

Legal Risk Management Tip
August 2018

Mid-Year Enforcement Action Cases

The SEC and FINRA annually publish a [letter outlining priorities](#) for the coming year, which are the primary focuses for examiners upon visiting your shop. On average, it takes 6 months for violations to show up in enforcement actions and longer if it goes to a hearing. Below are some of the more notable FINRA cases of 2018, typically involving an AWC; these are Acceptance, Waiver and Consent (“AWC”) with FINRA.

One of the most prevalent reoccurring themes are Written Supervisory Procedure (“WSP”) failures and supervisory system weaknesses, which ultimately resulted in a FINRA rule violation. Furthermore, anti-money laundering (“AML”) program violations continues to top the list. Upon reading the cases below from FINRA’s online disciplinary actions portal¹, you will find that most firms consented to the sanctions and to the entry of findings that it failed to establish and maintain a supervisory system that was reasonably designed to ensure compliance with the applicable securities laws and regulations, and FINRA rules. The cases below provide several recent illustrations of how members violated numerous areas of regulatory importance.

Puma Capital, LLC (CRD® #146744, Purchase, New York) January 2, 2018. Without admitting or denying the findings, Puma Capital, LLC “consented to the sanctions and findings that the member failed to develop and implement an AML program reasonably designed to achieve and monitor compliance with the Bank Secrecy Act and implementing regulations.”² “The findings also stated that the firm failed to establish and implement policies and procedures for detecting and reporting potentially suspicious activity relating to the liquidation of millions of shares of microcap securities.”³

“The firm was censured, fined \$70,000, and required to certify that the firm’s policies, systems and procedures (written and otherwise) and training are reasonably designed with respect to the firm’s compliance with FINRA Rule 3310, the Bank Secrecy Act, and Section 5 of the 1933 Act and the applicable rules and regulations with the respect to the distribution of unregistered securities.”⁴ (FINRA Case #2016047676801)

George K. Baum & Company (CRD #36354, Kansas City, Missouri) January 3, 2018. George K. Baum & Company was censured and fined \$35,000. “Without admitting or denying the findings, the firm consented to the sanctions and to the entry of findings that it improperly sought and received reimbursements from municipal bond offering proceeds for certain rating trip expenses that were unrelated to the business purposes of the trips and, as such, constituted excessive expenses.”⁵ (FINRA Case #2015043587201)

¹ See <http://www.finra.org/industry/disciplinary-actions>

² “Monthly and Quarterly Disciplinary and Other FINRA Actions.” Finra.org, March 2018, http://www.finra.org/sites/default/files/publication_file/March_2018_Disciplinary_Actions.pdf.

³ *Id.*

⁴ *Id at page 2.*

⁵ *Id at page 2.*

Lucia Securities, LLC (CRD #37179, San Diego, California)

January 9, 2018. Lucia Securities, LLC representatives “created and distributed wealth analysis reports to customers, which provided a complete overview of each customer’s financial assets. Included in these reports, among other things, were current assets held at and away from the firm. According to the findings, they failed to review, reasonably supervise and preserve certain consolidated reports that the firm’s registered representatives created and distributed to customers.”⁶ The firm was censured and fined \$35,000. (FINRA Case #2017055425901)

Simmons First Investment Group, Inc. (CRD #47439, Little Rock, Arkansas)

April 10, 2018 – Simmons First Investment Group was found “to not have adequately detected and failed to investigate potentially suspicious transactions occurring in the customer’s accounts for purposes of determining whether to file suspicious activity reports (SARs).”⁷ The firm was censured and fined \$200,000 and consented to the sanctions and to the entry of findings that it “failed to establish and implement an anti-money laundering (AML) program that could reasonably be expected to detect and cause the reporting of suspicious transactions occurring in accounts connected to one of its customers.”⁸ (FINRA Case #2016052628901)

Jumpstart Securities, LLC (CRD #156214, Atlanta, Georgia)

April 20, 2018. Jumpstart Securities was censured and fined \$50,000. The company “consented to the sanctions and to the entry of findings that it failed to ensure that a non-registered affiliated individual involved in the management of the firm’s business was properly registered as a principal.”⁹ They were “required to review or retain all business-related emails sent from or received through the email accounts at the parent company but failed to do so.”¹⁰ “The findings also stated that the firm maintained the registration status of an individual who was not acting as a representative for the firm.”¹¹ The firm filed a U4 for a Series 7 registered individual the last possible day before the individual would have been required to retake their securities examination in order to remain registered. “The individual worked for a real estate investment company that used the firm to act as agent for its contingent offering accounts. The individual had no employment contract with the firm, nor did he ever receive any compensation. While registered with the firm, the individual took but did not pass the Series 63 examination. The firm eventually terminated the individual’s association with the firm.”¹² (FINRA Case #2016047857701)

⁶ *Id at page 3.*

⁷ “Monthly and Quarterly Disciplinary and Other FINRA Actions.” Finra.org, page 2, June 2018, http://www.finra.org/sites/default/files/publication_file/June_2018_Disciplinary_Actions.pdf.

⁸ *Id at page 2.*

⁹ *Id at page 5.*

¹⁰ *Id at page 5.*

¹¹ *Id at page 5.*

¹² *Id at page 6.*

Ongoing Themes & How to Avoid

As disseminated to the industry as part of the SEC's and FINRA's examination priority letters, and further exemplified in the matters discussed above, regulators are increasingly focusing on the efficacy of member's internal policies and whether they are "reasonably designed to achieve compliance with applicable securities laws and regulations."¹³ Themes that run within these cases are proven to be "pain-points" for firms in the industry. In working towards maintaining a compliant firm, and avoiding regulatory infractions similar to the ones discussed herein, it is recommended that firms consider the following:

- **Anti-Money Laundering (AML).** AML rules have been in place for quite some time, and as evidenced by the regulatory actions discussed above, there are still firms struggling with developing sound policies in this area. It is highly recommended that firms annually test and audit their AML programs, Business Continuity Plans (BCP) and Regulation S-P Programs to ensure the effectiveness of their policies and procedures, internal controls and operational responses to possible red flag issues. The firm's WSPs should be updated regularly in light of any deficiencies identified as part of this testing. Further, firms should provide training to employees and other associated persons to ensure the firm's policies are being understood and universally applied.
- **Licensing/Registration.** The "Jumpstart Securities" matters exemplifies the importance of understanding the roles and responsibilities of internal employees and affiliates of the firm. Applicable regulations prevent the "parking" of licenses and require those performing certain functions on behalf of the firm to be properly registered. Within a routine audit, firms can regularly monitor licenses and registrations of the firm. It is highly recommended, that firms also develop organizational charts that stipulate the roles of associated persons to ensure that proper licensing/registration has occurred.
- **Establishing and Updating Your Policies and Procedures.** Many of these cases involve firms not having a "reasonably designed" procedure or method for reporting, detecting or supervising transactions. By annually reviewing, testing and updating your firm's WSPs, this risk can be greatly mitigated. The types of tests to be performed, as well as timing and frequency of such tests, will vary based upon the matter being reviewed. It is important that the testing be meaningful and designed to enhance any gaps that might exist in the firm's compliance program.

For more information on this topic, please contact us at (619) 298-2880 or at info@jackolg.com.

Author: David M. Sobel, Esq., FINRA Specialist; Editor: Michelle L. Jacko, Esq., Managing Partner, and Robert R. Boeche II, Esq., Senior Associate, Jacko Law Group, PC. JLG works extensively with investment advisers, broker-dealers, investment companies, hedge funds, banks and corporate clients on securities and corporate counsel matters.

This article is for information purposes and does not contain or convey legal advice. The information herein should not be relied upon in regard to any particular facts or circumstances without first consulting with a lawyer.

¹³ See FINRA Rule 3110(a)