

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11182 / May 11, 2023

In the Matter of

**Certain
Broker-Dealer
Practices,**

Respondents.

**ORDER UNDER RULES 262(b)(2),
506(d)(2)(ii), AND 602(e) OF THE
SECURITIES ACT OF 1933 AND RULE
503(b)(2) OF REGULATION
CROWDFUNDING GRANTING
WAIVERS OF THE DISQUALIFICATION
PROVISIONS OF RULES 262(a)(4),
506(d)(1)(iv), AND 602(c)(3) OF THE
SECURITIES ACT OF 1933 AND RULE
503(a)(4)(ii) OF REGULATION
CROWDFUNDING**

I.

Pursuant to the Broker-Dealer Off-Channel Communications Initiative,¹ the Division of Enforcement determined to recommend that the Securities and Exchange Commission (“Commission”) accept settlement offers from an SEC registered broker-dealer and a dual registered broker-dealer and investment adviser (together, the “Firms”) that committed certain non-scienter based record-keeping violations of the federal securities laws and agreed to consent to certain standardized settlement terms.

II.

The Commission has issued separate orders (“Record-Keeping Orders”) instituting administrative and cease-and-desist proceedings against the Firms.² These proceedings are consistent with previously-accepted settlement terms and are brought pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) for willful violations of Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder by the Firms for their failure to comply with the recordkeeping requirements on broker-dealers to ensure that they responsibly discharge their crucial roles in our markets. Specifically, the Firms failed to keep for prescribed periods, and furnish copies of, such business-related records as necessary or appropriate in the

¹ The Broker-Dealer Off-Channel Communications Initiative is an investigative initiative conducted by the Division of Enforcement.

² The two Firms subject to this Order are named in the Appendix to this Order.

public interest or for the protection of investors. The Firms admit to facts set forth in their respective Record-Keeping Orders and acknowledge that their conduct violated the federal securities laws. The Record-Keeping Orders will require the Firms to cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-4, thereunder, and to, among other things, undertake to retain a compliance consultant to conduct a comprehensive review of its supervisory, compliance, and other policies and procedures designed to ensure that all relevant electronic communications are preserved in accordance with the requirements of the federal securities laws. The Record-Keeping Orders will trigger certain disqualifications from exemptions from registration available under the Securities Act of 1933 (“Securities Act”) for the Firms.

III.

Rule 262(a) of Regulation A provides for disqualification from the Regulation A exemption from registration under the Securities Act for offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) of the Exchange Act that places limitations on that entity’s activities, functions, or operations. *See* 17 CFR § 230.262(a)(4)(ii). Similarly, Rules 506(d) of Regulation D and 503(a) of Regulation Crowdfunding provide for disqualification from the Regulation D and Regulation Crowdfunding exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) of the Exchange Act that places limitations on that entity’s activities, functions, or operations. *See* 17 CFR §§ 230.506(d)(1)(iv)(B) and 227.503(a)(4)(ii).

Rule 602(a) of Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. *See* 17 CFR § 230.602(a). Rule 602(c)(3) of Regulation E makes this exemption unavailable for the securities of an issuer if, among other things, any investment adviser or any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. *See* 17 CFR § 230.602(c)(3).

The Commission has the authority to waive the disqualifications of Regulations A, D, E, and Crowdfunding upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. *See* 17 CFR. §§ 230.262(b)(2), 230.506(d)(2)(ii), 230.602(e), and 227.503(b)(2).

In light of the Firms’ participation in the Broker-Dealer Off-Channel Communications Initiative, assuming the Firms comply with the terms of the Record-Keeping Orders, and in light of the benefits of the Broker-Dealer Off-Channel Communications Initiative, the Commission has determined that, pursuant to Rules 262(b)(2), 506(d)(2)(ii), and 602(e) of the Securities Act and Rule 503(b)(2) of Regulation Crowdfunding, good cause exists for not denying the various exemptions from registration discussed herein.

IV.

Accordingly, IT IS ORDERED, pursuant to Rules 262(b)(2), 506(d)(2)(ii), and 602(e) of the Securities Act and Rule 503(b)(2) of Regulation Crowdfunding, that waivers from the application of the disqualification provisions of Rules 262(a)(4)(ii), 506(d)(1)(iv)(B), and 602(c)(3) of the Securities Act and Rule 503(a)(4)(ii) of Regulation Crowdfunding, resulting from the entry of the Record-Keeping Orders against the Firms are hereby granted to the Firms as reflected in the attached appendix. Nothing in this Order shall effect any pre-existing disqualification under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any Firm. Failure to comply with terms of a Record-Keeping Order would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under these circumstances.

Because of the unique nature of the Broker-Dealer Off-Channel Communications Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Vanessa Countryman
Secretary

Appendix: Firms

Appendix A

(Waivers from disqualification under Regulations A, D, E, and Crowdfunding)

HSBC Securities (USA) Inc.
Scotia Capital (USA) Inc.