

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

AIS FINANCIAL, INC.
(CRD No. 41462),

Respondent.

Disciplinary Proceeding
No. 2008012169101

Hearing Officer – MAD

HEARING PANEL DECISION

March 3, 2011

Respondent violated Conduct Rules 3011(a) and 2110 by failing to implement and enforce an anti-money laundering program reasonably designed to achieve and monitor compliance with applicable laws, rules, and regulations, which resulted in a failure to identify, investigate, and report suspicious activity. For this violation, Respondent is expelled from FINRA membership. Respondent is fined \$40,000 for failing to maintain firm books and records, in violation of Conduct Rules 3110 and 2110, Section 17(a) of the Exchange Act, and Exchange Act Rules 17a-3 and 17a-4. Respondent is also assessed costs.

Appearances

For Complainant: Michael A. Gross, Esq., Sean W. Firley, Esq., and David B. Klafter, Esq., Boca Raton, FL, FINRA, DEPARTMENT OF ENFORCEMENT.

For Respondent: Ronald Bloomfield, corporate representative for AIS Financial, Inc.

DECISION

I. INTRODUCTION

The Department of Enforcement (“Enforcement”) brought this disciplinary proceeding against Respondent AIS Financial, Inc. (f/k/a Advantage Investment Strategies, Inc.) (“AIS”). Enforcement alleges that AIS violated certain Conduct Rules related to its anti-money laundering (“AML”) program. In addition, Enforcement alleges that AIS violated certain Conduct Rules and

provisions of the Securities Exchange Act of 1934 (“Exchange Act”) regarding the maintenance of new account documentation.¹

II. BACKGROUND AND PROCEDURAL HISTORY

This disciplinary proceeding arose as a result of an investigation regarding North American Clearing, Inc. (“North American”). AIS was an introducing broker to North American. During the investigation of North American, FINRA’s regional response team identified suspicious activity occurring at AIS. Upon further review, FINRA staff concluded that AIS failed to implement and enforce its AML program, which resulted in its failure to identify, investigate, and report suspicious activity. In addition, the staff concluded that AIS failed to maintain new account documentation.

Enforcement filed a Complaint with the Office of Hearing Officers on March 31, 2010. On May 4, 2010, AIS filed an Answer and requested a hearing. The Complaint contains two causes of action. The First Cause of Action alleges that AIS violated Conduct Rules 3011(a) and 2110 by failing to implement and enforce a reasonable AML program, and failing to identify, investigate, and file Suspicious Activity Report (“SAR”) forms regarding those transactions with the Financial Crimes Enforcement Network (“FinCEN”), the bureau within the United States Department of the Treasury (“Treasury”) that administers the implementation of regulations under the Bank Secrecy Act (“BSA”).² Enforcement alleges that, between November 2005 and December 2007, AIS failed to monitor many of the AML “red flags” set forth in its AML procedures. The Complaint alleges that this failure resulted in AIS’s failure to identify, investigate, and report suspicious penny stock activity in three instances. The first instance

¹ As of July 30, 2007, NASD and New York Stock Exchange Regulation, Inc. consolidated their member regulation functions and began operating under a new corporate name, the Financial Industry Regulatory Authority (“FINRA”). This Decision refers to and relies on the NASD rules in the Complaint that were in effect at the time of the Respondent’s alleged misconduct.

² 31 U.S.C. § 5311, *et. seq.*

involved large deposits of the same penny stock into accounts purportedly owned or controlled by 14 foreign nationals and three United States citizens, liquidations of the same, and subsequent fund disbursements. The second instance involved numerous penny stock deposits and liquidations in two accounts controlled by a Central American money management firm whose owner had been the subject of several significant regulatory actions. The third instance involved penny stock deposits and liquidations in multiple accounts controlled by persons who have been the subjects of several significant regulatory and criminal actions. The Second Cause of Action alleges that AIS violated Conduct Rules 3110 and 2110, Section 17(a) of the Exchange Act, and Exchange Act Rules 17a-3 and 17a-4 by failing to maintain new customer account documentation.

The hearing was held on November 9, 2010, in Los Angeles, California, before a Hearing Panel composed of the Hearing Officer, a current member of FINRA's District 2 Committee, and a former member of FINRA's District 2 Committee. Enforcement called one witness: Steven Santos ("Santos"), a FINRA Regulatory Specialist. AIS did not call any witnesses. Before the hearing, the parties submitted Stipulations of the Parties ("Stipulations"). The Stipulations cover many of the material facts in this proceeding and designate Enforcement's proposed hearing exhibits (CX-1 through CX-57) as joint exhibits.³

Based upon a preponderance of the evidence, the Hearing Panel makes the following findings of fact and conclusions of law.

³ In this decision, "Tr." refers to the transcript of the hearing; "CX" refers to the joint exhibits; and "Stip." refers to the parties' stipulations.

III. FINDINGS OF FACT

A. Respondent

AIS has been a FINRA member since October 1996.⁴ It has one office in Westlake Village, California.⁵ Currently, AIS has approximately six registered persons.⁶ In 2006 and 2007, AIS generated a substantial portion of its revenue through its customers' sales of penny or low-priced stocks.⁷ In those two years, the firm reported total annual revenue of \$842,076 and \$533,798, respectively.⁸

The owners of AIS and their respective percentage of ownership are as follows: Marc Riviello ("Riviello")⁹ owns 75% or more of the firm, and Ronald Bloomfield ("Bloomfield") and John Martin, Sr. each own 10% or more.¹⁰ From approximately February 2006 through at least September 2008, Riviello served as AIS's Chief Executive Officer, Chief Compliance Officer, and AML Compliance Officer ("AML Officer").¹¹ Bloomfield is the current president of AIS; he also served as AIS's corporate representative for this proceeding.¹²

B. AIS's AML Program

AIS had AML procedures in effect and a designated AML Officer throughout the review period, November 2005 through December 2007.¹³ Its procedures were drafted from the small

⁴ Stip. ¶ 2.

⁵ Stip. ¶ 3.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ In June 2009, AIS filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") for Riviello, terminating his association with the firm. Riviello still maintains his 75% or greater ownership interest in AIS. Stip. ¶ 2.

¹⁰ *Id.*

¹¹ CX-57, at 1, 4; Tr. 21, 23.

¹² CX-52; Respondent's Notice Designating Ronald Bloomfield as Corporate Representative, dated Oct. 26, 2010.

¹³ Tr. 22-25; CX-1-4.

firm template AML procedures provided by FINRA in Notice to Members (“NTM”) 02-21, a Special Notice to Members on the new AML requirements for broker-dealers.¹⁴ AIS’s AML procedures required it to monitor for potentially suspicious activity, investigate such activity, and report it by filing a SAR, as appropriate.¹⁵ To assist in this regard, AIS’s procedures set forth a non-exhaustive list of 25 “red flags,” indicators of potentially suspicious activity.¹⁶ AIS copied its red flags from those listed in NTM 02-21.¹⁷ AIS’s procedures required it to investigate if any red flag was identified.¹⁸ Further, absolute certainty regarding possible unlawful activity was not a requirement in order to file a SAR; the procedures stated that AIS only needed to suspect or have reason to suspect unlawful activity.¹⁹

As noted above, Riviello was AIS’s AML Officer for most of the review period. As the AML Officer, he was responsible for establishing and enforcing the firm’s AML program, monitoring the firm’s compliance with its AML obligations, and filing SARs.²⁰ Riviello’s responsibilities also included approving new accounts, wire transfers, and fund disbursements.²¹ During Enforcement’s investigation, Riviello testified during his on-the-record interview that he monitored for suspicious activity by reviewing the firm’s trade blotters.²² However, he never

¹⁴ Tr. 126-27. The AML procedures were not tailored to AIS’s business model. *Id.* For example, while penny stock sales comprised a substantial portion of AIS’s business, the procedures did not focus on penny stocks and any related suspicious activities that might arise.

¹⁵ Stip. ¶ 5.

¹⁶ CX-1, at 14-16; CX-2, at 14-16.

¹⁷ Tr. 28; CX-57, at 9; *Compare* CX-1, at 14-16 and CX-2, at 14-16 with NTM 02-21, at 10-11.

¹⁸ Tr. 28; CX-2, at 16.

¹⁹ Tr. 29; CX-2, at 16.

²⁰ Tr. 25-26; CX-2, at 1; CX-57, at 5. Riviello did not delegate any of his AML responsibilities during the review period. Tr. 26; CX-57, at 5.

²¹ CX-57, at 4.

²² Tr. 30; CX-57, at 27-28.

reviewed consecutive monthly blotters to detect any patterns of size or volume.²³ Further, Riviello acknowledged that he never reviewed any activity with an eye toward detecting suspicious activity.²⁴

FINRA staff questioned Riviello about the red flags listed in AIS's AML procedures.²⁵

Riviello testified that AIS did not monitor for many of the red flags set forth in its AML procedures.²⁶ Specifically, Riviello stated that:

- 1) AIS did not ask any of the firm's customers about the source of their funds;²⁷
- 2) AIS did not do anything to ascertain whether a customer or a person publicly associated with the customer had a questionable background or had been the subject of news reports indicating possible criminal, civil, or regulatory violations;²⁸
- 3) AIS did not monitor for accounts that exhibited a lack of concern regarding risks, commissions, or other transaction costs;²⁹
- 4) AIS did not monitor for customers who appeared to be acting as agents for an undisclosed principal for the client, or were otherwise evasive regarding that person or entity;³⁰
- 5) AIS did not ask customers to describe the nature of their business to determine if they lacked a general knowledge of their industry;³¹

²³ CX-57, at 28.

²⁴ CX-57, at 13.

²⁵ Tr. 30.

²⁶ CX-57, at 9-12.

²⁷ CX-57, at 9-10; Tr. 31.

²⁸ CX-57, at 10; Tr. 31.

²⁹ CX-57, at 10; Tr. 32.

³⁰ CX-57, at 10; Tr. 32-33.

³¹ CX-57, at 10; Tr. 33.

- 6) AIS did not monitor for structuring to avoid the \$10,000 government reporting requirements;³²
- 7) AIS did not monitor for any customer who had multiple accounts under a single name or multiple names with a large number of interaccount or third-party transfers;³³
- 8) AIS did not monitor for customers having accounts domiciled in non-cooperative countries or territories identified by the Financial Action Task Force (“FATF”);³⁴
- 9) AIS did not monitor for unexplained or sudden wire activities, including in accounts that had little or no previous activity;³⁵
- 10) AIS did not monitor for numerous currency or cashiers check transactions aggregating to significant sums;³⁶
- 11) AIS did not monitor for large numbers of wire transfers to unrelated third parties inconsistent with customers’ legitimate business purposes;³⁷
- 12) AIS did not monitor for wire transfers that had no apparent business purpose to or from a country identified as a money laundering risk or bank secrecy haven;³⁸
- 13) AIS did not monitor for large or frequent incoming wire transfers immediately withdrawn by check or debit card without any apparent business purpose;³⁹
- 14) AIS did not monitor for funds deposits followed by an immediate request that the money be wired out or transferred to a third party or to another firm without any apparent business purpose;⁴⁰

³² CX-57, at 10; Tr. 33-34. Structuring is the breaking up of transactions for the purpose of evading the BSA reporting and recordkeeping requirements and, if appropriate thresholds are met, should be reported as a suspicious transaction under 31 C.F.R. § 103.18. Riviello did not have any understanding of what the term “structuring” meant as it related to AML. CX-57, at 10; Tr. 34.

³³ CX-57, at 10; Tr. 34.

³⁴ CX-57, at 10-11; Tr. 35-36. Riviello was not familiar with the FATF or what function it performed. CX-57, at 11; Tr. 35.

³⁵ CX-57, at 11; Tr. 36.

³⁶ CX-57, at 11; Tr. 36.

³⁷ CX-57, at 11; Tr. 36-37.

³⁸ CX-57, at 11; Tr. 37. Riviello had no understanding of a bank secrecy haven; he could not identify a country that was a bank secrecy haven. CX-57, at 11; Tr. 37.

³⁹ CX-57, at 11; Tr. 37-38.

⁴⁰ CX-57, at 11; Tr. 38.

- 15) AIS did not monitor for customers making a funds deposit for the purpose of purchasing a long-term investment followed shortly thereafter by a request to liquidate the position and transfer the proceeds out of the account;⁴¹
- 16) AIS did not monitor for excessive journal entries between unrelated accounts without any apparent business purpose;⁴²
- 17) AIS did not monitor for any customer requests to process transactions to avoid the firm's normal documentation requirements;⁴³
- 18) AIS did not monitor whether customers, for no apparent reason or in conjunction with other red flags, engaged in transactions involving certain types of securities, such as penny stocks, Regulation S stocks, and bearer bonds, which, although legitimate, have been used in connection with fraudulent schemes and money laundering activity;⁴⁴
- 19) AIS did not monitor for unexplained high levels of account activity with very low levels of securities transactions;⁴⁵
- 20) AIS did not monitor for customers maintaining multiple accounts in the names of family members or corporate entities for no apparent purpose;⁴⁶ and
- 21) AIS did not monitor for inflows of funds or other assets well beyond the known income or resource of customers.⁴⁷

In addition, Riviello testified that he had never investigated suspicious activity for AML or filed a SAR.⁴⁸

While AIS had AML procedures in effect during the review period, the Hearing Panel finds that it failed to implement and enforce them.

⁴¹ CX-57, at 11; Tr. 38.

⁴² CX-57, at 11; Tr. 38-39.

⁴³ CX-57, at 11-12; Tr. 39.

⁴⁴ CX-57, at 12; Tr. 40. Riviello acknowledged that AIS customers traded in penny stocks; yet, he did not monitor for this red flag. *Id.*

⁴⁵ CX-57, at 12; Tr. 41.

⁴⁶ CX-57, at 12; Tr. 41-42.

⁴⁷ CX-57, at 12; Tr. 42.

⁴⁸ CX-57, at 12-13; Tr. 44.

C. Suspicious Activity

Suspicious activity occurred in accounts opened and held at AIS related to the following: Asia Global Holdings Corp. stock (“AAGH”), accounts controlled by Firm 1,⁴⁹ and accounts controlled by AX and BX. Each is addressed separately below.

1. Asia Global Holdings Corp. Stock

Asia Global Holdings Corp. (“Asia Global”) is a Nevada company purportedly operating in China with headquarters in Hong Kong.⁵⁰ Its common stock is registered with the Securities and Exchange Commission (“SEC”) and trades on the Over the Counter Bulletin Board.⁵¹

The activity in the accounts holding AAGH shares was suspicious. In 2006 and 2007, AIS opened numerous customer accounts and allowed the customers to deposit shares of low-priced, thinly-traded AAGH, liquidate those shares, and then withdraw the sales proceeds.⁵² Between July 18, 2006 and December 31, 2007, approximately 20 AIS customers sold over 65 million shares of AAGH at prices ranging from approximately 2 to 30 cents per share.⁵³ The liquidations of AAGH generated proceeds of approximately \$5.1 million for the customer accounts.⁵⁴ The liquidations coincided with spikes in the stock’s volume.⁵⁵ Between July 2006 and March 2007, sales of AAGH accounted for 34% of AIS’s total revenue.⁵⁶

⁴⁹ Generic names have been used throughout the decision to protect the confidentiality of the entities and customers.

⁵⁰ CX-10, at 6.

⁵¹ *Id.*

⁵² Stip. ¶ 6.

⁵³ CX-6; Tr. 46-47.

⁵⁴ CX-6, at 2; Tr. 47.

⁵⁵ Tr. 50-51; CX-7.

⁵⁶ Stip. ¶ 8; Tr. 48; CX-53.

A review of the new account forms for the customers who liquidated AAGH revealed suspicious activity. Nine of the forms were completed in the same handwriting,⁵⁷ and reflected that the customers were Hong Kong citizens.⁵⁸ Several of the new account forms were dated with the same date.⁵⁹ In addition, several of the new account forms listed the customers' liquid net worth and annual income at amounts significantly less than the amount of AAGH that they sold.⁶⁰ For example, the new account form for Customer A listed his net worth as under \$15,000, and his annual income as between \$40,000 and \$64,999; yet, he liquidated shares of AAGH that generated sales proceeds of over \$100,000.⁶¹ Customer A deposited and sold all his AAGH shares in six days, and withdrew virtually all of his proceeds within two weeks of opening his account at AIS.⁶² Customer B's new account form listed her liquid net worth as under \$15,000, and her annual income as between \$65,000 and \$124,999; however, she deposited and liquidated shares of AAGH that generated sales proceeds of over \$650,000.⁶³ Customer C's new account form listed her occupation as a "HOUSEWIFE." She stated that her annual income was between \$65,000 and \$124,999, and her liquid net worth was under \$15,000; yet, she deposited and liquidated shares of AAGH that generated sales proceeds of nearly \$700,000.⁶⁴

⁵⁷ CX-5; Tr. 128.

⁵⁸ Stip. ¶ 9. AIS could not provide FINRA with all of the new account forms for the customer accounts that deposited and liquidated shares of AAGH. *See infra* Findings of Fact, Part III, Section D.

⁵⁹ CX-5.

⁶⁰ Stip. ¶ 9.

⁶¹ Stip. ¶ 10.

⁶² CX-8, at 1.

⁶³ Stip. ¶ 11; Cx-8, at 6..

⁶⁴ CX-5, at 1; CX-8, at 4; Stip. ¶ 12.

AIS charged a commission of just under 5% to liquidate most of the shares of AAGH.⁶⁵ AIS earned commissions of \$243,304 for the liquidations of AAGH.⁶⁶ There was no evidence that any of the AAGH customers expressed concerns about commissions.

During the time period that these customer accounts were opened and the AAGH stock was liquidated, Riviello was AIS's AML Officer, responsible for monitoring suspicious activity. The above activity triggered the following relevant red flags in AIS's AML procedures:

The customer's account has inflows of funds or other assets well beyond the known income or resources of the customer.

The customer exhibits a lack of concern regarding risks, commissions, or other transaction costs.

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, Regulation S stocks, and bearer bonds, which although legitimate, have been used in connection with fraudulent schemes and money laundering activity. (Such transactions may warrant further due diligence to ensure the legitimacy of the customer's activity.)

As noted above, Riviello testified that he did not monitor for these red flags. Further, Riviello testified that he was not aware of any instance when a customer had inflows of funds in excess of his income or resources.⁶⁷ AIS did not identify the AAGH activity as being suspicious.⁶⁸ Accordingly, it did not investigate or report the activity.⁶⁹

In May 2009, the SEC filed a Complaint against Riviello; Joseph Mangiapane, Jr. ("Mangiapane"), a former registered representative at AIS;⁷⁰ and others for engaging in

⁶⁵ Stip. ¶ 8; CX-6, at 2; Tr. 47.

⁶⁶ CX-6; Tr. 47.

⁶⁷ CX-57, at 12; Tr. 42.

⁶⁸ CX-57, at 12-13; Tr. 65-66.

⁶⁹ CX-57, at 13; Tr. 65-66.

⁷⁰ Tr. 20; CX-57, at 13.

manipulative schemes.⁷¹ The SEC Complaint asserted that Riviello and Mangiapane planned a manipulative scheme for AAGH in 2006 -- the exact same time that these accounts were opened at AIS. The SEC proceeding was stayed because the United States Department of Justice (“DOJ”) filed a criminal indictment against Mangiapane and others for several charges including fraud, conspiring to commit securities fraud, and conspiring to commit money laundering for their roles in a manipulative scheme involving AAGH and other stocks during 2006 and 2007.⁷²

The DOJ indictment identified AIS as the brokerage firm where accounts were opened for the receipt of and trading in AAGH shares.⁷³ It further alleged that after each Asia Global stock issuance, AAGH shares were received into trading accounts held at AIS, totaling approximately 60 million shares.⁷⁴ The indictment alleged that Mangiapane and others bought and sold, and directed the buying and selling, out of the accounts at AIS.⁷⁵ The indictment further alleged that AIS authorized the issuance of checks representing sales proceeds from the AAGH liquidations, and requested that those checks be sent to Mangiapane.⁷⁶ The indictment also alleged that AIS authorized wire transfers of proceeds from AAGH to bank accounts held in the names of participants at a bank in Hong Kong.⁷⁷

Riviello was also charged in the DOJ Complaint. On April 27, 2010, Riviello pled guilty to a “Felony Information charging him with conspiracy to engage in monetary transactions in

⁷¹ Stip. ¶ 13; CX-10.

⁷² Stip. ¶ 13; CX-11.

⁷³ CX-11, at 14.

⁷⁴ CX-11, at 15-17.

⁷⁵ CX-11, at 17.

⁷⁶ CX-11, at 21-22.

⁷⁷ *Id.* at 22-23.

property derived from specified unlawful activity” in the United States District Court for the District of Delaware.⁷⁸

2. Firm 1 Accounts

Firm 1 is a money management firm based in Costa Rica.⁷⁹ Firm 1 is controlled by a stock promoter (“Promoter”) who has been the subject of significant regulatory actions.⁸⁰ In 2003, prior to Firm 1 opening accounts at AIS, the SEC charged Promoter and three others with securities fraud for engaging in an Internet manipulative scheme.⁸¹ In 2009, the SEC prevailed on the fraud charges against Promoter.⁸²

In November 2005, Firm 1 opened an account for Customer 1 at AIS.⁸³ In February 2006, Firm 1 opened an account for Customer 2 at AIS.⁸⁴ The new account forms for both accounts listed the exact same residential address in Belize, similar business addresses in Costa Rica, and the same Firm 1 e-mail address.⁸⁵

The activity in the Customer 1 and 2 accounts was suspicious. It involved a pattern of depositing shares of penny or low-priced stocks, liquidating them, and wiring out the proceeds. Between November 2005 and December 2007, the Customer 1 account deposited approximately

⁷⁸ CX-12, at 1.

⁷⁹ Tr. 68.

⁸⁰ Tr. 68-69; CX-15-17.

⁸¹ Stip. ¶ 14; CX-15.

⁸² Stip. ¶ 14; CX-16. Promoter was also the subject of subsequent SEC and related criminal charges. In September 2008, the SEC charged Promoter and another individual with engaging in a fraudulent bribery scheme designed to manipulate the market for a stock. *See* CX-17. In 2009, in a related criminal proceeding, Promoter pled guilty to participating in a scheme to provide secret bribes to stock brokers in order to induce the brokers to purchase a particular stock for their customers. *See* CX-18.

⁸³ CX-13, at 4.

⁸⁴ CX-14, at 4.

⁸⁵ Stip. ¶ 15.

3.4 billion shares of penny or low-priced stock of nine different issuers.⁸⁶ Between December 2005 and April 2007, the Customer 1 account sold approximately 2.4 billion shares of such stock, generating sales proceeds of approximately \$2.4 million for the account, and commissions of \$34,582 for AIS.⁸⁷ There were only two purchases, totaling 60,000 shares, during this time period.⁸⁸ Commissions on those purchases totaled \$2,720.⁸⁹ Throughout the review period, the disbursements from the Customer 1 account totaled approximately \$2.1 million.⁹⁰

The Customer 2 account deposited approximately 1.5 billion shares of penny or low-priced stock from 22 different issuers during the review period.⁹¹ Between November 2005 and April 2007, the Customer 2 account sold approximately 303 million shares of its stock, generating sales proceeds of approximately \$1.3 million for the account, and commissions of \$18,980 for AIS.⁹² The purchases were minimal, totaling approximately 63,000 shares, and generating \$2,404 in commissions.⁹³ Between November 2005 and December 2007, the funds disbursements from the Customer 2 account totaled approximately \$1.1 million.⁹⁴

The activity in the accounts controlled by Firm 1 was also suspicious for AML purposes because both accounts engaged in similar activity. The two accounts had similar holdings and their disbursements occurred on similar dates.⁹⁵ Both accounts stopped liquidating shares of low-priced stocks in late April 2007, despite holding additional shares of such stocks in their

⁸⁶ Stip. ¶ 16; CX-21.

⁸⁷ Stip. ¶ 16; CX-19.

⁸⁸ CX-19, at 3; CX-21, at 3-5.

⁸⁹ CX-19, at 3.

⁹⁰ Stip. ¶ 16; CX-21, at 5.

⁹¹ Stip. ¶ 17; CX-22.

⁹² Stip. ¶ 17.

⁹³ CX-20.

⁹⁴ Stip. ¶ 17; CX-22, at 4.

⁹⁵ Stip. ¶ 18.

accounts.⁹⁶ The purchases of stock in both accounts were extremely minimal in relation to the sales of stock.⁹⁷ Both accounts requested that the physical stock certificates from some of the same issuers be returned to them.⁹⁸ Lastly, on October 25, 2006, both accounts transferred the exact same stock to another broker-dealer, in the exact same amount, using the same Customers 1 and 2 account names.⁹⁹

The suspicious activity in the Customer 1 and 2 accounts, coupled with Promoter's questionable background, triggered the following red flags in AIS's written AML procedures:

The customer (or a person publicly associated with the customer) has a questionable background or is the subject of news reports indicating possible criminal, civil, or regulatory violations.

The customer maintains multiple accounts, or accounts in the names of family members or corporate entities, for no apparent purpose.

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, Regulation S stocks, and bearer bonds, which although legitimate, have been used in connection with fraudulent schemes and money laundering activity. (Such transactions may warrant further due diligence to ensure the legitimacy of the customer's activity.)

AIS did not identify the activity in the accounts controlled by Firm 1 as being suspicious.¹⁰⁰ Accordingly, it did not investigate or report the activity.¹⁰¹

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Stip. ¶ 18; CX-23. Mangiapane was copied on this request. CX-23.

⁹⁹ CX-24-25; Tr. 78-79.

¹⁰⁰ CX-57, at 15-16; Tr. 79.

¹⁰¹ CX-57, at 15-16; Tr. 79-80.

3. The AX and BX Accounts

Prior to opening accounts at AIS, AX and his nephew, BX, had disciplinary histories. In 2002, AX settled fraud charges with the SEC.¹⁰² The SEC Complaint alleged that he had participated in a manipulative scheme involving a start-up energy company.¹⁰³ BX had settled three disciplinary actions with FINRA.¹⁰⁴ On July 9, 2007, the SEC issued a Litigation Release, stating that it had filed fraud charges against AX and BX for their role in a penny stock spam campaign.¹⁰⁵ The Litigation Release stated:

[AX and BX], both recidivist securities law violators, illegally made more than \$4.6 million during a 20-month “scalping” scheme by obtaining shares from at least 13 penny stock companies and selling those shares into an artificially active market they created through manipulative trading, spam email campaigns, direct mailers, and Internet-based promotional activities.¹⁰⁶

It further disclosed that in a related action, a grand jury had indicted AX and BX “for engaging in organized criminal activity and money laundering.”¹⁰⁷ In May 2009, AX and BX settled the fraud charges with the SEC, agreeing to pay \$2.8 million in disgorgement and \$1 million in civil penalties.¹⁰⁸

In September 2007, AX and BX opened four corporate accounts at AIS.¹⁰⁹ AIS opened the accounts for AX and BX just two months after the issuance of the July 2007 SEC Litigation Release discussed above. AIS’s clearing firm raised concerns about AX’s and BX’s regulatory

¹⁰² Stip. ¶ 19; CX-32.

¹⁰³ Stip. ¶ 19; CX-32.

¹⁰⁴ CX-33.

¹⁰⁵ Stip. ¶ 20; CX-34.

¹⁰⁶ CX-34.

¹⁰⁷ *Id.*

¹⁰⁸ CX-35.

¹⁰⁹ Stip. ¶ 21; CX-26-29. Bloomfield was the account executive for AX and BX at a prior firm. CX-57, at 22-23; Tr. 94-95.

history with AIS, but AIS decided to keep the accounts open.¹¹⁰ Riviello testified that he was aware of the regulatory actions against AX and BX, but, after he spoke to them, he felt comfortable keeping the accounts open and doing business with them.¹¹¹

The activity in the accounts controlled by AX and BX consisted of penny stock liquidations¹¹² – the same activity that formed the basis of the pending SEC and criminal actions against them. Between September and December 2007, the accounts controlled by AX and BX collectively sold approximately 3.5 million shares of low-priced stocks.¹¹³ There was only one purchase of 50,000 shares during this time period.¹¹⁴ In addition, on October 17, 2007, two of the accounts each transferred 2 million shares of the same stock to a third party, purportedly in connection with a private sale.¹¹⁵

In December 2007, BX opened an account with AIS for his family foundation, a not-for-profit corporation for which BX and AX were directors.¹¹⁶ BX and AX then directed AIS to transfer cash and securities positions from three of the four accounts at AIS into the newly-opened account for the family foundation.¹¹⁷ On December 27, 2007, BX instructed AIS to sell 18 positions, almost 4 million shares, in low-priced stocks, using “good-till-canceled” orders.¹¹⁸

¹¹⁰ Stip. ¶ 22.

¹¹¹ CX-57, at 23; Tr. 96.

¹¹² Stip. ¶ 22.

¹¹³ Stip. ¶ 23; CX-36-39.

¹¹⁴ CX-37.

¹¹⁵ Stip. ¶ 24; Tr. 101-03; CX-40-41.

¹¹⁶ Stip. ¶ 25.

¹¹⁷ *Id.*

¹¹⁸ CX-43; Tr. 104-05.

He also instructed AIS to sell 14 of the 18 positions through another FINRA member that was indirectly owned and controlled by a relative of AX and BX.¹¹⁹

The AX and BX accounts generated sales proceeds of approximately \$156,000.¹²⁰ AIS generally charged a commission of approximately 5% per share on those transactions.¹²¹ AIS's commissions totaled \$8,554.¹²²

The suspicious activity identified above, along with AX's and BX's questionable backgrounds, triggered the following red flags in AIS's AML procedures:

The customer (or a person publicly associated with the customer) has a questionable background or is the subject of news reports indicating possible criminal, civil, or regulatory violations.

For no apparent reason, the customer has multiple accounts under a single name or multiple names, with a large number of inter-account or third-party transfers.

The customer maintains multiple accounts, or accounts in the names of family members or corporate entities, for no apparent purpose.

The customer exhibits a lack of concern regarding risks, commissions, or other transaction costs.

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, Regulation S stocks, and bearer bonds, which although legitimate, have been used in connection with fraudulent schemes and money laundering activity. (Such transactions may warrant further due diligence to ensure the legitimacy of the customer's activity.)

¹¹⁹ CX-43; Tr. 104-05. That family member and his firm were also recently disciplined by FINRA. Tr. 106.

¹²⁰ Stip. ¶ 23.

¹²¹ *Id.*

¹²² CX-36-39.

AIS did not identify the activity in the accounts controlled by AX and BX as being suspicious.¹²³ Accordingly, AIS did not file a SAR on the above activity.¹²⁴

D. Recordkeeping

During FINRA's investigation, the staff requested that AIS provide new account documents and account agreements for customer accounts pursuant to Procedural Rule 8210.¹²⁵ AIS failed to maintain the documentation for eight customers.¹²⁶ Accordingly, it could not provide the customer account documentation to FINRA staff.

IV. CONCLUSIONS OF LAW

A. BSA and the Implementing Rules and Regulations

The BSA, initially adopted in 1970, established the framework for AML obligations imposed on financial institutions. Treasury delegated the authority to administer the BSA to FinCEN.¹²⁷ The BSA was amended in 2001 by Title III of the USA PATRIOT Act (the "Patriot Act").¹²⁸ Among other requirements, the Patriot Act requires that all broker-dealers establish and implement AML programs designed to achieve compliance with the BSA and the regulations thereunder, including the requirement that broker-dealers file SARs with FinCEN.¹²⁹

In April 2002, FINRA issued NTM 02-21, which provided guidance to assist members in developing AML compliance programs that fit their business models and needs. The guidance

¹²³ Tr. 107; CX-57, at 23.

¹²⁴ Tr. 107; CX-57, at 23.

¹²⁵ Tr. 108-10; CX-45, at 8-9; CX-47, at 4-5; CX-48, at 3-4; CX-50, at 2-3.

¹²⁶ CX-51; Tr. 108-10. Three of the eight customers sold shares of AAGH. *See* CX-6, CX-8.

¹²⁷ *See* Amendment to the Bank Secrecy Act Regulations – Requirement that Brokers or Dealers in Securities Report Suspicious Transactions, 67 Fed. Reg. 44048, at 44053 (July 1, 2002).

¹²⁸ 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).

¹²⁹ *See* 31 U.S.C. § 5318(h); 31 C.F.R. § 103.120(c).

included 25 red flags as examples of the types of activity for which firms should monitor.¹³⁰ The NTM emphasized each firm's duty to detect red flags that might be signs of money laundering and, if any were detected, to "perform additional due diligence before proceeding with the transaction."¹³¹

On April 24, 2002, FINRA adopted Conduct Rule 3011,¹³² which requires each member firm to "develop and implement a written anti-money laundering program reasonably designed to achieve and monitor the member's compliance with the requirements of the [BSA], and the implementing regulations promulgated thereunder by [Treasury]." Further, Rule 3011(a) requires 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 to issue final regulations requiring broker-dealers to file SAR forms with FinCEN. Treasury issued the implementing regulations on July 2, 2002. The regulations provide 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."¹³³ Section (a)(2) of the regulations 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: (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

¹³⁰ NTM 02-21, at 10-11.

¹³¹ *Id.*

¹³² Order Approving Proposed Rule Changes Relating to Anti-Money Laundering Compliance Programs, 67 Fed. Reg. 20854 (Apr. 26, 2002).

¹³³ 31 C.F.R. § 103.19(a)(1).

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; or (4) the transaction involves use of the broker-dealer to facilitate criminal activity.¹³⁴ It is not necessary for a broker-dealer to prove that a customer has engaged in illegal activity or to have actual knowledge of illicit or unlawful trading by a customer; rather, it is sufficient that the broker-dealer has reason to suspect that a transaction involves unlawful activity or lacks an apparent lawful purpose.¹³⁵ A broker or dealer in securities must file a SAR no later than 30 calendar days after the date of initial detection of a reportable transaction.¹³⁶

In August 2002, FINRA issued NTM 02-47, which set forth the provisions of the final AML rule for suspicious transaction reporting promulgated by Treasury for the securities industry. NTM 02-47 advised broker-dealers of their duty to file a SAR form for certain suspicious transactions occurring after December 30, 2002, in accordance with the regulations issued by Treasury. FINRA noted that the final rule requires that broker-dealers 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.

B. AIS's AML Violations

The First Cause of Action alleges that, from November 2005 through December 2007, AIS violated Conduct Rules 3011(a) and 2110, by failing to implement and enforce its AML program, which resulted in a failure to identify, investigate, and report suspicious activity.

¹³⁴ See NTM 02-47 (Aug. 2002); 31 C.F.R. § 103.19(a)(2).

¹³⁵ 31 C.F.R. § 103.19(a)(2).

¹³⁶ 31 C.F.R. § 103.19(b)(3).

The Hearing Panel concluded that AIS did not implement and enforce its AML program. AIS abdicated its AML responsibilities. It failed to monitor the firm's compliance with the requirements of the BSA and the implementing regulations promulgated by Treasury. While AIS had an AML Officer and procedures throughout the review period, it did not monitor for most of the red flags in its procedures. AIS asserted that it reviewed trade blotters; yet, it did not review them with an eye toward detecting suspicious AML activity. All of the suspicious activity at issue involved penny stocks, a red flag in AIS's AML procedures; however, AIS did not perform any due diligence as required by its AML procedures.¹³⁷

AIS failed to enforce its AML procedures. AIS's inaction resulted in its failure to identify, investigate, and report the suspicious activity regarding the AAGH stock, the Firm 1 accounts, and the accounts controlled by AX and BX. All three instances triggered red flags that AIS ignored. The Hearing Panel finds that AIS violated Conduct Rules 3011(a) and 2110.

C. AIS's Recordkeeping Violation

The Second Cause of Action alleges that AIS failed to maintain new account documentation, in violation of Conduct Rules 3110 and 2110, Section 17(a) of the Exchange Act, and Exchange Act Rules 17a-3 and 17a-4. Conduct Rule 3110(a) requires member firms to "make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations and statements of policy promulgated thereunder and with the Rules of [FINRA] and as prescribed by SEC Rule 17a-3." Compliance with these recordkeeping rules is essential to the proper functioning of the regulatory process. "Indeed, the Commission has stressed the importance of the records that broker-dealers are required to

¹³⁷ CX-2, at 15.

maintain pursuant to the Exchange Act, describing them as the ‘keystone of the surveillance of brokers and dealers by our staff and by the securities industry’s self-regulatory bodies.’”¹³⁸

Here, AIS failed to maintain its new account documentation for eight customers, three of whom sold AAGH stock.¹³⁹ Accordingly, the Hearing Panel finds that AIS violated Conduct Rules 3110 and 2110, Section 17(a) of the Exchange Act, and Exchange Act Rules 17a-3 and 17a-4 thereunder by failing to maintain firm books and records.¹⁴⁰

V. SANCTIONS

A. AML

The FINRA Sanction Guidelines (“Guidelines”) do not specifically address violations of Conduct Rule 3011. However, in substance, the rules requiring firms to implement AML programs are supervisory requirements. Accordingly, the Hearing Panel considered the guidelines for supervisory violations in determining the appropriate remedial sanction in this case.¹⁴¹

The Guidelines for failing to supervise recommend a fine of \$5,000 to \$50,000, which amount may be increased by the amount of the respondent’s financial benefit.¹⁴² In a case against a member firm involving systemic supervision failures, the Guidelines recommend suspending the firm with respect to any or all activities or functions for up to two years or expulsion of the

¹³⁸ *Department of Enforcement v. Trevisan*, 2008 FINRA Discip. LEXIS 12, at *35 (N.A.C. 2008) (quoting *Edward J. Mawod & Co.*, 46 S.E.C. 865, 873 n.39 (1977), *aff’d*, 591 F.2d 588 (10th Cir. 1979).

¹³⁹ See *supra* footnote 127.

¹⁴⁰ See, e.g., *Fox & Co. Inv., Inc.*, Exchange Act Release No. 52,697, 2005 SEC LEXIS 2822, at *30-32 (Oct. 28, 2005).

¹⁴¹ See *Department of Enforcement v. Domestic Securities, Inc.*, 2008 FINRA Discip. LEXIS 44, at *21 n.9 (N.A.C. 2008)

¹⁴² *FINRA Sanction Guidelines* 105 (2010), available at www.finra.org/sanctionguidelines.

firm.¹⁴³ The Guidelines also recommend considering, in addition to the general principles and principal considerations applicable to all violations, the nature, extent, and size of the underlying misconduct; whether the respondent ignored red flags; the quality and degree of the supervisor's implementation of the firm's supervisory procedures and controls; and whether the respondent attempted to conceal misconduct.¹⁴⁴

Here, the underlying misconduct at issue was the liquidation of billions of shares of penny stocks, involving numerous accounts, resulting in millions of dollars for its customers and large commissions for AIS. The potential for harm was significant considering the nature and amount of the suspicious penny stock liquidations.

AIS experienced a complete failure of its AML supervisory system over a substantial period of time – approximately two years. As demonstrated by Riviello's investigative testimony, AIS's implementation of its written AML procedures was essentially non-existent. AIS failed to monitor for virtually every red flag in AIS's AML procedures. AIS ignored all of the red flags raised by its customers' suspicious activity in AAGH, and the suspicious activity in the accounts controlled by Firm 1, and AX and BX.

AIS demonstrated a deliberate disregard for the requirements of Conduct Rule 3011.¹⁴⁵ It turned a blind eye to its AML supervisory obligations. AIS did not investigate or report any suspicious activity. By failing to investigate and report the egregious red flag activities and events, Riviello, AIS's AML Officer, attempted to conceal the activity from the regulatory authorities.¹⁴⁶

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ Sanction Guidelines at 7 (Principal Considerations in Determining Sanctions, No. 13).

¹⁴⁶ *Id.* at 6 (Principal Considerations in Determining Sanctions, No. 10).

AIS's failure to investigate and report the suspicious activity was motivated by the profits it received in the form of commissions on the penny stock liquidations.¹⁴⁷ AIS generated a substantial portion of its total revenue during the relevant period – approximately \$300,000 in gross commissions – from the suspicious penny stock activity. Riviello was also motivated by the profits because he received a share of the commissions from the unreported suspicious activity.¹⁴⁸

The Hearing Panel found aggravating AIS's refusal to accept responsibility for its misconduct.¹⁴⁹ When the staff confronted Riviello with the suspicious activity, he maintained that there were no AML concerns. The evidentiary record amply demonstrates the numerous red flags that went undetected at AIS. As stated in AIS's AML procedures, AIS is required to investigate if even one red flag is triggered. Throughout the entire review period, approximately two years, AIS never investigated any activity for AML concerns and to date it has failed to provide any evidence that it has implemented and enforced an adequate AML program.

The Hearing Panel rejects AIS's argument that it should receive a minor sanction because the violation resulted from the acts of former employees. Bloomfield, AIS's current president, emphasized that Riviello and other registered representatives that engaged in this activity are no longer employed with AIS. However, Riviello is still a 75% owner of AIS.¹⁵⁰

The Hearing Panel was not convinced that AIS fully appreciated the magnitude of its misconduct. At the hearing, Bloomfield, on behalf of AIS, argued that the suspicious activity could be innocuous. The Hearing Panel found his position troubling in light of the evidence,

¹⁴⁷ *Id.* at 7 (Principal Considerations in Determining Sanctions, No. 17).

¹⁴⁸ CX-57, at 21.

¹⁴⁹ Sanction Guidelines at 6 (Principal Considerations in Determining Sanctions, No. 2).

¹⁵⁰ Stip. ¶ 2.

which overwhelmingly demonstrated that AIS blatantly ignored red flags and knowingly continued to do business with individuals with significant regulatory backgrounds. Further, both the SEC and the DOJ brought charges relating to the suspicious AAGH activity, and AIS maintained the customer accounts that enabled the suspicious AAGH activity to occur.

Bloomfield stated that going forward he hoped to have a “relatively clean firm” so that he could sell it and recoup his \$60,000 investment. The securities industry and the investing public demand more than an aspiration for a “relatively clean firm.”

For this violation, Enforcement recommended a \$150,000 fine and a one-year suspension from all penny stock activity. However, considering all of the foregoing factors, and the lack of any mitigating factors, the Hearing Panel found that AIS’s misconduct was egregious, and, accordingly, warrants a more significant sanction. AIS’s misconduct was intentional. AIS ignored its AML obligations, turning a blind eye to prominent red flags and blatant suspicious activity for an extended period of time. Moreover, there is no evidence of any corrective measures taken by AIS. As explained above, it is important as a matter of national policy that every FINRA member implement and enforce an effective AML program.

The 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.”¹⁵¹ In this case, the Hearing Panel found that AIS demonstrated a consistent disregard of Conduct Rules 3011 and 2110, which poses a serious risk to the investing public. Anything short of an expulsion of AIS would be insufficient to remedy its misconduct and deter it from engaging in future misconduct.

¹⁵¹ Sanction Guidelines at 2.

B. Recordkeeping

In deciding upon appropriate sanctions for the recordkeeping violations, the Hearing Panel considered the Guidelines' principal considerations applicable to all sanction determinations and the considerations that are specific to recordkeeping violations. The Guidelines for recordkeeping violations by a member firm recommend a fine of \$1,000 to \$10,000, and a suspension of the firm with respect to any or all activities or functions for up to 30 business days. In an egregious case, the Guidelines recommend a fine of \$10,000 to \$100,000, and suggest that the firm be suspended for a lengthier period (up to two years) or that the firm be expelled.¹⁵²

The Hearing Panel concluded that AIS's recordkeeping violation was egregious. The records in question, new account documentation, were important components of AIS's AML supervisory review system and material to FINRA's ability to evaluate the quality of AIS's AML review. As noted above, some of the records in question related to the suspicious activity FINRA was investigating. Without the ability to review AIS's new account documentation, the FINRA staff's ability to uncover additional AML violations and prevent fraudulent activity is frustrated.

The Hearing Panel also found AIS's disciplinary history to be an aggravating factor.¹⁵³ AIS has been the subject of two other disciplinary actions. In April 2008, AIS entered into a Letter of Acceptance, Waiver and Consent ("AWC") with FINRA for failing to preserve all of its business-related electronic communications and for failing to enforce its own prohibition on the use of personal e-mail accounts for business-related purposes, in violation of Section 17(a) of the Exchange Act, Exchange Act Rule 17a-4, and Conduct Rules 3010(b), 3110, and 2110.¹⁵⁴ In that

¹⁵² *Id.* at 29.

¹⁵³ Sanction Guidelines at 6 (Principal Considerations in Determining Sanctions, No. 1).

¹⁵⁴ Stip. ¶ 4.

case, AIS agreed to a censure and an \$11,000 fine.¹⁵⁵ In January 2006, AIS entered into a Minor Rule Violation Letter with FINRA for failing to maintain a copy of 52 order memoranda, in violation of Conduct Rule 3110.¹⁵⁶ AIS consented to a \$2,500 fine.¹⁵⁷

There are no mitigating factors in the record. After careful consideration of the above factors, the Hearing Panel determined that the appropriate sanction for AIS is a \$40,000 fine.

VI. ORDER

As alleged in the First Cause of Action, AIS violated Conduct Rules 3011(a) and 2110 by failing to implement and enforce an AML program reasonably designed to achieve and monitor compliance with applicable AML laws, rules, and regulations, which resulted in its failure to identify, investigate, and report suspicious activity. For this violation, AIS is expelled. AIS is fined \$40,000 for failing to maintain accurate books and records, in violation of Conduct Rules 3110 and 2110, Section 17(a) of the Exchange Act, and Exchange Act Rules 17a-3 and 17a-4, as alleged in the Second Cause of Action.

In addition, AIS is ordered to pay costs in the amount of \$2,156, which includes an administrative fee of \$750 plus the costs of the hearing transcript. The monetary sanction will be due and payable on a date set by FINRA, but not less than 30 days after this decision becomes

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

FINRA's final disciplinary action in this matter, and if this becomes FINRA's final action, the expulsion of AIS shall become effective immediately.¹⁵⁸

HEARING PANEL

Maureen A. Delaney
Hearing Officer
For the Hearing Panel

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¹⁵⁸ The Hearing Panel considered and rejected without discussion all other arguments of the parties.