



ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93AA

The commitments in this undertaking are offered to the Australian Securities and Investments Commission (ASIC) by:

Interactive Brokers LLC
ARBN 091 191 141
of Suite 2, Level 42
225 George Street
Sydney NSW 2000
and of
2nd Floor, 2 Pickwick Plaza
Greenwich 06830, Connecticut USA

1. DEFINITIONS

1.1 In addition to terms defined elsewhere in this undertaking, the following definitions are used:

AFS licence means Australian financial services licence.

AUS\$ means Australian dollars.

ARBN means Australian Registered Body Number.

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth).

Corporations Act means the *Corporations Act 2001* (Cth).

Corporations Regulations means the *Corporations Regulations 2001* (Cth).

Fee Refund is defined at subparagraph 5.1.1.

First Report is defined at subparagraph 6.3.3.

FLRC is defined at subparagraph 5.1.6.

IB means Interactive Brokers LLC ARBN 091 191 141.

IB's Refund Summary is defined at subparagraph 6.3.1.

Independent Consultant is defined at paragraph 6.1.

Margin lending facility has the meaning given by section 761EA of the Corporations Act.

Net Fees is defined at paragraph 2.9.

Payment Confirmation is defined at subparagraph 6.4.1.

Refund Client is defined at subparagraph 5.1.1.

Relevant Period means 1 July 2010 to 19 August 2013:

Sample Clients is defined at subparagraph 6.3.1.

Second Report is defined at subparagraph 6.4.3.

- 1.2 Except so far as the contrary intention appears in this undertaking, the interpretation of provisions in Part 1.2 of the Corporations Act and Part 2 Division 4 of the ASIC Act apply for the purposes of this undertaking as if the provisions of those Acts were provisions of this undertaking.

2. BACKGROUND

ASIC's Role

- 2.1 Under section 1 of the ASIC Act, ASIC is charged with a statutory responsibility to perform its functions and to exercise its powers so as to maintain, facilitate and improve the performance of the financial system and to promote the confident and informed participation of investors and consumers in the financial system.

Details of Conduct

- 2.2 IB is a foreign company that is registered to carry on business in Australia under Part 5B.2 of the Corporations Act. IB operates a financial services business that provides online trade execution services to clients.
- 2.3 From early 2000, IB provided financial services in Australia as a registered broker and securities dealer.
- 2.4 From 25 February 2004, IB has held AFS licence number 245574. Under the terms of its AFS licence, IB was authorised to deal in derivatives, foreign exchange contracts and securities and provide custodial and depository services.
- 2.5 From 1 July 2010, as a consequence of amendments to the Corporations Act, IB was required to hold an AFS licence that covered the provision of margin lending facilities to clients.
- 2.6 IB did not seek a variation to the conditions of its AFS licence to cover the provision of margin lending facilities until 23 July 2013. IB has informed ASIC

that it did not apply for variation as a consequence of incorrect legal advice received by IB.

- 2.7 During the period 1 July 2010 to 19 August 2013 (**Relevant Period**), IB issued margin lending facilities to clients in Australia without an AFS licence that covered the provision of those services. IB has informed ASIC that:
 - 2.7.1 IB issued 13,478 margin lending facilities to clients; and
 - 2.7.2 3,301 clients utilised the margin lending facilities, including 3,022 retail clients and 279 wholesale clients.
- 2.8 These margin lending facilities were issued by IB at the conclusion of its standard client application process to clients that selected a box requesting the ability to trade on margin in the application and satisfied certain creditworthiness criteria established by IB (based on matters such as their employment, familial status, net income, net worth, investment experience and investment objectives). IB requested documents to verify clients' names and addresses. The information and documents requested as part of the application process was not, in ASIC's view, sufficient to discharge IB's obligation to make reasonable inquiries and verify the retail clients' financial situation.
- 2.9 IB has determined that it received Net Fees of approximately AU\$1.5 million in respect of margin lending activity from retail clients to whom it issued margin lending facilities during the Relevant Period. For this purpose, **Net Fees** means fees and commissions received by IB from such retail clients in respect of margin lending activity, less amounts paid by IB from those commissions to third parties, such as clearing houses, regulators and intermediaries and net interest paid to IB by such retail clients, being interest received net of IB's cost of funds as calculated based on standard benchmarks for the relevant currency.
- 2.10 IB has informed ASIC that when operating costs (being employee, office, equipment, membership of exchanges and regulatory bodies, legal and accounting costs) are taken into account, its margin lending facilities in Australia operated at a loss during the Relevant Period.
- 2.11 On 16 July 2013, IB entered into a voluntary undertaking with ASIC, under which it agreed that it would not issue new margin lending facilities or increase existing facilities as of 19 July 2013.
- 2.12 In October 2013, IB commenced winding down its margin lending facilities in Australia and IB is not currently providing margin lending facilities in Australia.

3. ASIC'S CONCERNS

- 3.1 As the result of an investigation, ASIC is concerned that by reason of the matters referred to in paragraphs 2.5 to 2.7, IB may have contravened section

911A of the Corporations Act during the Relevant Period by offering margin lending facilities to clients without an AFS licence that covered the provision of those financial services.

- 3.2 Further, ASIC is concerned that by reason of the matters referred to in paragraphs 2.7 and 2.8, IB may have contravened section 985E of the Corporations Act by issuing margin lending facilities to retail clients without making assessments of unsuitability pursuant to section 985F or the inquiries and verification required under section 985G.

4. ADMISSION AND ACKNOWLEDGEMENT

- 4.1 IB admits that it has engaged in the contravention that is the subject of ASIC's concerns set out in paragraphs 3.1, IB acknowledges ASIC's concerns in paragraph 3.2 and that ASIC had reason to be concerned and IB has offered undertakings in the terms set out in paragraphs 5.1 to 6.5.

5. UNDERTAKINGS

- 5.1 Under section 93AA of the ASIC Act, IB has offered, and ASIC has agreed to accept as an alternative to civil proceedings in relation to the concerns set out at paragraphs 3.1 and 3.2, the following undertakings:

Undertaking to Refund Fees

- 5.1.1 Within 21 days of the First Report of the Independent Consultant, or such further time as may be agreed by ASIC, IB undertakes to refund to each retail client from whom it determines, based on the methodology agreed between IB and ASIC for the purposes of this enforceable undertaking, it received Net Fees in connection with the use of a margin lending facility during the Relevant Period (**Refund Client**), an amount calculated by IB in accordance with the methodology and confirmed by the Independent Consultant pursuant to paragraphs 6.3 and 6.4 of this enforceable undertaking (**Fee Refund**).
- 5.1.2 The procedure for payment of Fee Refunds will be, unless otherwise agreed by ASIC, as follows:
- (a) For Refund Clients with open IB accounts; within 21 days of the First Report of the Independent Consultant, IB will credit the account (*i.e.*, indicate a cash deposit into the account from IB) in the amount of the Fee Refund. IB will also provide an explanatory note by electronic message sent to the client via email and via IB's "Message Center". The explanatory note shall be in a form agreed by ASIC.
 - (b) For Refund Clients who no longer maintain any open IB account, within 21 days of the First Report of the Independent Consultant,

IB will provide such Refund Clients (by letter and email to the client's last known residential or business and/or email address) with an explanatory note in a form agreed by ASIC and will request banking instructions from the Refund Client concerning payment of the Fee Refund into any bank account nominated by the client. Within 14 days of receipt by IB of such banking instructions from the client, IB shall remit the Fee Refund to the Refund Client in accordance with the instructions.

- (c) If a Refund Client who no longer maintains any open IB account is entitled to a Fee Refund and does not contact IB within 21 days of the date of the last communication sent to the client in accordance with paragraph 5.1.2(b), IB will take reasonable steps to periodically contact the client to obtain the client's current bank account details, using the client's last known telephone number and email address. If IB is unable to contact the client for a further period exceeding 21 days, it will deposit the Fee Refund into the client's last known bank account noted on IB's records if IB can verify that the client still maintains such bank account.
- (d) If IB is unable for any reason to pay a Fee Refund to a Refund Client pursuant to subparagraphs 5.1.2(a) to (c) after 84 days of days of the First Report of the Independent Consultant, IB will within 7 days pay an amount equal to that client's Fee Refund to FRLC.

5.1.3 Fee Refunds will be subject to review by an Independent Consultant in the terms set out at in paragraphs 6.1 and 6.2.

5.1.4 IB will meet the costs of the Independent Consultant in relation to the terms of engagement set out at paragraph 6.2.

5.1.5 IB will provide assistance to the Independent Consultant as set out at paragraph 6.5.

Contribution to Financial Rights Legal Centre

5.1.6 Within 30 days of acceptance of this undertaking, IB undertakes to make a voluntary contribution of \$100,000 to the Financial Rights Legal Centre (FRLC), for the purposes of consumer education concerning financial services and consumer rights in Australia.

General Undertakings

5.2 IB will pay the costs of its compliance with this undertaking.

5.3 IB will also provide all documents and information requested by ASIC from time to time for the purpose of assessing IB's compliance with the terms of this undertaking.

6. INDEPENDENT CONSULTANT

- 6.1 IB will engage an independent consultant (**Independent Consultant**) to conduct reviews and prepare reports to ASIC and IB pursuant to paragraphs 6.2 to 6.4 and will take all reasonable steps necessary to ensure that the Independent Consultant performs the work outlined in paragraphs 6.3 and 6.4.

Terms of Engagement of Independent Consultant

- 6.2 Within 7 days of acceptance of this undertaking, or such further time as may be agreed between ASIC and IB, IB will engage the Independent Consultant to:
- 6.2.1 within 14 days of their engagement, check that IB's Fee Refunds have been calculated in accordance with the methodology agreed between IB and ASIC for the purposes of this enforceable undertaking, as set out at paragraph 6.3;
 - 6.2.2 within 105 days of the First Report verify, as set out in paragraph 6.4, that Fee Refunds have been paid in accordance with paragraphs 5.1.1 and 5.1.2; and
 - 6.2.3 Provide written reports to ASIC and IB in accordance with sub paragraphs 6.3.3 and 6.4.3.

Confirmation of Fee Refund Calculations

- 6.3 Within 21 days of their engagement, the Independent Consultant will check that the Fee Refunds have been calculated correctly by IB in accordance with the methodology agreed between IB and ASIC, as follows:
- 6.3.1 IB will provide the Independent Consultant with a list of names of all Refund Clients and the Independent Consultant will randomly select a minimum of 20 Refund Clients, or such larger number which it considers reasonable for the purposes of its review (**Sample Clients**). For each of the Sample Clients, IB will provide to the Independent Consultant details of the information used to calculate the Fee Refund in accordance with the methodology (**IB's Refund Summary**).
 - 6.3.2 The Independent Consultant will confirm whether or not the Fee Refunds for the Sample Clients have been correctly calculated by performing his or her own calculation based on the information provided in IB's Refund Summary. If the Independent Consultant identifies any errors in IB's Fee Refund calculations in the review of the Sample Clients, the Independent Consultant will notify ASIC and IB and IB will take reasonable steps to rectify such errors. The Independent Consultant may randomly select a number of additional Sample Clients which it considers reasonable for the purposes of satisfying itself that any error it has identified in IB's Fee Refund calculations has been rectified.

- 6.3.3 The Independent Consultant will summarise his or her findings in a written report (**First Report**).

Verification of Fee Refunds

- 6.4 Within 105 days of the First Report, or such further time as may be agreed by ASIC, the Independent Consultant will verify that Fee Refunds for the correct amounts (as determined pursuant to paragraph 6.3) have been paid in accordance with subparagraphs 5.1.1 and 5.1.2, as follows:
- 6.4.1 IB will provide confirmation of payment of Fee Refunds for each Refund Client in respect of whom it has paid a Fee Refund (including payments to FRLC pursuant to subparagraph 5.1.2(d)) in the form of customer account statements or third party documentation (**Payment Confirmation**);
- 6.4.2 The Independent Consultant will review the Payment Confirmations for the purpose of verifying that the Fee Refunds have been paid by comparing the amount stated in the Payment Confirmation against IB's Refund Summary (after any adjustments made by IB in accordance with subparagraph 6.3.3). If the Independent Consultant identifies any underpayment error in the payment of Fee Refunds, he or she will notify ASIC and IB and in the absence of manifest error, IB will rectify the error within 14 days unless ASIC and IB agree otherwise.; and
- 6.4.3 The Independent Consultant will summarise his or her findings in a second written report (**Second Report**).

IB's Obligations

- 6.5 IB will:
- (a) Permit the Independent Consultant to have access to any books relevant to the calculation and payment of Fee Refunds;
 - (b) Provide reasonable assistance to ASIC and the Independent Consultant, including the provision of any information or explanation reasonably requested by ASIC, or the Independent Consultant, of any matter that is related to a report that is prepared by the Independent Consultant;
 - (c) Otherwise provide reasonable access and assistance and take all reasonable steps to allow the Independent Consultant to be able to fulfil the terms of their engagement.

7. OTHER ACKNOWLEDGEMENTS

7.1 IB acknowledges that ASIC:

7.1.1 may issue a media release on execution of this undertaking referring to its terms, the concerns of ASIC which led to its execution and the identity of the Independent Consultant;

7.1.2 may from time to time publicly refer to this undertaking; and

7.1.3 will make this undertaking available for public inspection.

7.2 In relation to any report prepared by the Independent Consultant in accordance with subparagraph 6.2.3, IB acknowledges that ASIC:

7.2.1 may issue a media release referring to the content of the report;

7.2.2 may from time to time publicly refer to the report; and

7.2.3 may make available for public inspection a copy of the report, or a statement that refers to the content of the report.

7.3 ASIC acknowledges that in relation to paragraph 7.2, it will delete, remove or not refer to any information that:

7.3.1 IB has requested it not to release; and

7.3.2 ASIC is satisfied:

(a) would or could reasonably be expected to unreasonably affect the business, commercial or financial affairs of IB and in ASIC's view would be unreasonable to release because the release of the information would or could be expected to unreasonably affect the business, commercial or financial affairs of IB otherwise than is contemplated by this enforceable undertaking; or

(b) otherwise should not be disclosed because it would be against the public interest to do so; or

(c) consists of personal information of an individual.

7.4 IB further acknowledges that:

7.4.1 ASIC's acceptance of this undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges or seek a pecuniary civil order in relation to any contravention not the subject of ASIC's concerns in this undertaking or arising from future conduct;

7.4.2 this undertaking in no way derogates from the rights and remedies available to any clients of IB who receive or are entitled to Fee Refunds, including but not limited to, the right to seek recovery of any fees that are not refunded under the terms of this undertaking; and

7.4.3 this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking or arising from future conduct.

7.5 IB acknowledges that this enforceable undertaking has no operative force until accepted by ASIC, and IB and ASIC acknowledges that the date of the enforceable undertaking is the date on which it is accepted by ASIC.


**Executed by Interactive Brokers
LLC by its duly authorised
representative in the presence of:**



Authorised Signatory

Name: DAVID M. BATTAN
E.V.P. + General Counsel

Date: 12-8-14



Signature of witness

Name: SCOTT M. LITVINOFF
ASSOCIATE GENERAL COUNSEL

**Accepted by the Australian Securities and Investments Commission under section
93AA of the ASIC Act by its duly authorised delegate:**



David McGuinness

Senior Executive, Enforcement

Delegate of the Australian Securities and Investments Commission

Date: 15 December 2014