Lessons Learned and Developments in AML (AML Track)
Monday, May 21
11:15 a.m. – 12:15 p.m.

Does your AML program meet evolving expectations and address emerging money-laundering risks? Join FINRA staff and industry experts as they review legal cases and enforcement actions impacting AML programs. Panelists cover critical regulatory concerns, potential vulnerabilities, and how you can address any pitfalls in your AML program.

Moderator: Laura Leigh Blackston
Senior Regional Counsel
FINRA Enforcement

Panelists: Alma Angotti
Managing Director and Co-Head, Global Investigations and Compliance
Navigant

Sarah Green
Chief Financial Crimes Officer
Vanguard

Paul Tyrrell
Partner
Sidley Austin, LLP
Lessons Learned and Developments in AML (AML Track) Panelist Bios:

Moderator:

Laura Leigh Blackston is Senior Regional Counsel with FINRA’s Enforcement Department. Ms. Blackston joined FINRA as an attorney in 2002. Prior to joining FINRA, she was an associate and partner with the General Litigation group of the law firm Jones Walker. As Senior Regional Counsel, Ms. Blackston has handled key enforcement actions regarding anti-money laundering and has co-taught Anti-Money Laundering Regulation at FINRA’s Institute at Wharton. Ms. Blackston graduated from the University of Mississippi in 1988 with honors and received her J.D. Degree from Washington and Lee University with honors in 1992. She is also a member of FINRA’s Anti-Money Laundering Regulatory Expert Group and is Certified Anti-Money Laundering Specialist (CAMS).

Panelists:

Alma Angotti is Managing Director and Co-Head of the Global Investigations & Compliance practice. With more than 25 years of regulatory practice, Ms. Angotti has held senior enforcement positions at the SEC, Treasury’s Financial Crimes Enforcement Network (FinCEN) and FINRA (Financial Industry Regulatory Authority). In these positions, she was responsible for conducting investigations involving securities fraud, insider trading, financial fraud, anti-money laundering (“AML”) and counter terrorist financing, market manipulation, investor and market protection, and other regulatory violations. At FinCEN and FINRA, she designed and led the AML enforcement programs. She regularly worked with criminal prosecutors in a variety of jurisdictions and the U.S. Department of Justice to investigate and bring actions jointly. Ms. Angotti has counselled her clients, large global financial institutions, multinational companies, smaller financial institutions, broker-dealers, money services business and other types of Fintech companies, in a variety of projects, including gap analyses, compliance program reviews, risk assessments, remediation efforts, investigations and transaction reviews. Recently, she held interim senior compliance leadership positions at several global financial institutions providing day-to-day management of their compliance programs and assisting them with implementing enhancements to comply with a regulatory or criminal enforcement action. She has trained and advised the financial services industry as well as other regulators and government officials worldwide on AML, sanctions, terrorist financing and other regulatory compliance issues. Her professional associations include; District of Columbia Bar Association, American Bar Association, American Bankers Association, and Securities Industry and Financial Markets Association (SIFMA). Ms. Angotti has earned a Bachelor of Arts, Economics and Political Science from West Virginia University and a Juris Doctor from the University of Virginia School of Law.

Sarah D. Green is Chief Financial Crimes Officer for Vanguard. Prior to Vanguard, she was Senior Director of anti-money laundering (AML) Compliance in the Member Regulation Department at FINRA. Ms. Green led FINRA’s AML program, including its dedicated AML exam unit. She consulted with both examination and enforcement staff on AML and other legal and policy issues, and trains staff organization-wide on AML and the handling of suspicious activity reports (SARs). She was responsible for FINRA AML policy issues and guidance and training of financial industry professionals. Prior to joining FINRA, Ms. Green was the Bank Secrecy Act Specialist in the Division of Enforcement's Office of Market Intelligence (OMI) at the U. S. Securities and Exchange Commission (SEC). In this role, she oversaw the Commission’s review and use of SARs, consulted with Enforcement staff on AML and SAR handling issues, and facilitated information sharing between Enforcement and SEC’s Office of Compliance Inspections and Examinations (OCIE). Prior to joining OMI, Ms. Green was a Branch Chief in OCIE, managing the Commission’s AML examination program for broker-dealers, including developing examination modules and coordinating with self-regulatory organization staff on all aspects of AML examination and enforcement. Ms. Green represented FINRA on the Bank Secrecy Act Advisory Group, which advises the Financial Crimes Enforcement Network and the Department of Treasury on AML issues. She is a frequent speaker on AML, and regularly provides technical assistance to domestic and international audiences. Prior to joining the SEC, Ms. Green was an attorney at Gardner Carton & Douglas LLP (n/k/a Drinker Biddle & Reath LLP). Ms. Green received her J.D. from the William and Mary School of Law and her B.A. from Hamilton College.

Paul M. Tyrrell, Partner of Sidley Austin, LLP, focuses his practice on securities and commodities compliance and enforcement matters affecting financial institutions, with an emphasis on sales practice
and supervisory rules applicable to broker-dealers and their associated persons. He also advises clients on their compliance with the USA PATRIOT Act, Bank Secrecy Act and related anti-money laundering requirements and has been involved in leading regulatory AML disciplinary matters over the years. Mr. Tyrrell's extensive regulatory and litigation experience informs his comprehensive approach to challenges that clients encounter throughout their various lines of business. Mr. Tyrrell was a senior special regional counsel at FINRA's (formerly NASD) Boston District Office. He managed investigations and filed disciplinary matters arising out of broker-dealer examinations. As a senior trial attorney with the CFTC in New York, Mr. Tyrrell managed enforcement matters. He received his JD from Western New England College School of Law and his BA from the University of Florida.
Lessons Learned and Developments in AML (AML Track)
I. Panelists

Moderator

• Laura Leigh Blackston, Senior Regional Counsel, FINRA Enforcement

Panelists

• Alma Angotti, Managing Director and Co-Head, Global Investigations and Compliance, Navigant
• Sarah Green, Chief Financial Crimes Officer, Vanguard
• Paul Tyrrell, Partner, Sidley Austin, LLP
To Access Polling

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- Choose the Lessons Learned and Developments in AML (AML Track) session,
- Click on the polling icon:
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II. Recent Enforcement Actions

- Merrill Lynch
- Aegis Capital
- RSO – C.L. King and Associates
- Wells Fargo Advisors
III. DVP Accounts: Polling Question 1

1. Why should a broker-dealer conduct AML surveillance for RVP / DVP accounts?
   a. They don’t need to. Other FI’s have more info and are responsible.
   b. You don’t have to because they are low risk.
   c. They only need to “check the box” and look at the transactions occasionally.
   d. Because each BD has a responsibility to detect suspicious activity at, by or through BD.
III. DVP Accounts

Risks of DVP business through lens of recent Enforcement actions

- DVP accounts have the same risks as other accounts engaging in the same activity.
- Where the activity is low-priced securities, the risks include:
  - Shell companies as issuers.
  - Nominees or intermediaries as customers.
  - Pump and dump schemes.
III. DVP Accounts

• Where the activity is low-priced securities, the risks include:
  – Sale of restricted securities prior to expiration of holding period.
  – Self-serving statements from issuer, customer, or attorneys.

• Where the customer is an FFI (foreign financial institution), the risks include undisclosed underlying customers.
Brokerage Firms monitoring DVP accounts for suspicious activity

- Recognize that these accounts are not per se low risk.
- Ensure that the transactions receive at least the same level of suspicious activity monitoring as traditional accounts.
- Test systems to confirm that the transactions are being surveilled for suspicious activity.
III. DVP Accounts

Brokerage Firms monitoring DVP accounts for suspicious activity (cont.)

- Where suspicious activity is flagged, check to make sure that it is being reviewed and not cleared in batches.
- Educate staff that the BD has a responsibility to understand the client’s business and monitor whether the business conducted is consistent – cannot rely on the other broker-dealer who holds the account.
III. DVP Accounts

Importance in naming individuals in Aegis and C.L. King matters

- Failure to update procedures to include red flags associated with microcap activity (small firm template).
- Because customer stated that it would be depositing and liquidating billion of shares of penny stocks and activity was consistent, AMLCO believed not suspicious.
- Testimony that demonstrated complete lack of understanding of red flags of manipulative trading.
- Ignoring red flag inquiries from clearing firm.
III. DVP Accounts

- Firm’s filing of SAR on suspicious penny stock activity responsibilities
  - Firm has separate due diligence responsibilities pursuant to Section 5, particularly with respect to unregistered securities.
  - If customer is claiming an exemption from registration, Firm needs to conduct necessary due diligence to ensure the exemption is available.
  - In many of the recent matters, filing of a SAR would not have exonerated the Firm from Section 5 or supervision issues, the Firm should have considered rejecting the deposit or the liquidation.
Recent findings regarding flawed systems

- Failing to review transactions during transition in AML system.
- Failure of reports to reflect data from related accounts collectively.
- Falling behind in suspicious activity review and never catching up.
- Deposit and liquidation not tracked (only purchase and liquidation).
Recent findings regarding flawed systems

- Exclusion of entire groups of accounts from monitoring.
- Alerts closed as “unremarkable” or “in-line with expected activity”
- Missing Data for calculating risk ranking.
- Calibrating thresholds too high.
- Not using available scenarios.
IV. Good Governance – Understand, Test and Tune Surveillance

What can Firms do to avoid these types of data failures?

- Devote adequate resources to review of alerts
- Have a plan for compliance during system transitions
- Test!
- Employ unified system as opposed to patchwork system
- Work with system provider or developer to calibrate system
- Look for gaps in data collection
- Document reasons for non-use of available scenarios
IV. Good Governance – Understand, Test and Tune Surveillance

- Data Failure appropriate response
  - Define scope of the problem
  - Document corrective action
  - Retroactive review of data that was missed?
  - File any necessary SARs?
  - Notify regulators?
  - Other actions?
## V. Risks of Banking Services Associated with Brokerage Accounts: Polling Question 2

### 2. Should surveillance monitor for accounts with no securities transactions?

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<th>Option</th>
<th>Description</th>
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<tbody>
<tr>
<td>a.</td>
<td>No, if there are no securities transactions, there is no suspicious activity to report</td>
</tr>
<tr>
<td>b.</td>
<td>No, brokerage firms normally offer very limited non-securities services, these services are low-risk</td>
</tr>
<tr>
<td>c.</td>
<td>Yes, to determine if a service fee should be charged</td>
</tr>
<tr>
<td>d.</td>
<td>Yes, and the surveillance should include data on money movement</td>
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V. Risks of Banking Services Associated with Brokerage Accounts

- Risks for BDs associated with banking services
  - Same risks that exist for banks with non-cash money movement
  - Recent matters show risks for violation of corrupt practices act by laundering of bribery payments or kick-backs
  - Funds can be deposited and withdrawn through ATM card by unknown third party
  - Money movements are sometimes excluded from AML monitoring systems
V. Risks of Banking Services Associated with Brokerage Accounts

- Money movement not detected in recent cases
  - No securities transactions for ten-month period, but 115 wire transfers of $3.7 million, including transfers to and from foreign embassies, ambassadors and a foreign military official
  - Venezuelan currency conversion in violation of regulations by depositing funds into broker-dealer account for an import/export company in U.S. and transferring funds to Venezuelan resident in dollars
Money movement not detected in recent cases (cont.)

- One securities transaction in three years, but $171 million in money movement to third parties, many of whom were PEPs and/or located in jurisdictions of money laundering concern such as Cyprus, Russia, United Arab Emirates, Colombia, and Switzerland where stated purpose of accounts was generation of income.
V. Risks of Banking Services Associated with Brokerage Accounts

- Money movements monitoring procedures
  - Ensure that surveillance is capturing money movement activity
  - Are your procedures linking accounts appropriately? Do you check for common addresses, owners, beneficiaries, trading authority
  - Scrutiny given to accounts with little security activity
  - Understand reason for maintaining account at broker dealer rather than a bank
VI. Suspicious Monitoring Pitfalls: Polling Question 3

3. If your SAR filings spike, what should you do?
   a. Change surveillance to decrease number of positives and, thereby, reduce number of SAR filings.
   b. Determine cause of increase in SAR filings; if business risk has increased, address those risks.
   c. Analyze data and detection scenarios. Can you tune the rules to better identify risks?
   d. Just keep filing SARs.
VI. Suspicious Activity Monitoring Pitfalls

Failures of Wells Fargo case resulting in $3.5 million fine

- The firm failed to file or timely file 50 SARs, including 45 continuing suspicious activity SARs. The violation resulted in large part from the failure of a new senior manager in the compliance department to understand the firm’s obligations to file continuing activity SARs.

- He incorrectly told surveillance that:
  - Continuing activity SARs are not a regulatory requirement
  - They should stop filing continuing activity SARs
  - Filing a SAR required proof of actual underlying illegal activity

- The same manager told surveillance that it was filing too many SARs
VI. Suspicious Activity Monitoring Pitfalls

Failures of Wells Fargo case resulting in $3.5 million fine (cont.)

- Staff were instructed not to document any disagreements with management’s decisions not to file SARs
- Firm filed no continuing activity SARs where suspicious wire activity occurred, because surveillance thought the account was closed; group failed to confirm this; account did not close, and unexplained wire activity continued.
Risks associated with FFI accounts

- Could be supplying nominees – don’t know who beneficial owner is
- Could be complicit in tax evasion by U.S. customers
- Popular method for liquidating dubious penny stocks
- Issues with currency conversion (transactions in one currency go into suspense account for conversion to dollars and then journaled to appropriate account; transaction not picked up as foreign wire by surveillance)
- Less stringent AML regimes in home jurisdiction
VI. Suspicious Activity Monitoring Pitfalls

Lessons from Aegis Matter

- Take inquiries from your clearing firm seriously and document resulting investigation. Aegis repeatedly received AML alerts from its clearing firm detailing suspicious activity, but Aegis filed no SAR and never investigated why its surveillance system wasn’t picking up the activity.
Lessons from Aegis Matter (cont.)

- If you have FFI accounts, it is essential to understand their business and the risks associated; the underlying customers of Aegis’s FFI accounts were unknown to Aegis.

- With low-priced securities – do your procedures at least incorporate red flags in the small firm template? Are you monitoring for those? Aegis was doing significant low-priced securities business, but did not update its procedures.
VII. Questions?
Appendix

- Merrill Lynch[1]
- Aegis Capital[2]
- RSO – C.L. King and Associates[3]
- Wells Fargo Advisors[4]

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 82956 / March 28, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18412

In the Matter of
Aegis Capital Corporation,
Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 203(e) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(e) of the Investment Advisers Act of 1940 (“Advisers Act”) against Aegis Capital Corporation (“Aegis” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“Offer”) that the Commission has determined to accept. Respondent admits the facts set forth in paragraphs 1 to 79 in Section III below, acknowledges that its conduct violated the federal securities laws, admits the Commission’s jurisdiction over it and the subject matter of these proceedings, and consents to the entry of this order instituting administrative and cease-and-desist proceedings pursuant to Sections 15(b) and 21C of the Exchange Act and Section 203(e) of the Advisers Act, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.
III.

On the basis of this Order and Respondent’s Offer, the Commission finds that:

SUMMARY

From at least late 2012 through early 2014, Aegis, a registered broker-dealer, failed to file Suspicious Activity Reports (“SARs”) on hundreds of transactions when it knew, suspected, or had reason to suspect that the transactions involved the use of the broker-dealer to facilitate fraudulent activity or had no business or apparent lawful purpose. Many of the transactions involved red flags of potential market manipulation, including high trading volume in companies with little or no business activity during a time of simultaneous promotional activity. Aegis did not file SARs on these transactions even when it specifically identified AML red flags implicated by these transactions in its written supervisory procedures.

Although Aegis had written supervisory procedures concerning AML compliance, the firm’s internal trade review mechanisms to identify the AML red flags listed in its written supervisory procedures were ineffective. For example, the trading surveillance system used by Aegis was ineffective as it did not analyze low-priced securities transactions in Delivery Versus Payment/Receive Versus Payment accounts (“DVP/RVP”).

Aegis’ failure to file SARs went beyond its inadequate systems to surveil for suspicious activity. Throughout the relevant period, senior Aegis personnel became aware of transactions that exhibited numerous AML red flags through alerts from its clearing firm (hereinafter defined as “AML Alerts”). All of these AML Alerts were sent directly to Aegis’ AML Compliance Officers (“AML COs”) who were (i) per Aegis’ written supervisory procedures, responsible for filing SARs on the firm’s behalf and (ii) the primary point of contact for the clearing firms as it related to suspicious activity.

Although the AML Alerts raised many red flags – including many red flags listed in Aegis’ written supervisory procedures as examples of suspicious activities – Aegis did not file SARs regarding these transactions. In fact, Aegis did not create written analyses or compile other records indicating that it had considered filing SARs. Rather, Aegis closed some accounts due at least in part to suspicious activity while neglecting to file a SAR for that activity and did not investigate why its own surveillance systems failed to detect the suspicious activity.

[1] The findings herein are made pursuant to Respondent’s Offer and are not binding on any other person or entity in this or any other proceeding.
As a result of the foregoing, Aegis willfully\(^2\) violated Exchange Act Section 17(a) and Rule 17a-8 thereunder.

**RESPONDENT**

Aegis is a dually-registered investment adviser and broker-dealer with multiple branches and is headquartered in New York, NY. For its fiscal year 2014, Aegis had revenues of approximately $123 million and, for its fiscal year 2015, revenues of approximately $98 million. During those fiscal years, Aegis had revenues of approximately $250,000 and $270,000 from its low-priced securities business. Aegis’ business consists of investment banking, venture capital, and debt market services as well as full-service retail and institutional advisory and brokerage services. Aegis’ CEO is also the firm’s founder and 100% owner.

**FACTS**

A. *Aegis’ Low Priced Securities Business*

1. During the relevant period, Aegis had various brokerage customers who transacted in low-priced securities. Several of these customers did so through DVP/RVP accounts. In DVP/RVP accounts held at Aegis, the customer deposited their shares at another firm in a custodial account, and the sale transactions were effected through Aegis. During the relevant period, Aegis had relationships with various clearing firms that assisted in effecting low-priced securities transactions.

2. Aegis had customers at their branch offices who transacted in low-priced securities. Several of these customers were foreign financial institutions that effected transactions on behalf of their underlying customers, all of whom were unknown to Aegis.

B. *Aegis’ Anti-Money Laundering Compliance Program*

   i. **Written Supervisory Procedures Concerning SARs and Specific Red Flags Related to Market Manipulations**

3. During the relevant period, Aegis had specific written supervisory procedures concerning compliance with its AML responsibilities. Aegis’ written supervisory procedures expressly identified Aegis’ AML CO as the individual responsible for deciding whether Aegis needed to file a SAR. Moreover, Aegis’ written supervisory procedures stated that all Aegis employees were obligated to “promptly report to the [AML CO] any known or

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\(^2\) A willful violation of the securities laws means merely “that the person charged with the duty knows what he is doing.” Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949)).
suspected violations of anti-money laundering policies as well as other suspected violations or crimes.”

4. Pursuant to 31 C.F.R. § 1023.320 (the “SAR Rule”), Aegis was required to file SARs for transactions by, at or through the firm that involved or aggregated at least $5,000 if Aegis knew, suspected, or had reason to suspect that, among other things, the transactions involved funds derived from illegal activity, had no business or apparent lawful purpose, or involved using Aegis to facilitate criminal activity. Aegis explicitly cited the SAR Rule in its written supervisory procedures.

5. Aegis, in its written supervisory procedures, expressly identified certain trading in low-priced securities as suspicious activity that could warrant a SAR filing:

   Aegis will file [SARs] for transactions that may be indicative of money laundering activity. Suspicious activities include a wide range of questionable activities; examples include trading that constitutes a substantial portion of all trading for the day in a particular security . . . [and] heavy trading in low-priced securities.

   (emphasis added.)

6. Aegis, in its written supervisory procedures, also expressly identified specific AML red flags associated with low-priced securities transactions of which its employees should be aware. These specific AML red flags – many of which were also described as red flags in industry notices issued by FINRA (e.g., FINRA Notice to Members 09-05 and NASD Notice to Members 02-21) – included the following:

   i. There is a sudden spike in investor demand for, coupled with a rising price in, a thinly-traded or low-priced security;

   ii. The issuer has been through several recent name changes, business combinations or recapitalizations, or the company’s officers are also officers of numerous similar companies;

   iii. The issuer’s SEC filings are not current, are incomplete, or nonexistent;

   iv. The customer appears to be acting as an agent for an undisclosed principal, but declines or is reluctant, without legitimate commercial reasons, to provide information or is otherwise evasive regarding that person or entity;

   v. The customer’s account has wire transfers that have no apparent business purpose to or from a country identified as a money laundering risk or a bank secrecy haven; and

   vi. The customer, for no apparent reason or in conjunction with other “red flags,” engages in transactions involving certain types of securities, such as penny stocks . . . which although legitimate, have been used in connection with fraudulent schemes and money laundering activity.
Aegis’ Trade Review Mechanisms to Identify AML Red Flags Were Inadequate and Aegis Did Not Effectively Train its Employees Concerning Low-Priced Securities Transactions

While Aegis did have written supervisory procedures concerning AML compliance, Aegis’ internal trade review mechanisms to identify the AML red flags listed in its written supervisory procedures were ineffective. Aegis had two such trade review mechanisms that were ineffective: (i) daily reviews of transactions by its branch managers and (ii) a broader surveillance system provided by its clearing firm. Moreover, Aegis did not adequately train its employees concerning AML issues associated with low-priced securities transactions.

Per Aegis’ written supervisory procedures, Aegis’ branch managers were responsible for reviewing their branch customers’ trades to identify any suspicious activity. After identifying suspicious activity during their manual trade review, the branch managers were required to report it to Aegis’ AML CO so that the AML CO could consider whether Aegis should file a SAR.

Although several of Aegis’ customers engaged in suspicious sales of low-priced securities, Aegis branch managers did not report suspicious activity to the AML COs.

During the relevant period, Aegis used a trade review system provided by its then clearing firm to monitor its customers’ low-priced securities transactions for suspicious activity. This system monitored all of the Firm’s customers’ transactions and automatically “flagged” – i.e. turned a row in a trade-blotters display from green to either yellow or red – questionable transactions for later review by an Aegis compliance employee.

Initially, Aegis used the basic version of the trade review system to monitor its transactions, but this system did not analyze DVP/RVP transactions. Subsequently, in July 2013, Aegis upgraded to the enhanced version of the trade review system.

Unlike the basic version, the enhanced version allowed users like Aegis to enable the system to analyze DVP/RVP accounts. Despite the receipt of specific alerts of suspicious trading in DVP/RVP accounts described below, however, Aegis did not enable until April 2015 the enhanced version of the trade review system to analyze DVP/RVP accounts.

Accordingly – during the relevant period – Aegis’ surveillance technology did not analyze the transactions described in this order. Rather, these transactions were assigned a green flag and simply batch approved by the applicable Aegis personnel.

Each year, Aegis required all employees to complete a computerized training module that included training on AML issues, including SAR filing. None of these modules, however, included any discussion of the red flags associated with low-priced securities transactions. Accordingly, Aegis’ employees – including those employees responsible for reviewing trades – never received any training from Aegis that included examples of
the red flags associated with low-priced securities transactions that were outlined in the firm’s written supervisory procedures.

C. Aegis Failed to File SARs on Its Customers’ Low-Priced Securities Transactions

15. Aegis – throughout the relevant period – failed to file SARs on low-priced securities transactions and did not create written analyses or compile other records indicating that they considered filing SARs.

16. Aegis failed to file SARs despite the fact that numerous low-priced securities transactions effected through the firm exhibited several of the AML red flags that Aegis specifically identified in its written supervisory procedures.

17. In particular, Aegis failed to file SARs on transactions in which Aegis’ customers were (i) selling large quantities of low-priced securities that comprised a significant percentage of the issuers’ daily trading volume and outstanding float; (ii) trading shares of issuers who had changed names and business lines; (iii) selling substantial shares of low-priced securities during periods of spikes in price and volume of the issuers’ securities and during paid promotional campaigns; and/or (iv) trading in shares of issuers’ that had little or no market activity until the promotions began.

18. Aegis’ failure to file SARs on low-priced securities transactions went beyond its inadequate systems to surveil for suspicious activity and the red flags specifically identified in its written supervisory procedures. Indeed, as described in greater detail below, Aegis failed to file SARs on low-priced securities transactions even when it received alerts from its clearing firm about such suspicious transactions.

i. Aegis’ Clearing Firm Identified AML Red Flags in Aegis’ Low-Priced Securities Business and Described Them to Aegis in AML Alerts


21. The New Clearing Firm communicated these AML red flags by, among other things, sending AML Alerts directly to senior Aegis personnel, including the then-AML COs. These AML Alerts identified specific suspicious low-priced securities transactions occurring at Aegis.

22. Despite receiving these AML Alerts, Aegis did not file any SARs concerning the identified transactions. Nor did Aegis create any written analyses or compile other records indicating that it considered filing SARs. Moreover, Aegis did not take any steps to determine why its own surveillance systems were failing to detect these suspicious transactions.
D. **Illustrative Examples of Transactions in which Aegis Failed to File SARs**

i. **Customer A**

23. Between October 17 and December 27, 2012, an Aegis customer – Customer A – sold approximately 2.1 million shares of Issuer A, which traded on OTC Link (previously “Pink Sheets”) operated by OTC Markets Group Inc. (“OTC Link”). Customer A held a DVP/RVP account at Aegis and is a private Swiss bank that traded significant volumes of low-priced securities through an omnibus arrangement with Aegis on behalf of the Swiss bank’s underlying clients who were unknown to Aegis.

24. At the same time Customer A was selling shares of Issuer A, a stock promotion touting the company’s prospects was underway. Coinciding with the promotional campaign, Issuer A’s share price fluctuated from a low of $0.51 to a high of $0.93 on average daily volume of 558,792 shares. In the two months prior to October 17, 2012, no shares of Issuer A traded at all. Thus, Customer A’s trading in Issuer A occurred during a period of a sudden spike in price and volume – which were specific AML red flags identified in Aegis’ written supervisory procedures.

25. Prior to Customer A’s trading in Issuer A, Issuer A had undergone several name changes – again a specific AML red flag identified in Aegis’ written supervisory procedures. Moreover, contrary to the rosy picture of Issuer A painted by the above described promotional campaign, Issuer A’s Form 10-Q for the period ending September 30, 2012 reported that Issuer A had no revenues, a net loss of $143,345, and a “going concern” statement from its management.

26. Despite these red flags associated with the trading by Customer A, Aegis did not file a SAR.

27. From December 2012 to March 2013, Customer A again traded suspiciously in a low-priced security, this time in Issuer B – another security traded on OTC Link.

28. Indeed, during that period, Customer A sold 8.2 million shares of Issuer B for proceeds of approximately $2.4 million. The shares it sold accounted for more than 8.8% of Issuer B’s outstanding shares. This trading coincided with a promotional campaign during which Issuer B’s share price climbed from a low of approximately $0.40 to a high of approximately $0.96, before falling again to approximately $0.07, on average daily trading volume of approximately 1.5 million shares. The only trading in the six months prior to the beginning of the promotional campaign occurred on just one day and involved only 10,000 shares.

29. In addition to the suspicious trading noted above, there were other indicia that Issuer B likely was the subject of market manipulation. For example, Issuer B reported in 2013 that it was a world-class graphite company, yet two years earlier it had been a Malaysian publishing company that operated under a different name. Recent changes in an issuer’s name and business was one of the specific AML red flags identified in Aegis’ written supervisory procedures.
30. On April 4, 2013, the New Clearing Firm sent an AML Alert to Aegis’ then AML CO and other Aegis personnel concerning Customer A’s trading in Issuer B. In the April 4, 2013 AML Alert, the New Clearing Firm noted that Customer A had received over 9 million shares of Issuer B into its account between December 12, 2012 and March 4, 2013, and asked how and when Customer A acquired the shares and whether there was a registration statement in effect for them.

31. Prior to this April 4, 2013 AML Alert, the New Clearing Firm had expressed concerns to Aegis about its low-priced securities practices. In fact, in March 2013, the New Clearing Firm implemented specific restrictions on Aegis’ low-priced securities business. These restrictions included a requirement that, before Aegis customers could sell low-priced securities that had been physically deposited at the firm, either Aegis’ AML CO, the CEO, or the COO had to sign a red flag identifiers form indicating that the signatory had reviewed the proposed transactions for red flags commonly associated with market manipulation in low-priced securities.

32. The New Clearing Firm continued to communicate with the then AML CO and other Aegis personnel with additional questions concerning Customer A’s trading in Issuer B.

33. For example, on April 17, 2013, the New Clearing Firm emailed the then AML CO and other Aegis personnel citing three websites on which it found evidence of Issuer B promotions and made three requests: (i) describe the due diligence completed before executing Customer A’s transactions; (ii) describe how the relationship with Customer A was established; and (iii) identify Customer A’s underlying clients.

34. Despite the AML Alert and questions from the New Clearing Firm, Customer A continued to trade low-priced securities at Aegis. Accordingly, on May 20, 2013, the New Clearing Firm wrote yet again to the then AML CO about Customer A:

As you know AML is really tweaked on this [Customer A] account. Because the account is continuing to trade in multiple securities which have been subject to regulatory inquiries, we need a concrete plan to address this situation as soon as possible. In absence of receiving a mutually agreeable plan, AML going [sic] to be blocking transactions in the account beginning Tuesday prior to market opening.

35. The CEO requested extensions from the New Clearing Firm so that Customer A could continue to trade while Aegis attempted to transition Customer A’s accounts to another broker-dealer. Ultimately, Aegis closed Customer A’s accounts on September 13, 2013, at least in part because of concerns regarding the low-priced securities that were traded in them.

36. Despite these red flags associated with the trading by Customer A and Aegis’ closure of the account due to the presence of suspicious activity, Aegis did not file a SAR and did not create written analyses or compile other records indicating that it even considered
filing a SAR. The fact that Customer A’s account was a DVP/RVP account did not relieve Aegis of its SAR filing obligations with respect to that account.

ii. Customer B

37. Customer B is a British Virgin Islands company based in China that offers consulting and advisory services.

38. In an approximately one month period beginning in April 2013, Customer B sold approximately 200,000 shares of Issuer C through Aegis for proceeds of $2.3 million, or over $10 per share. Issuer C was listed on NASDAQ.

39. Just six months prior to these sales, Issuer C’s share price was $0.45 per share. And, a month prior to these sales, Issuer C’s share price was approximately $5 per share.

40. On April 25, 2013, Customer B sent a request to wire approximately $600,000 of the $2.3 million in proceeds to its bank account in Hong Kong.

41. Regarding this request, an Aegis compliance employee wrote to the then AML CO, Aegis CEO, and COO to explain that the funds included in the transfer request were proceeds from Customer B’s trading and wrote “[Issuer C’s] share price has risen quite a bit in the past 6 months. I’d prefer a member of senior management authorize and approve this wire.”

42. After the COO asked whether Issuer C’s shares were restricted when they arrived at Aegis, the compliance employee replied to the then AML CO, the Aegis CEO, and COO “[c]lean shares but the sudden spike in price is a concern.”

43. Notwithstanding the red flags the compliance employee raised, Aegis did not file a SAR concerning either the suspicious trading or the substantial proceeds wired offshore and did not create written analyses or compile other records indicating that it considered filing SARs.

44. After the initial wire was sent to Customer B’s Hong Kong account in late April 2013, Customer B made requests to send two more wires totaling the remainder of the proceeds from the trading. Then, On July 1, 2013, the New Clearing Firm sent Aegis an AML Alert regarding Customer B’s wire transfers described above. The New Clearing Firm asked Aegis to (i) confirm the identity of the account’s beneficial owner; (ii) describe the source of the beneficial owner’s funds; and (iii) describe the purpose of the wires sent to Customer B’s Hong Kong bank account.

45. Notwithstanding the receipt of the AML Alert from the New Clearing Firm and a subsequent regulatory request from FINRA that it received in late October 2013 concerning trading in Issuer C at the firm, Aegis did not file a SAR concerning the substantial proceeds wired offshore and did not create written analyses or compile other records indicating that it even considered filing a SAR.
iii. Customer C

46. In early November 2013, the New Clearing Firm sent another AML Alert, this time involving a different customer, Customer C. Customer C had a DVP/RVP account at Aegis.

47. On November 1, 2013, the New Clearing Firm sent Aegis an AML Alert outlining Customer C’s suspicious trading in several low-priced securities, including Issuers D and E and noting that in approximately six months Customer C had sold approximately 1 billion shares of low-priced securities through Aegis (emphasis added). Both Issuers D and E were traded on OTC Link.

48. In its AML Alert, the New Clearing Firm noted that Customer C, between September 17 and October 31, 2013, had sold 31% of Issuer D’s outstanding shares and that the average daily trading volume had increased by approximately five fold during Customer C’s trading while the share price had dropped by approximately 90%.

49. Other evidence also indicates Issuer D may have been the subject of market manipulation. In particular, Issuer D had experienced a rapid increase in the company’s stock price and volume that coincided with a promotional campaign that was inconsistent with the company’s financial performance as reflected in its SEC filings.

50. With respect to Issuer E, the New Clearing Firm noted in its AML Alert that Issuer E had reported no revenues and that Customer C had sold over 60% of the company’s outstanding shares in two and a half months while the share price had dropped by approximately 50%.

51. In addition to suspicious trading in Issuers D and E, the New Clearing Firm identified in the AML Alert similarly suspicious trading by Customer C in other low-priced securities including that Customer C – in one particular low-priced security – had sold more shares in three months than the issuer had outstanding.

52. In the AML Alert, the New Clearing Firm requested a description of: (i) the due diligence performed on the customer; (ii) the due diligence performed on the securities Customer C liquidated in the account; and (iii) how Aegis was comfortable with the activity in the account.

53. On November 5, 2013, the then AML CO informed the New Clearing Firm that Aegis had reviewed Customer C’s account activity and its account opening paperwork and had decided to close the account, which it did, at least in part, because of the AML concerns outlined in the AML Alert.

54. Despite these red flags associated with the trading by Customer C and Aegis’ closing the account due to the presence of suspicious activity, Aegis did not file a SAR. Moreover, Aegis did not create written analyses or compile other records indicating that it even considered filing a SAR. The fact that Customer C’s account was a DVP/RVP account did not relieve Aegis of its SAR filing obligations with respect to that account.
iv. **Customer D**

55. Another Aegis customer – Customer D – engaged in suspicious low-priced securities transactions for which Aegis did not file a SAR. Customer D was a foreign financial institution with a DVP/RVP account at the firm and traded on behalf of underlying customers who were unknown to Aegis.

56. Over an approximately six-month period beginning in late May 2013, Customer D sold approximately 457,000 shares of Issuer F for proceeds of approximately $2.8 million. Issuer F traded on OTC Link. Just prior to the trading – and coinciding with a promotional campaign – Issuer F’s share price climbed from $3.90 to $9.39 on substantially increased volume.

57. Customer D was not the only Aegis customer who traded suspiciously in Issuer F. Starting approximately two months before Customer D’s trading, Customers A and E sold a substantial amount of Issuer F shares for substantial proceeds. Customer E was yet another foreign financial institution with a DVP/RVP account at the firm and traded on behalf of underlying customers who were unknown to Aegis; it was incorporated in New Zealand and operated from Switzerland.

58. In particular, Customer A sold approximately 638,000 shares of Issuer F for proceeds of approximately $3.7 million while Customer E sold approximately 494,000 shares of Issuer F for proceeds of approximately $3.3 million. Thus, together Customers A and E sold over one million shares of Issuer F for proceeds of approximately $7 million.

59. Despite these red flags associated with the trading by Customer D, Aegis did not file a SAR regarding the above trading.

60. In early June 2013 – just a few weeks after Customer D began its trading in Issuer F – Customer D traded in another low-priced security transaction, this time Issuer G. Issuer G also traded on OTC Link.

61. Between June 11 and 17, 2013 and during a paid promotional campaign for Issuer G, Customer D sold approximately 340,000 shares of Issuer G for proceeds of approximately $248,000.

62. Moreover, another Aegis customer, Customer F, traded suspiciously in Issuer G at the same time as Customer D did. In particular, Customer F sold approximately 760,000 shares of Issuer G through Aegis during the promotion for proceeds of approximately $840,000. Customer F was yet another foreign financial institution with a DVP/RVP account at the firm and traded on behalf of underlying customers who were unknown to Aegis.

63. On December 2, 2013, the New Clearing Firm sent an AML Alert to Aegis regarding Customer D’s trading in Issuer G, and wrote that the trading “exhibited characteristics commonly associated with a pump-and-dump scheme; including paid stock promotion, a
significant increase in both price and trading volume, followed by a precipitous drop in price and volume.”

64. In the AML Alert, the New Clearing Firm also noted that Issuer G had changed both its name and business line (to a medical device company from an auto parts manufacturer), had no revenue and minimal trading volume until the stock promotion began, and that Customer D’s trading was similar to the suspicious trading by two other Aegis customers that had prompted the New Clearing Firm to request that those accounts be closed earlier in the year.

65. Aegis ultimately closed Customer D’s accounts, at least in part, because of the AML concerns associated with it.

66. Despite these red flags associated with the trading by Customer D and at least one other Aegis customer in Issuer G, as well as the closing of Customer D’s account due at least in part to concerns regarding low-priced securities transactions, Aegis never filed a SAR. Moreover, Aegis did not create any written analyses or compile other documents indicating that it considered filing a SAR. The fact that the above described accounts were DVP/RVP accounts did not relieve Aegis of its SAR filing obligations with respect to those accounts.

E. November 18, 2013 DVP/RVP Update to Written Supervisory Procedures

67. On November 18, 2013—in response to the deficiencies identified in an examination by the SEC’s Office of Compliance Inspections and Examinations—Aegis updated its written supervisory procedures to require that low-priced securities transactions in DVP/RVP accounts be subjected to the same due diligence as cash accounts when customers deposited physical securities.

68. In particular, Aegis’ updated written supervisory procedures required Aegis’ DVP/RVP customers to submit Deposited Securities Request Questionnaires (“DSRQs”) for any low-priced securities it wished to trade and required Aegis to complete due diligence to identify red flags associated with the issuers of low-priced securities.

69. DSRQs include, among other things, information about how the customer obtained a particular security, whether the customer is an affiliate of the issuer, and how many shares of the security the customer owns. DSRQs had to be filled out by the customer and approved by the registered representative and a member of Aegis’ management before any trading was to occur.

F. Customer G

70. Notwithstanding this update to Aegis’ written supervisory procedures, however, at least one of Aegis’ DVP/RVP customers (Customer G) traded suspiciously in low-priced securities and did so before the required DSRQ process had been completed. Customer G, a New York corporation, is a microcap hedge fund that held a DVP/RVP account at Aegis.

72. On February 19, 2014, the New Clearing Firm sent an AML Alert to Aegis explaining that it was going to block Customer G’s account at market close because, among other reasons, Customer G had already sold 200 million shares of Issuer H that day and 2.7 billion shares of low-priced securities since it opened its account.

73. In addition to the suspicious trading, there were other indicia that Issuer H may have been the subject of market manipulation. For example, Issuer H experienced a large increase in price and volume that coincided with a promotional campaign. Moreover, the company’s name had changed several times before becoming Issuer H.

74. The AML Alert was not limited to the suspicious Issuer H trades; it also described suspicious trading by Customer G in over 1.6 billion shares of the securities of ten additional microcap issuers.

75. The New Clearing Firm subsequently asked for an explanation of: (i) the due diligence Aegis performed on the customer; (ii) the due diligence Aegis performed on the securities liquidated in the account; and (iii) how Aegis was comfortable with the activity.

76. Even after Aegis received the AML Alert concerning Customer G’s trading, Customer G continued to trade in Issuer H. Indeed, on February 19 and 20, 2014, Customer G sold an additional 120 million shares of Issuer H.

77. On February 25, 2014, before Aegis had responded to the New Clearing Firm, it received a regulatory request from FINRA regarding trading in Issuer H at the firm. On March 14, 2014, Aegis received a second regulatory request from FINRA.

78. At the time of Customer G’s trading in February 2014, Aegis had already implemented its new DSRQ policy for trading in DVP/RVP accounts. The DSRQ packet for Customer G’s trading in Issuer H, however, was not signed by any of the required Aegis personnel and, thus, Customer G should never have been allowed to liquidate any of its Issuer H shares through Aegis.

79. Despite the significant trading by Customer G in Issuer H and the other red flags associated with the transactions, Aegis never filed a SAR. Moreover, Aegis did not create written analyses or compile other records indicating the consideration of filing a SAR. The fact that Customer G’s account was a DVP/RVP account did not relieve Aegis of its SAR filing obligations with respect to that account.

VIOLATION

80. The Bank Secrecy Act (“BSA”), and implementing regulations promulgated by the Financial Crimes Enforcement Network (“FinCEN”), require that broker-dealers file SARs with FinCEN to report a transaction (or a pattern of transactions of which the transaction is a part) conducted or attempted by, at, or through the broker-dealer
involving or aggregating to at least $5,000 that the broker dealer knows, suspects, or has reason to suspect: (1) involves funds derived from illegal activity or is conducted to disguise funds derived from illegal activities; (2) is designed to evade any requirement of the BSA; (3) has no business or apparent lawful purpose and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts; or (4) involves use of the broker-dealer to facilitate criminal activity. 31 C.F.R. § 1023.320(a)(2).

81. Exchange Act Rule 17a-8 requires broker-dealers to comply with the reporting, record-keeping, and record retention requirements of the BSA. The failure to file a SAR as required by the SAR Rule is a violation of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

82. By engaging in the conduct described above, Aegis willfully violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

**REMEDIAL EFFORTS**

83. In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent. Aegis retained a third-party AML compliance consultant (“Compliance Consultant”) with whom it had never worked before to conduct a review of Aegis’ AML program relating to transactions and/or business in low-priced securities and Aegis’ handling of DVP/RVP accounts, including Aegis’ relevant policies and procedures, for compliance with the Bank Secrecy Act. For the purpose of this review, “low-priced security” and “low-priced securities” meant any equity security that trades at or below $5 per share.

84. The Compliance Consultant submitted to the Commission’s staff a written report (the “Report”) describing the review it performed, the names of the individuals who performed the review, the conclusions reached, and the Compliance Consultant’s recommendations for changes in or improvements to Aegis’ policies and procedures.

**UNDERTAKINGS**

Aegis has undertaken to:

85. **Compliance Consultant.** With respect to its retention of the Compliance Consultant, Aegis has agreed to the following undertakings:

a. Aegis will continue to retain the services of the Compliance Consultant to complete the tasks, as outlined in these undertakings, associated with the review and Report described in paragraphs 83-84. The Compliance Consultant’s compensation and expenses shall be borne exclusively by Aegis.

b. Aegis shall adopt all recommendations contained in the Report within sixty (60) days the issuance of this Order; provided, however, that within thirty (30) days after the date of the Order’s issuance, Aegis shall in writing advise the Compliance Consultant and the Commission staff of any recommendations that
Aegis considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that Aegis considers unduly burdensome, impractical, or inappropriate, Aegis need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure, or system designed to achieve the same objective or purpose.

c. As to any recommendation with respect to Aegis’ policies and procedures on which Aegis and the Compliance Consultant do not agree, Aegis and the Compliance Consultant shall attempt in good faith to reach an agreement within sixty (60) days after the date this Order is issued. Within fifteen (15) days after the conclusion of the discussion and evaluation by Aegis and the Compliance Consultant, Aegis shall require that the Compliance Consultant inform Aegis and the Commission staff in writing of the Compliance Consultant’s final determination concerning any recommendation that Aegis considers to be unduly burdensome, impractical, or inappropriate. Aegis shall abide by the determinations of the Compliance Consultant and, within thirty (30) days after final agreement between Aegis and the Compliance Consultant or final determination of the Compliance Consultant, whichever occurs first, Aegis shall adopt and implement all of the recommendations that the Compliance Consultant deems appropriate.

d. Within thirty (30) days of Aegis’ adoption of all of the recommendations in the Report that the Compliance Consultant deems appropriate, as determined pursuant to the procedures set forth herein, Aegis shall certify in writing to the Compliance Consultant and the Commission staff that Aegis has adopted and implemented all of the Compliance Consultant’s recommendations in the Report. Thereafter, beginning one hundred eighty days (180) after the entry of this Order, the Compliance Consultant shall conduct such review as it deems appropriate to verify that Aegis has appropriately implemented the recommendations in the Report. Prior to two hundred and ten (210) days after the entry of this Order, the Compliance Consultant shall confirm to the Commission staff that Aegis has adopted and implemented all of the Compliance Consultant’s recommendations in the Report. Unless otherwise directed by the Commission staff, all Reports, certifications, and other documents required to be provided to the Commission staff shall be sent to Antonia Chion, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549, or such other address as the Commission staff may provide.

e. On the anniversary of the date of the submission of the Report described in paragraph 84, the Compliance Consultant shall conduct a review to determine whether: (1) Aegis is implementing all of the Compliance Consultant’s recommendations adopted pursuant to the foregoing provisions and this provision; and, (2) there have been any changes in the law or Aegis’ business operations such that the recommendations should be amended and updated to take into account any such changed circumstance. Within forty-five (45) days after the anniversary date of the submission of the Report, the Compliance Consultant shall submit a written and dated report of its findings to Aegis and the Commission.
staff (the “Anniversary Report”). Aegis shall require that the Anniversary Report include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, and any further recommendations concerning changes in or improvements to Aegis’ policies and procedures directed at effecting implementation of the recommendations in the initial Report or the Anniversary Report or directed at addressing any changes in the law or business. Any recommendations made in the Anniversary Report shall be subject to the same processes set forth in subparagraphs 85(b) through (d).

f. Aegis shall cooperate fully with the Compliance Consultant and shall provide the Compliance Consultant with access to such of its files, books, records, and personnel as are reasonably requested by the Compliance Consultant for review.

g. To ensure the independence of the Compliance Consultant for the remainder of the engagement, Aegis: (1) shall not have the authority to terminate the Compliance Consultant or substitute another compliance consultant for the Compliance Consultant without the prior written approval of the Commission staff; and (2) shall compensate the Compliance Consultant and persons engaged to assist the Compliance Consultant for services rendered pursuant to this Order at their reasonable and customary rates.

h. Aegis shall maintain its agreement with the Compliance Consultant, which provides that for the period of engagement and for a period of two (2) years from completion of the engagement, the Compliance Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Aegis, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Aegis shall similarly maintain its agreement with the Compliance Consultant requiring that any firm with which the Compliance Consultant is affiliated or of which the Compliance Consultant is a member, and any person engaged to assist the Compliance Consultant in the performance of the Compliance Consultant’s duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Aegis, 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 (2) years after the engagements.

i. Recordkeeping. Aegis shall preserve for a period of not less than six years from the end of the fiscal year last used, the first two years in an easily accessible place, any record of its compliance with the undertakings set forth herein.

86. Deadlines. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.
87. **Certifications of Compliance by Respondents.** Aegis shall certify, in writing, compliance with its undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Aegis agrees to provide such evidence. The certification and supporting material shall be submitted to Antonia Chion, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549, or such other address as the staff of the Commission may provide, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

**IV.**

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Aegis’ Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act and Section 203(e) of the Advisers Act it is hereby ORDERED that Aegis:

A. cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder;

B. is censured;

C. shall pay a civil monetary penalty in the amount of $750,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment shall be made in the following installments: $75,000 within ten (10) days after the institution of this Order, with the remaining civil penalties, and interest accrued pursuant to 31 U.S.C. § 3717, due in nine (9) monthly installments of $75,000 beginning on the first day of the month following the institution of this Order and continuing on the first day of each month thereafter for eight (8) months.

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of the civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application.

Payment must be made in one of the following ways:

1. Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

2. Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or
3. Respondent may pay by certified check, bank cashier’s check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

   Enterprise Services Center
   Accounts Receivable Branch
   HQ Bldg., Room 181, AMZ-341
   6500 South MacArthur Boulevard
   Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Aegis as Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Antonia Chion, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent’s payment of a civil penalty in this action (“Penalty Offset”). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission’s counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a “Related Investor Action” means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

D. shall comply with the undertakings enumerated in Section III above.

   By the Commission.

   Brent J. Fields
   Secretary
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 82382 / December 21, 2017

INVESTMENT ADVISERS ACT OF 1940
Release No. 4831 / December 21, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18318

In the Matter of

Merrill Lynch, Pierce, Fenner & Smith Incorporated

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 203(e) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b), and 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(e) of the Investment Advisers Act of 1940 ("Advisers Act") against Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, and Section 203(e) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.
III.

On the basis of this Order and Respondent’s Offer, the Commission finds that:

A. SUMMARY

A registered broker-dealer is required to file a suspicious activity report ("SAR") on a transaction (or a pattern of transactions of which the transaction is a part) conducted or attempted by, at, or through the broker-dealer involving or aggregating to at least $5,000 that the broker-dealer knows, suspects, or has reason to suspect: (1) involves funds derived from illegal activity or is conducted to disguise funds derived from illegal activities; (2) is designed to evade any requirement of the BSA; (3) has no business or apparent lawful purpose and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts; or (4) involves use of the broker-dealer to facilitate criminal activity. This matter concerns Merrill Lynch’s violations of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder, in connection with its failure to file SARs in compliance with these reporting requirements. Merrill Lynch, in addition to offering its customers the ability to buy and sell securities, offered its customers other services in brokerage accounts, such as ATM cash deposits, wires, journal-entry transfers, check writing, ATM withdrawals, cash advances, and ACH transfers. By offering these additional services, Merrill Lynch was susceptible to risks of money laundering and other illicit financial activity associated with these services.

From at least 2011 to 2015 (the “relevant period”), Merrill Lynch had anti-money laundering (“AML”) policies and procedures that were not reasonably designed to account for the additional risk associated with the additional services offered by certain of its retail brokerage accounts. Because of the deficiencies in its AML policies and procedures detailed below, Merrill Lynch failed to adequately monitor for, detect, and report certain suspicious activity related to transactions or patterns of transactions in its customers’ accounts. By failing to file SARs as required, Merrill Lynch violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

B. RESPONDENT

1. Merrill Lynch, headquartered in New York, New York, is dually registered with the Commission as a broker-dealer and an investment adviser. It is a subsidiary of Bank of America Corporation (“BofA”).

C. MERRILL LYNCH FAILED TO IMPLEMENT REASONABLE AML POLICIES AND PROCEDURES

2. During the relevant period, Merrill Lynch through its retail brokerage accounts offered traditional investment services such as buying and selling securities. In certain types of retail brokerage accounts, Merrill Lynch also offered other products and services such as wire transfers, checking, ATM currency deposits and withdrawals, and ACH transfers. During the relevant period, over $2 trillion in transactions not including the purchase or sale of securities moved through Merrill Lynch brokerage accounts via cash deposits, wires, journal-entry transfers, check writing, ATM withdrawals, cash advances, and ACH transfers. These transactions presented
money laundering risks, including, but not limited to, structuring currency deposits and withdrawals to avoid cash transaction reporting obligations and other risks associated with cash-intensive activities, such as laundering the proceeds of illegal activity.

3. During the relevant period, Merrill Lynch’s AML monitoring, investigations, and reporting were done as an enterprise-wide function at BofA. As a result, AML monitoring of a customer’s Merrill Lynch brokerage account could have led to an investigation of that customer’s transactions across the enterprise (including at BofA’s consumer bank); similarly, AML monitoring of a customer’s bank account could have led to an investigation of related brokerage accounts. Because this Order relates only to monitoring, investigating, and reporting of retail brokerage-account activity, this Order refers to Merrill Lynch.

4. As part of its AML program during the relevant period, Merrill Lynch attached a document entitled “Potential Money Laundering Indicators” to its AML policies and procedures to inform Merrill Lynch employees of indicators of possible money laundering. The “Potential Money Laundering Indicators” document stated: “The following potential money laundering indicators, when encountered, may warrant additional scrutiny. The mere presence of one of these indicators is not by itself evidence of criminal activity. Closer scrutiny should help to determine whether the activity is suspicious.” The Potential Money Laundering Indicators document identified potential indicators for money laundering that included, but were not limited to:

- Unusual transfers of funds occurring among related accounts or among accounts that involved the same or related principals;
- Many funds transfers sent in large, round dollar amounts;
- Funds transfer activity that was unexplained, repetitive, or showed unusual patterns;
- A customer engaging in excessive journal-entry transfers between unrelated accounts without any apparent business purpose;
- Wires originating from jurisdictions which had been flagged in relation to black market peso exchange activities;
- A large number of incoming or outgoing funds transfers taking place through a business account, where there appeared to be no logical business or other economic purpose to the transfers, particularly when this activity involved high-risk locations;
- A person customarily using the automated teller machine to make several bank deposits below a specified threshold; and
- The customer engaging in transactions involving cash or cash equivalents or other monetary instruments that appeared to be structured.

5. During the relevant period, Merrill Lynch primarily used a system called “Mantas” for the automated monitoring of retail brokerage accounts to detect potential money laundering activity related to money movements. Mantas was a vendor-provided transaction monitoring system used by many financial institutions that Merrill Lynch customized to meet its specific needs. Mantas alerted on transactions that fit within the parameters of specific scenarios selected by Merrill Lynch, such as rapid movement of funds or internal journal-entry transfers between unrelated accounts. Merrill Lynch had other methods of detecting suspicious movements of funds in accounts, but those methods were primarily manual, or only alerted on certain types of activity,
such as ATM transactions or wire transfers that were routed through BofA’s consumer bank before being debited or credited to the customer’s Merrill Lynch account. Merrill Lynch also used a separate automated surveillance system to conduct trade surveillance. Merrill Lynch referred to the alerts produced by its AML detection channels as “events.”

6. Since approximately October 2010, Merrill Lynch also used a system called “Event Processor,” or “EP,” which grouped Mantas events and events produced by other Merrill Lynch detection channels and assigned points to the event groups. Merrill Lynch opened a case for further investigation if an event group met a risk-based threshold “score.” Additionally, an investigator could manually open a case on particular accounts, customers, or transactions, but often Merrill Lynch did not investigate Mantas events unless their event group met the risk-based threshold for opening a case as a result of additional events, whether from Mantas or other detection channels.

1. **Merrill Lynch Did Not Use Mantas to Monitor Certain Accounts**

7. From approximately 2006 through approximately May 2015, Merrill Lynch did not apply its Mantas automated monitoring to certain accounts. These accounts included:

- Retirement Accounts—about 4.2 million SEP, 403b, IRA, IRA Rollover, Roth IRA, and other retirement accounts as of February 2015;
- Managed Accounts—about 228,000\(^1\) retail brokerage accounts held at Merrill Lynch as of February 2015 under the discretionary management of a Merrill Lynch registered representative or Merrill Lynch-approved outside investment adviser; and
- Securities-Based Loan Accounts—about 421,000 active retail brokerage accounts as of February 2015 that held securities-based loans, and brokerage accounts pledged as security for those loans.

8. These accounts engaged in a significant number of transactions, moving substantial amounts of funds to and from accounts at Merrill Lynch. From 2011 through 2013, managed accounts, securities-based loan accounts, and the accounts pledged to them engaged in approximately 12 million transactions moving approximately $105 billion to and from accounts at Merrill Lynch, via checks, ATM withdrawals, cash deposits, wires, and ACH transactions during that time period. The number and dollar amount of these transactions increased each year and accounted for approximately 6% of all movements of un-invested funds at Merrill Lynch.

9. In 2006 and again in 2009, Merrill Lynch determined to not use Mantas to monitor these accounts. Other applicable AML detection channels and automated trade surveillance systems were applied to those accounts, however, these other detection channels were not sufficient for the volume of transactions occurring in certain accounts, as they were primarily manual or only alerted on certain types of activity, such as ATM transactions or wire transfers that were routed through BofA’s consumer bank before being debited or credited to the customer’s

\(^1\) Some accounts were both a Managed Account and a Retirement Account; therefore, some accounts may be double counted.
Merrill Lynch account. In January 2012, during an internal review of its AML policies and procedures by new AML management and personnel, they discovered that Mantas had not been applied to these accounts since the inception of Mantas at Merrill Lynch in 2006. Although this issue was discussed with certain supervisors within the AML department, Merrill Lynch did not make arrangements for Mantas to monitor these accounts at that time. Around the end of 2014, Merrill Lynch determined that certain of the accounts should be monitored by Mantas. This change was completed by the end of May 2015.

2. Mantas Scoring Was Deficient

10. During the relevant period, Merrill Lynch excluded multiple occurrences of the same type of event from its scoring of Mantas events for two high risk detection scenarios. Therefore, an account with a single occurrence of a potentially suspicious transaction within the parameters of either detection scenario had the same scoring as an account in which the same type of transaction occurred repeatedly. In making this scoring decision, Merrill Lynch’s analysis insufficiently evaluated and inadequately documented the increased money laundering risk of this repetitive behavior.

3. Merrill Lynch Did Not Investigate and Report on Certain Mantas Events

11. From about September 19, 2011 through January 2012, Merrill Lynch did not investigate Mantas events that were not grouped with an event from one of the other detection channels, such as an employee referral, a government subpoena, or an event related to a wire transfer or ATM transaction that had been routed through BofA’s consumer bank before being debited or credited to a Merrill Lynch customer’s retail brokerage account. Specifically, in a stated effort to reduce the number of what Merrill Lynch determined to be “false positive” cases arising solely from Mantas events, on September 12, 2011, Merrill Lynch decided that it would make various changes to the way Mantas events were generated and scored. On that date, Merrill Lynch also decided that while those changes were being implemented: (1) EP would not open a case that was generated by Mantas events only (i.e., EP opened a case only if an event group contained at least one event from a detection channel other than Mantas and reached the risk-based case threshold discussed above, including the scores of the Mantas and non-Mantas events); and (2) suspended the 646 pending cases opened since about May 2011 that were based only on Mantas events. At the time of these decisions, the most senior AML risk governance committee at Merrill Lynch expected that impacted Mantas events would be reprocessed into EP (and rescored) after the completion of the relevant changes to the way Mantas events were generated and scored.

12. On December 5, 2011, a junior Merrill Lynch AML governance committee approved the changes to how Mantas events would be generated and scored, which changes were implemented on February 1, 2012. The junior Merrill Lynch governance committee, however, also decided to retire all prior Mantas events, effectively contravening the approach adopted by the senior AML risk governance committee without reengaging with that committee. Merrill Lynch did not re-process or rescore these Mantas-only events or cases into the newly changed Mantas system. As a result, Merrill Lynch did not investigate many Mantas-only events generated from May 2011 through August 2011 and did not investigate any Mantas-only events generated from
approximately September 2011 through January 31, 2012 for possible money laundering. Merrill Lynch eventually re-processed and rescored those Mantas-only events and cases in late 2014.

4. **Merrill Lynch Did Not Effectively Link Related Accounts in EP**

13. During the relevant period, EP used a number of systems and techniques to group events arising from related retail brokerage accounts. However, EP inadvertently did not link related accounts that involved customers who had both U.S. dollar-denominated and foreign currency-denominated accounts. Merrill Lynch customers were able to maintain accounts in different currencies, and could move different currencies to and from these accounts. However, until mid-2015, if AML detection channels produced events on a customer’s U.S. dollar-denominated and foreign currency-denominated accounts, EP did not always group those events into the same event group. As a result, a customer could have had two different event groups, neither of which reached the risk-based threshold to create a case—but which could have exceeded that threshold had the two event groups been combined. Accordingly, certain event groups did not meet the risk-based threshold and become an investigation for further review as rapidly as they otherwise would have, if at all.

5. **Merrill Lynch Did Not Adequately Monitor Continuing Suspicious Activity**

14. During the relevant period, Merrill Lynch did not have adequate policies and procedures for filing what were commonly known as “continuing activity” or “ongoing activity” SARs. When suspicious customer activity is continuing or ongoing, financial institutions are permitted to file SARs on the continuation of the originally reported activity after a 90-day review, rather than file within 30 days after the initial detection of facts that may constitute the basis for filing a SAR.2

15. During the relevant period, under Merrill Lynch’s AML policies and procedures, once a SAR for suspicious activity in an account was filed, the AML staff generally had discretion (except where otherwise specifically required) to elect whether or not that account would be investigated again 90 days later. Specifically, until 2013, investigators were only required to investigate an account again where the continuing suspicious activity that was reported in the SAR had been investigated as a result of an external source (such as a government subpoena); investigators otherwise had discretion whether to elect that the account be investigated again if the SAR had been investigated as a result of any non-systematic source—that is, any source, whether internal or external, other than an automated transaction monitoring system. In 2013, the policy was expanded to require that investigators investigate an account if the continuing suspicious activity reported in the SAR had been investigated as a result of any non-systematic source—that is, any source, whether internal or external, other than an automated transaction monitoring system. In August 2014, Merrill Lynch implemented a “Continuous Suspicious Activity Event” risk factor to adequately monitor for continuing suspicious activity. This risk factor created a case whenever any AML event occurred on the same party and of the same type as contributed to a SAR filed within the preceding 90 days.

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2 Broker-dealers have 60 days to file if no suspect is identified on the date of initial detection. 31 C.F.R. §1023.320(b)(3).
6. Merrill Lynch Did Not Adequately Investigate AML Events

16. Once an AML case was opened, the platform used by Merrill Lynch’s AML investigators during part of the relevant period did not provide sufficient visibility into transactions occurring in an account, causing the investigators sometimes unduly to limit their review to the specific events that triggered the event and not to review the account more broadly to determine whether the risk associated with that event warranted additional investigation or reporting. The investigators also did not have a tool to conduct extensive external records searches, in addition to broad, open source internet searches, on transaction counterparties. At times, the abbreviated investigation review and limited external search capabilities did not allow investigators to conduct a reasonable review of patterns of activity in the context of the Potential Money Laundering Indicators document. In addition, Merrill Lynch’s training sessions for AML investigators did not always adequately address certain potential money laundering schemes.

D. MERRILL LYNCH DID NOT FILE CERTAIN SUSPICIOUS ACTIVITY REPORTS

17. As a result of the deficiencies in its AML policies and procedures identified above, Merrill Lynch failed to file SARs on suspicious movements of funds through its accounts. For example, from January 1, 2009 to July 1, 2015, in just one Merrill Lynch branch office in San Diego, California, which principally served non-U.S. resident customers, Merrill Lynch failed to file SARs on numerous suspicious money movements. In addition, Merrill Lynch also failed to timely file seven SARs firm-wide on approximately $57,000,000 in transactions in roughly 20 accounts, due to the decision not to reprocess, rescore, and investigate Mantas events after scoring changes were completed at the end of January 2012.

18. The transactions on which Merrill Lynch failed to file SARs were part of a pattern of suspicious customer activity, occurring often through numerous commonly owned or controlled accounts, over many months and sometimes years, and matched numerous potential money laundering indicators identified in the Potential Money Laundering Indicators document. For example, accounts at the San Diego, California, branch that served non-resident customers engaged in suspicious transactions that included:

(1) patterns of large currency deposits through ATMs to fund off-shore company accounts where there was no apparent indicia of business operations and the due diligence documents for the customer, which Merrill Lynch obtained during the account opening process to determine the expected activity in the account, did not identify currency as a potential source of funds;

(2) accounts that engaged in complicated movements of large, even-dollar-denominated funds, through patterns of internal journal-entry transfers and deposits and withdrawals to and from accounts at third-party institutions in high risk jurisdictions, with no explanation as to the reason for the transactions being processed through multiple Merrill Lynch accounts before being sent to another financial institution; and
customers withdrawing currency via debit card cash advances and ATM withdrawals in long-term patterns with indicia of attempts to evade currency transaction report filings.

Merrill Lynch either failed to file SARs on many of these suspicious transactions or, if it did file a SAR, failed to review the accounts for continuing activity.

E. MERRILL LYNCH’S REMEDIAL EFFORTS

19. The Commission considered the remedial acts undertaken by Respondent. Merrill Lynch has remediated the issues described above as follows:

1. Monitoring of Certain Accounts—As described above, beginning in approximately May 2015, Merrill Lynch began monitoring accounts with Mantas.

2. Reprocessing of Mantas Events—In approximately 2014 and 2015, Merrill Lynch reprocessed and rescoring all the Mantas events whose scores had been affected by the Fall 2011 scoring decisions, and investigated all the Mantas-event-only cases that had been closed at that time. This resulted in approximately 1,015 investigations. In 2015, Merrill Lynch subsequently filed seven SARs on approximately $57,000,000 in transactions in roughly 20 accounts.

3. Scoring—In June 2015, Merrill Lynch changed the scoring for two high risk transaction scenarios so that events for transactions fitting these scenarios would score for each such transaction and not just once. In addition, in 2015, Merrill Lynch began using a separate BofA automated system to also monitor all movement of funds in Merrill Lynch retail brokerage accounts for potentially suspicious activity.

4. Account Linkages—In August 2015, Merrill Lynch modified EP to be able to link accounts and group events appropriately arising out of a customers’ U.S. dollar-denominated and foreign currency-denominated accounts.

5. Continuing Suspicious Activity Monitoring—In August 2014, Merrill Lynch implemented a “Continuous Suspicious Activity Event” risk factor, which created a case whenever any AML event occurs on the same party and of the same type as contributed to a SAR filed within the preceding 90 days. This was in addition to the ability of AML investigators to elect a 90-day review in appropriate circumstances.

6. Investigations—Merrill Lynch made enhancements to the workstation used by investigators in order to provide more visibility into transactions occurring in an account. Merrill Lynch also enhanced research tools for AML investigators, added procedures for investigators relating to potential red flags for money laundering, provided multiple training sessions to investigators regarding various money
F. VIOLATIONS

20. The BSA, and implementing regulations promulgated by the Financial Crimes Enforcement Network (“FinCEN”), require that broker-dealers file SARs with FinCEN to report a transaction (or a pattern of transactions of which the transaction is a part) conducted or attempted by, at, or through the broker-dealer involving or aggregating to at least $5,000 that the broker dealer knows, suspects, or has reason to suspect: (1) involves funds derived from illegal activity or is conducted to disguise funds derived from illegal activities; (2) is designed to evade any requirement of the BSA; (3) has no business or apparent lawful purpose and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts; or (4) involves use of the broker-dealer to facilitate criminal activity. 31 C.F.R. § 1023.320(a)(2) (“SAR Rule”).

21. Exchange Act Rule 17a-8 requires broker-dealers to comply with the reporting, record-keeping, and record retention requirements of the BSA. The failure to file a SAR as required by the SAR Rule is a violation of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

22. By failing to file SARs with FinCEN as required by the BSA with respect to certain of its customers’ activity as described above, Merrill Lynch willfully3 violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest to impose the sanctions agreed to in Respondent’s Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act and Section 203(f) of the Advisers Act, it is hereby ORDERED that:

A. Respondent Merrill Lynch cease and desist from committing or causing any violations and any future violations of Exchange Act Section 17(a) or Rule 17a-8 promulgated thereunder.

B. Respondent Merrill Lynch be, and hereby is censured;

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3 A willful violation of the securities laws means merely “‘that the person charged with the duty knows what he is doing.’” Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “‘also be aware that he is violating one of the Rules or Acts.’” Id. (quoting Gearhart & Otis, Inc. v. SEC, 348 F.2d 798, 803 (D.C. Cir. 1965)).
C. Respondent Merrill Lynch shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of $13,000,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier’s check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Merrill Lynch as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Alka Patel, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 444 S. Flower Street, 9th Floor, Los Angeles, CA 90071.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent’s payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based
on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Brent J. Fields
Secretary
FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

C. L. KING & ASSOCIATES, INC.
(BD No. 6183), AND

GREGG ALAN MILLER
(CRD No. 4163500),

Respondents.

DISCIPLINARY PROCEEDING
No. 2014040476901

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. During the period of at least January 2012 through March 2015, CL King & Associates, Inc. ("CL King" or the "Firm") assisted customer EACM and EACM’s Managing Member, JL, in a scheme to profit from the deaths of vulnerable elderly and terminally ill patients.

2. EACM identified and recruited terminally ill individuals by offering to pay them between $10,000 and $15,000 in exchange for their agreement to open a joint brokerage account with JL. From January 2012 through October 2013, CL King opened 36 accounts for EACM in the name of JL and that of one of several terminally ill individuals. Although these accounts ostensibly were opened by JL and the terminally ill individuals as joint accounts, EACM
required the terminally ill individuals to sign side agreements relinquishing their rights over, and responsibilities for, the assets in the accounts.

3. Once opened, EACM used the joint accounts at CL King to purchase discounted corporate bonds, notes, and market-linked CDs ("MLCDs") containing a survivor’s option or "death put" (collectively, the "Death Put Investments"), which allowed EACM and JL to redeem the investments for the full principal amount prior to maturity upon the death of a beneficial owner. When the terminally ill individual died, CL King redeemed the Death Put Investments on behalf of EACM. In total, CL King redeemed approximately $60 million in Death Put Investments. CL King made at least $1.2 million in margin interest and trading profits from EACM’s death put business.

4. In connection with these redemptions, CL King made material misrepresentations and failed to provide all material information to the issuers, including the fact that the deceased account holders were not the beneficial owners of the Death Put Investments. By making material misrepresentations and failing to disclose all material facts to issuers in connection with the Death Put Investment redemptions, CL King violated FINRA Rule 2010 both independently and by virtue of violating Section 17(a) of the Securities Act of 1933 ("Securities Act").

5. During the period January 2012 through March 2015, CL King failed to establish and maintain a reasonably designed supervisory system, including written supervisory procedures, related to the redemption of the Death Put Investments, in violation of NASD Conduct Rule 3010 and FINRA Rules 3110 and 2010.

6. During the period June 2009 through April 2014, CL King, acting through the Firm’s Anti-Money Laundering Compliance Officer ("AMLCO") Gregg Miller, failed to establish and implement a reasonably designed AML program to detect, investigate and report,
where appropriate, potentially suspicious activity related to the sale of low-priced penny stocks by CL King customers, including toxic-debt financier AE and Liechtenstein-based bank VPB, who collectively liquidated more than 11 billion shares of numerous penny stocks through CL King. AE’s and VPB’s penny stock liquidations generated proceeds of more than $14.39 million and $4.87 million, respectively, while CL King generated over $620,000 in commissions from these sales. By failing to establish and implement a reasonably designed AML program, CL King and Miller violated NASD Conduct Rule 3011(a) and FINRA Rules 3310(a) and 2010.

7. During the period June 2009 through April 2014, CL King, acting through Miller, also failed to conduct adequate due diligence and respond to red flags regarding the account it opened for VPB, a foreign financial institution, in violation of NASD Conduct Rule 3011(b) and FINRA Rules 3310(b) and 2010.

RESPONDENTS AND JURISDICTION

C.L. King & Associates, Inc.

8. CL King has been registered with FINRA as a member firm since May 1, 1972. The Firm is headquartered in Albany, New York with offices in New York City and Boston. CL King provides investment research, equity and fixed income trading, corporate finance, prime brokerage and clearing services to institutional clients and other broker-dealers. During all times relevant to this Complaint, the Firm had between approximately 70 and 105 registered personnel.

9. Under Article IV of FINRA’s By-Laws, FINRA possesses jurisdiction over CL King because (a) CL King currently is a FINRA member, and (b) the Complaint charges the Firm with securities-related misconduct committed while it was a FINRA member.
Gregg Alan Miller

10. Miller first became registered with FINRA through CL King as a General Securities Representative in February 2001. Since that time, Miller has maintained several registrations with FINRA through CL King, including General Securities Principal, Registered Options Principal, Equity Trader Limited Representative, Municipal Securities Principal and Research Principal. During all times relevant to this matter, Miller was CL King’s Compliance Manager and AMLCO. Miller continues to function as CL King’s AMLCO, and since February 1, 2015, he has been the Firm’s Chief Compliance Officer (“CCO”).

11. Under Article V of FINRA’s By-Laws, FINRA possesses jurisdiction over Miller because (a) he currently is registered with FINRA and associated with a member firm, and (b) the Complaint charges him with misconduct committed while he was registered with FINRA and associated with a member firm.

FACTS

I. CL KING’S PRIME SERVICES DEPARTMENT

12. In or about early 2007, CL King formed the Prime Services Department (“PSD”). The goal of the PSD was to attract outside clients such as registered investment advisors, small broker-dealers, and professional investors in order to generate additional commissions, margin interest and other revenue. As more fully set forth below, in an effort to generate revenue, the PSD brought in at least three new customers – EACM, AE and VPB – who engaged in businesses that the Firm was previously unfamiliar with and ill-prepared to supervise.
II. CL KING’S IMPROPER REDEMPTION OF DEATH PUT INVESTMENTS ON BEHALF OF EACM

EACM’s “Death Put” Scheme

13. JL formed EACM, a hedge fund, to take advantage of the potentially lucrative death put feature in certain bonds, notes and MLCDs. A death put is a contingent put feature that requires the issuer to repay the full principal amount of an investment prior to maturity following the death of a beneficial owner if certain requirements are met.

14. Although the particular features of the death puts differ from issuer to issuer, all require two conditions to be met for the death put to be validly exercised. First, the decedent must be a beneficial owner of the investment at the time of death. Second, the party exercising the death put must be the survivor of the decedent.

15. EACM’s entire business model consisted of identifying terminally ill individuals and offering to pay them between $10,000 and $15,000 in exchange for their agreement to open a joint brokerage account with JL. EACM then used the joint brokerage accounts to purchase Death Put Investments. When the terminally ill individual died, EACM redeemed the Death Put Investments for a profit.

16. As more fully set forth below, in order to effect this scheme, EACM, through CL King, made material misrepresentations and failed to disclose all material information to the Death Put Investment issuers. For example, EACM could only redeem the Death Put Investments if the terminally ill individual was a beneficial owner of the Death Put Investments at the time of his or her death. However, EACM required each of the terminally ill individuals to execute a secret side agreement in which the terminally ill individuals relinquished any rights to the assets held in the joint accounts. As a result, the terminally ill individuals were not beneficial
owners of the assets in the joint accounts, and EACM and CL King could not redeem any of those assets on their behalf.

_EACM Opens Joint Brokerage Accounts at CL King_

17. From January 2012 through October 2013, EACM opened 36 accounts at CL King in the name of JL and that of one of several terminally ill individuals. Each of these accounts was styled as a Joint Tenancy with Rights of Survivorship ("JTWROS") account. EACM and JL used these accounts to purchase and later redeem Death Put Investments.

18. Joint tenancy is a special form of ownership by two or more individuals of the same property. The individuals, who are called joint tenants, share equal ownership of the property and have the equal, undivided right to keep or dispose of the property. In order for there to be a valid joint tenancy, no one joint tenant can ever have a larger share.

19. Joint tenancy creates a right of survivorship. This right provides that if any one of the joint tenants dies, the remainder of the property is transferred to the survivors.

20. Because JL was not married to the terminally ill individuals, and other forms of concurrent ownership do not confer a right of survivorship on unmarried co-owners, the EACM accounts at CL King were opened as putative joint tenancies. In most instances, the JTWROS accounts at issue had at least three nominal joint tenants: JL, the terminally ill individual, and DJ, JL’s stepfather.

_The Terminally Ill Individuals Executed “Participant Agreements” Limiting their Rights and Participation in the Accounts and Investments, Thereby Invalidating the Joint Tenancy_

21. EACM provided the capital for the accounts, and required the terminally ill individuals to limit their rights in the accounts pursuant to a side agreement known as the “Participant Agreement.” The Participant Agreements were executed by JL and the terminally ill individual, _i.e._, the “participant,” or, in certain cases, the participant’s power of attorney.
22. During the period January 2012 through October 2013, EACM and JL utilized at least three different versions of the Participant Agreement. While the versions differed in certain respects, each Participant Agreement limited the participant’s rights to the assets held in the account in several ways. Specifically, each Participant Agreement contained one or more of the following limitations:

a. The participant could not withdraw funds from the account without JL’s written permission. In contrast, JL was permitted to transfer cash and securities out of the account without the participant’s prior consent;

b. The participant could not borrow against the assets in the account without JL’s written permission;

c. The participant’s profit was capped at the one-time $10,000 or $15,000 fee. In contrast, EACM’s and JL’s profit was not limited by the Participant Agreement in any way; and

d. In the event JL predeceased the participant, the participant was limited to receiving five percent of the account proceeds after expenses. The remaining 95 percent of the proceeds would go to EACM’s investors.

23. Under the terms of the Participant Agreements, the terminally ill participants also were required to execute a Limited Power of Attorney (“POA”) which further limited their rights and which authorized JL, without the participant’s prior consent, to take the following actions:

a. To open, manage, handle and direct brokerage accounts in the terminally ill participant’s name;

b. To make transfers of funds and securities into any such account(s);
c. To buy, sell, pledge and otherwise dispose of securities in the account(s);

d. To pledge and grant a security interest in the account(s) and the terminally ill participant's interest therein;

e. To execute agreements relating to the account(s) on behalf of the terminally ill participant; and

f. To sign the name of the terminally ill participant to any and all written instruments of assignment in connection with the account(s).

24. In light of the restrictions and limitations on the rights of the participants imposed by the Participant Agreements and accompanying POAs, the participants were not the beneficial owners of any of the assets in the joint accounts.

25. Also, because the Participant Agreements and accompanying POAs created unequal rights among the accountholders, they invalidated any purported joint tenancy and JL's alleged right of survivorship.

26. During the course of CL King's due diligence into EACM's business, the Firm did not ask for and was not provided with copies of the Participant Agreements. By at least December 2012, however, CL King personnel were aware of the existence of the Participant Agreements and had obtained a copy.

27. The Firm did not, however, require EACM to provide copies of the Participant Agreements as part of new account paperwork prior to June 2013. And CL King did not obtain all executed Participant Agreements for EACM's accounts at the Firm until at least mid-August 2013, only two months before EACM moved its accounts out of CL King.
28. During the period of at least January 2012 through at least March 2015 ("Relevant Period I"), CL King redeemed approximately $62 million of Death Put Investments held in 26 EACM accounts on behalf of EACM.\(^1\)

29. JL typically initiated a redemption request by forwarding a Letter of Authorization ("LOA") on EACM letterhead to CL King accompanied by a certified death certificate for one of the participants. The LOA was signed by JL and referenced one of the 36 EACM-related CLK accounts. The LOA stated that the participant, who was described as "a joint owner" of the referenced account, had passed away and that as "the surviving joint owners on the account," JL (and DJ in cases where he was the third joint tenant) wished to exercise the survivor’s option with respect to various Death Put Investments detailed in the body of the letter.

30. Typically, JL instructed CL King’s PSD staff regarding the documents to send to an issuer or redemption agent to support a redemption request. PSD staff collected the various documents required for the redemptions, which they then forwarded to the relevant issuers or issuers’ agents.

31. In most instances, CL King’s PSD staff forwarded a cover letter from CL King to the issuer or payment agent, stating that a “joint owner” of the referenced CL King account had passed away. CL King also provided copies of the LOA and the certified death certificate. CL King also typically provided the issuer or issuer’s payment agent with a completed election form, affidavit of domicile and CL King account statement.

32. CL King personnel did not read the prospectuses and disclosure statements for the Death Put Investments, but rather accepted EACM’s and JL’s representations regarding the

\(^1\) JL transferred EACM’s business out of CL King in late 2013. CL King, however, continued to handle Death Put Investment redemptions that had been initiated before EACM’s Business was transferred away from the Firm. The final redemption was completed in March 2015.
various redemption requirements. CL King personnel also did not review the language contained in the various forms each issuer required to be completed as part of the redemption process.

**CL King’s Redemption Requests Were Invalid**

33. All of the redemptions of Death Put Investments that CL King facilitated on behalf of EACM and JL were invalid because (1) the participants were not the beneficial owners of the assets in the joint accounts, and (2) JL had no legitimate right of survivorship.

34. In addition, many of these redemption requests, collectively worth millions of dollars, also were invalid because they violated the terms of the relevant prospectuses, disclosure statements and/or redemption forms. For example:

a. In or about July 2013, CL King submitted a request to Citibank on behalf of JL to redeem $3 million worth of the Citibank MLCD, CUSIP 172986GH8 (“the GH8 MLCD”). JL’s redemption request was made after the death of CMK, whose account with JL (the “31 Account”) contained the GH8 MLCD position. This request was invalid. The disclosure statement supplement for the GH8 MLCD stated that early withdrawals would be permitted only in the event of the death of a beneficial owner who “beneficially owned the Deposits . . . since the initial deposit date of the Deposits.” The “deposit date” for the GH8 MLCD was May 30, 2013. CMK was not, however, a beneficial owner of the GH8 MLCD investments on that date. Accordingly, CL King’s redemption request on behalf of EACM for the GH8 MLCD was invalid.

b. Similarly, on or about October 31, 2013, CL King submitted a request to Société Générale on behalf of JL to redeem $200,000 worth of Société Générale Medium Term Notes, CUSIP 78423EEP5 (the “SG EP5 Notes”). This request was made
after the death of FJ, whose account with JL (the “28 Account”) contained the SG EP5 Notes position. This request was invalid. The Survivor’s Option Election Form for the SG EP5 Notes stated that the Notes could be exercised only upon the death of a “beneficial owner” of the Notes. The SG EP5 Notes term sheet defined a “beneficial owner” as “a person who has the right, immediately prior to such person’s death, to receive the proceeds from the disposition of that Note, as well as the right to receive payment of the principal of the Note.” Pursuant to the terms of the Participant Agreement FJ entered into with JL, however, FJ did not have the right immediately prior to his death to receive the proceeds from the disposition of the SG EP5 Notes held within the account. As a result, FJ did not meet the definition of a beneficial owner of the SG EP5 Notes, and CL King’s redemption request was invalid.

Invalid Redemptions from the 31 Account

35. CL King facilitated the redemption of over $14.2 million in Death Put Investments on behalf of EACM from the 31 Account, including the $3 million in GH8 MLCD investments referenced above. In fact, more redemptions were made by EACM through CL King from the 31 Account, both in dollar value and number of positions, than any other account EACM opened at the Firm. However, all of these redemptions were invalid because CMK was not a beneficial owner of any of the assets held in the 31 Account. In fact, CMK died before the 31 Account was even opened at CL King.

36. On the afternoon of May 30, 2013, EACM first requested that CL King open a joint account with CMK. In an email from EACM to CL King’s PSD, EACM described the request to open this account as a “time is of the essence” situation.
37. On May 31, 2013, at approximately 6:50 a.m., CMK died. CMK died before CL King received all the necessary paperwork to open an account in her name and before Miller, on behalf of CL King, approved and signed the new account form to open the account.

38. Nevertheless, on May 31, 2013, after CMK had died, CL King permitted EACM to transfer approximately 89 Death Put Investments, collectively worth approximately $9.4 million, into the 31 Account.

39. Beginning on or about June 28, 2013, the Firm sent letters to various issuers and redemption agents, to request that the Death Put Investments transferred into the 31 Account after CMK’s death be redeemed.

40. In connection with these redemptions, CL King never disclosed to the issuers that CMK had died before the Death Put Investments had been transferred into her account.

41. All of these redemption requests were invalid because CMK could not have been a beneficial owner of any of the Death Put Investments that were transferred into her account after her death.

III. CL KING’S PENNY STOCK LIQUIDATIONS ON BEHALF OF AE AND VPB

AML Rules and Regulations Require Broker-Dealers to Monitor for, and Report, Suspicious Transactions

42. FINRA Rule 3310(a), which superseded NASD Conduct Rule 3011(a) on January 1, 2010, requires firms to “[e]stablish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. §5318(g) [the Bank Secrecy Act] and the implementing regulations thereunder."

43. The implementing regulation issued by the U.S. Department of the Treasury, 31 C.F.R. § 1023.320 (recodified from 31 C.F.R. § 103.19 on March 1, 2011), requires broker-
dealers to file with FinCEN “a report of any suspicious transaction relevant to a possible violation of law or regulation.” The regulation further provides:

A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through a broker-dealer, it involves or aggregates funds or other assets of at least $5,000, and the broker-dealer knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this chapter or of any other regulations promulgated under the Bank Secrecy Act;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the broker-dealer to facilitate criminal activity.

44. NASD Notice to Members 02-21 (“NTM 02-21”), issued in April 2002, provides guidance for AML compliance programs, including that: (a) firms must tailor their AML programs to fit their business model and customer base; (b) firms must monitor for red flags of suspicious activity that suggest money laundering; and (c) if firms detect “red flags,” they should perform additional due diligence and determine whether or not to file a suspicious activity report.
("SAR"). The Notice includes examples of "red flags" of potential money laundering and suspicious activity.

45. Trading penny stocks typically poses greater AML risks than trading other stocks because of lower trading volumes and less available information regarding issuers. As noted in NTM 02-21, penny stock transactions have been used in connection with fraudulent schemes and money laundering activity. The fraudulent activity may involve a party's manipulation of the stock price upward in order to sell shares at inflated prices or downward in order to acquire additional shares at lower prices, or trading to artificially inflate interest in a security.

**CL King's AML Procedures**

46. During all periods relevant to this Complaint, the Firm's written AML procedures listed certain red flags indicative of potentially suspicious activity.

47. The Firm's written supervisory procedures divided the list of red flags into various categories, including "Penny Stock Company Related Transactions." In this category, the Firm's procedures listed the following examples of "red flags" of potentially suspicious activity:

(a) Company has no business, no revenues and no product;
(b) Officers or insiders of the issuer are associated with multiple penny stock issuers;
(c) Company undergoes frequent material changes of business strategy or its line of business;
(d) Officers or insiders of the issuer have a history of securities violations;
(e) Company has not made disclosures in SEC or other regulatory filings; and
(f) Company has been the subject of a prior trading suspension.

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2 Penny stocks include securities that trade at less than $5 per share and are quoted over-the-counter. See SEC, Penny Stock Rules, available at http://www.sec.gov/answers/penny.htm (May 9, 2013).
48. In the category of “Customer Account Transactions,” CL King’s procedures listed the following examples of “red flags” of potentially suspicious activity:

(a) Transaction patterns show a sudden change inconsistent with normal activities; and

(b) Customer transactions include a pattern of receiving stock in physical form or the incoming transfer of shares, selling the position and wiring out proceeds.

49. The Firm’s AML procedures required monitoring for patterns of transactions of unusual size, volume, or type and for the red flags listed in its procedures. The procedures required the Firm to use exception reports to monitor for the presence of red flags. CL King’s AML Procedures also specifically required that trading in penny stocks be monitored for suspicious activity.

CL King’s AML Compliance Program was not Reasonably Designed to Address the Risks Presented by its Penny Stock Liquidation Business

50. Miller was CL King’s AMLCO throughout all periods relevant to this Complaint. As CL King’s AMLCO, Miller was responsible for establishing and implementing an AML program that was reasonably designed to cause the detection and reporting of suspicious activity.

51. The Firm, acting through Miller, was required to tailor the Firm’s AML program to the specific risks posed by the Firm’s business, which included facilitating the deposit and liquidation of penny and sub-penny stocks for a toxic-debt financier and for omnibus accounts maintained on behalf of undisclosed underlying clients of foreign financial institutions.

52. The Firm, acting through Miller, did not appropriately tailor its AML program to address the increased risks associated with these customers, including the potential for market manipulation.
53. CL King and Miller did not create a process or procedures requiring investigation into deposits and liquidations of penny stocks sold by AE or VPB, nor did the Firm bolster its compliance infrastructure to adequately monitor the substantial amount of penny stock activity placed in the AE and VPB accounts.

54. Also, neither Miller nor anyone else at CL King took adequate steps to detect and investigate potentially suspicious transactions in penny stocks, and respond appropriately, including considering whether or not to report the activity as suspicious.

55. CL King and Miller failed to implement any surveillance systems or utilize surveillance reports or other tools reasonably designed to detect suspicious penny stock transactions.

56. The Firm and Miller conducted no on-going trade surveillance after penny stock shares were deposited into the clients’ accounts to assess for potential suspicious activity.

57. Rather than monitor for red flags of suspicious activities associated with the deposit and liquidation of penny stocks, CL King merely reviewed daily or monthly commission runs or daily trade blotters. However, these commission runs and trade blotters were not designed to identify patterns of suspicious penny stock activity or to otherwise monitor for AML compliance.

58. The Firm and Miller also did not assess whether penny stock liquidations were occurring in combination with promotional activities by the issuer or stock promoters.

59. In addition, the Firm and Miller did not account for whether, as alleged below, the trades represented a significant percentage of the daily trading volume evidencing potential market domination.
Toxic Debt Financier AE Deposits and Liquidates Billions of Shares of Penny and Sub-Penny Stocks Through CL King

60. In late 2012, CK, the principal and owner of AE, was referred to CL King’s PSD. AE’s business consisted of identifying and providing loans to financially distressed companies quoted on the Over the Counter Bulletin Board ("OTCBB") or Pink Sheets. In return for these loans, AE received a promissory note from the issuer, which generally matured six months from the date of the loan.

61. The terms of the note required the borrower to repay AE the principal of the loan plus interest, which generally was set at 8 percent. If the borrower did not repay the loan by the maturity date, the loan terms permitted AE to convert the debt into common stock of the issuer, generally at a discount of approximately 45 percent to 55 percent of the three lowest end-of-day trading prices over the prior 30 trading days.

62. Based on this market-based conversion formula, the lower the stock price dropped, the more shares AE was entitled to receive when it exercised its conversion rights. When AE ultimately converted the notes into common stock, the resulting dilution of the stock typically had a depressive effect on the stock price over time, further increasing the number of shares AE was able to convert pursuant to the note terms.

63. Because of the cycle of dilution and stock price reductions that typically accompanies the issuance of convertible notes with a market-based conversion formula, and the corresponding negative effects of such a funding mechanism on the company and its shareholders, such financings are commonly called "death spirals" or "toxic.”

64. The stock AE received pursuant to these conversions was not subject to a registration statement filed with the SEC.
65. During CL King’s due diligence on AE and CK prior to account opening, the Firm was informed by CK about AE’s business model as described above. During the due diligence process, the Firm also became aware that in or about August 2012, a forum was created on the website IH to discuss AE and CK. Certain posts on the forum explained that CK was a well-known toxic debt financier while others suggested that investors may want to avoid investing in issuers who borrowed money from AE and CK.

66. The IH forum also revealed that in November 2012, AE and CK were named as defendants, along with numerous other individuals and entities, in a lawsuit filed in Federal District Court in Florida by the CEO of Simulated Environment Concept, Inc. (SMEV). Among other things, the lawsuit alleged that AE and CK engaged in a “pump and dump” of SMEV shares.

67. A copy of the complaint was publicly available at the time CL King performed its due diligence of AE and CK. The Firm, however, did not obtain the complaint or take any other steps to investigate the circumstances of the lawsuit as part of its due diligence.

68. In or about November 2012, AE opened an account with CL King.

69. During the period December 4, 2012 through November 25, 2013 (“Relevant Period II”), AE made approximately 788 deposits of common stock in approximately 138 penny stocks into its CL King account. These 788 deposits totaled approximately 11.7 billion shares.

70. During Relevant Period II, AE sold these 11.7 billion shares in approximately 2,100 trades, all at prices of less than one dollar per share and most at prices of less than one cent per share, for gross sales proceeds of more than $14.39 million. CLK earned over $574,000 in commissions from AE’s penny stock liquidations. During the period of February 11, 2013 through at least September 30, 2013, AE withdrew the proceeds of these penny stock sales from
its CLK account in approximately 35 wire transfers, or at a rate of more than one wire transfer per week.

71. In almost every trade, CL King sold AE’s stock to a single buyer — the broker-dealer TVG — at the direction of AE.

72. In November 2013, CK and three of his companies entered into a Consent Order with the SEC which found that he and his companies violated Section 5 of the Securities Act of 1933 by selling billions of unregistered and non-exempt shares of two penny stocks to the public. CK and his companies paid a total of $1.46 million in disgorgement, interest and penalties as part of the settlement.

*Liechtenstein-Based Bank VPB Deposits and Liquidates Millions of Shares of Penny Stocks at CL King*

73. Upon information and belief, during all relevant periods, SMI was a small broker-dealer based in Switzerland.

74. Between May 2007 and June 2014, SMI introduced eight foreign financial institutions to CL King, which opened a total of 13 accounts at the Firm. Each of these foreign financial institutions was headquartered in or operated from Switzerland or Liechtenstein.

75. In mid-2009, SMI introduced VPB, a bank domiciled in Liechtenstein with its primary operations in Zurich, Switzerland, to CL King. According to the U.S. Department of State, Switzerland and Liechtenstein are jurisdictions of primary money laundering concern. In or about June 2009, VPB opened an account with CL King.

76. Although CL King management were informed by JM in 2007 that the SMI-related accounts typically transacted in U.S. listed equities and options, the VPB account immediately began placing transactions in little known penny stocks quoted on the OTCBB and
pink sheets. At the time the VPB account was opened, CL King had little or no experience in trading penny stocks quoted on the OTCBB and pink sheets.

77. During the period June 2009 through at least April 2014 ("Relevant Period III"), VPB sold approximately 40 penny stocks through its CL King account. These transactions totaled approximately 41.4 million shares and generated proceeds of approximately $4.87 million.

*Red Flags Relating to Activity in AE's Account*

78. As further explained below, a significant number of the issuers whose stock was deposited and sold by AE at CL King had no history of revenue, no viable product and, in many cases, no business. In many instances, these issuers were also the subject of suspicious promotional campaigns which closely coincided with the AE liquidations. In some cases, current or former officers or directors of these issuers had criminal or regulatory histories, generally involving penny stock activities. In almost all cases, AE's liquidations constituted a significant percentage of the daily total market volume ("TMV") of these penny stocks. This information was readily available in public filings made by the issuers to the SEC, on the internet and through various market information sources, but Miller and CL King, in response to the trading activity, made no effort to investigate the issuers doing business with AE.

*Liquidations of FCGD*

79. During the period December 21, 2012 through August 23, 2013, AE deposited a total of approximately 30,649,033 shares of First Colombia Gold Corp. (FCGD) into its CL King account.

80. At that time, FCGD was an exploration stage mining company located in Antioquia, Colombia.
81. FCGD's Form 10-Q filed with the SEC for the period ending September 30, 2012 reported that the company had incurred an accumulated deficit from inception in September 1997 through September 2012 of $18.96 million and that there was no source of revenue associated with FCGD's business. The 10-Q also reported that the financial statements had been prepared on a going concern basis.

82. FCGD's SEC filings also indicated that its only source of revenue was from the issuance of convertible notes to AE and another entity.

83. Further, on or about April 24, 2013, FCGD was the subject of a promotional campaign by at least ten penny stock newsletters and websites. Certain newsletters and emails disseminated by these promoters made false and misleading claims about FCGD. An email sent by promoter MRG stated in part:

   Why do we like FCGD? FCGD is in the Gold and Oil Business.
   1.) FCGD is a gold and oil company. We all know how profitable mining is and this is why we like FCGD.
   2.) No dilution .... Nothing kills a stock more than dilution and this is why we also like FCGD.
   3.) The o/s on FCGD is also very low .... FCGD o/s is only 56 Million.

84. According to the FCGD Form 10-K/A for the period ending December 31, 2012 and filed with the SEC on April 23, 2013, FCGD stated that [t]he current focus of our business and operations is on the development of our mineral property interests on properties located in the western United States....” FCGD’s public filings make no mention of the company being in the “Oil Business.”

85. According to the December 31, 2012 Form 10K/A, FCGD had over 83 million outstanding shares of common stock as of that date, approximately double the number outstanding as of December 31, 2011 and almost 30 million shares more than stated in the MRG
promotional email. Further, according to a Schedule 13G filed with the SEC by AE on April 25, 2013 — the day after the promotional campaign — FCGD’s number of outstanding common shares stood at over 117.4 million.

86. On the same day of this promotional campaign, the trading volume in FCGD soared to over 168 million shares from an average volume of just 5,735,984 shares over the preceding ten trading days.

87. Despite the presence of these red flags, during Relevant Period II, CL King facilitated the liquidation of AE’s FCGD position in five trades for total proceeds of approximately $44,204. The average price for the FCGD sales was approximately .001 per share.

88. On April 24, 2013 alone, CL King liquidated approximately 5,883,333 shares of AE’s FCGD stock, generating proceeds of over $31,000 for AE.

89. On four of the five days that CL King liquidated FCGD stock from AE’s account, the sales represented over 30 percent of the TMV for the stock on that day. On three of these days, CL King’s liquidation of AE’s FCGD shares represented over 40 percent of the TMV.

Liquidations of AEGY

90. During the period December 28, 2012 through June 21, 2013, the AE account at CL King, through 18 separate stock deposits, received approximately 395,872,013 shares of Alternative Energy Partners, Inc. (AEGY).

91. At that time, AEGY was a development stage company purportedly engaged in the business of energy production and management.

92. AEGY’s Form 10-Q filed with the SEC for the period ending October 31, 2012, reported that the company had incurred an accumulated deficit from inception on April 28, 2008
through October 2012 of $7.286 million. AEGY reported revenues of just $3,701 during the same 54-month period and AEGY expressed doubts about the company’s ability to continue as a going concern.

93. On May 15, 2013, in a drastic departure from their prior stated business of energy production and management, AEGY announced that it had “signed a definitive agreement to acquire” both a medical marijuana payment solution and online order system from IEC.

94. Florida state incorporation documents indicate that the incorporator of IEC was RJH. In July 2009, the SEC instituted administrative proceedings against RJH for certifying false quarterly filings and for materially misleading the auditor of a company for which he was formally the CFO. In March 2010, RJH consented to an order in which he agreed to cease and desist from future violations of the securities laws, not act as an officer or director of a public company for a period five years and not appear before the SEC as an accountant.

95. Despite the presence of these red flags, during the period January 2, 2013 through June 24, 2013, CL King facilitated the liquidation of AE’s AEGY position in 29 trades for total proceeds of almost $710,000. These transactions generated approximately $27,529 in commissions for CL King. The average price for the AEGY sales was approximately .001 per share.

96. On 27 of the 29 days that CL King liquidated AE’s AEGY stock, AE’s sales accounted for over 20 percent of the TMV. On six of these days, AE’s sales accounted for over 40 percent of the TMV.
Liquidations of STKO

97. During the period March 19, 2013 through July 26, 2013, the AE account at CL King, through five separate deposits, received approximately 814,166,667 shares of Stakool, Inc. (STKO). All of the deposits were over 100 million shares, and two were for over 200 million.

98. According to otcmarkets.com, STKO was incorporated in 1997 as PLR, Inc. The company changed its name five times before becoming Stakool, Inc. in December 2009.

99. According to the company’s Form 10-K filed with the SEC for the period ending December 12, 2012, STKO, now known as Fresh Promise Foods, Inc., was a company purportedly engaged in the development and manufacture of natural and organic food products packaged for consumer consumption.

100. In a Form 10-Q filed with the SEC for the period ending September 30, 2012, STKO reported that for the first nine months of 2012, the company generated revenues of only $17,388, incurred a net loss of over $3.8 million, and expressed doubts about its ability to continue as a going concern.

101. On May 21, 2010, a federal indictment was unsealed in the Eastern District of Pennsylvania, charging KG, STKO’s then President, CEO and Director, and three other individuals with conspiracy to commit securities fraud, securities fraud and aiding and abetting securities fraud in connection with a scheme to manipulate the market in two separate microcap stocks. KG was the chairman and CEO of one of these companies. KG was arrested on the day the indictment was unsealed.

102. In September 2010, KG was charged by the SEC with fraud in connection with the activity leading to his indictment.

103. In March 2012, KG pleaded guilty to the criminal charges against him.
104. Despite the presence of these red flags, during the period March 25 through August 6, 2013, CL King facilitated the liquidation of AE’s STKO position in 31 transactions, generating proceeds of approximately $136,893 for AE. The average price for the STKO sales was approximately .0001 per share.

105. CL King liquidated AE’s position in STKO during 28 trading days. On 19 of these days, AE’s sales accounted for over 20 percent of the TMV in STKO. On three of these days, AE’s sales accounted for over 40 percent of the TMV.

_Liquidations of SAFC and MFTH_

106. During the period June 11, 2013 through August 27, 2013, the AE account at CL King, through four separate stock deposits, received approximately 23,825,277 shares of SafeCode Drug Technologies Corp. (SAFC).

107. During the period January 10, 2013 through January 22, 2013, the AE account at CL King, through two separate stock deposits, received approximately 37,188,356 shares of Medisafe 1 Technologies Corp. (MFTH).

108. According to filings made by both companies with the SEC, SAFC and MFTH claimed that in approximately November 15, 2012, they entered into a licensing agreement granting SAFC the non-exclusive right and license to manufacture and market MFTH’s purported technology for protecting against the wrongful use of medicine.

109. In SAFC’s Form 10-K for the period ending December 31, 2012, the company reported no revenues and a net loss of over $2 million since inception. The filing further stated that “as of December 31, 2012, the cash resources of the Company were insufficient to meet its current business plan. These and other factors raise substantial doubt about the Company’s ability to continue as a going concern.”
110. In MFTH's Form 10-K for the period ending December 31, 2012, the company reported no revenues from operations and a net loss of approximately $918,000 since inception. The company recorded revenue of $1.8 million for 2012 in the form of ten million shares of SAFC, which was paid to MFTH as consideration for the license agreement. According to its December 31, 2012 Form 10-K, MFTH's financial condition raised doubts about the company's ability to continue as a going concern.

111. MFTH filed its original Form S-1 with the SEC in September 2009. In November 2011, the attorney who represented the company in connection with that filing, MSK, settled SEC charges that he violated Sections 5 and 17(a) of the Securities Act of 1933 for knowingly writing a false and misleading opinion letter in connection with the issuance of millions of shares of a penny stock that was later manipulated. In January 2012, MSK pleaded guilty to federal criminal charges including conspiracy to commit securities fraud, wire fraud, and mail fraud, in connection with this activity. MSK was disbarred in New York in December 2012.

112. During the period November 2012 through February 2013, SAFC and MFTH were each the subject of promotional campaigns by at least ten penny stock promoters via emails, newsletters and websites.

113. These promotional emails, newsletters and reports contained questionable statements about SAFC’s and MFTH’s stock and/or company performance and growth. On January 6 and 7, 2013, the websites SLL, PSL and SRR released email newsletters regarding SAFC. These newsletters were titled with phrases like “*SAFC* could see -Triple Digit Percent Gains- Today! The Exclusive Report is Inside.”

114. The three newsletters also contained similar language, such as “It is Highly Probable that SAFC will be our First Triple Digit Percent Gainer of 2013!”, and “Another run up
to 33 cents would show traders over 650% in gains....” Disclaimers included with emails from all three of the websites cited a payment of $15,000 for one-day coverage of SAFC by a third party.

115. On February 14, 2013, the stock promotion website TSP released an email newsletter entitled “MFTH Today’s Hot 1 Day Play.” The newsletter disclosed that TSP was compensated $45,000 for the promotion and touted MFTH’s investment potential with phrases such as “The chart shows MFTH could possibly fly as high as a DOUBLE or more within a single day!”

116. Despite the presence of these red flags, during the period January 16, 2013 through January 28, 2013, CL King facilitated the liquidation of AE’s MFTH position in three transactions, generating proceeds of approximately $83,580 for AE. These transactions generated approximately $3,482 in commissions for CL King.

117. CL King liquidated AE’s position in MFTH during three trading days in the midst of the MFTH promotional campaign. On two of these days, AE’s sales accounted for over 20 percent of the TMV in MFTH.

118. Similarly, despite the presence of red flags, during the period June 14, 2013 through August 28, 2013, CL King facilitated the liquidation of AE’s SAFC position in at least 15 transactions, generating proceeds of approximately $66,431 for AE. These transactions generated approximately $2,703 in commissions for CL King.

119. CL King liquidated AE’s position in SAFC during 15 trading days. On 14 of these days, AE’s sales accounted for over 20 percent of the TMV in SAFC. On eight of these days, AE’s sales accounted for over 40 percent of the TMV.
Liquidations of FFFC

120. During the period December 12, 2012 through September 10, 2013, the AE account at CL King, through four separate stock deposits, received approximately 25,673,881 shares of FastFunds Financial Corp. (FFFC).

121. According to the company’s Form 10-K for the period ending December 31, 2012, FFFC was incorporated in Nevada in 1985. According to the Form 10-K, since late 2005 the company had limited operations, no full time employees and was in the process of locating a business to acquire. The company reported revenues of $36,518 and a net loss of $512,444 for 2012. The company also reported an accumulated deficit of $23,186,216 and stated that its financials were prepared on a going concern basis.

122. HF was FFFC’s Director during all times relevant to this Complaint. In 1994, HF was the subject of an SEC order requiring him to cease and desist from committing or causing future violations of Sections 57(a)(1) and (4) of the Investment Company Act of 1940 and Rule 17d-1 promulgated thereunder.

123. Despite the presence of these red flags, during the period December 19, 2012 through September 11, 2013, CL King facilitated the liquidation of AE’s FFFC position in approximately 21 transactions, generating proceeds of approximately $70,773 for AE. These transactions generated approximately $3,172 in commissions for CL King.

124. CL King liquidated AE’s position in FFFC during 21 trading days. On 12 of these days, AE’s sales accounted for over 40 percent of the TMV in FFFC. On February 12, 2013, AE’s sales accounted for over 60 percent of the TMV.
Liquidations of PNCH

125. During the period January 22, 2013 through September 10, 2013, the AE account at CL King, through 14 separate stock deposits, received approximately 492,271,881 shares of IC Punch Media (PNCH).

126. According to the company’s Form 10-K for the period ending December 31, 2012, PNCH was incorporated in Delaware in 2005 as IC Places, Inc. According to the Form 10-K, PNCH engaged in the ownership and operation of a network of city-based websites for travelers and local individuals.

127. According to the company’s Form 10-K for the period ending December 31, 2012, PNCH reported revenues of under $200,000 and a net loss of over $6.2 million for the year. PNCH’s financials were accompanied by a going concern opinion from the company’s auditors.

128. According to the Form 10-K, in July 2012, IC Places, Inc. entered into an agreement to acquire Punch Television Network ("Punch TV"), a company that was in the business of delivering entertainment to multicultural audiences. The consideration for the acquisition of Punch TV was 135,000,000 shares of PNCH.

129. On May 13, 2013, however, PNCH filed a Form 8-K with the SEC disclosing that the company’s agreement with Punch TV had been canceled. The Form 8-K also disclosed that the PNCH shares issued in connection with the Punch TV agreement had been canceled.

130. During all relevant periods, SS was listed as PNCH’s CEO in SEC filings made by the company. In January 1998, the SEC announced that it had filed a civil action against SS and his corporation NSI. The SEC alleged that SS and his company published a magazine in which SS enthusiastically recommended the securities of certain publicly-traded companies.
without disclosing that he had been paid at least $20,000 to make these recommendations, in violation of Section 17(b) of the Securities Act of 1933. As a result of the SEC’s actions, SS and NSI were fined and permanently enjoined from future violations of Section 17(b).

131. In August 2000, SS also entered into a Stipulation and Consent Order with the Florida Division of Securities and Investor Protection in which he agreed not to engage in the offer and sale of any security from offices in Florida or to individuals residing in Florida for ten years.

132. Despite the presence of these red flags, during the period January 22, 2013 through September 18, 2013, CL King facilitated the liquidation of AE’s PNHC position in 43 transactions, generating proceeds of approximately $839,136 for AE. These transactions generated approximately $35,721 in commissions for CL King.

133. CL King liquidated AE’s position in PNHC during approximately 40 trading days. On 29 of these days, AE’s sales accounted for over 20 percent of the TMV in PNHC. On 16 of these days, AE’s sales accounted for over 40 percent of the TMV in PNHC.

Red Flags Relating to Activity in VPB’s Account

134. A significant number of the issuers whose stock was sold by VPB at CL King had no history of revenue, no viable product and, in many cases, no business. In some cases, these issuers also failed to make required disclosures in SEC filings and were the subject of prior trading suspensions. Many of these issuers also underwent frequent changes of name and business strategy. In many instances, these issuers were also the subject of suspicious promotional campaigns which closely coincided with the VPB liquidations. In almost all cases, VPB’s liquidations constituted a significant percentage of the daily TMV of these penny stocks.

135. This information was readily available in public filings made by the issuers to the SEC on the internet and through various market information sources, but Miller and CL King, in
response to the red flags triggered by the trading activity, made no effort to investigate the
issuers sold by VPB through its CL King account.

Liquidations of GSAE

136. On June 30, 2009, VPB placed the first transaction in its CL King account -- a
sale of 7500 shares of Green Star Alternative Energy, Inc. (GSAE), a development stage
company quoted on the Pink Sheets. At the time, GSAE was a newly reporting company
pursuant to the Securities Exchange Act of 1934 ("Exchange Act"), purportedly engaged in the
business of environmentally friendly energy generation projects.

137. In GSAE’s Form 10-12G filed with the SEC on April 15, 2009, the company
disclosed that it was originally engaged in the business of offering educational and travel
seminars and workshops. In July 2008, the company changed its name to Green Star Alternative
Energy, Inc., effected a forward 50 to 1 stock split, abandoned the travel and education seminar
business, and began focusing on clean energy joint venture opportunities.

138. GSAE’s Form 10-12G in April 2009 disclosed no revenues, net losses, and a
going concern opinion from the company’s auditors. SEC filings for GSAE throughout the next
six months continued to disclose the same bleak financial picture of no revenues, net losses, and
a growing deficit.

139. Further, the SEC noted in a July 29, 2009 letter to the company that the British
Columbia Securities Commission had issued a cease-trade order relating to GSAE for reporting
deficiencies and that the Pink Sheets had issued a “skull and cross bones” caveat emptor warning
to investors.
In this letter, the SEC stated that GSAE failed to adequately disclose the British Columbia Securities Commission’s cease-trade order and the Pink Sheets’ caveat emptor warning to investors. This letter was available to CL King via the SEC’s EDGAR system.

During the period June 2009 through December 2009, GSAE was the subject of a promotional campaign that included the dissemination of numerous newsletters, alerts and emails touting GSAE, and containing highly suspect GSAE share price targets.

On or about September 28, 2009, a new research report was issued on GSAE by investor relations firm GRRD with a “BUY” recommendation and a $14.87 long term price target. At the time, GSAE shares were trading at approximately $0.25 per share.

In addition to the GRRD report, during the August 2009 through October 2009 time period, GSAE was the subject of promotional email alerts and profiles disseminated by at least seven other internet stock promotion companies. In each instance, the promoter disclosed that it had been compensated for its efforts. This compensation ranged between $8,000 and $45,000 and between 7,500 and 150,000 free trading shares of GSAE.

During the period August 1, 2009 through October 12, 2009, the internet stock promotion company STMI disseminated at least six email alerts regarding GSAE. A STMI alert dated August 28, 2009 stated: “THE TIME IS NOW TO GET IN ON GSAE!!... [W]e could see .80 – 1.00 in the not too distant future!! WITH BIG NEWS COMING DOWN THE PIPELINE, GSAE IS A NO-BRAINER!!” The disclaimer on the STMI website stated that 150,000 GSAE free trading shares were paid by a third party for the promotional alerts.

Despite the presence of these red flags, during the period June 30, 2009 through December 14, 2009, CL King facilitated the liquidation of approximately 1,921,320 shares of
GSAE through VPB’s account in approximately 50 trades. These sales generated proceeds of almost $864,000 and commissions to CL King of approximately $8,217.

146. CL King liquidated VPB’s position in GSAE during 47 trading days. On 17 of these days, VPB’s sales accounted for over 20 percent of the TMV in GSAE. On four of these days, VPB’s sales accounted for over 40 percent of the TMV. In September 10, 2009, VPB’s sales accounted for over 60 percent of the TMV.

147. Most of this activity occurred during the promotional campaign referenced above. Of the 47 sales of GSAE placed by VPB during the June 30, 2009 through December 14, 2009 period, 27 of the liquidations occurred in the months of August and September, during the period of most intense promotion. Further, the liquidations of GSAE in these two months represented over 68 percent of the total GSAE shares sold by VPB through CL King.

Liquidations of CLDS

148. According to its Form 10-K for the period ended February 29, 2012, CLDS’s prior corporate iteration, Accend Media (“ANCM”) was incorporated in Nevada on December 20, 2010. According to the Form 10-Q for the period ended November 30, 2012, ANCM changed its name and symbol to Cloud Star Corp. and CLDS, respectively, on May 24, 2012 after effecting a reverse merger with a private company named Cloud Star Corporation, which was incorporated in Nevada on October 17, 2011.

149. According to the Form 10-Q for the period ending August 31, 2012, CLDS was “an information technology services and software company that delivers immediate, easy and secure access to computer desktops and other consumer electron [sic] devices from remote locations.”
150. According to the Form 10-Q for the period ending November 30, 2012, CLDS reported no revenues, cash of $4,149, total assets of $65,728, total liabilities of $26,612, a net loss of $43,059, and a “going concern” statement by management.

151. During the period March 1, 2013 through April 26, 2013, CLDS was the subject of a promotional campaign that included the dissemination of alerts and a newsletter by JK.

152. The JK newsletter contained various suspect claims about CLDS, including a 2013 price target of $3 for the stock, which, at the time, was trading at approximately $0.30 per share. A disclaimer at the bottom of the JK newsletter stated that an affiliate of JK was paid $10,000 for the report. An abbreviated version of the JK newsletter was disseminated by at least three other internet stock promotion entities, all of which disclosed that they were paid for their promotion efforts.

153. CL King and Miller were presented with other red flags relating to VPB’s liquidation of CLDS that should have prompted further inquiry. Specifically, on March 6, 2013, a representative from broker-dealer KCG contacted CL King’s trading desk via email and expressed concern that orders the Firm placed for CLDS on behalf of VPB were not legitimate.

154. The KCG representative stated that at almost the same time that it received an order to sell 50,000 shares of CLDS from CL King, KCG also received an order to buy the same amount of CLDS at approximately the same price. Due to the size of the orders, the relative illiquidity of the security, and the similarity in pricing, KCG requested that CL King represent that it had conducted an appropriate review and, based upon that review, that CL King had determined that the order was being placed for legitimate purposes.
155. Upon receiving the KCG email, a CL King trader forwarded it to Miller, asking if he could respond to KCG that the CLDS order was legitimate. Just six minutes later, Miller responded “yes.”

156. CL King and Miller did not investigate the circumstances of the CLDS trade being questioned by KCG despite KCG’s stated concern that CL King’s trades in CLDS might be part of manipulative activity.

157. Despite the presence of these red flags, during the period December 17, 2012 through March 12, 2013, CL King facilitated the liquidation of approximately 480,000 shares of CLDS through VPB’s account in eight transactions. These sales generated proceeds of almost $180,000.

158. The bulk of CLDS share liquidations by CLK from VPB’s account took place during the promotional campaign referenced above. For example, VPB sold CLDS stock from its CL King account on six of the eight trading days during the period March 1, 2013 through March 12, 2013. On four of these days, VPB’s sales accounted for more than 65 percent of the TMV for CLDS.

159. On March 6, 2013, the same day the KCG representative questioned the legitimacy of the CLDS orders placed by CL King, VPB’s sales of CLDS accounted for more than 90 percent of the TMV. On the following day, VPB’s sales accounted for almost 97 percent of the TMV. Further, CL King’s liquidations of CLDS from the VPB account on December 17, 2012 and February 21, 2013 accounted for 100 percent of the TMV in CLDS on those days.

Liquidations of DRHC

160. According to the company’s SEC filings, Dethrone Royalty Holdings, Inc. (DRHC) was incorporated in Nevada on October 8, 2010 under its original name, Exclusive
Building Services, Inc. (EXBS), in order to provide commercial cleaning services to office buildings of 10,000 to 15,000 square feet in Harris County, Texas. At the time of incorporation, EXBS had only one employee, its founder and president, and provided cleaning services to one building.

161. According to SEC filings, in January 2012, the company effected a 31.25 for one forward split of its stock, increasing the number of issued and outstanding common shares from 11,500,000 to 359,975,000. In a Form 8-K dated July 12, 2012, EXBS formally announced that the company would change its name to Dethrone Royalty Holdings, Inc.

162. According to its Form 10-Q for the period ending October 31, 2012, DRHC claimed to manufacture and distribute sports nutrition and energy beverages through its wholly-owned subsidiary Dethrone Beverage, Inc. In its Form 10-Q filed for the period ended January 31, 2013, DRHC reported total assets of $351,142, the majority of which was classified as deferred loan costs, and a cash balance of $2,529. The company also reported $117,529 in total liabilities and no revenue. DRHC reported operating at a net loss of $260,582 for the three months ended January 31, 2013.

163. In various filings made and press releases issued by DRHC in late 2012 and the first three months of 2013, the company claimed that it entered into endorsement contracts with several professional athletes. In many instances, however, the names of these professional athletes were either misspelled or were completely incorrect. For example, in its Form 10-Q for the period ending October 31, 2012, DRHC reported:

As of December 14, 2012, we have also entered into contracts with several professional sports personalities (Jonathan Quick, Aldon Smith Haloti Nagataq and Taj Gibson to represent us by endorsing our products. All contracts cover three years and require us to issue an aggregate of 3,500,000 restricted shares of common stock
The names of Haloti Ngata, Pablo Sandoval and Matt Moulson are all misspelled in DRHC’s filing and the name of Kevin Shattenkirk as written is completely incorrect.

164. In or about March 2013, DRHC was the subject of at least six penny stock promotional newsletters or reports, each of which was available online and, in some instances, was disseminated via promotional emails. In all but one instance, these newsletters or reports touting DRHC disclosed that the promoter was compensated for its promotion of DRHC.

165. Each of these promotional newsletters and reports contained questionable statements about DRHC’s stock and/or company performance and growth. A newsletter dated March 20, 2013, contained a link to a webcast interview with DRHC’s CEO. In the webcast, DRHC’s CEO made several questionable statements, such as “I think we can hit Monster’s numbers within 6 years and its taken them 15 to get there.”

166. At the same time these promotional efforts were taking place, CL King facilitated the liquidation of millions of DRHC shares from the VPB account. Specifically, during the period January 7, 2013 through May 16, 2013, despite the presence of numerous red flags, CL King facilitated the liquidation of approximately 7.8 million shares of DRHC through VPB’s account. These sales generated proceeds of almost $218,000.

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3 Monster Beverage Corporation (NASDAQ: MNST) recorded revenues of over $2 billion in 2012.
167. CL King’s liquidation of DRHC stock from the VPB account took place over 41 trading days. On 20 of these days, VPB’s sales accounted for over 20 percent of the TMV in DRHC. On February 4, 2013, VPB’s sales of DRHC accounted for over 60 percent of the TMV.

_Liquidations of INNO_

168. According to the company’s Form 10-Q for the period ending April 30, 2013 and filed with the SEC on June 6, 2013, Innocap, Inc. (“INNO”) was incorporated in Nevada on January 23, 2004. According to the company’s April 30, 2013 Form 10-Q, the company was engaged in the business of locating and salvaging sunken ships.

169. INNO’s SEC filings disclosed no revenues at any time during the company’s existence, a history of net losses, unaudited financial reports and a going concern opinion from the company’s management.

170. In or around June and July 2013, at least 23 internet stock promotion websites disseminated approximately 50 promotional emails regarding INNO. The promotional emails touted the investment merits of INNO and frequently cited a July 2013 research report from GSCR, which provided a $2.00 price target for INNO’s common stock. According to disclaimers contained in these emails, each of the stock promoters was paid between $1,500 and $32,500 for its promotion of INNO.

171. At the same time these promotional efforts were taking place, CL King facilitated the liquidation of millions of INNO shares from the VPB account. Specifically, during the period June 11, 2013 through August 26, 2013, despite the presence of numerous red flags, CL King facilitated the liquidation of over 2 million shares of INNO through VPB’s account. These sales generated proceeds of almost $41,000.
172. CL King’s liquidation of INNO stock from the VPB account took place over 18 trading days. On 14 of these days, VPB’s sales accounted for over 20 percent of the TMV, and on three of the days, VPB’s sales constituted over 60 percent of the TMV in INNO. On August 14, 2013, VPB’s sales of INNO accounted for over 80 percent of the TMV.

*Liquidations of SRGE*

173. According to the SEC’s EDGAR system, Southridge Enterprises, Inc. (SRGE) last made a disclosure filing with the SEC on October 24, 2008, when the company filed a Form 8-K disclosing a change in its auditor. Effective April 11, 2011, the company stopped filing reports with the SEC.

174. According to the company’s Annual Report for the fiscal year ended August 31, 2012 posted on the OTC Markets website, SRGE was incorporated in Nevada in May 2004. The company was originally organized to explore mineral properties in British Columbia. In 2006, the company changed its business to ethanol production. By late 2008, SRGE management decided to change the company’s focus again to mineral exploration in Mexico.

175. According to the company’s unaudited annual report posted on the OTC Markets website for the year ending August 31, 2011, SRGE reported no revenues, a net loss of over $2 million and a going concern statement from the company’s management.

176. On or about January 16, 2012, MAR, a purported independent investment research firm located in Switzerland, issued a research report on SRGE. The report included a “SPECULATIVE BUY” rating and a target price of $0.20. At the time, SRGE was trading at approximately $0.0003 per share.
177. During the period January 6, 2012 through January 18, 2012, despite the presence of red flags, CL King facilitated the liquidation of almost 11 million shares of SRGE through VPB's account. These sales generated proceeds of only approximately $3,246.

178. CL King's liquidation of SRGE's stock from the VPB account took place over six trading days. On five of these days, VPB's sales accounted for over 20 percent of the TMV, and on two of the days, VPB's sales constituted over 40 percent of the TMV in SRGE. On January 12, 2012, VPB's sales of SRGE accounted for over 80 percent of the TMV.

**Red Flags Related to Officers Associated with Multiple Penny Stock Issuers**

179. CL King's Compliance Department did not conduct a review of the stocks deposited into the AE account, including an analysis to determine if there were common officers and directors amongst these issuers, until August 2013 after the Firm received regulatory inquiries from FINRA about AE's account.

180. The August 2013 analysis, which was done using publicly available information, found that nine individuals held officer or director positions with multiple issuers whose stock was deposited into and sold from AE's CL King account.

**Red Flags Raised by Regulatory Inquiries**

181. During Relevant Periods II and III, CL King received information requests from FINRA and the Depository Trust & Clearing Corporation (DTCC) concerning at least ten penny stocks that were heavily traded in the VPB or AE accounts: Petron Energy II, Inc. (PEII), Global Earth Energy, Inc. (GLER), One World Holdings, Inc. (OWOO), Victoria Internet Services, Inc. (VRIS), SRGE, CLDS, DRHC, AEGY, INNO, and GSAE.

182. Despite receiving these requests, CL King and Miller failed to investigate the activity or question why FINRA or DTCC was asking about VPB's and AE's activity in these
penny stocks. The only reaction the Firm had to these inquiries was to stop accepting physical certificates in the VPB account. However, the Firm still accepted electronic deliveries without appropriate due diligence at deposit or monitoring of the liquidations to assess for potential suspicious activity.

**FIRST CAUSE OF ACTION**  
**IMPROPER REDEMPTION OF DEATH PUT INVESTMENTS**  
Violation of FINRA Rule 2010  
(Respondent CL King)

183. The Department realleges and incorporates by reference paragraphs 1 through 182 above.

184. Section 17(a)(2) of the Securities Act prohibits, in the offer or sale of any securities using interstate commerce, obtaining “money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.”

185. Section 17(a)(3) of the Securities Act prohibits, in the offer or sale of any securities using interstate commerce, engaging “in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.”

186. FINRA Rule 2010 requires associated persons in the conduct of their business to “observe high standards of commercial honor and just and equitable principles of trade.”

187. The Death Put Investments that CL King redeemed, and attempted to redeem, on behalf of EACM are securities.

188. Each redemption of these Death Put Investments facilitated by CL King constituted a sale of a security back to the issuer. Accordingly, CL King was required to disclose all material facts and not make any material misrepresentations to the issuers and issuers’ agents in connection with the redemptions.
189. During Relevant Period I, in connection with the redemption of the Death Put Investments, by the means and instrumentalities of interstate commerce, CL King failed to disclose the following material facts:

   a. JL was not related to the participants;

   b. EACM paid the terminally ill participants a one-time fee to open joint accounts;

   c. EACM funded the accounts and the Participant Agreements provided that the participants bore no responsibility for funding the accounts;

   d. EACM and JL limited participants' rights in that they could not withdraw, borrow or transfer funds from the accounts. In contrast, JL was permitted to buy, sell, pledge or make transfers of the funds and securities in the accounts;

   e. In most instances, the participant's profit was capped at the one-time $10,000 or $15,000 fee. In contrast, EACM's and JL's profit was unlimited;

   f. Participants' heirs could not inherit any assets of the accounts upon a participant's death;

   g. In the event JL predeceased the participant, the participant was limited to receiving five percent of the account proceeds after expenses. The remaining 95 percent of the proceeds would go to the investors in EACM's hedge fund;

   h. Participants did not receive monthly account statements, transaction confirmations, payment of interest in connection with the accounts, or any other indicia of ownership;
i. CMK died before the 31 Account was approved and before any of the Death Put Investments redeemed in her name were transferred into the 31 Account; and

j. Pursuant to the terms of the Participant Agreements and accompanying POAs, none of the participants beneficially owned the Death Put Investments in the joint accounts.

190. During Relevant Period I, in connection with the redemption of Death Put Investments, by the means and instrumentalities of interstate commerce, CL King also misrepresented the status of the deceased participants as “joint owners” of the underlying CL King account in the Firm’s cover letters to issuers and issuers’ agents.

191. In addition, CL King did not provide any of the issuers or issuers’ agents with the Participant Agreements as part of the redemption documentation, even though CL King was aware of the existence of the Participant Agreements by at least December 2012.

192. As a result of the foregoing, CL King acted in contravention of Sections 17(a)(2) and 17(a)(3) of the Securities Act, and thereby violated FINRA Rule 2010.

193. CL King’s actions also constitute separate and distinct violations of FINRA Rule 2010.

SECOND CAUSE OF ACTION
FAILURE TO ESTABLISH AND IMPLEMENT A REASONABLE SUPERVISORY SYSTEM INCLUDING WRITTEN SUPERVISORY PROCEDURES
Violation of NASD Conduct Rule 3010 and FINRA Rules 3110 and 2010 (Respondent CL King)

194. The Department realleges and incorporates by reference paragraphs 1 through 193 above.
195. NASD Rule 3010 and FINRA Rule 3110 require each member to establish and maintain a system, including written supervisory procedures, to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD and FINRA Rules.

196. During the period of at least January 2012 through March 2015, CL King did not have a reasonably designed supervisory system, including written supervisory procedures, with regard to the redemption of the Death Put Investments.

197. Specifically, although CL King assisted EACM in redeeming over $60 million in Death Put Investments during Relevant Period I, the Firm’s written supervisory procedures did not contain any procedures addressing this business. Given the unique nature of the business and the Firm’s unfamiliarity with the various issues surrounding these investments, this lack of procedures was unreasonable.

198. CL King also failed to implement any supervisory system or processes to address any aspect of the Death Put Investment business. The Firm did not obtain and review prospectuses and disclosure statements for the Death Put Investments to make an objective determination that EACM’s and JL’s redemption requests were valid. The Firm did not take reasonable steps to obtain and review documentation regarding EACM, its hedge fund, or its relationship to the terminally ill individuals to determine whether the joint tenancy was valid or whether it qualified for redemption of the investments pursuant to the death put clause. When the Firm finally obtained a copy of one of the Participant Agreements in December 2012, it did not take reasonable steps to prevent JL and EACM from (1) maintaining sham JTWROS accounts at CL King and (2) making improper redemption requests. CL King also did not
contact the terminally ill participants, even on a spot-check basis, to ensure that EACM and JL’s actions on their behalf were authorized, suitable and appropriate.

199. By failing to establish and maintain a reasonably designed supervisory system, including written supervisory procedures, to ensure compliance with federal securities laws, NASD and FINRA rules with regard to the redemption of Death Put Investments, CL King violated NASD Conduct Rules 3010 (for conduct occurring before December 1, 2014) and FINRA Rules 3110 (for conduct occurring on or after December 1, 2014) and 2010.

THIRD CAUSE OF ACTION
FAILURE TO ESTABLISH AND IMPLEMENT A REASONABLE AML PROGRAM
Violation of NASD Conduct Rule 3011(a) and FINRA Rules 3310(a) and 2010 (Respondents CL King and Miller)

200. The Department realleges and incorporates by reference paragraphs 1 through 199 above.

201. FINRA Rule 3310(a), which superseded NASD Rule 3011(a) on January 1, 2010, requires members to “[e]stablish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. §5318(g) [the Bank Secrecy Act] and the implementing regulations thereunder.”

202. Throughout Relevant Periods II and III, CL King serviced customers whose primary trading activity involved the deposit and prompt liquidation of penny stocks. However, the Firm’s AML program was not tailored to the risks posed by its penny stock liquidation business.

203. As previously described, customers AE and VPB, and numerous transactions at CL King in the accounts of these customers, presented red flags for suspicious activity, including potential manipulative trading.
204. As CL King's AMLCO, Miller failed to develop and implement an AML program reasonably designed to achieve compliance with the Bank Secrecy Act and its implementing regulations and to cause the reporting of suspicious transactions. Miller also failed to tailor CL King's AML Compliance Program to the risks associated with the Firm's penny stock liquidation business.

205. Miller ignored and failed to reasonably detect and investigate red flags of potentially suspicious activities as described above, and failed to respond appropriately and consider whether or not to report the activity as suspicious to FinCEN.

206. In sum, by virtue of having inadequate AML procedures, and failing to implement those procedures, CL King and Miller failed to establish and implement an AML program reasonably expected to cause the detection and reporting of suspicious transactions under the Bank Secrecy Act and its implementing regulations.

207. As a result of the foregoing, CL King and Miller violated NASD Conduct Rule 3011(a) and FINRA Rules 3310(a) and 2010.

FOURTH CAUSE OF ACTION
FAILURE TO CONDUCT ADEQUATE DUE DILIGENCE AND RESPOND TO RED FLAGS REGARDING A FOREIGN FINANCIAL INSTITUTION
Violation of NASD Conduct Rules 3011(b) and FINRA Rules 3310(b) and 2010 (Respondents CL King and Miller)

208. The Department realleges and incorporates by reference paragraphs 1 through 207 above.

209. FINRA Rule 3310(b), which superseded NASD Conduct Rule 3011(b) on January 1, 2010, requires that firms "[e]stablish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder." Section 312 of the Patriot Act, which amended the Bank Secrecy Act,
requires all financial institutions to exercise due diligence when accepting correspondent accounts for foreign financial institutions. 31 U.S.C. § 5318(i). The due diligence must include “appropriate, specific, risk-based, and, where necessary, enhanced policies, procedures, and controls that are reasonably designed to enable the covered financial institution to detect and report, on an ongoing basis, any known or suspected money laundering activity conducted through or involving any correspondent account . . . .” 31 C.F.R. 1010.610(a).

210. According to 31 C.F.R. 1010.610(a)(2), assessing the money laundering risk presented by a correspondent account shall include, as appropriate, an examination of the following factors:

(a) the nature of the foreign financial institution’s business and the markets it serves;
(b) the type, purpose, and anticipated activity of such correspondent account;
(c) the nature and duration of the covered financial institution’s relationship with the foreign financial institution (and any of its affiliates);
(d) the anti-money laundering and supervisory regime of the jurisdiction that issued the charter or license to the foreign financial institution; and
(e) information known or reasonably available to the covered financial institution about the foreign financial institution’s anti-money laundering record.

211. The risk-based procedures for monitoring the correspondent account must include “a periodic review of the correspondent account activity sufficient to determine consistency with information obtained about the type, purpose, and anticipated activity of the account.” 31 CFR 1010.610(a)(3).

212. CL King’s procedures stated generally that due diligence is required in connection with correspondent accounts for foreign financial institutions (“FFIs”). CL King’s procedures
also required that the Firm obtain necessary information regarding FFI correspondent accounts such as the nature of the FFI’s business and the type, purpose, and anticipated activity of such correspondent accounts.

213. With respect to the VPB account opened in June 2009, CL King failed to obtain, inter alia, information about the type, purpose and anticipated activity of the account. Instead, CL King only obtained general information about the type of securities transactions SMI’s clients typically engaged in, i.e., U.S. listed equities and options. The Firm did not obtain this information on an account-by-account basis and therefore failed to conduct adequate due diligence on the SMI-referred FFI accounts, including VPB.

214. In connection with opening the account at CL King, VPB submitted to CL King an IRS Form W-8IMY, “Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding,” which was signed by VPB management and dated June 24, 2009. The Form W-8IMY listed VPB as a Qualified Intermediary “not acting for its own account” with respect to the correspondent account VPB opened at CL King.

215. Although the Form W-8IMY put CL King on notice that VPB was acting for others in its CL King account, Firm personnel mistakenly believed that VPB was acting for its own benefit.

216. The Firm’s failure to understand the nature of the VPB account was clearly illustrated in March 2013, when a customer of VPB contacted CL King’s trading desk directly to place a trade. In the email exchange that followed, CL King management indicated that they did not know the type of account (i.e. whether VPB was a proprietary account or omnibus account
trading assets belonging to underlying customers), which is a key fact in determining the nature of the business presented by correspondent accounts for FFIs.

217. CL King and Miller failed to obtain information about the type, purpose and anticipated activity of the VPB account, as required.

218. CL King and Miller also failed to conduct a periodic review of account activity to determine consistency with the anticipated activity in the account.

219. Throughout Relevant Period III, CL King and Miller failed to conduct and document any meaningful inquiry concerning the VPB account, VPB’s clients, whether or not such clients were U.S. persons, or whether or not VPB was operating as an unauthorized broker-dealer in the United States.

220. CL King and Miller also failed to investigate or respond to the potentially suspicious penny stock activity in VPB’s account, as detailed in paragraphs 134 through 178 and 181 through 182 above.

221. Based on the foregoing, CL King and Miller violated NASD Conduct Rules 3011(b) and FINRA Rules 3310(b) and 2010.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

A. make findings of fact and conclusions of law that the Respondents committed the violations charged and alleged herein;

B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including that Respondents be required to disgorge fully any and all ill-gotten gains, together with interest; and
C. order that the Respondents bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: April 18, 2016

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Robert A. Fisher, Senior Litigation Counsel
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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 82054 / November 13, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18279

In the Matter of

Wells Fargo Advisors, LLC,
Respondent.

ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934, MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the
public interest that public administrative and cease-and-desist proceedings be, and hereby are,
instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange
Act") against Wells Fargo Advisors, LLC ("Wells Fargo Advisors" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer
of Settlement (the "Offer") which the Commission has determined to accept. Solely for the
purpose of these proceedings and any other proceedings brought by or on behalf of the
Commission, or to which the Commission is a party, and without admitting or denying the findings
herein, except as to the Commission’s jurisdiction over it and the subject matter of these
proceedings, which are admitted, Respondent consents to the entry of this Order Instituting
Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the
Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a
Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds that
Summary

These proceedings arise out of Wells Fargo Advisors’ failure to file or timely file a number of Suspicious Activity Reports (“SARs”) from approximately March 2012 through June 2013. The majority of these failures involved the failure to timely file SARs on ongoing suspicious activity that continued after an initial SAR filing by Wells Fargo Advisors on related suspicious activity. At the time, Wells Fargo Advisors’ anti-money laundering (“AML”) policies and procedures required the filing of SARs pursuant to the requirements of the Bank Secrecy Act (“BSA”), including the filing of SARs related to continuing suspicious activity. Despite these requirements, Wells Fargo Advisors failed to file or timely file at least 50 SARs, a majority of which related to continuing suspicious activity occurring in accounts held at Wells Fargo Advisors’ U.S. branch offices that focused on international customers. By failing to file or timely file SARs as required, Wells Fargo Advisors willfully violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

Respondent

1. Wells Fargo Advisors, LLC, is a Delaware limited liability company with its headquarters offices located in St. Louis, Missouri. It is a wholly-owned subsidiary of Wells Fargo & Company, a publicly traded company whose stock trades on the NYSE under the ticker symbol WFC. Wells Fargo Advisors has been registered with Commission as a broker-dealer since 1987 and as an investment adviser since 1990. Wells Fargo Advisors provides securities brokerage, investment advisory and other financial services to its customers and advisory clients, the majority of whom are individuals. Wells Fargo Advisors has more than 15,000 registered representatives and advisory personnel and administers more than $1.5 trillion in customer assets.

Background

2. The Bank Secrecy Act (“BSA”) requires broker-dealers such as Wells Fargo Advisors to file SARs with the U.S. Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”) to report, among other things, transactions or patterns of transactions involving or aggregating to at least $5,000 or more that the broker-dealer either knows, suspects or has reason to suspect: involve funds derived from illegal activity or were conducted to disguise funds derived from illegal activities; were designed to evade any requirement of the BSA; had no business or apparent lawful purpose and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts; or involved the use of the broker-dealer to facilitate criminal activity. The BSA and FinCEN require the filing of a SAR within 30 days after a broker-dealer determines the activity is “suspicous” within the meaning of the SAR regulation.

3. FinCEN provides a form of administrative relief from the SAR filing deadline to financial institutions, including broker-dealers, for SARs identifying continuing activity of a
previously-filed SAR. Under this administrative relief, instead of filing a new SAR for each instance of ongoing suspicious activity, broker-dealers are allowed to file SARs for continuing activity after a 90-day review with the filing deadline being 120 calendar days after the date of the previously-related SAR filing. Broker-dealers also may file SARs on continuing activity earlier than the 120-day deadline if the broker-dealer believes the activity warrants earlier review by law enforcement.

4. During the relevant time period, Wells Fargo Advisors’ written AML policies and procedures mirrored the BSA and FinCEN’s requirements. This included a requirement that Wells Fargo Advisors perform a review for continuing activity after an initial SAR was filed and the account was not closed. The purpose of performing such a review was, among other things, for Wells Fargo Advisors to file continuing activity SARs to timely notify law enforcement of ongoing suspicious transactions.

5. Wells Fargo Advisors’ policies and procedures further required that all investigative case notes and SAR-related decisions be memorialized and maintained in the firm’s internal systems and that the manager of the AML Surveillance and Investigations group or his or her designee make the final determination of whether to file a SAR.

6. Employees in Wells Fargo Advisors’ Surveillance and Investigations group were responsible for investigating cases that appeared to have indications of suspicious activity in order to determine whether to recommend filing a SAR. As part of their duties, these employees also conducted reviews for continuing suspicious activity. If the previously-reported activity continued and they were unable to determine a business or apparent lawful purpose for the transactions or find a reasonable explanation for the transaction after thoroughly examining the available facts, they were to recommend filing a continuing activity SAR.

7. Prior to March 2012, Wells Fargo Advisors recognized members of the Surveillance and Investigations group for the quality and increased numbers of SARs (including continuing activity SARs) filed by the group.

**Changes to Wells Fargo Advisors’ AML Management**

8. Starting in approximately March 2012, Wells Fargo Advisors began making changes to the management over its AML program, including the management over the Surveillance and Investigations group.

9. In March 2012, Wells Fargo Advisors installed a new senior manager within the compliance department, including the AML program.

10. In July 2012, Wells Fargo Advisors installed a new manager to directly supervise the Surveillance and Investigations group on what was intended to be a short-term, interim basis.
11. Shortly after the arrival of new management, the Surveillance and Investigations group began receiving conflicting and confusing directions on when and whether to file certain SARs, especially regarding when and whether to file continuing activity SARs.

12. Among other things, the new AML management created confusion by communicating to the Surveillance and Investigations group that:

- they were filing too many SARs;
- continuing activity SAR reviews were not a regulatory requirement;
- they were to take steps to eliminate further continuing activity reviews; and
- filing a SAR required “proof” of illegal activity.

13. The new AML management also instructed the investigators not to document any disagreements with management’s decisions not to file SARs in Wells Fargo Advisors’ internal case management system, but instead to use the system to record only facts and management’s final decision.

14. All of these statements by the new AML management, many of which were communicated more than once to the Surveillance and Investigations group, created an environment in which the Surveillance and Investigations group experienced difficulty in recommending and filing SARs, especially continuing activity SARs.

15. Wells Fargo Advisors’ new AML management further stated that one of their goals was to decrease the number of continuing activity SAR filings by the firm by having the clients cease the activity or by closing the accounts and to retrain the Surveillance and Investigations group on what constituted “red flags” of suspicious transactions and activity within the firm’s brokerage accounts.

16. Despite these statements, no new formal training or guidance was offered to the Surveillance and Investigations group during the relevant time period, and investigators in the Surveillance and Investigations group had limited ability to influence the closing of accounts.

17. Between approximately July 2012 and June 2013, the total number of SARs filed by Wells Fargo Advisors dropped by approximately 60% from an average of 57 SARs filed per month to an average of 22 SARs filed per month.

18. Moreover, the interim manager of the Surveillance and Investigations group temporarily suspended certain continuing activity investigations and cleared them (that is, decided not to file SARs) without speaking directly to the investigators assigned to work on the investigations. Notwithstanding the firm’s policies and procedures to document all SAR decisioning, the interim manager did not enter his decisions within the firm’s internal case management system himself.

19. Ultimately, these activities led to missed and late SAR filings, in particular continuing activity SARs.
20. Because of the activities described above, Wells Fargo Advisors failed to file and timely file continuing activity SARs on previously-filed activity, as required by the BSA. For example:

a. After filing a continuing activity SAR on August 8, 2012 concerning significant unexplained wire activity that appeared to be an attempt to evade the requirements of the BSA, the interim manager of the Surveillance and Investigations group suspended the continuing activity review and assigned it to another group because the account was under review to be closed. However, the account was not closed and Wells Fargo Advisors never filed a continuing activity SAR, even though the unexplained wire activity continued after the date the initial SAR was filed.

b. After filing a continuing activity SAR on October 8, 2012 concerning unexplained wire activity that appeared to be an attempt to evade the requirements of the BSA, Wells Fargo Advisors failed to timely file a continuing activity SAR within the 120-day filing window even though the activity continued. Eventually, Wells Fargo Advisors filed a continuing activity SAR on July 10, 2013, approximately 155 days beyond the 120-day filing deadline.

c. After filing a continuing activity SAR on August 3, 2012 concerning significant unexplained wire activity that appeared to be an attempt to avoid the requirements of the BSA, Wells Fargo Advisors failed to timely file a continuing activity SAR within the 120-day filing window even though the activity continued. Eventually, Wells Fargo Advisors filed a continuing activity SAR on February 11, 2013, approximately 72 days beyond the 120-day filing deadline.

21. Ultimately, Wells Fargo Advisors failed to file or timely file at least 50 SARs during the relevant time period. 45 of the missed SARs related to continuing activity that occurred after a prior SAR filing and 5 of the missed SARs involved the failure to timely file an initial SAR related to suspicious activity involving accounts held at Wells Fargo Advisors.

22. Of the at least 50 unreported or untimely SAR filings, Wells Fargo Advisors filed 8 continuing activity SARs beyond the 120-day filing period.

23. After receiving an employee complaint in 2013 and conducting an internal investigation with assistance from an outside law firm, Wells Fargo Advisors retained a third-party AML compliance firm in the summer of 2014 to review no-SAR cases from January 2012 through August 2013. As a result of this review, Wells Fargo Advisors filed 24 additional continuing activity SARs and 5 initial SARs. These SARs, which are included in the figures discussed above,
were filed over one year after some of the reportable activity occurred and the initial 120-day filing deadlines expired.

**Violation**

24. As a result of the conduct described above, Wells Fargo Advisors willfully\(^1\) violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder, which require broker-dealers to comply with the reporting, record keeping, and record retention requirements of the BSA, including filing SARs as required by the BSA SAR Rule, 31 C.F.R. § 1023.320(a)(2).

**Wells Fargo Advisors’ Remedial Efforts**

25. In determining to accept Wells Fargo Advisors’ Offer, the Commission considered voluntary remedial acts promptly undertaken by Respondent, including the firm’s retaining a third-party AML compliance firm to review certain of its SAR investigations during the summer of 2014.

**Undertakings**

26. Respondent has voluntarily undertaken to, within one year of the entry of the Order:

   (a) Conduct, or cause to be conducted, a review of the policies, procedures and practices for the identification, evaluation, and reporting of suspicious activity related to accounts of Wells Fargo Advisors, as conducted by the designated AML financial crimes investigations unit (“FCI”) to determine whether AML investigative staff have sufficient time and resources to research account activity, formulate conclusions and timely file SARs;

   (b) As a result of the review, update the internal policies, procedures and practices relating to the identification, evaluation and reporting of suspicious activity related to accounts at Wells Fargo Advisors;

   (c) Provide additional training with respect to the appropriate determination of when to file SARs on suspicious activity to AML investigations staff within FCI who are responsible for conducting suspicious activity investigations and filing SARs relating to accounts at Wells Fargo Advisors; and

   (d) Certify, in writing to the Commission staff its compliance with the undertakings set forth above. The certification and any supporting material Respondent elects to provide shall be submitted to Anne C. McKinley,

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\(^1\) A willful violation of the securities laws means merely “‘that the person charged with the duty knows what he is doing.’” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “‘also be aware that he is violating one of the Rules or Acts.’” *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).
Assistant Director, Division of Enforcement, Securities and Exchange Commission, 175 West Jackson Blvd., Suite 1450, Chicago, Illinois 60604, no later than sixty (60) days from the date of the completion of the one-year period described above in paragraph 26.

In determining whether to accept the Offer, the Commission has considered these undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Wells Fargo Advisors’ Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act it is hereby ORDERED that:

A. Respondent Wells Fargo Advisors cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-8 promulgated thereunder.

B. Respondent Wells Fargo Advisors is censured.

C. Respondent Wells Fargo Advisors shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of $3,500,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier’s check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169
Payments by check or money order must be accompanied by a cover letter identifying Wells Fargo Advisors as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Anne C. McKinley, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 1450, Chicago, IL 60604.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent’s payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Brent J. Fields
Secretary

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