

BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C.



Application for Interlocutory Review of Action Taken by FINRA

In the Matter of the Continued Association of

Jonathan Chait with Interactive Brokers LLC and Interactive Brokers Corp.

File No. 3-17682

**FINRA'S MOTION TO DISMISS APPLICATION FOR INTERLOCUTORY REVIEW**

Alan Lawhead  
Vice President and  
Director – Appellate Group

Andrew J. Love  
Associate General Counsel

FINRA  
Office of General Counsel  
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202-728-8281 – Telephone  
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November 16, 2016

**BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION  
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Application for Interlocutory Review of Action Taken by FINRA  
In the Matter of the Continued Association of  
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**FINRA'S MOTION TO DISMISS APPLICATION FOR INTERLOCUTORY REVIEW**

Applicants in an ongoing FINRA eligibility proceeding have appealed a hearing panel's determination to go forward with a hearing to consider the application of Interactive Brokers LLC and Interactive Brokers Corp. (the "Firms") to continue to employ Jonathan Chait ("Chait") notwithstanding his statutory disqualification. Applicants assert that Chait is not disqualified, and state that they have filed this appeal to ensure that this issue is preserved for appellate review in the event that the hearing panel's determination is deemed a final, appealable, order. *See Applicants' Application for Review*, p. 1 n.1. FINRA has not issued a final decision on the application that is appealable under the Securities Exchange Act of 1934 ("Exchange Act"), and interlocutory review of the hearing panel's determination is improper. The Commission should therefore dismiss applicants' application for review.<sup>1</sup>

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<sup>1</sup> FINRA agrees that if and when it issues a final action on the Firms' application that is appealable under the Exchange Act, applicants may seek to appeal that action.

**I. Background**

On March 26, 2015, the Firms each filed a Membership Continuance Application (collectively “the Application”) with FINRA’s Department of Registration and Disclosure (“RAD”). The Application requests that FINRA permit Chait, a person whom RAD determined is statutorily disqualified, to continue to associate with the Firms as a general securities representative and general securities principal, and as Interactive Brokers LLC’s chief operating officer.

The Firms contested that Chait was statutorily disqualified under the Exchange Act, and FINRA’s Department of Member Regulation argued that RAD properly determined that Chait was subject to statutory disqualification. A subcommittee (“Hearing Panel”) of FINRA’s Statutory Disqualification Committee ordered the parties to submit briefs on the issue. In a letter dated October 12, 2016, the Hearing Panel informed the parties that it had determined that Chait was statutorily disqualified and that a hearing on the merits of the Application should go forward. *See Exhibit A.* A hearing has been scheduled on the Application for February 14, 2017. *See Exhibit B.*

**II. Argument**

There is no statutory basis for applicants’ attempted appeal. The sole basis for the Commission’s jurisdiction to review the action of a self-regulatory organization (“SRO”) is pursuant to Section 19(d) of the Exchange Act. Specifically, Section 19(d) authorizes Commission review of an SRO action only if that action: (1) imposes any final disciplinary sanction on any member (or person associated with a member) of the SRO or participant therein; (2) bars any person from becoming associated with a member; (3) denies membership or participation to any applicant; or (4) prohibits or limits any person in respect to access to services

offered by such organization or member thereof. 15 U.S.C. § 78s(d). Here, the Hearing Panel's determination to which applicants object does not qualify for Commission review under any of the bases in Section 19(d). Indeed, the eligibility proceeding is ongoing, Chait is currently associated with the Firms, a hearing on the merits of the Application is scheduled to occur in February 2017, and a final decision on the Application will be issued sometime thereafter. *See* FINRA Rules 9524(a)(10) & 9524(b).


In essence, applicants are asking the Commission to grant interlocutory review of the Hearing Panel's determination. Under Rule 400 of the Commission's Rules of Practice, however, interlocutory review is potentially available only in administrative proceedings brought by Commission staff, not FINRA eligibility proceedings. *See* SEC Rule of Practice 400, 17 C.F.R. § 201.400 ("Petitions by parties for interlocutory review are disfavored, and the Commission ordinarily will grant a petition to review a hearing officer ruling prior to its consideration of an initial decision only in extraordinary circumstances.")<sup>2</sup> In *Russell A. Simpson*, 53 S.E.C. 1042, 1048 (1998), the applicant urged the Commission to review a FINRA action on its own initiative under Rule 400, among other rules. In denying the request, the Commission expressly noted that Rule 400 did not apply to its review of SRO proceedings. *Id.* Consequently, applicants cannot here seek review from the Commission of the Hearing Panel's determination at this time.

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<sup>2</sup> The Commission's Rules of Practice provide that "hearing officer" means an "administrative law judge," among other things. SEC Rule of Practice 101(a)(5), 17 C.F.R. § 201.101(a)(5). Further, applicants do not assert that extraordinary circumstances exist to review the Hearing Panel's determination.

**III. Conclusion**

FINRA requests that the Commission dismiss applicants' application for review, without prejudice to their ability to appeal a final action in this matter under the Exchange Act, because the Commission lacks jurisdiction to entertain an appeal and there is no interlocutory Commission review of FINRA eligibility proceedings.



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Andrew J. Love  
Associate General Counsel  
FINRA  
1735 K Street, NW  
Washington, DC 20006  
(202) 728-8281

November 16, 2016

# **EXHIBIT A**



Andrew J. Love                      Direct: (202) 728 8281  
Associate General Counsel      Fax:      (202) 728 8264

October 12, 2016

**VIA Email and Certified Mail**

Douglas I. Koff, Esq.  
Schulte Roth & Zabel LLP  
1919 Third Avenue  
New York, NY 10022  
Douglas.Koff@srz.com

**VIA Email and Inter-Office Mail**

Ann-Marie Mason, Esq.  
Lorraine Lee-Stepney  
FINRA Non-Disciplinary Litigation  
1735 K Street, NW, 6th Floor  
Washington, DC 20006

Jeffrey D. Fox, Esq.  
Deputy General Counsel  
Interactive Brokers  
2200 Pennsylvania Avenue, NW  
Washington, DC 20037  
jfox@interactivebrokers.com

**RE: SD-2060 – The Association of Jonathan Chait with Interactive Brokers LLC  
SD-2061 – The Association of Jonathan Chait with Interactive Brokers Corp.**

Dear Parties:

The Hearing Panel has considered the parties' pre-hearing briefs concerning whether the order entered by the Austrian Financial Markets Supervisory Authority renders Mr. Chait statutorily disqualified. Based upon the arguments raised in the parties' briefs, the Hearing Panel has concluded that the order is disqualifying under Exchange Act Section 15(b)(4)(G), and has determined that a hearing on the merits of the applicants' MC-400 Applications should go forward. The parties will be contacted regarding a date and time for the hearing, at which the applicants should be prepared to present their case in support of the applications (including the proposed supervision for Mr. Chait).

If you have any questions, please contact Melanie Campbell, Legal Support Manager, at (202) 728-6998.

Very truly yours,

Andrew J. Love

cc:      Melanie Campbell

Investor protection. Market integrity

1735 K Street NW      T 202 728 8000  
Washington, DC      www.finra.org  
20006-1506

# **EXHIBIT B**





**Andrew J. Love** Direct (202) 728-8281  
Associate General Counsel Fax (202) 728-8264

November 14, 2016

**VIA Email and Certified Mail**

Douglas I. Koff, Esq.  
Schulte Roth & Zabel LLP  
919 Third Avenue  
New York, NY 10022  
Douglas.Koff@srz.com

**VIA Email and Inter-Office Mail**

Ann-Marie Mason, Esq.  
Deon McNeil-Lambkin, Esq.  
Lorraine Lee-Stepney  
FINRA Non-Disciplinary Litigation  
1735 K Street, NW, 6th Floor  
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Jeffrey D. Fox  
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2200 Pennsylvania Avenue, NW  
Washington, DC 20037  
jfox@interactivebrokers.com

**RE: SD-2060 – The Association of Jonathan Chait with Interactive Brokers LLC**  
**SD-2061 – The Association of Jonathan Chait with Interactive Brokers Corp.**

Dear Parties:

Please be advised that the hearing for these matters has been rescheduled for **Tuesday, February 14, 2017, at 10:00 a.m.** The hearing will take place in Conference Rooms 3-4 on the first floor of FINRA headquarters at **1735 K Street, NW, Washington, DC 20006**. The hearing panel consists of A. Louis Denton of Borer Denton & Associates, Blue Bell, Pennsylvania and Andrew Margolin of Bank of America Merrill Lynch, New York, New York.

The Department of Member Regulation and the applicant are required to exchange exhibit and witness lists by **Tuesday, January 31, 2017**. Further, **on or before Tuesday, January 31, 2017**, the parties should forward to each other copies of any additional documents that they intend to introduce at the hearing. The lists and exhibits shall be served by facsimile or commercial courier in accordance with FINRA Rule 9524.

Jeffrey D. Fox, Esq.  
Ann-Marie Mason, Esq.  
Deon McNeil-Lambkin, Esq.  
Lorraine Lee-Stepney  
November 14, 2016  
Page 2

Please note that the Office of General Counsel will act as custodian of the record in this matter under FINRA Rule 9524(a)(8), and will serve as counsel to the Hearing Panel. Copies of any documents exchanged between the parties should therefore also be served on the Office of General Counsel to the following address:

FINRA  
Office of General Counsel  
1735 K Street, NW  
Washington, DC 20006  
Attn: Andrew Love

Parties may choose to meet filing deadlines in proceedings before the NAC by sending a scanned PDF of the filing to [nac.casefilings@finra.org](mailto:nac.casefilings@finra.org). Documents that are filed electronically may be no larger than eight megabytes in size and must be received by 11:59 p.m. (Eastern Time) on the due date. The e-mail used to forward the filing shall indicate in the subject line the matter name, the case number, and the title of the filing, but the e-mail may not contain any argument. The electronic filing system will generate automatically a confirmation of receipt. The signed original and one copy must be sent contemporaneously via mail or overnight courier to the address listed above.

To aid in its review of this matter, the Hearing Panel may wish to take evidence from the member regarding the qualifications, background, and business activities of the member and its principals. Both Mr. Chait and his immediate supervisor should plan to attend and they should be prepared to discuss the events surrounding his disqualifying event, his proposed duties at the firm, and the manner in which he will be supervised. The Hearing Panel also may wish to take evidence regarding Mr. Chait's background as well as his activities since the date of his disqualification.

If you have any questions, please contact Melanie Campbell, Case Administrator, at (202) 728-6998.

Very truly yours,



Andrew J. Love

cc: Melanie Campbell

**CERTIFICATE OF SERVICE**

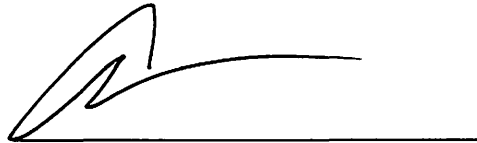
I, Andrew J. Love, certify that on this 16<sup>th</sup> day of November 2016, I caused a copy of the foregoing motion to be served by facsimile and messenger on:

Brent Fields, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-5400

and via facsimile and overnight delivery service on:

Douglas I. Koff, Esq.  
Schulte Roth & Zabel LLP  
919 Third Avenue  
New York, NY 10022

Service was made on the Commission by messenger and on the applicants' counsel by overnight delivery service and facsimile due to the distance between the offices of FINRA and applicants' attorney.



Andrew J. Love  
Associate General Counsel  
FINRA  
1735 K Street, NW  
Washington, DC 20006  
(202) 728-8281



Financial Industry Regulatory Authority

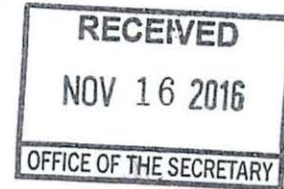
Andrew J. Love  
Associate General Counsel

Direct: (202) 728-8281  
Fax: (202) 728-8264

November 16, 2016

**VIA MESSENGER**

Brent J. Fields  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Room 10915  
Washington, DC 20549-1090



**RE: SD-2060 – The Association of Jonathan Chait with Interactive Brokers LLC**  
**SD-2061 – The Association of Jonathan Chait with Interactive Brokers Corp.**

Dear Mr. Fields:

Enclosed please find the original and three copies of the Motion to Dismiss in the above-captioned matter.

Please contact me at (202) 728-8281 if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Andrew Love". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Andrew Love

cc: Douglas I. Koff, Esq.  
Jeffrey D. Fox  
Melanie Campbell