

NYSE ARCA, INC.

HEARING BOARD DECISION 12-ARCA-9

September 24, 2012

HOLD BROTHERS ON-LINE INVESTMENT
SERVICES, LLC
ETP HOLDER

FINRA Proceeding No. 20110270441

Violated: (1) Exchange Act Sections 9(a)(1) and 9(a)(2) by, directly or indirectly, for the purpose of creating a false or misleading appearance of active trading in securities registered on a national securities exchange: (i) effected transactions which involved no change in the beneficial ownership thereof; (ii) entered orders for the purchase (sale) of securities with the knowledge that orders of substantially the same size, at substantially the same time, and at substantially the same price, for the sale (purchase) of such security, had been or would be entered by or for the same or different parties; and (iii) effected a series of transactions in securities to create actual or apparent active trading in such securities, or raising or depressing the price of such securities, for the purpose of inducing the purchase or sale of such securities by others; (2) Section 17(a)(1) of the Exchange Act and SEC Rules 17a-3 and 17a-4, and NYSE Arca Equities Rule 2.24, by failing to retain and preserve memoranda of each brokerage order given or received for the purchase or sale of securities, whether executed or unexecuted; (3) NYSE Arca Equities Rule 6.15(a), by directly or indirectly participating or having an interest in the profits of a manipulative operation; (4) NYSE Arca Equities Rule 6.5, by effecting or inducing the purchase or sale or otherwise effecting transactions for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such security, or for the purpose of unduly or improperly influencing the market price of such security, or for the purpose of making a price which does not reflect the true state of the market in such security; (5) NYSE Arca Equities Rule 7.38(c), by failing to aggregate odd lot orders into round lots when such orders were for the same account; (6) NYSE Arca Equities Rule 6.15(b), by participating in pre-arranged trades; (7) NYSE Arca Equities Rule 6.1(b), by failing to adhere to the principles of good business practice in the conduct of its business affairs; (8) NYSE Arca Equities Rule 6.18, by failing to reasonably supervise and implement adequate controls, including a separate system of follow up and review, designed to achieve compliance with NYSE Arca rules and policies, including review of its electronic customer order flow to detect potential rule violations. Consent to censure, a \$700,000 fine, and an undertaking.

Appearances:

For FINRA Market Regulation – Legal:

Steven Tanner, Esq.
Eric Brown, Esq.
David E. Rosenstein, Esq.
Robert A. Marchman, Esq.

For Hold Brothers On-Line Investment
Services, LLC:

Martin H. Kaplan, Esq.

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A Hearing Officer at the Financial Industry Regulatory Authority (“FINRA”) considered an Offer of Settlement and Consent entered into between the Legal Section of the Market Regulation Department at FINRA (“Market Regulation”) on behalf of the General Counsel of NYSE Arca, Inc. (“NYSE Arca” or “Exchange”)¹ and Respondent Hold Brothers On-Line Investment Services, LLC (“HBOLIS” or the “Firm”), an NYSE Arca Equities Trading Permit Holder.

The Offer of Settlement was submitted for the sole purpose of settling this disciplinary proceeding, without adjudication of any issues of law or fact, and without admitting or denying any allegations or findings referred to therein. Market Regulation does not contest the Offer of Settlement and recommends its acceptance. With due regard to the stipulated facts and violations and the proposed sanctions contained therein, the Hearing Officer believes it is appropriate to accept the Offer of Settlement and issues this Decision in accordance with NYSE Arca Equities Rules.²

Background and Jurisdiction

HBOLIS, a member of NYSE Arca, Inc., which at all relevant times is an Equity Trading Permit (“ETP”) holder NYSE Arca, Inc., is a self-clearing broker-dealer that primarily operates as a day trading firm by facilitating direct market access to customers and to its proprietary traders. HBOLIS’ principal place of business is in New York, New York, and it has approximately 95 associated persons, including proprietary traders. Between January 1, 2009, and December 31, 2011 (“the Review Period”), the owners of HBOLIS, Steven Hold (“S. Hold”) and his brother, were the Firm’s President and Chief Executive Officer, respectively.

HBOLIS’ primary business is providing a trading platform, trade software and trade execution, support and clearing services for day traders. Many traders using HBOLIS are located overseas in countries such as China, India, Russia, Ukraine, and Poland. These

¹ FINRA is handling this matter on behalf of NYSE Regulation pursuant to a Regulatory Services Agreement among NYSE Group, Inc., New York Stock Exchange LLC, NYSE Arca, Inc., NYSE Amex, NYSE Regulation, and FINRA, which became effective June 14, 2010.

² The facts, allegations, and conclusions contained in this Decision are taken from the executed Offer of Settlement.

foreign-based day traders typically trade through a non-broker-dealer entity that is owned and operated by the same owners of HBOLIS. These affiliated non-broker-dealer entities of HBOLIS, and the foreign day traders associated with them, are not registered with FINRA or the Securities and Exchange Commission (“SEC”).

During the Review Period, HBOLIS’ largest account was Demostrate LLC (“Demostrate”), an entity owned and funded 100% by HBOLIS’ principals. Trade Alpha Corporate, Ltd. (“Trade Alpha”), which also was owned and funded 100% by the principals of HBOLIS, was an affiliate of Demostrate and structured in a similar manner.

Overview

During the Review Period, Demostrate, a day trading entity wholly owned and funded by HBOLIS’ principals, was HBOLIS’ largest and most active account. Demostrate was controlled by, or under common control with, HBOLIS. Demostrate engaged traders and trading groups in various foreign countries, primarily China, to trade its capital utilizing different trading strategies.

During the Review Period, certain traders associated with Demostrate and/or Trade Alpha, utilizing a sponsored access relationship to connect with securities exchanges, engaged in manipulative trading activities, including improper odd lot trading, spoofing, layering, wash trading, and pre-arranged trading.

In addition, HBOLIS failed to establish and maintain a supervisory system, including written procedures, to supervise the Firm’s trading activity that was reasonably designed to achieve compliance with applicable federal securities laws and regulations, and NYSE Arca Equities Rules.

FACTS AND VIOLATIVE CONDUCT

HBOLIS’ Structure and Business and Its Common Control of Trade Alpha and Demostrate

HBOLIS’ ownership structure is broken into two classes. Class A Membership is owned by Hold Brothers, Inc., a corporation owned by HBOLIS’ principals. Class B Membership is owned by a group of proprietary traders registered with HBOLIS, including HBOLIS’ principals.

Although HBOLIS is self-clearing, the Firm also has a sponsored access relationship³ with another clearing firm, through which foreign traders utilize market participant identifiers (“MPID”). During the Review Period, HBOLIS had approximately 95 associated persons, including registered proprietary traders.

During the Review Period, HBOLIS had approximately 49 customer accounts, broken down into 217 different trader groups and 2,432 identified traders. Demostrate was by far

³ Sponsored access refers to the practice in which a bank or brokerage firm offers a client direct market access to an exchange.

HBOLIS' largest account. Approximately 90% (197) of the trader groups, and 88% (2,160) of the identified traders, were associated with the Demostrate account.

HBOLIS averaged approximately 400,000 trades per day, approximately 90% of which were placed through the Demostrate account.

HBOLIS' Common Control of Trade Alpha, Demostrate, and Their Traders

Demostrate is a foreign limited liability company organized in April 2009 in Nevis and St. Kitts and is 100% owned by HBOLIS' principals. Trade Alpha was also 100% owned by HBOLIS' principals. The Demostrate account was opened at HBOLIS on December 22, 2009. William Tobias, a registered representative with a HBOLIS affiliate and a non-registered fingerprint person with HBOLIS, was appointed as the managing member of Demostrate.

Demostrate was structured with various groups and locations of traders with various trading strategies, concentrated mainly in China. The Demostrate account was solely funded by HBOLIS' principals.

Recruitment of, and negotiation with, prospective traders and trader groups was largely handled on behalf of Demostrate by both recruiters employed by HBOLIS and by HBOLIS affiliates. Recruiters placed postings, approved by HBOLIS' Compliance Department, through online professional sites seeking individuals or groups interested in trading through direct access platforms. Recruiters were also responsible for negotiating rates with traders and trader groups, and for acting as a liaison between the prospective traders and groups and HBOLIS' IT, Compliance, Operations, Trade Support, and Accounting groups.

Demostrate's traders and trader groups (referred to by HBOLIS as "Risk Groups") were compensated based upon a percentage of profits of trading Demostrate's capital. HBOLIS charged Demostrate \$0.10/1,000 shares base rate plus expenses. After that, profits were generally split 85% to the Risk Group and 15% to the Demostrate account. HBOLIS' principals were responsible for authorizing the payouts to the Risk Groups. Each Risk Group was responsible for allocating profits to its individual traders. Although Demostrate assumed risk of loss for trading in the account, generally 10% of the Risk Group's 85% (capped at \$10,000) was held in a reserve against losses in Demostrate Risk Groups.

Once a Demostrate trader was approved through the recruitment process, HBOLIS' trade support group assigned the trader a four digit alpha identifier. In some instances, traders had more than one identifier (for example, in order to trade two different trading strategies).

HBOLIS' Trade Support and Risk Management teams were responsible for establishing trader limits and buying power for the Trade Alpha and Demostrate traders. HBOLIS oversaw risk management of the traders to ensure traders were not taking undue risk with capital, and HBOLIS' Compliance Department was responsible for reviewing the trading activity of the Trade Alpha and Demostrate traders for improper or violative trading activities. HBOLIS' Compliance Department also had the authority to initiate disciplinary action against Trade Alpha and Demostrate traders, up to and including termination. In addition to the roles previously referenced, Tobias performed consulting services for HBOLIS.

Based upon the foregoing, Trade Alpha, Demostrate and their traders, were controlled by, or under common control with, HBOLIS.

Violations of Sections 9(a)(1) and 9(a)(2) of the Securities Exchange Act of 1934 and NYSE Arca Equities Rules 6.1(b), 6.5, 6.15(a), 6.15(b), and 6.18

Spoofing and Layering

1. During the Review Period, HBOLIS, through its affiliated entities Trade Alpha and Demostrate, and utilizing a sponsored access relationship to connect with exchanges, engaged in manipulative trading activities, in willful violation of Sections 9(a)(1) and 9(a)(2) of the Securities Exchange Act of 1934 (the "Exchange Act"), and also in violation of NYSE Arca Equities Rules 6.1(b), 6.5, and 6.15(a).
2. Among the manipulative trading activities utilized by certain of the Trade Alpha/Demostrate traders were spoofing and layering, including manipulative cross-market layering activities. Generally, spoofing is a form of market manipulation which involves a market participant placing certain non-bona fide order(s), generally inside the existing National Best Bid or Offer ("NBBO"), with the intention of briefly triggering some type of market movement and/or response from another market participant, followed by cancellation of the non-bona fide order, and the entry of an order on the opposite side of the market. Layering involves a trading pattern in which multiple, non-bona fide, limit orders are entered on one side of the market at various price levels away from the NBBO in order to create the appearance of a change in the levels of supply and demand, thereby artificially moving the price of the security. An order is then executed on the opposite side of the market at the artificially created price, and the non-bona fide orders are immediately cancelled.
3. Throughout the Review Period, there were hundreds of instances of Trade Alpha/Demostrate traders engaging in spoofing and layering activities in order to profit by artificially manipulating the price of a security.
4. By way of example is the following spoofing activity used by Trade Alpha in order to induce the trading algorithm of an unaffiliated entity (the "Algo") to trade against Trade Alpha.
5. On March 23, 2009, in shares of ABC, a thinly traded stock, a Trade Alpha non-bona fide sell short order was entered inside the prevailing quote which lowered the National Best Offer ("NBO").⁴ Thereafter, a Trade Alpha order was entered inside the prevailing quote, which raised the National Best Bid ("NBB"). Based upon this change in the market, the Trade Alpha trader induced the Algo to sell to Trade Alpha at a price lower than where the market had been. The Trade Alpha trader then cancelled its original orders, and entered a new Trade Alpha sell short order, selling 100 shares at a profit of \$.02 per share.

⁴ Volume in ABC on March 23, 2009, was 71,500 shares, and traded in a range of \$10.44 to \$10.77.

Time	Event	Buy/sell	Volume	Price	NBB	NBO	Comment ⁵
9:56:41	order	sell short	100	10.61	10.59	10.63	order lowered NBO to 10.61
9:56:44	order	buy	300	10.60	10.59	10.61	order raised NBB to 10.60
9:56:44	trade	buy	100	10.60	10.60	10.61	trade vs. Algo
9:56:45	cancel	buy	200	10.60	10.60	10.61	Bid reverts to where it was at beginning of sequence.
9:56:45	cancel	sell short	100	10.61	10.59	10.61	Offer reverts to where it was at beginning of sequence. Sell short was entered to lower the offer, inducing a purchase at lower price.
9:56:52	order	sell short	300	10.62	10.61	10.63	order lowered NBO to 10.62
9:56:53	trade	sell short	100	10.62	10.61	10.62	trade vs. Algo
9:56:54	cancel	sell short	200	10.62	10.61	10.62	

6. Such pattern of placing small limit orders for thinly traded stocks within the NBBO was done for the purpose of artificially narrowing the NBBO, and allowed the Trade Alpha trader to take advantage of his artificially narrowed quote. The Trade Alpha traders induced the Algo to repeatedly sell securities to Trade Alpha, and then triggered the Algo to buy them back from Trade Alpha at a higher price.
7. Another form of spoofing involved price manipulation of stock by “flashing” quotes without the intent to trade the stock.
8. In the example described below, in trading in XYZ on September 4, 2009, between 3:33 and 3:55 p.m., certain Trade Alpha traders entered 75 buy orders totaling 797,800 shares. Of these orders, which were priced from \$1.65 to \$1.70, Trade Alpha received 11 executions of 22,220 shares. During the same time, certain Trade Alpha traders entered 381 sell orders totaling 27,251,600 shares. These separately entered non-bona fide sell orders, which added liquidity to the offer, were cancelled within minutes or seconds. These orders received approximately 40 executions of 77,845 shares. These sell orders inflated the number of shares offered from tens of thousands to millions of shares.

Time	Buy/Sell	Volume	Price	National Best Bid	National Best Offer	Market Bid Volume	Market Ask Volume
15:30:23	sell	134 (original order 10,000)	1.66	1.65	1.66	109,300	15,500
15:30:25 - 15:30:53	sell orders entered	83 orders of 50,000 each	1.66	1.65	1.66	decrease from 109,300 to 86,700	increase from 15,300 to 4,111,500
15:30:54 - 15:31:20	sell orders	52 orders of 50,000 each	1.66	1.65	1.66	increase from 86,700	decrease from

⁵ The effect of the order/trade cancellation on the NBBO is reflected in the row after the event.

Time	Buy/Sell	Volume	Price	National Best Bid	National Best Offer	Market Bid Volume	Market Ask Volume
	canceled					to 87,900	4,161,500 to 1,611,500
15:31:20 - 15:31:30	sell orders entered	71 orders of 50,000 each	1.66	1.65	1.66	decrease from 87,900 to 85,600	increase from 1,611,500 to 5,111,500
15:31:43 - 15:32:07	sell orders canceled	102 orders of 50,000 each	1.66	1.65	1.66	decrease from 85,600 to 34,400	decrease from 5,111,500 to 60,900

9. The entry of such a large amount of sell orders, in which the size of the quote increased from tens of thousands to millions of shares, followed by the cancellation of these orders, created a false appearance of activity in such security, and improperly influenced the market price of such security.
10. Prior to February 2010, the Firm did not have sufficient written supervisory procedures (“WSPs”) or surveillance reviews to detect layering or spoofing, and thus, failed to establish and maintain a supervisory system reasonably designed to detect and prevent such manipulative trading activities and achieve compliance with applicable NYSE Arca Equities rules and federal securities laws.

Wash Trading⁶

11. HBOLIS failed to sufficiently and effectively monitor for potential wash trades and pre-arranged trading activities, and prior to April 2010, failed to have sufficient surveillance reviews to detect or prevent wash trading or pre-arranged trading activities, or sufficient WSPs to achieve compliance with applicable NYSE Arca Equities rules and federal securities laws.
12. In thousands of instances during the Review Period, a particular Trade Alpha or Demostrate Risk Group, as well as a specific Trade Alpha or Demostrate trader, were on both sides of a transaction, buying and selling the security on the same day, at the same time and price.
13. For example, on June 30, 2009, Trade Alpha, through the Firm, engaged in a pattern of trading in EFG in which Trade Alpha repeatedly appeared on both sides of transactions. Although different trader identifications were on each side of the transactions, several of the same trader identifications were repeatedly paired against each other. The following is a sampling of the trading that day.

⁶ Wash trading involves the execution of a securities transaction which involves no change in the beneficial ownership of the security. Wash trades may be inadvertent or may be attributable to an improper purpose such as the intentional manipulation of trading volume or market prices.

Time	Side	Volume	Price	Trader ID
13:52:33	sell	2000	.2675	L DFA
13:52:33	buy	2000	.2675	P DEH
13:53:14	sell	2000	.2611	L DFA
13:53:14	buy	2000	.2611	P DEH
13:53:40	sell	2000	.2679	L DFA
13:53:40	buy	2000	.2679	P DEH
13:53:56	sell	1800	.2611	L DFA
13:53:56	buy	1800	.2611	P DEH

14. Trade Alpha engaged in 15 transactions in EFG in which it was on both sides of the trades, with volume totaling 24,800 shares. The trades were executed by traders located in the same Trade Alpha trading group.

Pre-arranged Trading⁷

15. In addition to wash trading, certain traders of Trade Alpha engaged in pre-arranged trading.
16. For example, in 12 instances from April 13, 2009 to May 1, 2009, a Trade Alpha trader, through the Firm, engaged in a pattern of trading in nine stocks, entering a series of transactions in which he pre-arranged with a trader at another firm to take the opposite side of the transactions. In these pre-arranged transactions, the Trade Alpha trader would enter a short sale (buy), and then several seconds later buy (sell) the same position at a lower (higher) price, and then repeat the process. For example, he engaged in the following trades on April 13, 2009, in shares of DEF:

Time	Buy / Sell	Price	Volume
12:10:55	Sell short	11	800
12:11:02	Buy	10.97	800
12:11:19	Sell short	11	1,000
12:11:24	Buy	10.97	1,000
12:11:28	Sell short	11	1,000
12:11:32	Buy	10.97	1,000
12:11:38	Sell short	11	1,000
12:11:42	Buy	10.97	1,000
12:11:47	Sell short	11	1,000
12:11:52	Buy	10.97	1,000

⁷ While wash trading is the execution of a securities transaction which involves no change in the beneficial ownership of the security, pre-arranged trading is an offer to sell coupled with an offer to buy back at the same or at a pre-determined price, and may involve a change in beneficial ownership.

Improper Odd Lot Trading - Violations of NYSE Arca Equities Rules 6.18 and 7.38

17. During 2009, NYSE Arca Equities Rule 7.38(c) provided, in part, that Equity Trading Permit (“ETP”) Holders are prohibited from unbundling round lots for the purpose of entering odd lot limit orders⁸ in comparable amounts.
18. NYSE Arca Equities had issued Regulatory Bulletins to advise members of prohibited practices in connection with odd lot trading. For example, NYSE Arca Equities Regulatory Bulletin RBE 03-10 (November 24, 2003) reminded ETP Holders that unbundling round lots for the purpose of entering odd lots is conduct inconsistent with just and equitable principles of trade and is subject to enforcement action.
19. On February 23, 2009, a Trade Alpha trader, through the Firm, engaged in a series of odd lot transactions in three stocks, in which he established round lot positions, then liquidated the positions in a series of odd lot transactions. For example, the following are the trades in shares of GHI:

Time	Arca Bid / Ask	Buy / Sell	Price	Volume
14:36:11	8.86/9.00	B	9.00	100
14:36:28	8.86/9.06	S	9.03	99
14:36:37	8.86/9.06	S	9.03	1
14:36:53	8.86/9.06	B	9.06	500
14:37:03	8.86/9.16	S	9.14	99
14:37:05	8.86/9.16	S	9.14	99
14:37:07	8.86/9.16	S	9.14	99
14:37:09	8.86/9.16	S	9.14	99
14:37:12	8.86/9.16	S	9.14	99
14:37:13	8.86/9.16	S	9.14	5

20. In all three instances, certain traders of Trade Alpha unbundled round lot orders and entered violative odd lot orders in comparable amounts.
21. As a result of the activity cited in paragraphs 19 and 20, certain traders of Trade Alpha purchased the stocks at a low price, then entered a bid at a higher price that established a new NBBO, and then sold the position at a higher price because the odd lot dealer was forced to honor the NBBO.
22. The Firm failed to establish, maintain and/or enforce appropriate written policies and procedures for supervision and control, including a separate system of follow-up and review, with respect to violative odd lot transactions on the NYSE Arca marketplace. Additionally, the Firm did not maintain sufficient surveillance reviews that would have detected the traders activities.

⁸ Round lots are typically 100 shares, and odd lots are typically 99 shares or less. Among other things, odd lot orders receive guaranteed execution at the NBBO and are not reported to the Consolidated Tape.

**Failure to Retain Books and Records:
Violations of Section 17(a)(1) of the Exchange Act, Rules 17a-3 and 17a-4,
and NYSE Arca Equities Rule 2.24**

23. SEC Rule 17a-3(a)(6), promulgated pursuant to the Exchange Act, requires that a memorandum of each brokerage order be made that shows, among other things, the terms and conditions of the order and of any modification or cancellation thereof, including the time of entry. Exchange Act Rule 17a-4(b)(1) requires, in part, that every broker and dealer preserve, for a period of not less than three years, all records required pursuant to Exchange Act Rule 17a-3(a)(6).
24. NYSE Arca Equities Rule 2.24 requires firms to make, keep current and preserve books and records as prescribed by the Exchange Act.
25. During the period between approximately early 2009 and September 2010, HBOLIS failed to retain and preserve numerous memoranda of each brokerage order given or received for the purchase or sale of securities, whether executed or unexecuted.

FINDINGS OF VIOLATIONS

26. Willfully violated Exchange Act Sections 9(a)(1) and 9(a)(2) by, directly or indirectly, for the purpose of creating a false or misleading appearance of active trading in securities registered on a national securities exchange: (i) effected transactions which involved no change in the beneficial ownership thereof; (ii) entered orders for the purchase (sale) of securities with the knowledge that orders of substantially the same size, at substantially the same time, and at substantially the same price, for the sale (purchase) of such security, had been or would be entered by or for the same or different parties; and (iii) effected a series of transactions in securities to create actual or apparent active trading in such securities, or raising or depressing the price of such securities, for the purpose of inducing the purchase or sale of such securities by others.
27. Violated Section 17(a)(1) of the Exchange Act and SEC Rules 17a-3 and 17a-4, and NYSE Arca Equities Rule 2.24, by failing to retain and preserve memoranda of each brokerage order given or received for the purchase or sale of securities, whether executed or unexecuted.
28. Violated NYSE Arca Equities Rule 6.15(a) by directly or indirectly participating or having an interest in the profits of a manipulative operation.
29. Violated NYSE Arca Equities Rule 6.5 by effecting or inducing the purchase or sale or otherwise effecting transactions for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such security, or for the purpose of unduly or improperly influencing the market price of such security, or for the purpose of making a price which does not reflect the true state of the market in such security.
30. Violated NYSE Arca Equities Rule 7.38(c) by failing to aggregate odd lot orders into round lots when such orders were for the same account.

31. Violated NYSE Arca Equities Rule 6.15(b) by participating in pre-arranged trades.
32. Violated NYSE Arca Equities Rule 6.1(b) by failing to adhere to the principles of good business practice in the conduct of its business affairs.
33. Violated NYSE Arca Equities Rule 6.18 by failing to reasonably supervise and implement adequate controls, including a separate system of follow up and review, designed to achieve compliance with NYSE Arca rules and policies, including review of its electronic customer order flow to detect potential rule violations, including:
 - a) manipulative trading, including layering and spoofing activities;
 - b) wash trading;
 - c) pre-arranged trades; and
 - d) improper odd lot trading practices.

DECISION

The Hearing Officer accepted the Offer of Settlement and found that Hold Brothers On-Line Investment Services, LLC committed the violations as set forth above.

PENALTY

In accordance with the Offer of Settlement, Hold Brothers On-Line Investment Services, LLC is censured, and fined \$700,000. Hold Brothers On-Line Investment Services, LLC shall pay the fine in accordance with the payment plan in the attached Sanctions Addendum.

In addition, Hold Brothers On-Line Investment Services, LLC shall undertake to:

- a. Retain, within 60 days of the date of this Decision, an Independent Consultant, not unacceptable to FINRA, to conduct a comprehensive review of the adequacy of the Firm's policies, systems and procedures (written and otherwise) and training relating to anti-money laundering, trading, sponsored access, direct market access, day trading, compliance with SEC Rule 15c3-5, and the use of foreign traders.
- b. Exclusively bear all costs, including compensation and expenses, associated with the retention of the Independent Consultant.
- c. Cooperate with the Independent Consultant in all respects, including by providing staff support. HBOLIS shall place no restrictions on the Independent Consultant's communications with FINRA staff and, upon request, shall make available to FINRA staff any and all communications between the Independent Consultant and the Firm and documents reviewed by the Independent Consultant in connection with his or her engagement. Once retained, HBOLIS shall not terminate the relationship with the Independent Consultant without FINRA staff's written approval; HBOLIS shall not be in and shall not have an attorney-client relationship with the Independent

Consultant and shall not seek to invoke the attorney-client privilege or other doctrine or privilege to prevent the Independent Consultant from transmitting any information, reports or documents to FINRA.

- d. At the conclusion of the review, which shall be no more than 160 days after the date of this Decision, require the Independent Consultant to submit to the Firm and FINRA staff an Initial Report. The Written Report shall address, at a minimum: (i) the adequacy of the Firm's policies, systems, procedures and training relating to anti-money laundering, trading, sponsored access, direct market access, day trading, compliance with SEC Rule 15c3-5, and the use of foreign traders; (ii) a description of the review performed and the conclusions reached; and (iii) the Independent Consultant's recommendations for modifications and additions to the Firm's policies, systems, procedures and training; and
- e. Require the Independent Consultant to enter into a written agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any other employment, consultant, attorney-client, auditing or other professional relationship with HBOLIS, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Any firm with which the Independent Consultant is affiliated in performing his or her duties pursuant to this Offer of Settlement and Consent shall not, without prior written consent of the FINRA staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with HBOLIS or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.
- f. Within 90 days after delivery of the Written Report, HBOLIS shall adopt and implement the recommendations of the Independent Consultant or, if it determines that a recommendation is unduly burdensome or impractical, propose an alternative procedure to the Independent Consultant designed to achieve the same objective. The Firm shall submit such proposed alternatives in writing simultaneously to the Independent Consultant and the FINRA staff. Within 30 days of receipt of any proposed alternative procedure, the Independent Consultant shall: (i) reasonably evaluate the alternative procedure and determine whether it will achieve the same objective as the Independent Consultant's original recommendation; and (ii) provide the Firm with a written decision reflecting his or her determination. The Firm will abide by the Independent Consultant's ultimate determination with respect to any proposed alternative procedure and must adopt and implement all recommendations deemed appropriate by the Independent Consultant.
- g. Within 30 days after the issuance of the later of the Independent Consultant's Written Report or written determination regarding alternative procedures (if any), HBOLIS shall provide the FINRA staff with a written implementation report, certified by the President or CEO of HBOLIS, attesting to, containing documentation of, and setting forth the details of the Firm's implementation of the

Independent Consultant's recommendations.

- h. Within 60 days after the issuance of the later of the Independent Consultant's Written Report or written determination regarding alternative procedures (if any), the Firm's President or CEO shall certify that the Firm's supervisory systems and procedures are in compliance with federal securities laws and NYSE Arca Equity Rules.⁹

For the Hearing Board



Andrew H. Perkins
Deputy Chief Hearing Officer

⁹ FINRA staff may extend any of these procedural dates upon written request showing good cause for the requested extension.