

**MEMO# 23160**

January 6, 2009

## **FINRA Sanctions Electronic Broker-Dealer For Inadequate AML Procedures**

[23160]

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TO: COMPLIANCE MEMBERS No. 1-09  
AML COMPLIANCE WORKING GROUP No. 1-09  
BROKER/DEALER ADVISORY COMMITTEE No. 1-09  
SEC RULES MEMBERS No. 1-09  
SMALL FUNDS MEMBERS No. 2-09  
OPERATIONS COMMITTEE No. 1-09  
TRANSFER AGENT ADVISORY COMMITTEE No. 2-09 RE: FINRA SANCTIONS ELECTRONIC  
BROKER-DEALER FOR INADEQUATE AML PROCEDURES

FINRA has announced that it has entered into a Letter of Acceptance, Waiver and Consent ("AWC") with one of its members to resolve violations of an NASD Code of Conduct rule resulting from the firm's inadequate AML procedures. [\[1\]](#) The broker-dealer neither admitted nor denied FINRA's findings in the AWC. According to the AWC, the broker-dealer, whose business consists primarily of providing an on-line, Internet based trading platform for customers, primarily utilized an automated proprietary system (the "System") to review accounts for potentially suspicious activity pursuant to its AML procedures. The System consisted of five filters that queued transactions and accounts for further review by the firm's AML/Risk Department. Such filters were triggered by patterns of abnormal activity in brokerage accounts surrounding money movement, but not suspicious trading activity. The only filter in the System that might have been triggered by suspicious trading activity was the fifth filter, which was only applied to trading within the accounts of the firm's employees.

According to the AWC, the Bank Secrecy Act requires broker-dealers' AML procedures to address, among other things, monitoring of account activities, including but not limited to

trading activity. To assist firms in this responsibility, the Suspicious Activity Report of the Financial Crimes Enforcement Network ("FinCEN") of the U.S. Treasury Department identifies twenty types of suspicious activity that must be reported, including, with respect to trading activity, market manipulation, pre-arranged or other non-competitive trading, and wash or other fictitious trading. [2] Such activities would not necessarily have triggered filters based on abnormal movement of money. Because of this, FINRA found that the firm's AML automated system was inadequate and, consequently, violated NASD Conduct Rule 3011(a), which requires broker-dealers to have AML policies and procedures that are reasonably expected to detect and cause the reporting of suspicious securities transactions. Based on this violation, the broker-dealer was censured and fined \$1 million.

The AWC notes that a firm's AML obligations are not a "one-size-fits all requirement," and each financial institution should tailor its AML program to fit its business based on factors such as the business' size, location, business activities, types of accounts it maintains, types of transactions in which its customers engage, and "the technological environment in which the firm operates." It additionally notes that Special NASD Notice to Members 02-21, which was issued in April 2002, [3] instructs broker-dealers to "consider conducting computerized surveillance of account activity to detect suspicious transactions and activity."

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Senior Associate Counsel

#### [Attachment](#)

#### **endnotes**

[1] See the attached E\*Trade Securities, E\*Trade Clearing, AWC No. 2006004297301, which was accepted by FINRA on December 31, 2008.

[2] See Item 30 of FinCEN Form 101, Suspicious Activity Report by Securities and Futures Industries (Form SAR-SF), which is available at:

[http://www.fincen.gov/forms/files/fin101\\_sar-sf.pdf](http://www.fincen.gov/forms/files/fin101_sar-sf.pdf).

[3] NASD's Special Notice to Members 02-21 is available at:

<http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p003704.pdf>.