were not in U.S. dollars; and failing to maintain and enforce supervisory procedures reasonably designed to comply with the trade reporting exception in FINRA Rule 6380A. The Firm responded in writing to the deficiencies noted and represented that it revised its written supervisory procedures (“WSPs”) to address these deficiencies.

In June 2022, the SEC completed an examination of the Firm that resulted in no further action.

In 2021, FINRA completed a routine examination of the Firm that resulted in six exceptions: (1) failing to accurately calculate haircuts when computing its preferred stock; (2) failing to establish WSPs to document supervisory controls for calculating

² John Quigley (“Quigley”) is statutorily disqualified because of a January 1999 SEC order, which found that he willfully aided and abetted and caused violations of Exchange Act Section 15 and Exchange Act Rules 15c1-2 and 15c2-7 in connection with market-making activities. *See* Exchange Act Sections 3(a)(39), 15(b)(4)(E). For this misconduct, the SEC ordered that Quigley cease and desist from engaging in violative conduct and pay a \$25,000 civil penalty, and suspended Quigley for seven weeks. Although Quigley is statutorily disqualified, an application for Quigley to associate with the Firm was not necessary because the sanctions imposed by the SEC were no longer in effect. *See* FINRA Rule 9522(a)(1); *FINRA Regulatory Notice 09-19*, 2009 FINRA LEXIS 52 (Apr. 2009).

haircuts for the Firm's net capital computation; (3) filing inaccurate FOCUS reports; (4) failing to include a process or controls for the timely and accurate filing of the Firm's Financial Filings and Notifications; (5) failing to maintain systems and controls for monitoring recordkeeping requirements associated with large trader client activities; and (6) failing to maintain adequate WSPs regarding the frequency of training related to the function and control of the Firm's trading algorithms. The Firm responded in writing to the exceptions and represented that it corrected the noted deficiencies. Member Supervision states that the examination was closed with no further action.

2. Recent Regulatory History

Other than the Final Judgment, the Firm has been the subject of four recent regulatory matters.

In July 2020, NYSE Arca, Inc. accepted a Letter of Acceptance, Waiver and Consent ("AWC") from the Firm for violations of Exchange Act Section 17(a), Exchange Act Rule 17a-3, NYSE Arca Rules 2.28 (Books and Records), 6.68-O (Record of Orders), and 11.16 (Books and Records), and NYSE Arca Options Rule 11.18 (Supervision). Without admitting or denying the allegations, the Firm consented to findings that from November 2016 through January 2019, it failed to create and maintain records for at least 10 options orders manually routed to the Exchange for execution and failed to establish and maintain a supervisory system reasonably designed to ensure compliance with its books and records obligations. NYSE Arca, Inc. censured the Firm and fined it \$40,000.

In December 2015, FINRA accepted an AWC from the Firm for violations of FINRA Rules 2010 and 5310. Without admitting or denying the allegations, the Firm consented to findings that from January 2014 through March 2014, the Firm failed to fully and promptly execute 107 customer market orders. FINRA fined the Firm \$5,000.

In July 2015, FINRA accepted an AWC from the Firm for violations of Exchange Act Rule 17a-3, NASD Rule 3110, and FINRA Rules 2010, 4511, and 7450. Without admitting or denying the allegations, the Firm consented to findings that from November 2011 through November 2012, it failed to capture the "not held" terms and conditions for approximately 11,000 orders and transmitted to OATS reports that contained inaccurate, incomplete, or improperly formatted data. FINRA censured the Firm and fined it \$15,000, which accounted for the fact that the Firm discovered and corrected the issue that led to its violations prior to FINRA's review of this matter.

In October 2014, FINRA accepted an AWC from the Firm for violations of FINRA Rules 2010 and 6460. Without admitting or denying the allegations, the Firm consented to findings that from July 2012 through September 2012, the Firm failed to publish immediately a bid or offer that reflected the price and the full size of a customer limit order for an OTC Equity Security held by the Firm that was at a price that would have improved the Firm's bid or offer in such security. FINRA fined the Firm \$5,000.

IV. The Firm's Proposed Continued Membership with FINRA and Proposed Plan of Heightened Supervision

The Firm seeks to continue its membership with FINRA notwithstanding the Final Judgment, which renders the Firm statutorily disqualified. The Firm has therefore agreed to the following Plan of Heightened Supervision as a condition of its continued membership with FINRA:

1. The Firm shall comply with the Final Judgment entered on May 2, 2022, in the United States District Court for the Southern District of New York in connection with *Securities and Exchange Commission v. BTIG, LLC*, Case No. 21-cv-4521;
2. The Firm shall annually evaluate its WSPs relating to compliance with Regulation SHO ("Reg SHO"), including its order marking and locate procedures, to determine if the Firm's WSPs accurately reflect the Firm's current business model, risks, and controls. The Firm shall correct any gaps detected in its Reg SHO WSPs. The Firm shall document any updates made to its Reg SHO WSPs and segregate and maintain all documentation related to its evaluation for ease of review by FINRA staff;
3. For a period of 5 years after this approval, the Firm shall conduct bi-annual (twice a year) review and testing of its procedures related to ensuring compliance with Reg SHO, specifically related to its order marking and locate procedures. The Firm's review and testing measures shall be documented. Any "red flags" noted during the Firm's review and testing shall be addressed and documented. Any steps taken by the Firm to remediate along with any disciplinary actions taken shall be documented. The Firm shall segregate and maintain all documentation related to its bi-annual review testing for ease of review by FINRA staff;
4. For a period of 5 years after this approval, the Firm shall conduct bi-annual (twice a year) review and testing of its Reg SHO surveillance systems specifically related to its order marking and locate procedures to ensure that the systems are accurately implemented and the Firm is in compliance with Reg SHO. The Firm's review and testing measures shall be documented. Any "red flags" noted during the Firm's review and testing shall be addressed and documented. Any steps taken by the Firm to remediate along with any disciplinary actions taken shall be documented. The Firm shall segregate and maintain all documentation related to its bi-annual review and testing for ease of review by FINRA staff;
5. Annually, the Firm shall review its web-based training module with respect to Reg SHO, including compliance with order marking and locate procedures. The Firm shall also incorporate any necessary changes based on changes to the Firm's business model, risks, and controls. The Firm shall

document its review and any updates made. The Firm shall segregate and maintain the documentation for ease of review by FINRA staff;

6. If any updates are made with respect to the above training as it relates to Reg SHO, the Firm shall incorporate the updates into its annual training which will be mandatory for all BTIG Sales and Trading personnel and other relevant FINRA registered persons personnel. New Sales and Trading personnel and other relevant FINRA registered personnel must complete said training within 120 days of date of hire. If updates are made to training as it relates to Reg SHO, the Firm shall maintain and segregate the training materials, along with documentation of the completion of the training by FINRA registered persons, for ease of review by FINRA staff;
7. The Firm shall obtain written approval from FINRA's Statutory Disqualification Group prior to changing any provision of the Plan; and
8. The Firm shall submit any proposed changes or other requested information under this Plan to SDMailbox@finra.org.

If the Firm's request to continue its membership in FINRA is approved, Member Supervision represents that FINRA intends to utilize its examination and surveillance processes to assess the Firm's continued compliance with the standards prescribed by Exchange Act Rule 19h-1 and FINRA Rule 9523.

V. Discussion

Member Supervision recommends approving the Firm's request to continue its membership in FINRA. After carefully reviewing the entire record in this matter, we approve the Application.

In evaluating an application like this, we assess whether the statutorily disqualified firm seeking to continue its membership in FINRA has demonstrated that its continued membership is consistent with the public interest and does not create an unreasonable risk of harm to the market or investors. *See* FINRA By-Laws, Art. III, Sec. (3)(d); *cf. Frank Kufrovich*, 55 S.E.C. 616, 624 (2002) (holding that FINRA "may deny an application by a firm for association with a statutorily-disqualified individual if it determines that employment under the proposed plan would not be consistent with the public interest and the protection of investors"). Factors that bear on our assessment include the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, and whether there has been any intervening misconduct.

We recognize that the Final Judgment involved serious violations of securities rules and regulations. We note, however, that the misconduct underlying the Final Judgment occurred over a relatively brief period and involved a single customer. Further, the Final Judgment did not expel or suspend the Firm. Nor did the Final Judgment

restrict or limit the Firm's securities activities beyond enjoining the Firm from violating the Exchange Act, and the Firm has complied with all terms of the Final Judgment.³

Moreover, since the SEC Complaint, the Firm represents that it has implemented enhanced training and compliance efforts and supervisory procedures designed to prevent future Regulation SHO violations and that it updated its WSPs in response to the Final Judgment. Specifically, in June 2022 the Firm introduced a new training module course specific to Regulation SHO that is required training for all Sales Trading, Equity Trading, Corporate and Venture services, Franchise sales, Global Program Trading, Operations, Options, Outsource Trading, Prime Brokerage, Direct Market Access, and Trading Compliance Departments. Further, the Firm revised its WSPs that address compliance with Regulation SHO to help ensure that the misconduct underlying the Final Judgment is not repeated.

We further agree with Member Supervision that the Firm's regulatory history should not prevent the continuance of the Firm as a FINRA member. The Firm took corrective actions in response to the AWCs entered against it and addressed deficiencies noted in FINRA examinations. At this time, we are satisfied, based in part upon the Firm's representations, Member Supervision's representations, the heightened supervisory plan, and the record currently before us, that the Firm's continued membership in FINRA is consistent with the public interest and does not create an unreasonable risk of harm to the market or investors. Accordingly, we approve the Firm's Application to continue its membership in FINRA as set forth herein.⁴ In conformity with the provisions of Exchange Act Rule 19h-1, the approval of the continued membership of the Firm will become effective within 30 days of the receipt of this notice by the SEC, unless otherwise notified by the SEC.

On Behalf of the National Adjudicatory Council,

Jennifer Mitchell Piorko
Vice President and Deputy Corporate Secretary

³ We further note that, in connection with the Final Judgment, the SEC found good cause to grant the Firm a waiver from the disqualification provision of Rule 506(d)(2)(ii) of Regulation D under the Securities Act of 1933.

⁴ FINRA certifies that the Firm meets all qualification requirements and represents that it is a member of NYSE-ARCA, as well as CBOE, CBOE BYX, CBOE BZX, CBOE EDGA, CBOE EDGX, Nasdaq BX Inc., Nasdaq Stock Market, Nasdaq International Securities Exchange (ISE), Investor's Exchange (IEX), and Member Exchange LLC (MEMX), which concur with the Firm's proposed continued membership.