

**NYSE AMERICAN LLC
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2019-08-00065**

TO: NYSE American LLC

RE: Peter De Paola & De Paola Trading, Inc., Respondents
CRD Nos. 4638326 & 143625

From at least March 14, 2019 through April 2019 (the “Relevant Period”), Peter De Paola (“Mr. De Paola”) violated: (1) Section 11(a)(1) (Trading by Members of Exchanges, Brokers, and Dealers) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 11a-1(a) (Regulation of Floor Trading) thereunder, NYSE American Rules 910NY (Compliance with Section 11(a) of the Exchange Act), 922NY (Trading by ATP Holders on the Floor), and 936NY(a) (Discretionary Transaction) for improperly engaging in discretionary trading for an account in which he had an interest; (2) NYSE American Rule 933NY(f) (Responsibilities of Floor Brokers) for improperly using his firm’s error account for trades that were not for the purpose of correcting bona fide errors; (3) NYSE American Rules 324 (Books and Records) and 955NY (Order Format and System Entry Requirements) for improperly creating order records and for incorrectly identifying the clearing broker firm for those orders; (4) NYSE American Rule 16 (Business Conduct) for failing to adhere to the principles of good business practice in the conduct of his business affairs; and (5) NYSE American Rule 320(b) and (e) (Offices–Approval, Supervision, and Control) for failing to reasonably discharge his duties and obligations in connection with supervision and control of the activities in which he engaged that violated applicable securities laws and regulations and Exchange rules.

During the Relevant Period, De Paola Trading, Inc. (“De Paola Trading,” and together with De Paola, “Respondents”) violated NYSE American Rule 320(e) (Offices–Approval, Supervision, and Control) for failing to establish, maintain, enforce and keep current a system of compliance and supervisory controls reasonably designed to achieve compliance with applicable securities laws and regulations and Exchange rules.

Mr. De Paola consents to a censure; a supervisory bar with a right to reapply after five (5) years; a suspension from entering the NYSE American LLC Exchange Floor for three (3) weeks; and a fine of \$150,000. De Paola Trading consents to a censure and an undertaking.

* * *

Pursuant to Rule 9216 of the NYSE American LLC (“NYSE American” or the “Exchange”) Code of Procedure, Respondents submit this Letter of Acceptance, Waiver, and Consent (“AWC”) for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, NYSE American will not bring any future actions against the Respondents alleging violations based on the same factual findings described herein.

I. ACCEPTANCE AND CONSENT

- A. Respondents hereby accept and consent, solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NYSE American, or to which NYSE American is a party, prior to a hearing and without an adjudication of any issue of law or fact, and without admitting or denying the findings, to the entry of the following findings by NYSE American:

BACKGROUND AND JURISDICTION

1. De Paola Trading is a New York corporation with its principal place of business in New York, New York. De Paola Trading became a NYSE American member organization in May 2007. De Paola Trading operates a floor broker business on the NYSE American Options Floor.
2. Mr. De Paola is President, Owner and Chief Compliance Officer (“CCO”) of De Paola Trading. In addition, Mr. De Paola was Managing Member and Owner of a market making firm (the “Market Making Firm”) that was a NYSE American member organization from June 2018 to July 2019.

VIOLATIONS

Improper Discretionary Trading (Mr. De Paola)

3. Exchange Act Section 11(a)(1) (Trading by Members of Exchanges, Brokers, and Dealers) prohibits “any member of a national securities exchange to effect any transaction on such exchange for [his] own account, the account of an associated person, or an account with respect to which [he] or an associated person thereof exercises investment discretion.”
4. Exchange Act Rule 11a-1(a) (Regulation of Floor Trading) provides that “No member of a national securities exchange, while on the floor of such exchange, shall initiate, directly or indirectly, any transaction in any security admitted to trading on such exchange, for any account in which such member has an interest, or for any such account with respect to which such member has discretion as to the time of execution, the choice of security to be bought or sold, the total amount of any security to be bought or sold, or whether any such transaction shall be one of purchase or sale.”
5. NYSE American Rule 910NY (Compliance with Section 11(a) of the Exchange Act) requires an ATP Holder to “ensure that each of [his] transactions complies with Section 11(a) of the Exchange Act.”
6. NYSE American Rule 922NY (Trading by ATP Holders on the Floor) prohibits an ATP Holder from “initiat[ing] a transaction, while on the Floor, for an account in which he has an interest unless such ATP Holder is registered with the Exchange as a Market Maker.”

7. NYSE American Rule 936NY(a) (Discretionary Transaction) prohibits a Floor Broker from “execut[ing] or caus[ing] to be executed any transaction on this Exchange with respect to which transaction such Floor Broker is vested with discretion as to: (1) the choice of the class or series of options to be bought or sold; (2) the stated number of option contracts to be bought or sold; (3) the ability to increase the stated volume; or (4) whether any such transaction shall be one of purchase or sale.”
8. In June 2018, Mr. De Paola formed the Market Making Firm with one other individual (the “Trader”) and Mr. De Paola was the Managing Member and Owner. Because Mr. De Paola was also President and Owner of De Paola Trading (a NYSE American Floor broker firm), he was prohibited from having any involvement in the Market Making Firm’s trading operations and from accessing the Market Making Firm’s trading information. *See, e.g.*, Exchange Act Rule 11a-1(a); NYSE American Rule 910NY; De Paola Trading’s written supervisory procedures (“WSPs”) (discussed in detail below). In other words, the Trader was to have sole discretion over the Market Making Firm’s trading.
9. The Market Making Firm started trading in September 2018 with \$425,000 in net capital. According to De Paola Trading’s WSPs, Mr. De Paola was to treat the Market Making Firm’s orders like any other customer order and the Market Making Firm was to receive no preferential treatment. Until March 2019, De Paola Trading executed the Market Making Firm orders that it received electronically or in open outcry, like it did with all other customers.
10. From September 2018 through March 2019, however, the Trader’s strategy for the Market Making Firm was not successful. By March 13, 2019, the Market Making Firm’s total equity (or, net capital) fell to \$64,000.
11. Starting around March 14, 2019, Mr. De Paola engaged in discretionary trading for the Market Making Firm and entered orders for the Market Making Firm directly from his booth at De Paola Trading into the BLAZE electronic order capture (“EOC”) system or in open outcry.¹
12. For example, from at least March 14, 2019 through April 11, 2019, Mr. De Paola executed more than 500 trades for the Market Making Firm, an overwhelming majority of which Mr. De Paola entered electronically into BLAZE. The trades were directional (*i.e.*, bullish or bearish) intraday positions in one of two major index exchange-traded funds (“Index ETFs”) that neither Mr. De Paola nor the Market Making Firm hedged.

¹ BLAZE currently is the EOC device approved for use on NYSE American.

13. Therefore, the intraday positions often well exceeded the Market Making Firm's net capital. Indeed, on multiple trading days between March 14, 2019 and April 11, 2019, Mr. De Paola accumulated massive net short dollar delta positions in the Index ETFs that well exceeded the Market Making Firm's net capital.
14. By April 11, 2019, the Market Making Firm was below net capital and had negative equity. Shortly thereafter (still in April 2019), no more trading was done for the Market Making Firm. The Market Making Firm ultimately ceased operations and deregistered in July 2019.
15. As a result of improperly engaging in discretionary trading, Mr. De Paola violated Exchange Act Section 11(a)(1), Exchange Act Rule 11a-1(a), and NYSE American Rules 910NY, 922NY and 936NY(a).

Improper Use of Error Account (Mr. De Paola)

16. NYSE American Rule 933NY(f) (Responsibilities of Floor Brokers) provides that "Floor Brokers who are required to establish and maintain error accounts may only use such error accounts for the purpose of correcting bona fide errors."
17. Mr. De Paola improperly used De Paola Trading's error account for certain of the trades that he made for the Market Making Firm.
18. Specifically, in April 2019, Mr. De Paola used De Paola Trading's error account for nearly 100 of the trades that he made for the Market Making Firm – even though none of the trades were for the purpose to correct a bona fide error.
19. As a result of improperly using the De Paola Trading error account, Mr. De Paola violated NYSE American Rule 933NY(f).

Improper Creation of Incorrect Records (Mr. De Paola)

20. NYSE American Rule 324 (Books and Records) requires members and member organizations to "keep true and complete books of account and records adequately setting forth the transactions of such members and member organizations in accordance with the requirements of the rules of the Exchange and the Securities Exchange Act of 1934 and the rules thereunder."
21. NYSE American Rule 955NY (Order Format and System Entry Requirements) provides that for "[e]ach order transmitted to the Floor, [it] must be recorded legibly in a format that has been approved by the Exchange, and the ATP Holder receiving such order must record the time of its receipt on the Floor," and "[o]rders sent to the Exchange for execution must comply with the order format requirements established by the Exchange relating to, among other things, option symbol, expiration month, exercise price, type of option (call or put), quantity of option contracts, clearing member organization, whether the order is to buy or sell, and whether the order is market or limit."

22. In connection with improperly trading for the Market Making Firm and at times using De Paola Trading's error account to do so, Mr. De Paola also created inaccurate books and records.
23. First, because Mr. De Paola did not receive the orders' parameters from the Market Making Firm but instead Mr. De Paola used discretion to enter the orders and execute the trades, the records relating to the transactions were improperly recorded as market maker orders.
24. Second, the records relating to the orders over which Mr. De Paola improperly used discretion were not accurate because Mr. De Paola did not identify the correct clearing broker for the Market Making Firm.
25. As a result of improperly creating false and inaccurate records, Mr. De Paola violated NYSE American Rules 324 and 955NY.

Failure to Adhere to Principles of Good Business Practice (Mr. De Paola)

26. NYSE American Rule 16 (Business Conduct) requires every member "at all times [to] adhere to the principles of good business practice in the conduct of his business affairs."
27. As discussed, when Mr. De Paola exercised discretion for the Market Making Firm, he accumulated directional intraday positions that exceeded the Market Making Firm's net capital, which created risk because the Market Making Firm lacked the capital to cover.
28. In addition, by misidentifying the clearing broker firm when entering the Market Making Firm's orders, the actual clearing broker firm was then not made aware of the positions and exposure, at least on a real-time intraday basis.
29. As a result of creating this risk and entering the orders in a manner where the clearing broker firm was not made aware of the positions and exposure on a real-time basis, Mr. De Paola violated NYSE American Rule 16.

Failure to Supervise (Mr. De Paola & De Paola Trading)

30. NYSE American Rule 320(b) (Offices—Approval, Supervision, and Control) requires the "person in charge of a group of employees [to] reasonably discharge his duties and obligations in connection with supervision and control of the activities of those employees related to the business of their employer including compliance with securities laws and regulations and Exchange rules."
31. NYSE American Rule 320(e) (Offices—Approval, Supervision, and Control) requires members and member organizations to "establish, maintain, enforce and keep current a system of compliance and supervisory controls, reasonably designed to achieve

compliance with applicable securities laws and regulations and Exchange rules, that are appropriate to their business size, structure, customer accounts, transactions and business activities.”

32. During the Relevant Period, De Paola Trading’s WSPs included the following:

Peter De Paola is President and shareholder of [De Paola Trading] and a member of [the Market Making Firm], a registered broker dealer. De Paola shall have no involvement in [the Market Making Firm’s] trading operations nor shall he have access to [the Market Making Firm] trading information. [The Market Making Firm’s] orders shall be treated as any other customer order and shall receive no preferential treatment. The CCO or his designee shall review all daily transaction reports, order reports and such other reports or documentation as the CCO or his designees may require to ensure compliance.”

33. During the Relevant Period, Mr. De Paola was both the President and CCO of De Paola Trading. As such, he was responsible to reasonably supervise employees for compliance with applicable securities laws and Exchange rules. He was also responsible for enforcing a system of compliance and supervisory controls reasonably designed to achieve compliance with such laws and rules. However, rather than reasonably discharging these duties, Mr. De Paola engaged in improper discretionary trading, improperly used the firm’s error account, created inaccurate books and records, and failed to adhere with principles of good business practice. Accordingly, Mr. De Paola failed to reasonably discharge his duties and obligations in connection with supervision and control of the activities of his business in violation of NYSE American Rule 320(b) and (e).

34. In addition, De Paola Trading failed to establish, maintain, enforce and keep current a system of compliance and supervisory controls, reasonably designed to achieve compliance with applicable securities laws and regulations and Exchange rules, allowing Mr. De Paola’s violative conduct to go undetected, in violation of NYSE American 320(e).

RELEVANT PRIOR DISCIPLINARY HISTORY

35. On November 6, 2020, De Paola Trading settled with NYSE American for \$50,000 for violating, among other rules, NYSE American Rule 320 (supervision). *See* NYSE American Matter Nos. 2019-05-00067, et al.

OTHER FACTORS CONSIDERED

36. In determining the appropriate monetary sanction in this matter, NYSE Regulation took into account that Mr. De Paola lost approximately \$600,000 of his own money that he used for initial and ongoing funding of the Market Making Firm before ceasing the firm’s operations.

SANCTIONS

B. Mr. De Paola consents to the imposition of the following sanctions:

1. **Censure;**
2. **Supervisory bar, with a right to reapply after five (5) years from the date this AWC is deemed final;**
3. **Suspension from entering the NYSE American Exchange Floor for three (3) weeks starting when this AWC is deemed final (or by another date later agreed to by NYSE Regulation staff in writing); and**
4. **Fine in the amount of \$150,000 (to be paid according to a payment plan agreed to by NYSE Regulation).**

De Paola Trading consents to the imposition of the following sanctions:

1. **Censure; and**
2. **Undertaking to (i) appoint both a new CCO and new NYSE American Floor supervisor (both of whom are properly qualified and registered), with each serving in their respective roles when this AWC is deemed final, (ii) have the newly appointed CCO also pass the Series 14 and the newly appointed NYSE American Floor supervisor also pass the Series 4 by March 31, 2022 (or by another date later agreed to by NYSE Regulation staff in writing), and (iii) certify with NYSE Regulation staff the same by March 31, 2022 (or by another date later agreed to by NYSE Regulation staff in writing).**

Mr. De Paola agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. Mr. De Paola has submitted a Method of Payment Confirmation form showing the method by which he will pay the fine imposed.

Mr. De Paola specifically and voluntarily waives any right to claim that he is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

Mr. De Paola agrees that he shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any fine amounts that Mr. De Paola pays pursuant to this AWC, regardless of the use of the fine amounts. Mr. De Paola further agrees that he shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any fine amounts that he pays pursuant to this AWC, regardless of the use of the fine amounts.

The sanctions imposed herein shall be effective on a date set by NYSE Regulation staff.

II. WAIVER OF PROCEDURAL RIGHTS

Respondents specifically and voluntarily waive the following rights granted under the NYSE American Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the Respondents;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the Exchange's Board of Directors and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondents specifically and voluntarily waive any right to claim bias or prejudgment of the Chief Regulatory Officer of NYSE American; the Exchange's Board of Directors, Disciplinary Action Committee ("DAC"), and Committee for Review ("CFR"); any Director, DAC member, or CFR member; Counsel to the Exchange Board of Directors or CFR; any other NYSE American employee; or any Regulatory Staff as defined in NYSE American Rule 9120 in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

Respondents further specifically and voluntarily waive any right to claim that a person violated the ex parte communication prohibitions of NYSE American Rule 9143 or the separation of functions prohibitions of NYSE American Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III. OTHER MATTERS

Respondents understand that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed by NYSE Regulation, and accepted by the Chief Regulatory Officer of NYSE American pursuant to NYSE American Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the Respondents; and
- C. If accepted:
 - 1. The AWC shall be sent to each Director and each member of the Committee for Review via courier, express delivery or electronic means, and shall be

deemed final and shall constitute the complaint, answer, and decision in the matter, 10 days after it is sent to each Director and each member of the Committee for Review, unless review by the Exchange Board of Directors is requested pursuant to NYSE American Rule 9310(a)(1)(B);

2. This AWC will become part of the Respondents' permanent disciplinary records and may be considered in any future actions brought by the Exchange, or any other regulator against the Respondents;
 3. NYSE American shall publish a copy of the AWC on its website in accordance with NYSE American Rule 8313;
 4. NYSE American may make a public announcement concerning this agreement and the subject matter thereof in accordance with NYSE American Rule 8313; and
 5. Respondents may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Respondents may not take any position in any proceeding brought by or on behalf of the Exchange, or to which the Exchange is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Respondents' (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Exchange is not a party.
- D. A signed copy of this AWC and the accompanying Method of Payment Confirmation form delivered by email, facsimile or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy.
- E. Respondents may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. Any such statement does not constitute factual or legal findings by the Exchange, nor does it reflect the views of NYSE Regulation or its staff.

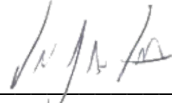
Respondents certify that, in connection with each of the Exchange's requests for information in this matter, Respondents made a diligent inquiry of all persons and systems that reasonably had possession of responsive documents and that all responsive documents have been produced. In agreeing to the AWC, the Exchange has relied upon, among other things, the completeness of the document productions.

The undersigned, on behalf of the Respondents, certifies that a person duly authorized to act on their behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's provisions voluntarily; and

that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

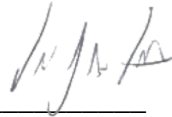
01/06/22 _____
Date

Peter De Paola,
Respondent

By: 
Peter De Paola
President & Owner
De Paola Trading, Inc.

01/06/22 _____
Date

De Paola Trading, Inc.
Respondent

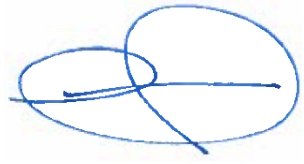
By: 
Peter J De Paola
Peter De Paola
President & Owner
De Paola Trading, Inc.

Reviewed by:


Richard L. Herzfeld, Esq.
Richard L. Herzfeld, P.C.
Counsel for Respondents Peter De Paola and De Paola Trading, Inc.

Accepted by NYSE Regulation

January 7, 2022
Date


Tony M. Frouge
Deputy Head of Enforcement
NYSE Regulation

Signed on behalf of NYSE American LLC,
by delegated authority from its Chief
Regulatory Officer