

15, 2008, Petra and Allamian filed an Answer, where they denied the material allegations in the Complaint.

II

EVIDENCE PRESENTED AT THE HEARING

NFA presented one witness at the hearing and introduced a number of documents into evidence. Allamian testified on his own behalf. A summary of the evidence follows:

Vilia Sutkus-Kiela

Vilia Sutkus-Kiela (Kiela), a manager in NFA's Compliance Department, testified substantially as follows:

Petra is an NFA Member introducing broker (IB) that is pending withdrawal. Since 2006, Allamian has been a registered associated person (AP), NFA Associate and principal of Petra. From April 2006 through October 2008, Allamian was also a registered AP and NFA Associate of Last Atlantis Capital Management LLC (Last Atlantis). Last Atlantis was an NFA Member commodity pool operator and commodity trading advisor from November 2005 through April 2009. Last Atlantis operated a commodity pool called Last Atlantis Partners LLC (Partners). Partners offered numerous share classes to participants. Each share class focused on a different investment strategy. Petra is also a broker-dealer registered with the Securities and Exchange Commission (SEC). Petra introduced Partners' share classes to clearing firms. At the time of the audit, Partners was Petra's only client. Petra had two listed principals, Allamian and his wife Linda Allamian. Allamian was Petra's only AP. In order for Petra to be registered, it was required to have at least one AP.

In March 2008, NFA began an audit of Last Atlantis and Petra. NFA began the audit of Last Atlantis and Petra after reviewing certain financial statements that Petra had filed with NFA. The financial statements were signed by an individual named Mark Ramos (Ramos). The oath and affirmation also indicated that Ramos was Petra's chief executive officer, even though Ramos was not a listed principal of the firm. NFA decided to include Last Atlantis in the audit because Petra's financial statements reported that Petra had a subordinated loan with Partners – Share Class O.

Last Atlantis and Petra were located on the same floor of an office building located in St. Charles, Illinois. Each firm had its own office suite, but the suites were next door to each other. Although Allamian had his own office in the Last Atlantis suite, during the time NFA was on site conducting the audit, Kiela observed that Allamian was often in Petra's office suite.

Prior to beginning the audit, NFA contacted Allamian and informed him that NFA was planning an audit of Petra. NFA also sent a document request to Allamian, and Allamian provided the requested documents to NFA. During the actual audit, NFA directed most of its questions regarding Petra to Allamian, and Allamian answered those questions. At no time during this process did Allamian ever question why NFA was requesting information on Petra from him or tell NFA at that time that he was not a principal or AP of Petra.

NFA announced the Last Atlantis audit to an individual named Irwin Berger (Berger), who was the listed principal of Last Atlantis. Berger, however, told NFA to direct the audit questions and document requests to Allamian. Allamian provided NFA with the requested documents and answered NFA's audit questions. In addition, Last Atlantis' written audit response was signed by both Allamian and Berger.

As part of the Last Atlantis audit, NFA reviewed the firm's ownership records. These records indicated that Dylan and Ryan Allamian owned 20 percent of Last Atlantis. Allamian told NFA that these were his minor children. If Allamian had owned the 20 percent, rather than his minor children, Last Atlantis would have been required to list Allamian as a principal of the firm.

NFA also reviewed Petra's operating agreement. This document indicated that Linda Allamian was the sole owner of Petra. Linda Allamian was never at Petra's office during NFA's five-week audit, and her registration history indicated that she had never been an AP or listed principal of another firm. Allamian told NFA that Linda Allamian was not involved in the operations of the company and that he was in charge of Petra's operations.

At the conclusion of every audit, NFA requires the firm to provide a management representation letter that includes certain representations regarding the documents and verbal information the Member gave to NFA during the audit. Allamian signed Petra's letter and indicated his title was "Principal."

The subordinated loan agreement between Petra and Partners' Share Class O provided that Share Class O was lending \$300,000 to Petra for a three-year term beginning in September 2007. Petra received the loan proceeds on September 1, 2007. During the audit, Allamian told NFA that Petra borrowed the money because it needed it for capital purposes. At that time, Petra's minimum capital requirement, as a broker-dealer, was \$250,000. When NFA reviewed Petra's August 31, 2007 net capital computation, however, NFA learned that Petra already had excess capital of \$89,000 at the time of the loan from Share Class O. When NFA confronted Allamian with this

information, Allamian explained that Petra needed the money to pay Last Atlantis for payment for order flow.

NFA reviewed Petra's financial records and determined that on September 10, 2007, a few days after receiving the loan proceeds, Petra wrote a check to Linda Allamian for \$60,000. The following day, Petra wired \$250,000 to Last Atlantis.

Last Atlantis did not properly disclose the nature of this loan to the Share Class O participants. The fund's annual report listed the loan as a cash or cash equivalent balance. This was improper reporting for a number of reasons including the fact that a subordinated loan is, as the name indicates, subordinated to other debts. Therefore, in the event Petra became insolvent or bankrupt, the subordinated loan would be the last debt paid.

The January 2008 Share Class O's balance sheet included a receivable for \$2.7 million. Allamian told NFA that the receivable represented payment for order flow for trades that were executed on behalf of Share Class O. Allamian also told NFA that Lek Securities, Share Class O's clearing firm would route its orders to Interactive Brokers, the executing broker. Interactive Brokers would then remit a payment for the order flow to Petra. Petra, in turn, remitted this payment to Last Atlantis, which sent it to Share Class O.¹ Allamian told NFA that Partners received this payment on a monthly basis. Kiela acknowledged on cross-examination that Petra did pass the order flow payments it actually received through to Last Atlantis.

¹ Payment for order flow is a common practice in the securities industry. It usually involves an exchange or market maker paying a brokerage firm to route its orders through the exchange or market maker.

Although NFA repeatedly asked for an agreement or other evidence supporting this relationship, neither Last Atlantis nor Allamian ever provided any type of agreement or documentation that explained or supported that the commodity pool was entitled to this monthly payment or how the monthly payment was calculated. Typically, for any type of receivable, the firm should have some type of documentation that verifies that the receivable actually exists and how it is calculated.

On cross-examination, Kiela indicated that she discussed the payment for order flow situation with a FINRA auditor. The auditor explained that payment for order flow was common practice in the securities industry. The auditor never told her that there had to be a written agreement to memorialize the arrangement. Kiela also stated that Interactive Brokers never disputed that this arrangement existed.

Using a *Summary Profit & Loss Report* issued by Lek Securities for Share Class O (NFA Exhibit 15) and internal accounting records of Last Atlantis, which shows the accrued amounts of rebate receivable (NFA Exhibit 17), NFA prepared a spreadsheet that showed the amount of Class O's trading gains and losses by month at Lek Securities and the amount of the rebate receivable that was accrued by month (NFA Exhibit 19). For example, in January 2007, the pool had a trading loss of \$726,000 and booked a rebate receivable of \$791,000. Share Class O's income statement reported a \$61,000 gain. When NFA asked Allamian how Last Atlantis calculated the rebate receivable for that month, he did not provide any explanation. In February 2007, the pool lost \$873,000 and booked a rebate receivable of over \$1,000,000. Share Class O's income statement for that month reflected a \$134,000 gain. From March 2007 through January 2008, the pool booked similar receivables.

Although the pool lost money almost every month, the rebate receivable offset the loss and the income statement reflected a monthly gain in each of those months.

Last Atlantis never collected the full amount of the receivable booked each month. For example, although Last Atlantis booked a \$791,000 receivable in January 2007, it collected \$233,000 in February. Last Atlantis booked a \$1,005,000 rebate receivable in February and collected \$939,000 in March. As a result, by the end of March, Last Atlantis had not collected \$633,000 of the receivable booked in January and February. Last Atlantis continued to book receivables from March 2007 through January 2008, but they were never fully collected. The total amount of the receivable accrued January 2007 through January 2008 was \$4.5 million. However, Last Atlantis collected only \$1.8 million of that receivable.

Last Atlantis included the full value of the receivable when reporting balances to the participants in Share Class O. For example, in the month of January 2007, a participant by the name of Rohrer received a statement that indicated monthly income of \$19,224. However, without the accrued receivable, this participant's account would have lost almost all of its \$296,409 net asset value in January based on the trading losses incurred by the pool. NFA reviewed the other participants' statements, which also reflected a monthly net income for each month. Although the pool lost a significant amount of its investment through trading losses in 2007, the accrued receivable made it appear that the pool, and therefore each participant, had made money.

In August of 2007, Interactive Brokers filed a FINRA arbitration claim against a number of parties, including Petra and Allamian. The claim alleged that Petra engaged in wash trading. Interactive Brokers sought to recover the funds it had

previously paid Petra for order flow rebates. Even after this arbitration claim was filed, Last Atlantis continued to accrue for the order flow rebates on the books of Share Class O and included the value of the receivable in the statements to its participants.

Kiela opined that once Interactive Brokers stopped remitting payment for order flow in April 2007, Last Atlantis should have stopped accruing for the payments. Moreover, once Last Atlantis had notice of the FINRA arbitration claim, it should have treated the uncollected rebate receivables that were accrued from January 2007 through April 2007 as a doubtful receivable. Last Atlantis, however, did not treat the receivable any differently and continued to reflect its full value in the statements it sent to participants. Moreover, Last Atlantis did not notify the participants that Interactive Brokers had stopped paying the rebates in April or that it had filed an arbitration claim to recover previously paid rebates until NFA required it to do so in approximately March 2008.

NFA prepared an analysis that showed the value of each active participant's investment excluding the participant's share of the rebate receivable (NFA Exhibit 15). Any amounts of the rebate that were actually received were included in the net asset value. This analysis indicated that the value of each participant's investment would have been significantly less if the rebate receivable was excluded. For example, in January 2007, Last Atlantis reported to Rohrer that the net asset value of his investment was \$296,000. However, if his pro-rata share of the value of the accrued receivable was excluded, the net asset value of his investment was negative \$22,000. Although NFA's analysis showed that the pool lost \$3.5 million from trading during its life, none of the monthly statements to the participants ever reflected a loss. Last Atlantis also charged a 50 percent incentive fee based on the trading gains of the pool.

By including the value of the rebate receivable in the pool's performance, it appeared that the pool had made money. As a result, Share Class O paid Last Atlantis incentive fees in excess of \$230,000.

Allamian was aware that the receivable was included in the value of Share Class O and the net asset values reported to participants each month.

As CEO, Ramos should have been listed as a principal of Petra. NFA later learned, however, that Ramos attempted to be listed as a principal at one time, but NFA put a hold on the application because of his disciplinary history, which included a guilty plea to a felony that may have constituted a statutory disqualification.

Martin James Allamian

Allamian testified substantially as follows:

Allamian's wife purchased Petra in July of 2005, and she owns 100 percent of Petra. Because Allamian's wife had no experience in the securities business, FINRA told Petra that she could not be involved in the day-to-day operations of Petra, and that the firm would have to hire others with the appropriate licenses. When Petra was purchased, the CEO was John Hopkins (Hopkins), and there were several other employees. Shortly after Allamian's wife purchased Petra, Hopkins and the other employees left, and Ramos took over as CEO.

Ramos was essentially the sole employee of Petra until Steve Cass (Cass) was hired to do the financial records. Ramos remained as CEO until an issue related to his background arose and then he was replaced by Cass. At the time of the audit, Allamian learned that Ramos had been denied registration by NFA.

Although Allamian was listed as a principal of Petra, he did not learn of this until the time of NFA's audit. During the audit, NFA staff showed him that he was

listed as a principal on Petra's registration records. Allamian did not make any effort to withdraw as a principal when he learned of his status.

During a 2007 audit of Petra, FINRA determined that Petra was undercapitalized. FINRA determined that the rebate payments Petra received were customer funds and therefore Petra was required to maintain minimum capital of \$250,000. Since the increase in capital was due to Petra's relationship with Share Class O, Petra concluded that Share Class O should provide the funds to meet the additional capital requirements. Allamian claimed that Petra's attorneys and FINRA suggested a subordinated loan agreement. The funds from the loan agreement were used to capitalize Petra. Linda Allamian withdrew \$60,000 of her investment in Petra after Petra received the proceeds of the loan.

Petra had been receiving payment for order flow through Lek Securities from Interactive Brokers for other accounts for almost two years before it started trading Share Class O. After the rebate receivable balance on Petra's books for Share Class O was about three months old, Interactive Brokers started to be evasive about payment. Finally, Allamian and others² had a meeting with Interactive Brokers' in-house attorney. The attorney told Allamian that Interactive Brokers believed that Share Class O was engaging in wash trading, and that Interactive Brokers would not remit the outstanding payment for order flow unless Last Atlantis could show Interactive Brokers that it was not engaging in wash trading. Although Petra made several attempts to show Interactive Brokers how the trading worked, Interactive Brokers never paid the amount due and eventually filed the FINRA arbitration.

² Allamian did not specifically identify who he was referring to.

While the arbitration proceeding was pending, Petra requested to withdraw its broker-dealer registration. Before Petra was allowed to withdraw, FINRA and the SEC did a review of the firm's books and records. FINRA and the SEC also reviewed the arbitration filing and requested the records related to the alleged wash trading. After this review, Petra was permitted to withdraw.

The arbitration hearing occurred in the summer of 2009. Prior to the hearing, Lek Securities and Interactive Brokers reached a settlement on the claims involving Lek Securities. According to Allamian, the arbitrators found that Petra, Last Atlantis and Allamian individually were innocent of all claims of wash trading. On cross-examination, Allamian acknowledged that the arbitrators denied both Interactive Brokers' claim for a refund of the amount they previously paid on the order flow rebates, as well as Last Atlantis' claim for the amount due on the rebate receivable. Allamian did not know why the arbitrators did not award Last Atlantis or Petra the amount of the receivable. The end result, however, was that the Share Class O participants lost substantial amounts of money.

III

FINDINGS, CONCLUSIONS AND PENALTY

Petra was an IB Member of NFA during the period covered by the Complaint. As an NFA Member, Petra was required to comply with NFA Requirements and is subject to disciplinary proceedings for violations of NFA Requirements that occurred while it was an NFA Member.³ Allamian was a principal and AP of Petra and an NFA Associate during the period covered by the Complaint. Therefore, he was

³ See NFA Compliance Rule 2-14.

required to comply with NFA requirements, and NFA has jurisdiction over him for purposes of this action.⁴

The Panel will dispose of the least complex charge in this matter first. NFA charged Petra with violating NFA Registration Rule 208(a) because it failed to list Ramos, who was acting as the firm's CEO, as a principal of the firm. There is no dispute that Ramos was the firm's CEO. Allamian readily admitted that Ramos functioned in that capacity. Although Ramos made some attempt to become a listed principal of Petra, the process was never completed due to a felony conviction in his background. However, even after Ramos withdrew his application to be a listed principal he continued to function as Petra's CEO. As Petra's CEO, there is no question that Ramos should have been listed as a principal. However, he was not. Therefore, the Panel finds that Petra violated NFA Registration Rule 208(a).

The remaining two charges in the Complaint – violation of NFA Compliance Rule 2-4 by Petra and violation of NFA Compliance Rule 2-9 by Petra and Allamian – are based primarily on the same conduct. Specifically, NFA alleges that Petra failed to observe high standards of commercial honor and just and equitable principles of trade in the conduct of its commodity futures business and Petra and Allamian failed to supervise Petra based on Petra's role in the payment for order flow issues involving Last Atlantis and Partners.

Before addressing Petra's and Allamian's role in the payment for order flow situation, the Panel first notes that it finds that this situation was completely mishandled to the detriment of the Share Class O participants. Clearly, Petra and Last Atlantis were well aware for months that there was substantial likelihood that the

⁴ See NFA Bylaw 301(b) and NFA Compliance Rule 2-14.

payment for order flow receivable would never be collected. Rather than making full disclosure of this very material information to Share Class O participants, Last Atlantis continued to trade the pool in the same manner and Petra continued to calculate a monthly receivable for payment for order flow. Once the situation was sorted out, however, neither Petra nor Last Atlantis collected any amounts due for the payment for order flow and Share Class O participants suddenly found themselves with an investment that was nearly worthless.

The evidence presented at this hearing clearly proves NFA's allegations regarding Petra and Allamian's role in this conduct. Although Petra and Last Atlantis were separate entities, they were both being run, at least in part, by Allamian. The firms maintained offices on the same floor of an office building, and Allamian freely moved between the two firms, overseeing both businesses. Moreover, Allamian was a listed principal of Petra and possibly should have been a listed principal of Last Atlantis. During the time of NFA's audit, Allamian appeared to be running Last Atlantis and was the only person able to answer any questions about Last Atlantis. Petra was also a key player in the misreporting to Last Atlantis's Share Class O participants about the value of their investment. Allamian admitted that Petra calculated the monthly amount supposedly due to Last Atlantis. Allamian also readily admitted that he was involved in the discussions with Interactive Brokers regarding their decision to stop paying for order flow. Despite being fully aware of the likelihood that the payment for order flow amounts would never be paid to Petra and then to Last Atlantis, Petra and Allamian continued to provide Last Atlantis with monthly amounts due and never made any attempt to ensure that Last Atlantis informed Share Class O participants of the precarious situation. Rather, Share Class O participants continued to receive statements that indicated that

their investment was profitable, when in fact, without the amount related to the payment for order flow, each participant's investment was nearly worthless.

Equally troubling was the subordinated loan made by Share Class O to Petra. Share Class O made this loan to Petra shortly after Interactive Brokers filed its FINRA arbitration. Despite the fact that the amount at issue in the arbitration was a substantial portion of the net asset value of the pool, Petra "borrowed" this money from Share Class O and then almost immediately disbursed \$60,000 to Allamian's wife. In addition, the true nature of this loan – that it was subordinated to the claims of all other creditors – was not disclosed to the participants. Rather, the loan was reported on financial statements as a cash equivalent at the pool's broker. Moreover, there is no consistent reason for the purpose of the loan. When NFA asked Allamian about the loan initially, he told them it was to be used to provide capital for Petra to meet its net capital requirement. When NFA pointed out that Petra has excess net capital at the time of the loan, Allamian indicated the loan was to remit the order flow payments to Last Atlantis. The notes to Last Atlantis's December 31, 2007 financial statements, however, indicate that the loan was made to "facilitate continued development of execution technology required for trading the Share Class' (Share Class O) strategy." Although the Panel cannot determine the true purpose of the loan, the one thing that is clear is that immediately after making the loan, Allamian's wife withdrew \$60,000 from Petra.

Although it is not clear to the Panel that Petra and Allamian initially intended to mislead the Share Class O investors, the fact of the matter remains that in the end they did and they did not do anything to correct the investors' misinformation on the value of their investment. Petra's involvement in this misreporting and its

involvement in the subordinated loan agreement are clear violations of NFA Compliance Rule 2-4. Moreover, this conduct, along with Petra's and Allamian's failure to ensure that Ramos, who was ineligible to act a principal of Petra, did not act in that capacity showed a failure to supervise on their part, in violation of NFA Compliance Rule 2-9. This conduct is inconsistent with just and equitable principles of trade.

A number of factors must be considered when determining the appropriate sanctions for these violations. One of the more important factors is the nature of the violations. The evidence at the hearing clearly established that Petra and Allamian engaged in a course of conduct that resulted in a group of investors having a false belief in the value of their investment. The evidence also clearly shows that Petra and Allamian were well aware of the possibility of not recovering the payment for order flow that had been accrued for months before they ever provided participants with any information on the possibility that these funds would not be collected. As a regulated entity and a regulated individual, both Petra and Allamian have a responsibility to ensure that they play no part in misleading investors. Both failed to do so in this situation. In particular, Petra showed its inability to act properly in this industry. Petra had one client and it failed miserably in properly dealing with that client. Based on the above discussion, the Panel hereby imposes the following sanctions:

1. Petra is permanently barred from NFA membership and from acting as a principal of an NFA Member.
2. Allamian is suspended from NFA membership, associate membership and may not act as a principal of an NFA Member for a period of three years from the date of this Decision. If after the conclusion of this three-year period, Allamian applies for NFA membership, associate membership or to act as a principal of an NFA Member, he must pay a fine of \$250,000 within 30 days of the date on which he is granted NFA membership, associate membership or principal status.

IV

APPEAL

Petra and Allamian may appeal the Panel's Decision to the Appeals Committee of NFA by filing a written Notice of Appeal with NFA within fifteen days of the date of this Decision. Pursuant to NFA Compliance Rule 3-13(a), the Notice must describe those aspects of the disciplinary action to which exception is taken and must include any request to present written or oral arguments. The Decision shall be final after the expiration of the time for appeal or review unless it is appealed or reviewed.

V

INELIGIBILITY

Pursuant to the provisions of Commodity Futures Trading Commission (CFTC) Regulation 1.63, this Decision and the sanctions imposed by it render Allamian ineligible to serve on a governing board, disciplinary committee, oversight panel, or arbitration panel of any self-regulatory organization as that term is defined in CFTC Regulation 1.63 until three years after the effective date of the Decision or until all of the sanctions and conditions imposed by the Panel have been fulfilled, whichever is later.

**NATIONAL FUTURES ASSOCIATION
HEARING PANEL**

Dated: 02/17/2011

By: Gloria Matthews Harris
Gloria Matthews Harris
Chairperson

(caw:BCC Cases/Petra Trading Decision)

AFFIDAVIT OF SERVICE

I, Nancy Miskovich-Paschen, on oath state that on February 17, 2011, I served copies of the attached Decision, by sending such copies in the United States Mail, postage prepaid, certified mail, return receipt requested, and by regular mail, in envelopes addressed as follows:

David Stawick
Office of the Secretariat
Commodity Futures Trading
Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Terry Montgomery
Division of Enforcement
Commodity Futures Trading
Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Thomas Smith
Deputy Director
Compliance & Registration, DCIO
Commodity Futures Trading
Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Tempest Thomas
Proceedings Clerk
Office of Proceedings
Commodity Futures Trading
Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Andrew M. Allamian, Esq.
855 West Prairie Avenue
Wheaton, IL 60187

and by hand delivery to:

Elizabeth C. Sheridan, Esq.
National Futures Association
300 South Riverside Plaza
Suite 1800
Chicago, IL 60606


Nancy Miskovich-Paschen

Subscribed and sworn to before me
on this 17th day of February 2011.



Notary Public

