

**NYSE AMERICAN LLC
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2020-08-00101**

TO: NYSE AMERICAN LLC

RE: Brendan E. Cryan and Company, LLC, Respondent
CRD No. 33496

During the period of January 2019 through July 2019 (the “Relevant Period”), Brendan E. Cryan and Company, LLC violated: (1) Rule 200(g) of Regulation SHO of the Securities Exchange Act of 1934 and NYSE American Rule 7.16E (Short Sales) for incorrectly marking 1224 sell orders and subsequently entering those orders into NYSE American; and (2) NYSE American Rule 3110 - Equities (Supervision) for failing to establish and maintain a supervisory system reasonably designed to achieve compliance with Exchange Act Rule 200(g) and NYSE American Rule 7.16E. Consent to a censure and \$17,500 fine.

* * *

Pursuant to Rule 9216 of the NYSE American LLC (“NYSE American” or the “Exchange”)¹ Code of Procedure, Brendan E. Cryan and Company, LLC (“Cryan” 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. Cryan 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. The Firm is a member and registered Electronic Designated Market Maker (“eDMM”) on NYSE American. The Firm has been a member of NYSE American since 1999. The Firm’s business consists of proprietary trading in its assigned eDMM symbols.

PROCEDURAL HISTORY

2. This matter arises from a referral from FINRA's Market Regulation Department concerning violations identified during FINRA's 2019 equities cycle examination of the Firm.

VIOLATIONS

3. Exchange Act Rule 200(g) requires a broker or dealer to mark all sell orders of any equity security as "long," "short," or "short exempt." The Rule provides that an order to sell shall be marked "long" only if the seller is deemed to own the security being sold as detailed in the Rule; and either the security to be delivered is in the physical possession or control of the broker or dealer, or it is reasonably expected that the security will be in the physical possession or control of the broker or dealer no later than the settlement of the transaction.
4. NYSE American Rule 7.16E requires members to mark all sell orders as "long," "short," or "short exempt" in accordance with Exchange Act Rule 200(g).
5. NYSE American Rule 3110-E(a) requires each member firm to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable Exchange rules.
6. During the Relevant Period, the Firm incorrectly marked 1,222 out of 5,565 orders selected for review as long while maintaining a short position, and incorrectly marked 2 of 5,565 orders as short while maintaining a long position. The Firm subsequently entered those orders incorrectly into the Exchange. The mismarkings were caused by a flawed order marking mechanism in the Firm's third-party order management system. The conduct described in this paragraph constitutes separate and distinct violations of Exchange Act Rule 200(g) and NYSE American Rule 7.16E.
7. During the Relevant Period, the Firm failed to establish and maintain a supervisory system reasonably designed to ensure compliance with order marking requirements pursuant to Exchange Act Rule 200(g) and NYSE American Rule 7.16E. Although the Firm maintained written supervisory procedures concerning order marking, the Firm's reviews failed to identify any of the mismarked orders. The Firm relied on an exception-based report and position verification reports provided by its clearing agent. However, the Firm's reports identified no exceptions during the Review Period. The position verification reports were generated at the start/end of day and thus not relevant, as the mismarkings occurred intraday. Also, the Firm did not have a supervisory review to periodically verify the accuracy of its order marking logic. As a result of the above, the Firm violated NYSE American Rule 3110-E(a).

RELEVANT PRIOR DISCIPLINARY HISTORY

8. In October 2019, the Firm consented to a fine of \$60,000 (NYSE Matter Nos. 2018-05-00053, 2018-07-0059, 2018-07-00067, 2018-09-00036 and 2019-07-00017), for, among other things, Reg SHO 200(g) order marking violations and related supervisory violations.

OTHER FACTORS

9. NYSE Enforcement took into account the Firm's remediation efforts including that the Firm corrected the order marking logic effective April 2020. Additionally, the Firm enlisted the assistance of an outside consultant to revise its WSPs, enhance its surveillance reports, and implement a new quarterly review of DMM trading engine logs to confirm accuracy of its order marking.

SANCTIONS

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

Censure and fine in the amount of \$17,500 payable to NYSE American

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.

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, 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 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.

04/19/2021


Date

Brendan E. Cryan and Company, LLC,
Respondent

By: 

Gabriel Freytes
Chief Executive Officer

Reviewed by:




Stephen Cohen, Esq.
Loeb and Loeb
345 Park Ave
New York, NY 10154
(212) 407-4279
Counsel for Respondent

Accepted by NYSE Regulation

4/20/2021

Date



Kimberly Shamsiddin
Head of Member Examination Oversight
Program
NYSE Regulation

Catherine Lifeso
Director, Enforcement

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