

II. FINDINGS

The Commission finds the following:

A. SUMMARY

During the Relevant Period, Interactive Brokers failed to supervise diligently its employees' processing of certain exchange fees charged to its customers, in violation of Regulation 166.3. Specifically, Interactive Brokers charged customers executing certain spread trades the exchange fee applicable to outright trades when Interactive Brokers in fact paid the exchange the lower amount applicable to spread trades. As a result, Interactive Brokers' customers were overcharged \$710,828.14. Interactive Brokers represents that where it has confirmed that a current customer was overcharged, it has refunded the amount of the overage, and has notified former affected customers how to obtain their overages.

B. RESPONDENT

Interactive Brokers LLC is registered with the Commission as a futures commission merchant ("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.

C. FACTS

Customers transacting on exchanges pay fees for trading and clearing their trades ("exchange fees") that are applied to each transaction in the normal course of business. FCMs such as Interactive Brokers receive invoices for these fees from the exchanges, and the FCMs typically assess these fees to their customers. The fees charged by exchanges vary based upon, among other things, the different and changing applicable rates, surcharges and fee structures associated with different exchange products, the different memberships held by customers, and the customer's monthly trading volumes in certain contracts. Exchanges charge these fees to FCMs and rely upon FCMs to apply the fees to particular customers.

During the Relevant Period, Interactive Brokers unintentionally erroneously charged its customers the exchange fees applicable to outright trades rather than the lower rate the exchange charged for certain spread trades of equities futures and foreign exchange futures traded on the Chicago Mercantile Exchange ("CME") Globex platform.² This occurred because Interactive Brokers failed to update the exchange fees charged to customers when the exchange changed the way it assessed fees. Interactive Brokers failed to identify this oversight for nearly six years, until Commission Staff inquired about possible exchange fee overcharging on E-mini Equity Index Futures spreads traded on CME Globex. Once the issue was identified, Interactive

² The CME Globex product categories affected were: E-mini Equity Index Futures Spreads, Housing Index Futures Spreads, Micro E-mini Index Futures Spreads, Micro E-Mini Index Options Spreads, Nikkei Equity Futures Spreads, and certain FX Futures Spreads. Not all products were affected throughout the full Relevant Period.

Brokers undertook prompt corrective and remedial action and cooperated fully with the Staff's investigation.

Following a review of certain CME Globex exchange fees that may have been overcharged, Interactive Brokers discovered that it had failed to pass along discounts on certain equity index futures spread trades dating to January 2015 and certain FX futures spread trades dating to February 2018, resulting in its overcharging customers an aggregate \$710,828.14 for exchange fees. Interactive Brokers represents that since discovering the overcharging, it has refunded to current customers the amounts of any overages by placing the amounts overcharged in their accounts and notifying these customers of the refunds to their accounts. With respect to former customers (whose accounts are closed), Interactive Brokers deposited overages paid by those customers into their closed accounts, notified them of the refunds, and asked them to claim the refunds.

III. LEGAL DISCUSSION

Regulation 166.3, 17 C.F.R. § 166.3 (2021), 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) (citations omitted). “[A] showing that the registrant lacks an adequate supervisory system can be sufficient to establish a breach of duty under Regulation 166.3.” *Collins*, 1997 WL 761927, at *10. 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).

Pursuant to Regulation 166.3, registrants have a duty to supervise their officers, employees, and agents who are responsible for establishing, monitoring, maintaining, and controlling the systems used for collecting exchange fees from customers. *See, e.g., In re Morgan Stanley & Co. LLC*, CFTC No. 17-28, 2017 WL 4386852, at *5 (Sept. 28, 2017) (consent order) (finding that FCM failed to protect against overcharging customers for exchange fees for more than seven years); *In re J.P.*

Morgan Sec. LLC, CFTC No. 17-04, 2017 WL 150288, at *2–4 (Jan. 11, 2017) (consent order) (finding that FCM violated Regulation 166.3 and ordering FCM to retain outside consultants to overhaul its exchange and clearing fee procedures); *In re Barclays Capital, Inc.*, CFTC No. 16-25, 2016 WL 4395676, at *2–4 (Aug. 4, 2016) (consent order) (finding that FCM's fee reconciliation process had been inaccurate and faulty for nearly four years, violating Regulation 166.3); *In re Merrill Lynch, Pierce, Fenner & Smith, Inc.*, CFTC No. 14-22, 2014 WL 4259211, at *2–5 (Aug. 26, 2014) (consent order) (finding that FCM violated Regulation 166.3 because its fee reconciliation process for identifying and correcting discrepancies between the invoices from the exchange clearinghouses and the amounts charged its customers had been faulty for more than two years).

During the Relevant Period, with respect to processing certain exchange fees charged to customers, Interactive Brokers both employed an inadequate supervisory system and failed to perform its supervisory duties diligently, in violation of Regulation 166.3. Specifically, Interactive Brokers was required to ensure that customers were charged the correct exchange fees for trades executed on their behalf. Not only did Interactive Brokers fail to do so, it did not detect the overcharging for nearly six years, until Commission Staff inquired about possible overcharges. Interactive Brokers should have monitored its officers, employees, and agents responsible for customer billing to ensure that customers were charged the correct fees and that the employees responsible for updating exchange fees were adequately trained and had sufficient policies, procedures, and resources in place.

IV. FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, Interactive Brokers, LLC violated Regulation 166.3, 17 C.F.R. § 166.3 (2021).

V. OFFER OF SETTLEMENT

Respondent 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 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, and 28 U.S.C. § 2412, and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2021), 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 on 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 Respondent has consented in the Offer; and
- 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 Regulation 166.3, 17 C.F.R. § 166.3 (2021);
 2. Orders Respondent to cease and desist from violating Regulation 166.3;
 3. Orders Respondent to pay a civil monetary penalty in the amount of three hundred thousand dollars (\$300,000), plus post-judgment interest within ten days of the date of entry of this Order;
 4. Orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order.
- F. Represents that it has already updated its policies and procedures to prevent future violations of Regulation 166.3, including, but not limited to, assigned additional personnel to track and implement changes to U.S. futures exchange fee schedules and enhance controls to ensure that such changes are accurately implemented.
- G. Represents that, on or before February 23, 2022, it transferred all overcharges to affected customers’ or former customers’ accounts.

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

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent and its successors and assigns shall cease and desist from violating Regulation 166.3, 17 C.F.R. § 166.3 (2021).

- B. Respondent shall pay a civil monetary penalty in the amount of three hundred thousand dollars (\$300,000) (“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.

Respondent 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
6500 S. MacArthur Blvd.
HQ Room 266
Oklahoma City, OK 73169
9-amc-ar-cftc@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact Tonia King 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 Deputy Director Robert Howell, Commodity Futures Trading Commission, Division of Enforcement, 77 W. Jackson Blvd., Suite 800, Chicago, IL 60604.

- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. **Public Statements:** Respondent agrees that neither it nor any of its successors 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 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: Respondent agrees to pay disgorgement in the amount of seven hundred ten thousand, eight hundred twenty-eight dollars and fourteen cents \$710,828.14 (“Disgorgement Obligation”), representing the excess fees it collected in connection with such violation. Respondent shall receive dollar-for-dollar credit toward its Disgorgement Obligation for all overcharges of exchange fees that it has repaid customers (including any amounts used to offset outstanding debt owed to Interactive Brokers by affected customers) harmed by its violation of Regulation 166.3.

If by September 1, 2022, any overcharges in any closed, archived, or inactive accounts have not been claimed, Respondent shall pay by October 17, 2022 the unclaimed overcharges to the U.S. Treasury. If the unclaimed funds are not paid in full by October 17, 2022, then post-judgment interest shall accrue on the unclaimed funds 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.

Respondent shall make such payment 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
6500 S. MacArthur Blvd.
HQ Room 266
Oklahoma City, OK 73169
9-amc-ar-cftc@faa.gov

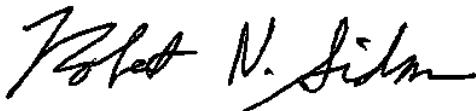
If payment is to be made by electronic funds transfer, Respondent shall contact Tonia King or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the remaining Disgorgement Obligation with a cover letter 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 Deputy Director Robert Howell, Commodity Futures Trading Commission, Division of Enforcement, 77 W. Jackson Blvd., Suite 800, Chicago, IL 60604.

3. Cooperation: Respondent shall cooperate fully and expeditiously with the Commission, including the Commission’s Division of Enforcement, in this action, and in any current or future Commission investigation or action related thereto. Respondent shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, this action.

- D. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent's Disgorgement Obligation or 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.
- E. Change of Address/Phone: Until such time as Respondent satisfies in full its Disgorgement Obligation and CMP Obligation as set forth in this Order, Respondent 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.
- F. Case-Specific Undertakings: Respondent and its successors and assigns shall comply with the following undertakings set forth in the Offer:
1. To the extent it has not already done so, Respondent will assign additional personnel to track and implement changes to U.S. futures exchange fee schedules and enhance controls to ensure that such changes are accurately implemented.
 2. To the extent it has not already done so, Respondent will implement a fee reconciliation process for monthly U.S. futures exchange fee invoices to help detect potential U.S. futures exchange fee overcharges to customers. If the differential between the amount of such an invoice and the amount shown as due to the exchange in Respondent's internal systems is material, Respondent will promptly initiate further inquiry into the source of the differential, which may include correspondence with the exchange and/or initiating an internal review process about the source of the differential. Respondent will make reasonable efforts to identify the source of such differentials within 90 days of discovery.

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: June 30, 2022