

NYSE AMERICAN LLC
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NOS. 2019-05-00067, 2019-08-00055, 2019-08-00018, 2019-10-00080,
2020-04-00097, and 2020-06-00068

TO: NYSE AMERICAN LLC

RE: De Paola Trading, Inc., Respondent
CRD No. 143625

During the period of May 2019 through August 2020 (the “Relevant Period”), De Paola Trading, Inc. violated: (1) NYSE American Rules 933NY, 963NY, and 991NY when the Firm effected six trade-throughs, one of which caused potential customer harm in the amount of \$9,207.38; (2) NYSE American Rule 935NY for failing to expose an agency order for at least one second prior to execution; (3) NYSE American Rules 16, 922NY, and 935NY for failing to announce an order, for failing to have instructions to trade at a certain price; and for walking the price in contravention of the principles of good business practice; (4) NYSE American Rule 934.3NY for executing tied hedge trades that did not meet the 500-contract minimum requirement, and NYSE American Rule 955NY by failing to properly systematize the order as a tied hedge trade; (5) NYSE American Rule 955NY by informing a customer that an order had been announced prior to the order being systematized; and (6) NYSE American Rule 320 for failing to establish and maintain adequate supervisory systems and written procedures that were reasonably designed to ensure compliance with NYSE American Rules 963NY, 991NY, 935NY, 922NY, 955NY, and 934.4NY. Consent to a censure, a \$50,000 fine, and an undertaking.

* * *

Pursuant to Rule 9216 of the NYSE American LLC (“NYSE American” or the “Exchange”) Code of Procedure, De Paola Trading, Inc. (“De Paola” or the “Firm”) submits 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 Firm alleging violations based on the same factual findings described herein.

I. ACCEPTANCE AND CONSENT

- A. De Paola hereby accepts and consents, without admitting or denying the findings, and 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, to the entry of the following findings by NYSE American:

BACKGROUND AND JURISDICTION

1. De Paola Trading, Inc. is a New York corporation with its principal place of business in New York, New York. De Paola became a NYSE Amex Member on May 31, 2017.

PROCEDURAL HISTORY

2. This matter arises from six referrals to NYSE Regulation Enforcement by the Surveillance & Investigations section of NYSE Regulation.

VIOLATIONS

Trade-Through Violations

3. During the Relevant Period, NYSE American Rule 963NY required that when a Floor Broker executed trades in the open outcry market, the executions not trade through the Exchange Best Bid/Offer (the “ABBO”).
4. During the Relevant Period, NYSE American Rule 991NY required that when a Floor Broker executed a trade, the execution not trade through any Protected Bids or Protected Offers (the “NBBO”).
5. During the Relevant Period, NYSE American Rule 933NY stated that “[a] Floor Broker handling an order is to use due diligence to execute the order at the best price or prices available to him, in accordance with the Rules of the Exchange.”
6. In three transactions executed during the Relevant Period, one or more Floor Brokers employed at the Firm improperly traded through the ABBO by effecting customer transactions in an option series at prices that were inferior to the ABBO. None of these transactions caused customer harm. The conduct described in this paragraph constitutes separate and distinct violations of NYSE American Rule 963NY.
7. In three transactions executed during the Relevant Period, one or more Floor Brokers employed at the Firm improperly traded through the NBBO by effecting customer transactions in an option series at prices that were inferior to the NBBO. The conduct described in this paragraph constitutes separate and distinct violations of NYSE American Rule 991NY.
8. For one of the transactions discussed in Paragraph 7, one or more Floor Brokers employed at the Firm, who left the Firm a short time later, failed to use due diligence to execute orders at the best prices available, resulting in \$9,207.36 of potential customer harm. The conduct described in this paragraph constitutes a violation of NYSE American Rule 933NY.

Order Exposure Violations

9. During the Relevant Period, NYSE American Rule 935NY prohibited market participants from executing an agency order without first exposing the order on the Exchange for at least one second.
10. During the Relevant Period, NYSE American Rule 922NY prohibited Floor Brokers from initiating trading in the Firm's own account.
11. During the Relevant Period, NYSE American 16 stated that "[e]very member and member organization shall at all times adhere to the principles of good business practice in the conduct of his business affairs."
12. On July 29, 2019, the Firm failed to expose the material terms of a trade due to the Firm making an "as of" adjustment to the terms of an execution in GEMS, without exposing the trade in open outcry. As a result of this conduct, the Firm violated NYSE American Rule 935NY.
13. On September 20, 2019, a Floor Broker at the Firm represented a bid without having an order at the price represented in open outcry, printed the trade at a price different from the announced price of the trade without announcing or exposing the trade in open outcry at that price, and announced and consummated a transaction at a price different from that instructed by the client. As a result of this conduct, the Firm violated NYSE American Rule 922NY, NYSE American Rule 935NY, and NYSE American Rule 16.

Tied Hedge

14. During the Relevant Period, NYSE American Rule 955NY(c) required ATP Holders to record order details prior to representation in the trading crowd.
15. During the Relevant Period, NYSE American Rule 934.3NY, Commentary .01 allowed a member to buy or sell a stock, security futures or futures position following receipt of an option order, including a complex order, prior to announcing such order to the trading crowd, provided certain conditions are met. Inter alia, the member must ensure that "the option order is . . . within the designated tied hedge eligibility size parameters, which parameters shall be determined by the Exchange and may not be smaller than 500 contracts per order (there shall be no aggregation of multiple orders to satisfy the size parameter)" and that "such member or member organization shall create an electronic record that it is engaging in a tied hedge transaction in a form and manner prescribed by the Exchange[.]"
16. On March 17, 2020, the Firm executed tied hedge trades that did not meet the 500-contract minimum requirement described by NYSE American Rule 934.3NY, Commentary .01, in violation of NYSE American Rule 934.3NY. The Firm had a complying order of 1000 which it split into lots of 250 in the mistaken belief that this still complied with the rule.

17. The Firm also failed to properly systematize the aforementioned March 17, 2020 orders as tied hedge trades, in violation of NYSE American Rule 955NY(c).

Announcement of Customer Orders

18. One of the primary functions of a floor broker such as the Firm is to handle facilitated and solicited crosses on the floor for its customers. A key element of the handling of a cross is the disclosure to the trading crowd of the material elements of the order prior to its execution. *See* NYSE American Rule 934.1NY(2) (Facilitation Cross Transactions) (“the Floor Broker requests bids and offers for the option series subject to facilitation, then discloses the Customer order . . .”); NYSE American Rule 934.3NY (Solicitation) (“A Floor Broker representing an order in options . . . may solicit another ATP Holder or non-member broker dealer outside the trading crowd . . . to participate in the transaction on a proprietary basis provided the Floor Broker, upon entering the trading crowd to execute the transaction, announces to the trading crowd the same terms and conditions about the originating order as disclosed to the solicited party”).
19. Additionally, to the extent that the Firm’s customer (or the Firm’s customer’s customer) intends to hedge an order handled by the Firm, that hedging can only begin once “[a]ll the terms and conditions of the originating order . . . are disclosed to the trading crowd.” NYSE American Rule 995NY(c)(1). Customers that intend to hedge a cross being handled by a floor broker typically request that the floor broker inform them by phone or instant message that the order has been announced so that they can begin hedging. Because the customer is prohibited from hedging until an order has been announced but has no first-hand knowledge of when that actually occurs, it is critical that a floor broker only inform a customer that an order has been announced after the material terms and conditions have been disclosed to the crowd. *See* NYSE Arca Options Regulatory Bulletin 20-01, Obligations of OTP and ATP Holders Acting as Floor Brokers (“RBO 20-01”) (“A Floor Broker may be found in violation of Exchange rules if, prior to [vocalizing the terms and conditions of the order], the Floor Broker informs its client that its order is ‘announced’ or ‘represented.’”).
20. NYSE American Rule 955NY requires that “[e]very ATP Holder that receives an order for execution on the Exchange must immediately, prior to representation in the trading crowd, record the details of the order (including any modification of the terms of the order or cancellation of the order) into the [Electronic Order Capture System] . . .”
21. In connection with one customer order on February 3, 2020, the Firm violated NYSE American Rule 955NY by informing its customer that the order had been announced prior to the details of that order in the Electronic Order Capture System.

Supervisory Violations

22. During the Relevant Period, NYSE American Rule 320 set forth certain requirements regarding offices, supervision and control of NYSE American members and member

- organizations. NYSE American Rule 320(e) required that members and member organizations who have employees 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 NYSE American rules, that are appropriate to their business size, structure, customer accounts, transactions and business activities.
23. During the Relevant Period, the Firm did not have adequate supervisory controls or reviews in place.
24. With respect to Exchange rules governing trade-throughs and order exposure, the Firm's written supervisory procedures ("WSPs") did not reasonably address or set out procedures concerning the way in which the Firm monitored activity to ensure compliance with Exchange rules. With respect to the representation of customer orders in the trading crowd, the Firm failed to implement supervisory procedures or a supervisory system reasonably designed to ensure that its customers are only informed that an order has been announced after all of the material terms of the customer order have been properly conveyed to the trading crowd. Additionally, the Firm's WSPs did not address or set out procedures regarding tied hedge transactions.
25. Accordingly, the Firm violated NYSE American Rule 320 for failing to establish and maintain adequate supervisory systems and written procedures that were reasonably designed to ensure compliance with NYSE American Rules 963NY, 991NY, 935NY, 922NY, 955NY, and 934.4NY.

RELEVANT PRIOR DISCIPLINARY HISTORY

26. The Firm has previously been issued three Cautionary Action Letters ("CALs"), *see* Matter No. 2018-11-00034 (Jan, 25, 2019); Matter Nos. 20160701303 and 20140420306 (Nov. 10, 2016); Matter No. 20140414382 (08/14/2015) and three notices of fines for minor violations of a rule ("MRV notice") for trade through and related violations. *See* Matter No. 2019-05-00089 (Sept. 12, 2019) (third-level MRV of \$2,500); Matter No. 2018-12-00024 (Mar. 1, 2019) (second-level MRV of \$1,000); Matter No. 2017-09-00045 (01/05/2018) (first-level MRV of \$500).
27. The Firm has previously been issued two MRV notices for violations of NYSE American Rule 935NY. *See* Matter No. 2019-06-00080 (9/26/2019) (second-level MRV of \$2,500); Matter No. 2019-05-00083 (Sept. 3, 2019) (first-level MRV for \$2,000).
28. The Firm has previously been issued an MRV notice for conduct related to violations of NYSE American Rule 955. *See* Matter No. 2017-03-00062 (July 10, 2017) (first-level MRV of \$1,500).
29. The Firm has previously been issued a CAL for conduct related to violations of NYSE MKT Rule 922NY (the predecessor rule to NYSE American Rule 922NY). *See* FINRA Matter No. 20140438397 (June 26, 2017).

30. The Firm entered into a settlement in 2016, in which the Firm consented to a censure and fine of \$50,000. That matter involved, among other issues, De Paola's improper designation of Qualified Contingent Cross Orders, which did not meet certain definitional requirements and therefore were not entitled to exemption from the order exposure requirements of MKT Rule 935NY (the predecessor rule to NYSE American Rule 935NY).

OTHER FACTORS

31. In connection with this settlement, the Firm has offered to pay its customer (referenced in paragraph 8) restitution in the amount of \$9,207.38.

SANCTIONS

B. The Firm also consents to the imposition of the following sanctions:

1. Censure and fine in the amount of \$50,000

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

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

The Firm agrees that it 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 the Firm pays pursuant to this AWC, regardless of the use of the fine amounts. The Firm further agrees that it 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 the Firm pays pursuant to this AWC, regardless of the use of the fine amounts.

2. Undertaking

Within 60 days of the execution of this AWC, the Firm agrees to certify that deficiencies in its supervisory procedures have been addressed through implementation of procedures that are reasonably designed to achieve compliance with the rules and regulations cited herein.

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

II. WAIVER OF PROCEDURAL RIGHTS

The Firm specifically and voluntarily waives the following rights granted under the NYSE American Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the Firm;
- 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, the Firm specifically and voluntarily waives any right to claim bias or prejudice 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 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.

The Firm further specifically and voluntarily waives any right to claim that a person violated the ex parte communication prohibitions of Rule 9143 or the separation of functions prohibitions of 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

The Firm understands 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 Firm; 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, 25 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);

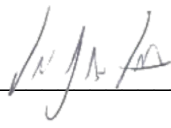
2. This AWC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by the Exchange, or any other regulator against the Firm;
 3. NYSE American shall publish a copy of the AWC on its website in accordance with NYSE American Rule 8313;
 4. NYSE American may make a public announcement concerning this agreement and the subject matter thereof in accordance with NYSE American Rule 8313; and
 5. The Firm 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. The Firm 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 Firm's (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. The Firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firm understands that it 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.

The Firm certifies that, in connection with each of the Exchange's requests for information in connection with this matter, the Firm 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 Firm, certifies that a person duly authorized to act on its 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.

Nov 2020
Date

De Paola Trading, Inc.,
Respondent

By: 
Name: 
Title:

Reviewed by:

Richard L. Herzfeld

Richard L. Herzfeld, Esq.
Richard L. Herzfeld, P.C.
112 Madison Avenue, 8th Floor
New York, NY 10016
212-818-9019
Counsel for Respondent

Accepted by NYSE Regulation

November 6, 2020
Date



Danielle A. Kantor
Senior Enforcement Counsel
NYSE Regulation

William Vanderveer
Regulatory Attorney
NYSE Regulation

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