FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. DOMESTIC SECURITIES, INC. (CRD No. 34721), Respondent.	Disciplinary Proceeding No. 2005001819101 Hearing Officer—Andrew H. Perkins **HEARING PANEL DECISION** August 14, 2007

Respondent violated NASD Rules 3011 and 2110 by failing to develop and implement a written anti-money laundering program reasonably designed to achieve and monitor compliance with applicable laws, rules, and regulations. For this violation, Respondent is fined $10,000 and ordered to retain an independent consultant to review its anti-money laundering program and its implementation of that program. Respondent is also assessed costs.

Appearances

Jeffrey P. Bloom and Colleen Hanrahan, New York, NY (Rory C. Flynn, Chief Litigation Counsel, Washington, DC, Of Counsel) for the Department of Enforcement.

Richard F. Horowitz, Esq., Lawrence J. Toscano, Esq., and Allen M. Eisenberg HELLER, HOROWITZ & FEIT, P.C., New York, NY, for the Respondent.

DECISION

I. INTRODUCTION

The Department of Enforcement ("Enforcement") filed a Complaint against Domestic Securities, Inc. ("Domestic" or the "Respondent"), a Financial Industry Regulatory Authority

("FINRA")[1] member firm, on October 3, 2006. The Complaint contains three causes of action. The First Cause of Action alleges that Domestic violated NASD Conduct Rules 3011(a), 3011(b) and 2110, and MSRB Rule G-41, by failing to develop and implement adequate written anti-money laundering ("AML") policies and procedures. The Second Cause of Action alleges that Domestic violated NASD Conduct Rules 3011(e) and 2110, and MSRB Rule G-41 by failing to provide AML training to its traders between January 2004 and July 2006. The Third Cause of Action alleges that Domestic violated NASD Conduct Rules 3011(a), 3011(b), and 2110, and MSRB Rule G-41 by failing to monitor, analyze, and investigate certain in-house cross trades it received from John Shull ("Shull"), a broker and trader at Golden Capital Securities Ltd. ("Golden Capital"), a Canadian broker-dealer,[2] to determine if Domestic should file a Suspicious Activity Report ("SAR") form regarding those transactions with the Financial Crimes Enforcement Network ("FinCEN"), the bureau within the United States Department of the Treasury ("Treasury") that administers the implementing regulations under the Bank Secrecy Act (the "BSA").[3]

Domestic filed an Answer on October 26, 2006, and an Amended Answer on January 8, 2007. Domestic requested a hearing, which was held on June 5 and 6, 2007, at FINRA's offices in New York City. The hearing panel comprised the Hearing Officer, a current member of the District 10 Committee, and a current member of the District 11 Committee.[4]

[1] Effective July 30, 2007, the corporate successor to NASD is the Financial Industry Regulatory Authority (FINRA). FINRA's rules, which include NASD Conduct and Procedural Rules, are available on FINRA's Internet site at http://www.finra.org/RulesRegulation/FINRARules/index.htm.

[2] Stipulations ("Stips.") ¶¶ 13, 14 (May 1, 2007).

[3] 31 U.S.C. § 5311, *et. seq.*

[4] References to the Department's exhibits are cited as "C- ___," and references to Domestic's exhibits are cited as "R- ___" although Domestic did not label his exhibits with a letter prefix.

II. FINDINGS OF FACT

A. Domestic Securities

Domestic has been a FINRA member since May 6, 1994. During the review period, Domestic's operated only as a wholesale market maker in NASDAQ, Over the Counter (OTC) Bulletin Board, and Pink Sheet Securities; the firm has no retail accounts.[5] Approximately 98% to 99% of Domestic's business involves trading with other FINRA member firms; Domestic's remaining business involves trading with Canadian broker-dealers.[6] Domestic clears through Penson Financial Services, Inc. ("Penson"). During the review period, Domestic had 46 registered representatives and 3 branch offices.

Domestic started its market-making activities in 2002 when it hired Jeffrey Barber ("Barber"), Michael P. Dewhurst, Joel E. Marcus, and David H. Prado from M.H. Meyerson & Co., Inc. ("Meyerson").[7] They operated as a partnership at Domestic, splitting commissions equally,[8] and conducted a majority of Domestic's market-making business during the review period.

B. Domestic's AML Program

Domestic had AML procedures in effect and a designated AML Officer throughout the review period, January 2004 through July 2005. Domestic's AML Procedures were set forth in Section 10 of its Supervisory and Compliance Procedures manual.[9] However, Domestic did not tailor its AML Procedures to reflect its business model. For example, Section 10 of the manual did not specifically address market making and related suspicious activities that might arise, such

[5] Stips. ¶¶ 1, 2, 3; Hr'g Tr. 96-97. Domestic has an affiliated broker-dealer, Rushmore Capital (formerly HMS Securities), that has a limited number of retail accounts. *See* Hr'g Tr. 139, 288.

[6] Stips. ¶ 6.

[7] Hr'g Tr. 97, 141, 289.

[8] Hr'g Tr. 98.

[9] C-2 (Supervisory and Compliance Procedures manual); Hr'g Tr. 42-43; Stips. ¶¶ 7, 9.

as market manipulation, prearranged or other non-competitive trading, and wash or other fictitious trading. Instead, Domestic used "canned" retail procedures to which it appended the following general prefatory note, "because of the nature of [Domestic's] business and clientele … a large portion of the following procedures are either not applicable or will be effected on a limited basis."[10] In the section identifying "red flags" of suspicious activity, Domestic copied all of the examples contained in NASD Notice to Members ("NTM") 02-21,[11] to which it added a note that a number of them were not relevant due to the nature of the firm's business model.[12]

Domestic also did not perform any trade reviews during the review period to detect and report potential money-laundering problems.[13] Although Domestic reviewed random blocks of trades, it did not conduct reviews to identify suspicious trading patterns.[14] Domestic made no effort to conduct a more systematic review to identify suspicious trading patterns. Domestic justified its random trade-review process by citing the large volume of trades it processed daily. Domestic argued that it would not have been possible to review all of its trades.

To supplement its AML compliance program, Domestic added an Anti-Money Laundering Addendum to its clearing agreement with Penson on July 3, 2002.[15] The Addendum sets up a regime of shared surveillance responsibility. In general, the Addendum obligates Penson to "monitor customer accounts for any suspicious transactions that involve, in the aggregate, at least $5,000 in funds or other assets" and to file any required SAR forms with FinCEN.[16] For its part, Domestic is obligated to "notify Penson of any suspicious transactions it

[10] C-2, at 2; Hr'g Tr. 225-26.

[11] C-2 at 7-9.

[12] C-2, at 7.

[13] Hr'g Tr. 149-50, 157.

[14] Hr'g Tr. 157-58, 162.

[15] Stips. ¶ 17; R-8.

[16] R-8, at 2.

detects or of which it is aware with respect to the accounts of customers for whom it introduces transactions to Penson."[17] The Addendum, however, does not specifically address Domestic's market-making activities. At no time did Penson notify Domestic that it had detected any suspicious transactions involving Domestic.

Enforcement's expert, Judith Poppalardo ("Poppalardo"),[18] concluded that Domestic's Supervisory and Compliance Procedures were not "reasonably designed" because they did not reflect the business that the firm conducts.[19] She noted that the firm's procedures covered products and services that the firm did not offer. For example, Section 5.0, Communications with the Public, Section 12.0, Mutual Funds, and Section 15.0, Accounts, include policies relating to third party accounts, discretionary accounts, accounts for minors and incompetent persons, trust accounts, collateral/escrow accounts, and ERISA accounts. She further noted that Domestic admitted that its AML policies are largely not relevant to its operations.[20]

In addition, Poppalardo testified that Domestic's AML Procedures did not meet the requirements of NASD Conduct Rule 3011 because they stated that they had limited applicability. In her opinion, such prefatory disclaimers were likely to cause the firm's employees to disregard the procedures in their entirety because they highlighted the inapplicability of much of the material that followed.[21] At the very least, Domestic's failure to customize its AML Procedures to the firm's business left its employees with that task. Each

---

[17] *Id.*

[18] Poppalardo is the managing partner of Financial Industry Service Group, LLC in Washington, DC, which provides regulatory consulting services to broker-dealers in the areas of compliance, financial services legislation, market structure, operations, and trading. She obtained a JD degree from the University of Bridgeport School of Law. Her regulatory experience includes service as an Assistant Director with the Division of Market Regulation and the Office of Compliance Inspections and Examinations at the SEC. In addition, Poppalardo served as the Assistant General Counsel for the National Securities Clearing Corporation and Associate General Counsel of the Securities Industry Association. *See* Department's Mot. for Leave to Offer Expert Testimony (May 1, 2007).

[19] C-26, at 4 (Poppalardo Expert Rep't).

[20] *See* C-2, at 2 (Supervisory and Compliance Procedures, Section 10.1).

[21] Hr'g Tr. 228.

employee needed to review the sample red flags provided in the manual and then devise his or her own set of red flags that more appropriately addressed the firm's market-making activities. Further, Domestic provided no guidance to its employees on how to apply the AML Procedures.

Although Domestic's own expert, Wendy Goetz ("Goetz"),[22] held the overall opinion that Domestic took "reasonable steps to follow a process consistent with the requirements of its AML program and in compliance with NASD Rule 3011,"[23] she nonetheless agreed with Poppalardo's conclusion that Domestic's AML Procedures did not address the firm's business model adequately. Accordingly, Goetz recommended that Domestic modify its written procedures to cross-reference the sections of its Capital Markets Manual[24] that addressed issues of trading abuses, market manipulation, and wash trades with its AML Procedures in Section 10 of its Supervisory and Compliance Procedures manual.[25] Goetz testified that such cross-references would direct Domestic's employees to consider trading abuses and issues of market manipulation in the AML context as well.[26]

C. Golden Capital's Cross Trades

Between January 2004 and July 12, 2005, Golden Capital sent Domestic a series of retail in-house cross trades of low-priced securities, which traded on the OTC market in the United States of America.[27] Shull, a broker and trader at Golden Capital, sent most of these trades to Barber.[28] Golden Capital prearranged the terms of the trades in question, which meant that

[22] Goetz is a managing member of Get The Net, LLC, a financial services consulting firm in New York, NY. She obtained an MBA degree in finance from Bernard Baruch College, CUNY, in 1981. For 27 years before founding Get The Net, she was employed in a variety of compliance positions at several national broker-dealers.

[23] R-15, at 13 (Goetz Expert Rep't).

[24] R-2.

[25] Hr'g Tr. 380-81.

[26] Hr'g Tr. 381.

[27] *See* C-12 (Canadian trading records for Shull accounts).

[28] Shull telephoned orders to Barber or his assistant daily during the review period. Hr'g Tr. 109-10.

Golden Capital set the trade prices and the amount Domestic received for executing the trades.[29] The only difference in price between the two reported legs of each transaction was the compensation paid to Domestic for executing the trades, which generally ran between $50 and $100 per cross trade. Domestic assumed no risk on the trades.[30]

Enforcement focused its case on the trades that it considered exhibited signs of suspicious activity, such as market domination, wash transactions, marking the close, and multiple same day cross trades.[31] Between June 2004 and July 2005, the Golden Capital cross trades accounted for over 90% of the daily trading volume in 14 securities.[32] And, in over 60 instances, the Golden Capital cross trades represented 100% of the daily trading in the subject securities.[33] In 23 instances, Golden Capital sent the cross trades to Domestic within the last 30 minutes before the close of trading for the day.[34] Enforcement also noted four days on which Domestic executed multiple cross trades in four illiquid, low-priced securities.[35]

Enforcement further established that two of the low-priced securities, Aqua Fontanea and Biltmore Enterprises, moved in tandem on September 9 and 10, 2004.[36] On those two days, the two securities traded in a series of cross trades in the same volume and at the same time, resulting in both securities rising from an opening price of $0.24 per share to $1.00 per share.[37]

---

[29] Hr'g Tr. 155; Stips. ¶ 20.

[30] Hr'g Tr. 118.

[31] Enforcement did not contend that Domestic should have filed a SAR form to report any of the Golden Capital cross trades.

[32] C-18.

[33] C-18.

[34] C-20.

[35] C-19.

[36] C-24; C-25.

[37] Hr'g Tr. 77-78, 83-84; C-24.

In addition, the Golden Capital cross trades were the only trades for both securities on their first two days of trading.[38]

Shull sent the cross trades to Domestic because Canadian regulations required that they be executed on the US market.[39] Upon inquiry from Barber, Shull represented that each of the cross trades involved two different Canadian customers and a bona fide change in beneficial ownership.[40] Shull further represented that both sides of the cross trades were unsolicited.[41] Barber had done similar cross trades with Shull without a problem while Barber was a broker at Meyerson. This history gave Domestic additional confidence that the cross trades were lawful. Accordingly, no one at Domestic made any further inquiry about the cross trades; Domestic just facilitated the trades as an accommodation to Golden Capital as they were received.[42]

D. Domestic's AML Training

Enforcement alleged in the Second Cause of Action that Domestic failed to conduct AML training between January 2004 and July 2006. However, Anthony Monaco ("Monaco"), Domestic's Chief Compliance Officer and AML Officer from March 2005 until October 2006, testified that he conducted AML training as part of Domestic's compliance meetings in January and February 2005.[43] Monaco testified that he conducted the meeting on January 12, 2005, with Domestic's Chief Compliance Officer and the second meeting on February 1, 2005, by himself.[44] Domestic's records for those two meetings, which were signed by the attendees, reflect that

[38] Hr'g Tr. 81-82.

[39] Hr'g Tr. 52, 154, 188, 293-95. Domestic's president testified that they verified Shull's representation with Golden Capital's compliance officer. Hr'g Tr. 294-95.

[40] Hr'g Tr. 118-19.

[41] Hr'g Tr. 122.

[42] Hr'g Tr. 122, 155.

[43] Hr'g Tr. 349-50.

[44] Hr'g Tr. 350.

AML was on the agenda for each meeting.[45] In addition, Domestic introduced records of its December 9, 2005, compliance meeting that reflect that AML was one of the topics addressed at the meeting.[46] Attached to the agenda for that meeting was a copy of Domestic's AML Procedures, Section 10 of its Supervisory and Compliance Procedures manual.

III. CONCLUSIONS OF LAW

A. The BSA and Implementing Rules and Regulations

The BSA, initially adopted in 1970, established the framework for anti-money laundering obligations imposed on financial institutions. Among other things, it authorized the Secretary of the Treasury to issue regulations requiring financial institutions—including broker-dealers—to keep records of and file reports on financial transactions that might be useful in investigating and prosecuting money laundering and other financial crimes.[47] The BSA was amended in 2001 by Title III of the USA Patriot Act (the "Patriot Act"),[48] entitled the "International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001."

On April 24, 2002, FINRA adopted Conduct Rule 3011, to ensure members' compliance with Treasury's implementing regulations.[49] Conduct Rule 3011 requires each member firm to "develop and implement a written anti-money laundering program reasonably designed to achieve and monitor the firm's compliance with the requirements of the [BSA], and the implementing regulations promulgated thereunder by [Treasury]." Further, Rule 3011(a) requires

[45] C-10.

[46] C-11.

[47] Securities Act Rule 17a-8 requires broker-dealers to comply with the reporting, recordkeeping, and record retention requirements adopted under the BSA.

[48] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

[49] The requirement to establish an anti-money laundering compliance program is a mandate of federal law, and the regulations implementing the BSA do not allow NASD to grant exemptions to any types of broker-dealers from the statutory requirements.

each member to establish and implement policies and procedures "that can be reasonably expected to detect and cause the reporting of" suspicious activity and transactions.

Section 356 of Title III of the Patriot Act required Treasury, in consultation with the Securities and Exchange Commission and the Board of Governors of the Federal Reserve System, to issue rules requiring broker-dealers to file suspicious activity reports with FinCEN. Treasury issued the implementing regulation on July 2, 2002. It provided that, with respect to any transaction after December 30, 2002, "[e]very broker or dealer in securities within the United States … shall file with FinCEN … a report of any suspicious transaction relevant to a possible violation of law or regulation."[50] Section (a)(2) of that regulation requires broker-dealers to report to FinCEN any transaction that, alone or in the aggregate, involves at least $5,000 in funds or other assets, if the broker-dealer knows, suspects, or has reason to suspect that it falls within one of four classes: (1) the transaction involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity; (2) the transaction is designed, whether through structuring or other means, to evade the requirements of the BSA; (3) the transaction appears to serve no business or apparent lawful purpose or is not the sort of transaction 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; and (4) the transaction involves use of the broker-dealer to facilitate criminal activity.[51]

In August 2002, FINRA issued Notice to Members ("NTM") 02-47,[52] which set forth the provisions of the final AML rule for suspicious transaction reporting promulgated by Treasury for the securities industry. NTM 02-47 further advised broker-dealers of their duty to file a SAR

[50] 31 CFR § 103.19(a)(1).

[51] *See* NTM 02-47, 2002 NASD LEXIS 59 (Aug. 2002).

[52] 2002 NASD LEXIS 59 (Aug. 2002).

form for certain suspicious transactions occurring after December 30, 2002, in accordance with the regulations issued by Treasury. Treasury's release states that broker-dealers should determine whether activities surrounding certain transactions raise suspicions of no business or apparent lawful purpose by looking for red flags such as those enumerated in NTM 02-21.[53] NTM 02-21 emphasized each firm's duty to detect red flags and, if it detects any, to "perform additional due diligence before proceeding with the transaction."[54]

The SAR form indicates 20 "Type[s] of suspicious activity" that broker-dealers must report, including "Market manipulation," "Money laundering/Structuring," "Prearranged or other non-competitive trading," "Securities fraud," "Significant wire or other transactions without economic purpose," and "Wash or other fictitious trading."

B. Domestic's Inadequate Written AML Procedures

The Hearing Panel concluded that Domestic's AML Procedures were not reasonably designed to achieve and monitor the firm's compliance with the requirements of the BSA and the implementing regulations promulgated thereunder by Treasury. Domestic failed to tailor its procedures to the nature of its business. For example, Domestic copied the example red flags in NTM 02-21 even though most of them bore no relation to Domestic's operations. Such an approach is not reasonable. FINRA member firms are required to implement policies and procedures that deal with their business operations. Domestic's only business was wholesale market making, yet none of its AML Procedures, including the list of red flags, addressed market-making activities.

The Hearing Panel rejects Domestic's argument that it was not required to do more because FINRA had not published specific guidance for market makers. Contrary to Goetz's

[53] 2002 NASD LEXIS 24 (Apr. 2002).

[54] *Id.* at *37.

opinion,[55] enforcement of FINRA's rules is not dependent upon FINRA first publishing detailed guidance on each rule's application. Moreover, in this case, the obligation to implement adequate procedures is a mandate of federal law and wholly independent of any such interpretative guidance from FINRA.

The Hearing Panel also rejects Domestic's argument that its AML Procedures should be deemed reasonable and adequate because it followed FINRA'S Small Firm Template ("SFT").[56] FINRA published the SFT to assist small firms in fulfilling their responsibilities to establish an AML program. However, it was not intended to address every firm's needs or to "create a safe harbor from regulatory responsibility."[57] FINRA included the following warning in the first paragraph of the SFT that each firm must tailor its AML program to fit its particular situation.

> There is no exemption from the rules for small broker-dealers, and they are required to follow all of the requirements of AML rules. The obligation to develop an AML plan is not a "one-size-fits-all" requirement, and you must tailor your plan to fit your particular firm's situation. This language is provided as a **helpful starting point** to walk you through developing your firm's plan. If this language does not fit your firm's business situation in any respect, you will need to prepare your own language. **You** are responsible for ensuring that your plan fits your firm's situation and that you implement your plan. (Emphasis in the original.)

In addition, NTM 02-21 advises members that to be effective each firm's AML procedures must reflect the individual "firm's business model and customer base."[58] And, with regard to red flags, NTM 02-21 states that appropriate red flags must be described in each firm's written policies and AML compliance procedures.[59] Domestic did not do so. Instead, it copied

---

[55] Hr'g Tr. 397-98, 417, 428.

[56] Available at "http://www.nasd.com/RulesRegulation/IssueCenter/Anti-MoneyLaundering/NASDW_006340."

[57] SFT at 1.

[58] 2002 NASD LEXIS 24, at *17.

[59] *Id.* at *42.

the provided examples without regard to whether they had any application to Domestic's business and operations.

In conclusion, the Hearing Panel finds that Domestic violated NASD Conduct Rules 3011 and 2110 by failing to implement policies and procedures that were reasonably designed to achieve and monitor the firm's compliance with the requirements of the BSA and the implementing regulations promulgated thereunder by Treasury.[60]

C. Failure to Classify the Cross Trades as Suspicious Activity for AML Reporting

Because Domestic lacked adequate AML procedures, including appropriate red flags geared to its market-making activities, Domestic did not specifically review trades to ascertain whether it should file a SAR form. Domestic's head of trading testified that he never made special efforts to identify AML issues.[61] Rather, he conducted customary supervision of Domestic's trading activities to detect the very same activities that Enforcement contends could be suspicious activities for AML reporting purposes. For example, Domestic had written policies and procedures in its Capital Markets Manual covering "trading abuses," such as manipulation, fictitious transactions, and wash and prearranged trading.[62] Enforcement did not allege that Domestic failed to detect any such "trading abuses" or that it should have filed a SAR form to report the Golden Capital cross trades. Nonetheless, in the Third Cause of Action, Enforcement charged Domestic with failing to identify and consider the cross trades as "suspicious transactions" for AML reporting purposes.

---

[60] NASD Conduct Rule 2110 requires members and associated persons to "observe high standards of commercial honor and just and equitable principles of trade." By violating Conduct Rule 3110, Domestic also violated Conduct Rule 2110. The Hearing Panel dismissed the charge that Domestic violated MSRB Rule G-41 because there was no evidence that Domestic conducted a municipal securities business.

[61] Hr'g Tr. 150, 152.

[62] *See* R-2, at 28-32.

Under the facts and circumstances of this case, the Hearing Panel concludes that, in substance, the First and Third Causes of Action charge the same misconduct, albeit from a different perspective. As found above, Domestic did not implement adequate AML policies and procedures, and, therefore, did not monitor its trading activities from the perspective of AML compliance. The failure to consider whether the cross trades raised any AML concerns is the direct consequence of not having an adequate AML program. Thus, taking into consideration the fact that Enforcement has not alleged that the trading at issue amounted to suspicious activity that Domestic should have reported, the Hearing Panel will dismiss the Third Cause of Action.

D. Domestic's AML Training

The Hearing Panel finds that Enforcement failed to prove by a preponderance of the evidence that Domestic failed to conduct any AML training between January 2004 and July 2006. As found above, Domestic's Chief Compliance Officer testified that he conducted AML training as part of Domestic's compliance meetings in January and February 2005.[63] His testimony is corroborated by Domestic's records for those meetings, which reflect that AML was on the agenda for each meeting.[64] In addition, Domestic records indicate that the firm's AML procedures were on the agenda for the compliance meeting held on December 9, 2005.[65] Accordingly, the Hearing Panel will dismiss the Second Cause of Action.

IV. SANCTIONS

The FINRA Sanction Guidelines do not specifically address violations of Conduct Rule 3011. However, in substance, the rules requiring firms to implement written AML procedures are supervisory requirements. Accordingly, the Hearing Panel considered the guidelines for supervisory violations in determining the appropriate remedial sanction in this case.

[63] Hr'g Tr. 349-50.

[64] C-10.

[65] C-11.

The Sanction Guidelines for deficient written supervisory procedures provide for a fine of $1,000 to $25,000. A principal consideration in determining the appropriate sanction for failing to implement and maintain adequate written supervisory procedures is whether the proven "deficiencies allowed violative conduct to occur or to escape detection."[66] As discussed above, Enforcement did not allege or demonstrate any such related violations. Nor did Enforcement contend that Domestic should have filed a SAR for the Golden Capital cross trades. In addition, the Hearing Panel notes that Golden Capital was registered with the Investment Dealers Association of Canada and was itself subject to AML requirements under Canadian law. And Canada is not on the list of sanctioned countries maintained by the Office of Foreign Assets Control ("OFAC").[67] In addition, the Hearing Panel found somewhat mitigating that the potential trading abuses Enforcement identified, such as market manipulation, were included in Domestic's Capital Markets Manual although they were not linked to the firm's AML Procedures.

In addition to the Sanction Guideline for deficient written supervisory procedures, the Hearing Panel considered the Sanctions Guidelines' "Principal Considerations in Determining Sanctions," which are applicable to all cases.[68] The Hearing Panel found aggravating that Domestic still has not corrected the deficiencies in its written AML Procedures despite the institution of this proceeding and the recommendation of its own expert. The Hearing Panel also found aggravating Domestic's refusal to accept responsibility for its misconduct.[69] As discussed above, a member firm cannot blame its failure to comply with applicable securities laws, rules,

---

[66] FINRA Sanction Guidelines 109 (2007), *available* at http://www.finra.org/web/groups/enforcement/documents/enforcement/p011038.pdf.

[67] OFAC, a department within Treasury, administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction. OFAC maintains a list of such targeted countries and organizations.

[68] *Id.* at 6-7.

[69] *Id.* at 7 (Principal Considerations No. 2).

and regulations on the lack of more detailed guidance from FINRA. Ignorance of FINRA's rules is no excuse for their violation.[70] Nor is it relevant that other firms in the industry are also acting improperly.[71] Moreover, the Hearing Panel found that Domestic intentionally violated its obligation to implement adequate AML procedures after it concluded incorrectly that it did not need an AML program due to the non-retail nature of its business.[72] Further, this opinion influenced all aspects of the firm's approach to AML compliance, which undoubtedly reduced the effectiveness of its AML training and surveillance.

The Hearing Panel rejected Domestic's argument that its decision to cease executing cross trades for Golden Capital was a mitigating factor. Domestic did not drop this business until after FINRA commenced its investigation. Remedial steps taken after intervention by a regulatory authority are not mitigating under the Sanction Guidelines.[73]

Considering all of the foregoing factors, the Hearing Panel found that Domestic's misconduct was serious. As explained above, it is important as a matter of national policy that every FINRA member—not just members with retail operations—have and implement an effective AML program. Domestic failed to fulfill this obligation in several respects; moreover, Domestic still has not corrected the deficiencies in its written AML program.

The Sanction Guidelines explain that the principal goal of sanctions is "to remediate misconduct by preventing the recurrence of misconduct, improving overall standards in the industry, and protecting the investing public."[74] In this case, the Hearing Panel found that Domestic's demonstrated disregard of Conduct Rule 3011 poses a serious risk to the investing

---

[70] *See Department of Enforcement v. Cipriano*, No. C07050029, 2007 NASD Discip. ____, at *__ (July 26, 2007).

[71] *Id.* n.28.

[72] *Id.* at 7 (Principal Considerations No. 13).

[73] *Id.* at 7 (Principal Considerations Nos. 2, 3, 4).

[74] *Id.* at 2.

public. The Hearing Panel concluded that the appropriate sanctions under the facts and circumstances of this case are a $10,000 fine and a requirement that Domestic retain a consultant to review its written AML program and then implement the consultant's recommendations to ensure that the program complies with Conduct Rule 3011. The Hearing Panel believes these sanctions will remediate Domestic's violations and deter others from engaging in similar misconduct.

V. ORDER

Domestic Securities, Inc. violated NASD Rules 3011 and 2110 by failing to develop and implement a written AML program reasonably designed to achieve and monitor compliance with applicable AML laws, rules, and regulations. For this violation, Domestic is fined $10,000. In addition, within 75 days of this decision becoming FINRA's final disciplinary action, Domestic shall retain an independent consultant with experience in designing and evaluating broker-dealer AML procedures, who shall be not unacceptable to FINRA District 8 staff, to conduct a prompt review of Domestic's written AML program and its implementation of that program, including but not limited to those deficiencies found in this proceeding. Upon completion of the consultant's review, Domestic shall submit a report to District 8 staff setting forth the consultant's findings and recommendations, along with Domestic's actions to implement those recommendations.

Finally, Respondent is ordered to pay costs in the amount of $3,723.35, which includes an administrative fee of $750 plus the costs of the hearing transcript. These sanctions shall be

effective on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.[75]

_____

Andrew H. Perkins
Hearing Officer
For the Hearing Panel

Copies sent to:

Domestic Securities, Inc. (*by FedEx and first-class mail*)
Richard F. Horowitz, Esq. (*by electronic and first-class mail*)
Jeffrey P. Bloom, Esq. (*by electronic and first-class mail*)
Colleen Hanrahan, Esq. (*by electronic and first-class mail*)
Rory C. Flynn, Esq. (*by electronic and first-class mail*)

[75] The Hearing Panel considered and rejected without discussion all other arguments of the parties.