

Response to NFA complaint against Petra Trading Group (“Petra”) and Martin J. Allamian (“Allamian”) NFA Case NO. 08-BCC-029

In Response to Claim Number 1 Petra and Allamian admit.

Further answering that Petra, to this day, to the best of my knowledge, has not yet conducted any futures business. They are registered with FINRA and the SEC and have only done securities business.

In Response to Claim Number 2 Petra and Allamian deny.

Further answering that it appears the former President of Petra has Allamian down as a principal without his knowledge. He also has Allamian listed as a greater than 10% owner which is false-his wife is 100% owner. At NO time did Allamian have access to the NFA registration website or was he able to enter any registration information. This was conducted by the president Mark Ramos and at no time did he inform Allamian he would be a principal. In fact, Mr. Ramos who operated Petra on a day-to-day basis was supposed to be the principal, and it appears that only after Mr. Ramos was denied, that he made Allamian principal, again without his knowledge.

In response to Claim number 3 Petra and Allamian admit.

Further answering that Last Atlantis Partners is a client of Petra and the only business that was introduced was securities related business. To the best of my knowledge, Petra has not conducted any futures business.

In response to claim number 4 Petra and Allamian admit.

In response to claim number 5 Petra and Allamian admit.

Further answering, neither Petra nor Allamian have access to LACM’s books and records but the information appears to be accurate.

In response to claim number 6 Petra and Allamian admit to the first sentence but deny sentence number 2.

Further answering that Petra books and records are kept by a properly registered FINOP who after conferring with the SEC after a Petra audit, agreed that the Payment For Order Flow monies were deemed to be client money at all times and that Petra was merely a pass through entity, so instead of showing a receivable and an offsetting payable, Petra would not show either one on its’ books and records.

Additionally, Allamian obtained from Last Atlantis a list of all of the trades that were done at Interactive Brokers on a spreadsheet as well as having those trades burned to a CD. These were provided to the NFA auditors who were on site. Additionally, and most important is the fact that Allamian provided the NFA with a copy of the arbitration that

talks about the reason IB refuses to pay, but at no time points to any dispute in the number of orders sent-or the amount that would be owed to Share Class O if the trades were not-in IB's eyes, illegal. Additional Petra records were provide to the NFA that show that in previous months every penny that was paid to Petra from LEK Securities was then passed on to LACM for Share Class O.

In response to claim number 7 Petra and Allamian admit.

In response to claim number 8 Petra and Allamian admit that IB filed a FINRA arbitration but deny that any of the trades that were done are "wash trades".

Further answering that the reason that IB gives for refusing to pay has changed over the many months since May 2007. Initially they refused to pay because they claimed that LACM was doing electronic trading. When it was brought to their attention that electronic trading was not illegal, and after LACM showed the IB attorney and business development people how they were able to trade so fast and so often, IB changed their reason for not paying to claiming the trades were "wash trades". Ironically, the SEC and FINRA have looked at the same trades during the period in question and have decided that none of the trades in question constitute "wash trades". We know this because Petra filed to withdraw as a broker dealer and the withdraw process was held up until both organizations could review the trades that are the subject of the arbitration. After reviewing the trades, Petra was indeed allowed to withdraw with no fines or sanctions against the firm or any of its members.

In response to claim number 9 Petra and Allamian admit.

In response to claim number 10 Petra and Allamian deny the first sentence and admit to the second and third sentences.

Further answering that Petra stopped using IB after the first week in May 2007. At no time did IB sever the relationship. Additionally, although neither Petra nor Allamian have access to LACM's books and records, sources at LACM confirmed that during a review of the trades for the Interactive arbitration, LACM did find trades that were not accounted for due to a lack of collaborating data from IB.

In response to claim number 11 Petra and Allamian deny.

Further answering, neither Petra nor Allamian have access to the books and records of LACM, nor did they have any input in the monthly preparation. Sources at LACM believe the receivable to be correct and thus the statements accurate.

In response to claim number 12 Petra and Allamian aver.

Further answering that neither Petra nor Allamian have access to LACM's books and records nor any input as to how those number are calculated. It would make sense that if the margins were very thin, that a trading loss would be the result after commission and

fees, but the total trade would be profitable when figuring in the Payment For Order Flow amount. This type of trading is very common in the securities and options on securities world.

In response to claim 13 Petra and Allamian aver to sentences number 1, 2, and 3. In response to sentence number 4 Petra and Allamian admit.

Further answering that Allamian explained to the NFA that at the end of each month Mark Ramos would get the amount that is owed for Payment For Order Flow from IB. The amount was calculated by IB based on the number of eligible contracts that LACM had sent to IB. Because we are talking about millions of trades, and the fact that Petra was merely a pass through entity, Ramos would get the number from IB and pass it on to LACM. Once LACM agreed, IB would wire the money to Lek, Lek would pay Petra and Petra would send it to LACM. This was the procedure every month.

In response to claim number 14 Petra and Allamian deny.

Further answering, neither Petra nor Allamian have any control over the books and records of LACM. Allamian asked that a representative from LACM answer this question during the audit and 2 different representatives explained to the auditors that were on site that as LACM reviewed the trades made during the period that is subject to the arbitration, they discovered trades that were not previously accounted for. LACM then made accounting entries to reflect this. It makes no sense and nobody at either firm would say that Ramos told Allamian to do something and Allamian told LACM to do something. Again, Ramos would report what was due to LACM after getting the numbers from someone at IB.

In response to claim number 15 Petra and Allamian agree with the first sentence and aver to the rest.

Further answering neither Allamian nor Petra have any input into how the books and records of LACM are kept.

In response to claim number 16 Petra and Allamian admit.

Further answering, due to an SEC audit it was determined that that money that Petra received from Payment For Order Flow was Customer Money- meaning it belongs to Share Class O. Because it is customer money, Petra had to become a \$300,000 broker dealer. Because virtually the only client they had doing this was LACM Share Class O, it made sense that Share Class O should fund the arrangement. Once funded properly, through the subordinated loan, which the Last Atlantis Partners Operating Agreement gives the management the right to do, Petra's owner was able to remove a portion of the capital that she put into the business when it was purchased. Additionally, \$250,000 that Petra had received from Payment for Order Flow was sent on to the customer. Both transactions were done in the open, through US banks, in existing accounts, so no money was funneled, as the term usually applies to a deceitful act. The broker dealer remained

in regulatory compliance and all the correct paperwork for the subordinated loan was executed in a timely fashion and on file. The actual risk to the funds is no different than being in the Share Class because Petra does not do any retail business.

In response to claim number 17 Petra and Allamian admit except that James Koch, LACM's attorney answered most of the questions put to LACM by the NFA.

In response to claim number 18 Petra and Allamian admit the first three sentences and deny the last sentence.

Further answering, LACM has taken a series of actions to in an attempt to distribute the remaining assets of Share Class O. LACM has given NFA updated investor statements with the plan for liquidating the share class according to the operating agreement that each investor has signed. The investor statements were provided to the NFA on May 7, 2008 showing the value of the investment including the receivable and the value of the investment writing down the receivable to zero. The NFA has stated that LACM has failed to propose a reasonable plan of distribution for Share Class O. LACM has submitted a plan and has attempted to execute the plan. LACM has provided the NFA with a plan to comply with its disbursement of funds requests. The following is a time line of the actions taken by LACM to comply with a distribution plan for the Share Class O funds.

The week following the issuance of the MRA (on May 1), LACM staff met with the NFA staff including talking about how to disburse the funds back to the Share Class O investors. LACM offered to do an accounting of each investor's Share Class O account by both recognizing the receivable and writing the receivable to zero. This was provided to the NFA on May 7. The MRA did not state how the funds were to be disbursed to the investors. With the approval of the NFA, LACM wanted to disburse the funds to the investors based on writing the receivable to zero. The NFA did not want LACM to disburse the funds directly to the investors. Sometime after May 7, LACM's attorney, James Koch ("Koch"), talked to the NFA about using an outside third party to disburse the funds. Koch volunteered to the NFA using his law firm as the third party. He also brought up using an independent third party called JAMS. On May 23, LACM asked its attorney Koch to contact the NFA about the accounting information it had provided to use as a basis for returning the funds to the Share Class O investors. Koch was not able to speak with the NFA attorney and left a message to return his call. On May 27 Koch called the NFA in the morning but was not able to reach the NFA attorney. On May 28 Koch called the NFA's attorney. Koch said the NFA would have a response but they clearly did not. Then early in the afternoon on May 28 Koch informed LACM he had spoken with the NFA attorney about an interpleader as a possible means to disburse the funds where a court would be in charge of the disbursement. Koch wanted to know if LACM approved of going ahead with filing it. LACM gave its attorney Koch approval to file an interpleader. On June 3 Koch informed LACM he was working on the pleading called a Complaint for Declaratory Relief. On June 5 Koch provided LACM a draft of the interpleader complaint and informed LACM it needed a defendant to file it. LACM asked one of the Share Class O investors to be the defendant and got his approval. Late in

the afternoon on June 5, LACM received a final draft of the interpleader complaint. Koch informed LACM he provided the NFA's attorney with a copy of the complaint to review before it's filing. Koch informed LACM he was not going to file it until he was given approval to proceed by the NFA's attorney. On the Friday before filing the complaint in court (June 6), Koch got NFA approval to file it. The Complaint was filed with the Cook County Circuit Court on June 11. On June 23 Koch informed LACM the Cook County Circuit Court set the case for hearing on the motion to disburse monies to investors upon consent of the NFA for Monday July 28th at 9:30 AM. On June 25, Koch said the NFA told him that it would so consent. On June 30, the NFA retained outside counsel to ask for more time to respond to the Complaint filed on June 11. On July 28 the counsel for the NFA filed a Motion to Dismiss the claim as to the NFA. On August 7, a request was made by the complainant and LACM to continue the motion on August 28 which was granted. On August 28 the Complaint was dismissed for want of prosecution.

On August 7, LACM wrote a letter to the NFA attorney because it was surprised that the NFA used outside counsel to ask the Cook County Circuit Court to dismiss the claim made by the Share Class O investor. LACM was under the impression that the NFA wanted it to use the court system as the means to return the remaining funds back to the LACM Proprietary Options Share Class O investors. In the NFA's response to the August 7 letter dated August 28, the NFA put in writing what means are acceptable for disbursing the funds to the Share Class O investors.

On October 15, 2008 LACM wrote a letter to the attorney at the NFA requesting that LACM be permitted to disburse funds from LACM Share Class O to pay legal fees associated with the arbitration matter filed by Interactive. LACM wrote this letter because LACM Share Class O is an interested party in the arbitration and is owed \$2.7 million for equity option trades that qualified for payment for order flow under a contract between Interactive from March 2007 to the first week of May 2007. In a letter to LACM dated October 23, 2008, the NFA denied the request to approve the disbursement for legal fees. The NFA provided the following rationale. "As NFA has noted before, Share Class O is not a party to the arbitration matter." LACM's rationale is although Share Class O is not named in the arbitration matter, it is an interested party because more than one half of the equity options trading that involved payment for order flow was on behalf of Share Class O. The remainder of the equity options trading involving payment for order flow was for a proprietary managed account. Therefore, LACM believes it is in the best interests of the investors of Share Class O to pay its share of the legal costs associated with recovering the payment for order flow money owed to the Share Class.

On November 10, 2008 LACM's counsel for its defense in the Interactive arbitration, Anthony Valiulis, met with the NFA senior staff in person to ask to reconsider its position regarding the releasing the legal fees from LACM Share Class O. After the meeting the NFA requested certain information before deciding whether to approve the disbursement of the funds. LACM provided that information on November 21, 2008. Yet it was not until December 2nd that NFA finally gave its final answer, leaving LACM with very little time before the hearing in January. The NFA told LACM that it would not approve the release of the funds for the following reasons:

- A. The NFA said that it felt that there was insufficient documentation supporting the \$2.7 million receivable and therefore it could not be sure that a recovery in the arbitration would actually benefit the Share Class.
- i. LACM has never understood this concern. No one has disputed in the arbitration that LACM Share Class O is the ultimate beneficiary of the claim being asserted against Interactive Brokers.
 - ii. Moreover, the parties have signed written documentation to evidence this understanding in order to satisfy the NFA. Of the amounts being sought in the arbitration, 54% after expenses and fees, will go to LACM Share Class O.
- B. The NFA objected because 100% of the investors did not agree to the distribution.
- i. Under the Last Atlantis Partners LLC Operating Agreement, however, 100% approval is not necessary. Indeed in almost every organization, 100% approval will not be necessary. In fact, it would make little sense to allow someone with a small percentage to interfere with the will of the vast majority.
 - ii. Here, LACM had secured the consent of 75%, substantially more than the simple majority required under the Operating Agreement.
 - iii. Moreover, all of the investors are now being given notice through the filing of an interpleader in Circuit Court of Cook County Illinois and have an opportunity to express their concerns, if any, to this distribution.
- C. The NFA also complained that the individual parties to the arbitration have not contributed to the legal fees.
- i. Under the Operating Agreement, however, the individual parties are entitled to have their legal expenses paid by the Share Class.
 - ii. Moreover, LACM understands that the individual parties do not have the funds sufficient to pay the fees in any event.
- D. Similarly, the NFA also objected to the fact that the other interested party in the recovery has not paid any part of the legal expenses.
- i. Although it is true that LACM is seeking to recover damages not only for the Share Class but also for another account, there is no contractual obligation for the other account, a passive investor to pay any attorneys' fees or costs.
 - ii. Share Class O has a contractual obligation to pay fees and costs.
 - iii. Moreover, despite this, the other account has agreed on a going forward basis to commit to pay \$100,000 in fees and costs.

None of the NFA's concerns constitute legitimate reasons for disregarding LACM's unambiguous rights under the Operating Agreement or the will of 75% of Share Class O investors. Indeed, the NFA's conduct appears arbitrary and capricious and contrary to the best interests of the investors, whose interests the NFA is supposedly attempting to safeguard.

On December 4, 2008 LACM filed a verified Complaint for Interpleader and Declaratory Relief in the Circuit Court of Cook County, Illinois seeking to allow the LACM Share Class O Investors the opportunity to assert their claims against certain funds held by LACM but currently restricted by the NFA in accordance with a "Member Responsibility Action" ("MRA") issued by the NFA on April 24, 2008. In addition, LACM is also seeking an expedited declaration from the Court under 735 ILCS 5/2-701 allowing a certain portion of that fund (i.e., \$250,000) to be released and used as attorneys' fees on behalf of the LACM Share Class O investors in accordance with the affirmative vote of 75% of those investors in connection with an ongoing arbitration in which LACM Share Class O has the opportunity to recover approximately \$2.7 million. Unless those funds are immediately released, LACM's attorneys will not be able to proceed on behalf of LACM in that arbitration, which is scheduled for hearing in January, 2009.

LACM has previously given the support for the receivable to the NFA (text files of the trades, a spreadsheet summarizing the amounts of the receivable, a copy of the payment for order flow agreement between Interactive and LEK, and a verbal explanation of the flow of payments between LEK, Petra, LACM, and LACM Share Class O.

In response to claim number 19 Petra and Allamian admit the first two sentences and deny the third.

Further answering: please see the previous answer for claim number 18.

In response to count 1, claim number 24 Petra and Allamian deny.

Further answering, LACM's activities cannot even be remotely considered deceptive unless they do not prevail at the arbitration. If they prevail, the receivable was indeed real and the amount accurate. Even so, at no time did Petra or Allamian have any control over LACM books and records. Petra was merely the broker, providing a clearing relationship so the strategy could be executed at very favorable commission rates. Allamian was indeed an AP of both firms, but that did not give him control. Additionally, Ramos erroneously listed Martin Allamian as a partial owner. FINRA and any other documents and all parties of Petra will acknowledge, under oath if necessary, that at no time did Martin Allamian ever own, or represent to own any portion of Petra.

In response to claim number 25 Petra and Allamian deny.

Further answering that Petra facilitated nothing more than the execution of equity option orders and the payment for that order flow. The NFA claims that Petra is owed for the order flow and it has been consistently explained that IB pays LEK, LEK pays Petra and

Petra pays LACM. Every month for millions of dollars this implied contract has been in place. It is SO OBVIOUS that it is customer money- that the SEC made Petra become a \$250,000 broker dealer. It is very strange to us as why an organization that is supposed to PROTECT the public's interest seems to be putting up so many obstacles for them to get their existing money, and continues to try and make the case that if monies are recovered, the receivable belongs to Petra-WHEN ALL OF THE PARTIES INVOLVED AGREE THE RECOVERY BELONGS TO SHARE CLASS O INVESTORS.

In response to claim number 26 Petra and Allamian deny.

Further answering that Allamian has explained that each month Mark Ramos, the President of Petra would get, from IB, the amount that IB owed for the orders that were sent. This amount would be passed on to LACM and if they agreed, IB would wire that amount to LEK, who paid Petra who then paid LACM. Because of the huge volume of trades done each month it would be crazy for an entity or individual without the proper technology to keep track of the trades to try and calculate what was owed. LACM and IB have the technology. Additionally, according to FINRA and the SEC, Mr. Ramos is indeed a principal of Petra.

In response to claim number 27 Petra and Allamian deny.

Further answering that the subordinated loan was made by the entity that benefited the most from having the Broker Dealer, Share Class O. The LACM Operating Agreement allowed for this type of transaction and once properly completed, Allamians wife removed a portion of the initial capital she had invested into her broker dealer. Petra was not aware of what LACM did or did not disclose to Share Class O participants.

In response to claim number 28 Petra and Allamian deny that they violated NFA Compliance Rule 2-4

In response to claim number 30 Petra and Allamian admit.

Further answering, Ramos was a listed as a principal for FINRA and SEC purposes. Petra has never executed any futures business and Ramos attempted to register himself as a principal for NFA purposes.

In response to claim 31 Petra and Allamian admit.

Further answering, as the president of Petra, Ramos was Petra and the activities he performed were covered by the security licenses that he held. To the best of my knowledge Ramos never conducted any futures business.

In response to claim number 32 Petra and Allamian deny.

In response to claim number 34 Petra and Allamian deny.

Further answering, neither Petra nor Allamian controlled the actions of LACM. Additionally, as a disputed receivable is hardly a SCHEME to deceive. Although Petra attempted to list Ramos as a principal, it was the NFA that did not approve him.

In response to claim number 35 Petra and Allamian deny.

Further answering, Allamian is listed as a partial owner due to a clerical error by Ramos.

In response to claim number 36 Petra and Allamian deny.

