

STATE OF NEW JERSEY  
BUREAU OF SECURITIES  
P.O. Box 47029  
Newark, New Jersey 07101  
(973) 504-3600

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IN THE MATTER OF: :  
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 :  
William Marshall Dratel :  
CRD # 843025 :  
and :  
The Dratel Group, Inc. :  
CRD # 8049 :  
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**SUMMARY REVOCATION ORDER**

Pursuant to the authority granted to the Chief of the New Jersey Bureau of Securities (“Bureau”) by the Uniform Securities Law, as amended, L. 1997, c. 276, N.J.S.A. 49:3-47 et seq., (“Law”), more particularly, N.J.S.A. 49:3-58, and after careful review and due consideration of: (1) Complaint, Disciplinary Proceeding No. 2008012925001, filed by Financial Industry Regulatory Authority (“FINRA”) on May 11, 2010 (the “FINRA Complaint”); (2) Extended Hearing Panel Decision, No. 2008012925001, FINRA Office of Hearing Officers (“Panel Decision”), dated September 28, 2012; (3) Decision, No. 2008012925001, Before the National Adjudicatory Council FINRA (“NAC Decision”), dated May 2, 2014 and (4) Opinion of the Commission (“SEC Decision”) U.S. Securities and Exchange Commission (“SEC”), dated March 17, 2016, the Bureau Chief has determined that the agent registration of William Marshall Dratel and the broker-dealer registration of The Dratel Group, Inc. shall be **REVOKED** for the reasons that follow:

**FINDINGS OF FACT**

1. The Dratel Group, Inc. (“DGI”) (CRD # 8049) has been registered with the Bureau as a broker-dealer since July 12, 1983, and maintains a primary business location at 53345

Rt. 25. Building 10, #3, Southold, New York 11971.

2. William Marshall Dratel (“Dratel”) (CRD # 843025), residing in Southold, New York, was registered with the Bureau as an agent of DGI on February 1, 1988. Dratel was the sole owner, President and CCO of DGI as well as its only registered agent.

### **FINRA Complaint**

3. On May 11, 2010, FINRA issued a complaint against DGI and Dratel (together the “Respondents”) alleging, among other things, that the Respondents executed a fraudulent trade allocation scheme known as “cherry-picking.” Cherry picking is a practice in which a securities professional allocates profitable trades to a preferred account (like their own) and less profitable or unprofitable trades to a non-preferred account (like a customer’s). FINRA also alleged that, in furtherance of the cherry-picking scheme, DGI and Dratel falsified and backdated order tickets.
4. After a hearing held December 13-22, 2011, a hearing panel found, with one dissent, Respondents liable for the alleged violations on September 28, 2012.
5. Respondents appealed the hearing panel’s decision to FINRA’s National Adjudicatory Council (“NAC”).
6. On May 2, 2014, the NAC affirmed the FINRA hearing panel’s findings and rejected the dissent. Specifically, the NAC affirmed the FINRA hearing panel’s decision to bar Dratel in all capacities and ordering him to disgorge \$489,000, plus pre-judgment interest, and to pay certain costs. However, The NAC increased the sanction against DGI from a day-trading bar to a full expulsion from membership.
7. On May 12, 2014, Respondents appealed the matter to the SEC.

### **SEC Decision**

8. On March 17, 2016, the SEC rendered a Decision, based upon an independent review of the record, which found that: (1) Dratel and DGI engaged in an unlawful cherry-picking scheme; (2) the cherry-picking scheme violated the anti-fraud provisions of the securities laws; and (3) Dratel and DGI violated the recordkeeping provisions of Exchange Act Section 17(a)(1) including the provisions of Exchange Act Rule 17a-3(a)(6) and (7).

### **The Unlawful Cherry-Picking Scheme**

9. Beginning in October 2005, Dratel placed trades in both his personal and customer accounts over which he had discretionary authority.
10. Dratel had discretionary authority over approximately seventy customer accounts. Of those seventy customer accounts, Dratel day and overnight traded in about forty accounts. Dratel was most active in twenty-five of those accounts (the “Discretionary Accounts”).
11. In the first five months of 2005, the proportion of profitable day and overnight trades in the Discretionary Accounts and in Dratel’s own account was 46% and 40%, respectively.
12. From October 2005 to December 2006, however, only 28% of the trades in the Discretionary Accounts were profitable, while 83% of the trades in Dratel’s account were profitable.
13. In 2006, Dratel day and overnight traded the same stock, on the same day, for both himself and in his Discretionary Accounts 27 times. Dratel received a greater profit or smaller loss than his customers in the Discretionary Accounts 21 out of 27 times, or 78%

of the time.

14. The SEC found that:
  - a. The increased proportion of profitable day and overnight trades in Dratel's own account in 2006 and corresponding decrease in the proportion of profitable trades in the Discretionary Accounts was a statistical departure from prior periods;
  - b. Dratel allocated trades after they had been executed, and falsified and backdated trade tickets to make it appear as if the allocations occurred when the trades were placed;
  - c. The evidence did not demonstrate any other explanation than cherry-picking for the increased proportion of profitable traded in Dratel's own accounts; and
  - d. Dratel and DGI's cherry-picking coincided with Dratel suffering personal financial losses.

**The Cherry-Picking Scheme Violated the Anti-Fraud Provisions of the Securities Laws**

15. The SEC sustained FINRA's findings that Dratel and DGI violated the Securities Exchange Act of 1934 "(Exchange Act") Section 10(b), Exchange Act Rule 10b-5 and NASD Rule 2120 by engaging in an unlawful cherry-picking scheme.
16. The SEC concluded that Dratel and DGI violated Exchange Act Section 10(b), Rule 10b-5, and NASD Rule 2120 because their cherry picking was a deceptive "device, scheme [and] artifice to defraud" and a deceptive act, practice, and course of business which operated as a "fraud or deceit" on their customers.
17. The SEC reasoned that a discretionary account automatically implies a general

fiduciary duty between a broker and a customer and that, in such circumstances, the broker has an affirmative duty of full and fair disclosure of material facts. Dratel breached his fiduciary duty by failing to disclose to his customers that he was cherry picking for his own personal benefit.

18. The SEC found that the series of cherry-picked trades constituted an over-arching scheme to defraud the customers of the Discretionary Accounts by stealing profits on selected trades.
19. The SEC found that Dratel and DGI acted with scienter. Dratel controlled all of the trading and allocation decisions and, therefore, knew that he was trading in the same securities as his customers and that he was favoring his own account over theirs. Further, Dratel demonstrated his intent to deceive by failing to disclose his activities to his customers and attempting to conceal his misconduct from FINRA.

#### **Dratel and DGI Violated the Recordkeeping Provisions**

20. In carrying out the cherry-picking scheme, Dratel and DGI or its staff timed stamped blank order tickets, failed to identify customers on order tickets until after execution, and threw order tickets away.
21. The SEC found that DGI violated Exchange Act Section 17(a)(1), Exchange Act Rules 17a-3(a)(6) and (7), and Dratel and DGI violated NASD Rule 3110. Dratel caused DGI's recordkeeping violations because Dratel handled all of DGI's trading, and completed or directed DGI staff to complete all of the firm's order tickets. By violating these recordkeeping provisions, Dratel and DGI also violated NASD Rule 2110.

#### **SEC Sanctions**

22. The SEC sustained FINRA's decision to bar Dratel in all capacities, expel DGI from

membership and order Dratel to pay \$489,000 of disgorgement, interest and certain costs.

### CONCLUSIONS OF LAW

**DRATEL IS THE SUBJECT OF AN ORDER BY THE SECURITIES AND EXCHANGE COMMISSION BARRING HIM FROM THE SECURITIES INDUSTRY AND DGI IS THE SUBJECT OF AN ORDER BY THE SECURITIES AND EXCHANGE COMMISSION EXPELLING IT FROM A NATIONAL SECURITIES ASSOCIATION**

N.J.S.A. 49:3-58(a)(1)

N.J.S.A. 49:3-58(2)(vi)

23. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.
24. Pursuant to N.J.S.A. 49:3-58(a):

[t]he bureau chief may by order deny, suspend, or revoke any registration if he finds: (1) that the order is in the public interest; and (2) that the applicant or registrant ...(vi)... is the subject of an order of the Securities and Exchange Commission, a self-regulatory organization, the Commodity Futures Trading Commission, an insurance regulator, or a federal or state banking regulator, suspending or expelling him from a national securities or commodities exchange or national securities or commodities association registered under the "Securities Exchange Act of 1934"...
25. Having been barred from the securities industry by the SEC, there is good cause, pursuant to N.J.S.A. 49:3-58(a)(2)(vii), to revoke Dratel's agent registration.
26. Having been expelled from FINRA membership, there is good cause, pursuant to N.J.S.A. 49:3-58(a)(2)(vii), to revoke DGI's broker-dealer registration
27. Based upon the foregoing, and pursuant to N.J.S.A. 49:3-58(a)(1), it is in the public interest to revoke DGI's registration as a broker-dealer and Dratel's registration as an agent.

**DRATEL AND DGI HAVE ENGAGED IN DISHONEST OR UNETHICAL PRACTICES  
IN THE SECURITIES BUSINESS**

N.J.S.A. 49:3-58(a)(1)

N.J.S.A. 49:3-58(a)(2)(vii)

N.J.A.C. 13:47A-6.3(a)

28. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.
29. Pursuant to N.J.S.A. 49:3-58(a):
- [t]he bureau chief may by order deny, suspend, or revoke any registration if he finds: (1) that the order is in the public interest; and (2) that the applicant or registrant . . . (2) that the applicant or registrant . . . (vii) has engaged in dishonest or unethical practices in the securities, commodities, banking, insurance or investment advisory business . . . .
30. Pursuant to N.J.A.C. 13:47A-6.3(a):
- “Dishonest or unethical practices” as used in N.J.S.A. 49:3-47 et seq., specifically in N.J.S.A. 49:3-58(a)(2)(vii), shall include:
- (15.) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance;
- (32.) Altering any document relevant to or on the books of any broker-dealer . . . with any entry or deletion which is materially false or misleading;
31. The conduct by Dratel and DGI described above and in the SEC Decision constitutes dishonest or unethical practices in the securities business by, among other things, effecting securities transactions by means of manipulative, deceptive, and fraudulent practices and altering the books and records of a broker-dealer.
32. Based upon the foregoing, and pursuant to N.J.S.A. 49:3-58(a)(1), it is in the public interest to revoke DGI’s registration as a broker-dealer and Dratel’s registration as an agent.

**CONCLUSION**

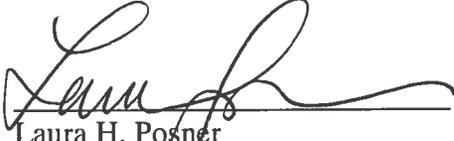
For the reasons stated above, it is on this 3<sup>rd</sup> day of May, 2016

**ORDERED** that the agent registration of William Marshall Dratel be **REVOKED**; and it is further

**ORDERED** that the broker-dealer registration of The Dratel Group, Inc. be **REVOKED**; and it is further

**ORDERED** that Respondents are denied all exemptions contained in N.J.S.A. 49:3-50 subsections (a) paragraph 9, 10, and 11 and subsection (b); and it is further

**ORDERED** that the exemptions to the registration requirements provided by N.J.S.A. 49:3-56(b), N.J.S.A. 49:3-56(c) and N.J.S.A. 49:3-56(g) are hereby denied as to the Respondents.

  
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Laura H. Posner  
Chief, Bureau of Securities

## **NOTICE OF RIGHT TO HEARING**

Pursuant to the Uniform Securities Law (1997), N.J.S.A. 49:3-47 et seq., specifically, N.J.S.A. 49:3-58(c), the Bureau Chief shall entertain on no less than three days notice, a written application to lift the summary revocation on written application of the applicant or registrant and in connection therewith may, but need not, hold a hearing and hear testimony, but shall provide to the applicant or registrant a written statement of the reasons for the summary revocation.

This matter will be set down for a hearing if a written request for such a hearing is filed with the Bureau within 15 days after the respondent receives this Order. A request for a hearing must be accompanied by a written response, which addresses specifically each of the allegations set forth in the Order. A general denial is unacceptable. At any hearing involving this matter, an individual respondent may appear on his/her own behalf or be represented by an attorney.

Orders issued pursuant to this subsection to suspend or revoke any registration shall be subject to an application to vacate upon 10 days' notice, and a preliminary hearing on the order to suspend or revoke any registration shall be held in any event within 20 days after it is requested, and the filing of a motion to vacate the order shall toll the time for filing an answer and written request for a hearing.

If no hearing is requested, the Order shall be entered as a Final Order and will remain in effect until modified or vacated. If a hearing is held, the Bureau Chief shall affirm, vacate or modify the order in accord with the findings made at the hearing.

**NOTICE OF OTHER ENFORCEMENT REMEDIES**

You are advised that the Uniform Securities Law provides several enforcement remedies, which are available to be exercised by the Bureau Chief, either alone or in combination. These remedies include, in addition to this action revoking your registration, the right to seek and obtain injunctive and ancillary relief in a civil enforcement action, N.J.S.A. 49:3-69, and the right to seek and obtain civil penalties in an administrative or civil action, N.J.S.A. 49:3-70.1.

You are further advised that the entry of the relief requested does not preclude the Bureau Chief from seeking and obtaining other enforcement remedies against you in connection with the claims made against you in this action.