

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 82958 / March 28, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18414

In the Matter of

EUGENE TERRACCIANO,

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTIONS 15(b) AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
SECTION 203(f) OF THE INVESTMENT
ADVISERS ACT OF 1940, AND SECTION
9(b) OF THE INVESTMENT COMPANY
ACT OF 1940 AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Eugene Terracciano (“Respondent” or “Terracciano”).

II.

After an investigation, the Division of Enforcement alleges that:

SUMMARY

This matter involves anti-money laundering (“AML”) compliance failures at Aegis Capital Corporation (“Aegis” or “the firm”) by Eugene Terracciano (“Terracciano”), who served as the firm’s AML Compliance Officer (“AML CO”) from September 2013 to approximately September 2015.

From September 2013 through early 2014, all while Terracciano was serving as Aegis’ AML CO, Aegis failed to file Suspicious Activity Reports (“SARs”) on hundreds of transactions when it knew, suspected, or had reason to suspect that the transactions involved the use of the broker-dealer to facilitate fraudulent activity or had no business or apparent lawful purpose. Many of the transactions involved red flags of potential market manipulation, including high trading

volume in companies with little or no business activity during a time of simultaneous promotional activity. Aegis did not file SARs on these transactions even when it specifically identified AML red flags implicated by these transactions in its written supervisory procedures.

Under Aegis' written supervisory procedures, the firm's AML CO (Terracciano) was responsible for filing SARs on the firm's behalf. Throughout the relevant period, Terracciano became aware of transactions that exhibited numerous AML red flags through alerts from Aegis' clearing firms (hereinafter defined as "AML Alerts"). Terracciano was the primary point of contact for the clearing firms as it related to suspicious activity. Although the AML Alerts raised many red flags – including many red flags listed in Aegis' written supervisory procedures as examples of suspicious activities – Terracciano did not file SARs on Aegis' behalf regarding these transactions and did not produce a written analysis or otherwise demonstrate that he had considered filing SARs for these transactions.

As a result of the foregoing, Terracciano willfully aided and abetted and caused Aegis' violations of Exchange Act Section 17(a) and Rule 17a-8 thereunder.

RESPONDENT

Eugene Terracciano, 55. Terracciano served as Aegis' AML CO from September 2013 until approximately September 2015.

OTHER RELEVANT ENTITIES

Aegis Capital Corporation is a dually-registered investment adviser and broker-dealer with multiple branches and is headquartered in New York, NY. Aegis' business consists of investment banking, venture capital, and debt market services as well as full-service retail and institutional advisory and brokerage services.

FACTS

A. Aegis' Low Priced Securities Business

1. During the relevant period, Aegis had various brokerage customers who transacted in low-priced securities. Several of these customers did so through Delivery Versus Payment/Receive Versus Payment accounts ("DVP/RVP"). In DVP/RVP accounts held at Aegis, the customer deposited their shares at another firm in a custodial account, and the sale transactions were effected through Aegis. During the relevant period, Aegis had relationships with various clearing firms that assisted in effecting low-priced securities transactions.
2. Aegis had customers at their branch offices who transacted in low-priced securities. Several of these customers were foreign financial institutions that effected transactions on behalf of their underlying customers, all of whom were unknown to Aegis.

B. Aegis' Anti-Money Laundering Compliance Program – Written Supervisory Procedures Concerning SARs and Specific Red Flags Related to Market Manipulations

3. During the relevant period, Aegis had specific written supervisory procedures concerning compliance with its AML responsibilities. Aegis' written supervisory procedures expressly identified Aegis' AML CO as the individual responsible for deciding whether Aegis needed to file a SAR. Moreover, Aegis' written supervisory procedures stated that all Aegis employees were obligated to “promptly report to the [AML CO] any known or suspected violations of anti-money laundering policies as well as other suspected violations or crimes.”
4. Pursuant to 31 C.F.R. § 1023.320 (the “SAR Rule”), Aegis was required to file SARs for transactions by, at or through the firm that involved or aggregated at least \$5,000 if Aegis knew, suspected, or had reason to suspect that, among other things, the transactions involved funds derived from illegal activity, had no business or apparent lawful purpose, or involved using Aegis to facilitate criminal activity. Aegis explicitly cited the SAR Rule in its written supervisory procedures.
5. Aegis, in its written supervisory procedures, expressly identified certain trading in low-priced securities as suspicious activity that could warrant a SAR filing:

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

(emphasis added.)

6. Aegis, in its written supervisory procedures, also expressly identified specific AML red flags associated with low-priced securities transactions of which its employees should be aware. These specific AML red flags – many of which were also described as red flags in industry notices issued by FINRA (e.g., FINRA Notice to Members 09-05 and NASD Notice to Members 02-21) – included the following:
 - i. There is a sudden spike in investor demand for, coupled with a rising price in, a thinly-traded or low-priced security;
 - ii. The issuer has been through several recent name changes, business combinations or recapitalizations, or the company's officers are also officers of numerous similar companies;
 - iii. The issuer's SEC filings are not current, are incomplete, or nonexistent;
 - iv. The customer appears to be acting as an agent for an undisclosed principal, but declines or is reluctant, without legitimate commercial reasons, to provide information or is otherwise evasive regarding that person or entity;

- v. The customer's account has wire transfers that have no apparent business purpose to or from a country identified as a money laundering risk or a bank secrecy haven; and
- vi. The customer, for no apparent reason or in conjunction with other "red flags," engages in transactions involving certain types of securities, such as penny stocks . . . which although legitimate, have been used in connection with fraudulent schemes and money laundering activity.

C. Terracciano Failed to File SARs on Aegis' Behalf Concerning Low-Priced Securities Transactions

- 7. Terracciano – throughout the relevant period – failed to file SARs on Aegis' behalf concerning low-priced securities transactions, and did not produce a written analysis or otherwise demonstrate that he had considered filing SARs for these transactions.
- 8. Terracciano failed to file SARs on Aegis' behalf despite the fact that numerous low-priced securities transactions effected through the firm exhibited several of the AML red flags that Aegis specifically identified in its written supervisory procedures.
- 9. In particular, Terracciano failed to file SARs on transactions in which Aegis' customers were:
 - (i) selling large quantities of low-priced securities that comprised a significant percentage of the issuers' daily trading volume and outstanding float;
 - (ii) trading shares of issuers who had changed names and business lines;
 - (iii) selling substantial shares of low-priced securities during periods of spikes in price and volume of the issuers' securities and during paid promotional campaigns; and/or
 - (iv) trading in shares of issuers' that had little or no market activity until the promotions began.
- 10. Terracciano failed to file SARs on Aegis' behalf on low-priced securities transactions even when he received AML Alerts from its clearing firm about such suspicious transactions.
- 11. These AML Alerts were sent from a clearing firm that Aegis hired in July 2012 and transitioned its clearing business to by December 2012 (the "New Clearing Firm").
- 12. Beginning in January 2013, the New Clearing Firm identified AML red flags in Aegis' low-priced securities business and described them in AML Alerts that continued throughout Terracciano's tenure as Aegis' AML CO. However, despite receiving these AML Alerts, Terracciano failed to file SARs on Aegis' behalf and did not produce a written analysis or otherwise demonstrate that he had considered filing SARs for these transactions. Nor did he follow up with others to learn why firm employees or Aegis'

trade surveillance system had not brought the suspicious transactions identified in the AML Alerts to his attention.

13. Had Terracciano followed up to learn why suspicious transactions were not being brought to his attention through the firm's own internal systems, he would have learned that the firm's trade surveillance system did not analyze DVP/RVP transactions for suspicious activity. Rather, he would have learned that these transactions were simply batch approved by the applicable Aegis personnel.

D. Illustrative Examples of Transactions in which Terracciano Failed to File SARs on Aegis' Behalf

i. Customer C

14. In early November 2013, while Terracciano was serving as Aegis' AML CO, the New Clearing Firm sent an AML Alert to Aegis regarding Customer C. Customer C had a DVP/RVP account at Aegis.
15. On November 1, 2013, the New Clearing Firm sent Terracciano an AML Alert outlining Customer C's suspicious trading in several low-priced securities, including Issuers D and E and noting that in approximately six months Customer C had sold approximately *1 billion* shares of low-priced securities through Aegis (emphasis added). Both Issuers D and E were traded on OTC Link.
16. In its AML Alert, the New Clearing Firm noted that Customer C, between September 17 and October 31, 2013, had sold 31% of Issuer D's outstanding shares and that the average daily trading volume had increased by approximately five fold during Customer C's trading while the share price had dropped by approximately 90%.
17. Other evidence also indicates Issuer D may have been the subject of market manipulation. In particular, Issuer D had experienced a rapid increase in the company's stock price and volume that coincided with a promotional campaign that was inconsistent with the company's financial performance as reflected in its SEC filings.
18. With respect to Issuer E, the New Clearing Firm noted in its AML Alert that Issuer E had reported no revenues and that Customer C had sold over 60% of the company's outstanding shares in two and a half months while the share price had dropped by approximately 50%.
19. In addition to suspicious trading in Issuers D and E, the New Clearing Firm identified in the AML Alert sent to Terracciano similarly suspicious trading by Customer C in other low-priced securities including that Customer C – in one particular low-priced security – had sold more shares in three months than the issuer had outstanding.
20. In the AML Alert, the New Clearing Firm requested a description of: (i) the due diligence performed on the customer; (ii) the due diligence performed on the securities Customer C liquidated in the account; and (iii) how Aegis was comfortable with the activity in the account.

21. On November 5, 2013, Terracciano informed the New Clearing Firm that Aegis had reviewed Customer C's account activity and its account opening paperwork and had decided to close the account, which it did, at least in part, because of the AML concerns outlined in the AML Alert.
22. Despite these red flags associated with the trading by Customer C and closing the account due to the presence of suspicious activity, Terracciano did not file a SAR on Aegis' behalf. Moreover, Terracciano did not produce a written analysis or otherwise demonstrate that he had considered filing SARs for these transactions. The fact that Customer C's account was a DVP/RVP account did not relieve Aegis of its SAR filing obligations with respect to that account.

ii. Customer D

23. Another Aegis customer – Customer D – engaged in suspicious low-priced securities transactions for which Aegis did not file a SAR. Customer D was a foreign financial institution with a DVP/RVP account at the firm and traded on behalf of underlying customers who were unknown to Aegis.
24. In early June 2013, Customer D traded shares of Issuer G, which traded on OTC Link. Specifically, Between June 11 and 17, 2013 and during a paid promotional campaign for Issuer G, Customer D sold approximately 340,000 shares of Issuer G for proceeds of approximately \$248,000.
25. Moreover, another Aegis customer, Customer F, traded suspiciously in Issuer G at the same time as Customer D did. In particular, Customer F sold approximately 760,000 shares of Issuer G through Aegis during the promotion for proceeds of approximately \$840,000. Customer F was yet another foreign financial institution with a DVP/RVP account at the firm and traded on behalf of underlying customers who were unknown to Aegis.
26. On December 2, 2013, while Terracciano was serving as the AML CO, the New Clearing Firm sent an AML Alert to Terracciano regarding Customer D's trading in Issuer G, and wrote that the trading "exhibited characteristics commonly associated with a pump-and-dump scheme; including paid stock promotion, a significant increase in both price and trading volume, followed by a precipitous drop in price and volume."
27. In the AML Alert, the New Clearing Firm also noted that Issuer G had changed both its name and business line (to a medical device company from an auto parts manufacturer), had no revenue and minimal trading volume until the stock promotion began, and that Customer D's trading was similar to the suspicious trading by two other Aegis customers that had prompted the New Clearing Firm to request that those accounts be closed earlier in the year.
28. Terracciano ordered that Customer D's account be closed and acknowledged in an email that the compliance department did "not have the bandwidth to monitor the account." This lack of compliance "bandwidth" was particularly relevant since Terracciano had

learned that the branch manager who supervised the trading had not been conducting required reviews.

29. Customer D's accounts were ultimately closed, at least in part, because of the AML concerns associated with it. Terracciano knew that the accounts trading in low-priced securities was a serious concern. In fact, Terracciano did not finally act to close the accounts until he became aware that the branch manager had not, in fact, blocked the account from trading in low-priced securities.
30. Despite these red flags associated with the trading by Customer D and at least one other Aegis customer in Issuer G as well as the closing of Customer D's account due at least in part to concerns regarding low-priced securities transactions, Terracciano did not file a SAR on Aegis' behalf. Moreover, Terracciano did not produce a written analysis or otherwise demonstrate that he had considered filing SARs for these transactions. The fact that the above described accounts were DVP/RVP accounts did not relieve Aegis of its SAR filing obligations with respect to those accounts.

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

31. On November 18, 2013 – in response to deficiencies identified by the Commission's Office of Compliance Inspections and Examinations – Terracciano sent an email to all Aegis employees containing an update to Aegis' written supervisory procedures that required low-priced securities transactions in DVP/RVP accounts to be subjected to the same due diligence as cash accounts when customers deposited physical securities.
32. In particular, Aegis' updated written supervisory procedures required Aegis' DVP/RVP customers to submit Deposited Securities Request Questionnaires ("DSRQs") for any low-priced securities it wished to trade and required Aegis to complete due diligence to identify red flags associated with the issuers of low-priced securities.
33. DSRQs include, among other things, information about how the customer obtained a particular security, whether the customer is an affiliate of the issuer, and how many shares of the security the customer owns. DSRQs had to be filled out by the customer and approved by the registered representative and a member of Aegis' management before any trading was to occur.

iv. Customer G

34. Notwithstanding this update to Aegis' written supervisory procedures, however, at least one of Aegis' DVP/RVP customers (Customer G) traded suspiciously in low-priced securities and did so before the required DSRQ process had been completed. Customer G, a New York corporation, is a microcap hedge fund that held a DVP/RVP account at Aegis.
35. Between February 10, 2014 and February 20, 2014, Customer G sold 705.9 million shares of Issuer H through Aegis for proceeds of approximately \$1.24 million. Issuer H traded on OTC Link.

36. On February 19, 2014, the New Clearing Firm sent an AML Alert that Terracciano received explaining that it was going to block Customer G's account at market close because, among other reasons, Customer G had already sold 200 million shares of Issuer H that day and 2.7 *billion* shares of low-priced securities since it opened its account.
37. In addition to the suspicious trading, there were other indicia that Issuer H may have been the subject of market manipulation. For example, Issuer H experienced a large increase in price and volume that coincided with a promotional campaign. Moreover, the company's name had changed several times before becoming Issuer H.
38. The AML Alert was not limited to the suspicious Issuer H trades; it also described suspicious trading by Customer G in over 1.6 *billion* shares of the securities of ten additional microcap issuers.
39. The New Clearing Firm subsequently asked for an explanation of: (i) the due diligence Aegis performed on the customer; (ii) the due diligence Aegis performed on the securities liquidated in the account; and (iii) how Aegis was comfortable with the activity.
40. Even after Aegis received the AML Alert concerning Customer G's trading, Customer G continued to trade in Issuer H. Indeed, on February 19 and 20, 2014, Customer G sold an additional 120 million shares of Issuer H.
41. At the time of Customer G's trading in February 2014, Aegis had already implemented its new DSRQ policy for trading in DVP/RVP accounts. The DSRQ packet for Customer G's trading in Issuer H, however, was not signed by any of the required Aegis personnel and, thus, Customer G should never have been allowed to liquidate any of its Issuer H shares through Aegis.
42. Despite the significant trading by Customer G in Issuer H and the other red flags associated with the transactions, Terracciano did not file a SAR on Aegis' behalf. Moreover, Terracciano did not produce a written analysis or otherwise demonstrate that he had considered filing SARs for these transactions. The fact that Customer G's account was a DVP/RVP account did not relieve Aegis of its SAR filing obligations with respect to that account.

VIOLATIONS

43. The Bank Secrecy Act ("BSA"), and implementing regulations promulgated by FinCEN, require that broker-dealers file SARs with FinCEN to report a transaction (or a pattern of transactions of which the transaction is a part) conducted or attempted by, at, or through the broker-dealer involving or aggregating to at least \$5,000 that the broker-dealer knows, suspects, or has reason to suspect: (1) involves funds derived from illegal activity or is conducted to disguise funds derived from illegal activities; (2) is designed to evade any requirement of the BSA; (3) has no business or apparent lawful purpose and the broker-dealer knows of no reasonable explanation for the transaction after examining the available

facts; or (4) involves use of the broker-dealer to facilitate criminal activity. 31 C.F.R. § 1023.320(a)(2).

44. Exchange Act Rule 17a-8 requires broker-dealers to comply with the reporting, record-keeping, and record retention requirements of the BSA. The failure to file a SAR as required by the SAR Rule is a violation of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.
45. By engaging in the conduct described above, Aegis violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.
46. By engaging in the conduct described above, Terracciano willfully aided and abetted and caused Aegis' violations of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

- A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;
- B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act including, but not limited to, civil penalties pursuant to Section 21B of the Exchange Act;
- C. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act including, but not limited to, civil penalties pursuant to Section 203 of the Advisers Act;
- D. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 9(b) of the Investment Company Act including, but not limited to, civil penalties pursuant to Section 9 of the Investment Company Act; and
- E. Whether, pursuant to Section 21C of the Exchange Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Exchange Act Section 17(a) and rule 17a-8 thereunder and whether Respondent should be ordered to pay a civil penalty pursuant to Section 21B(a) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for purposes of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent as provided for in the Commission's Rules of Practice.

IT IS FURTHER ORDERED that, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice, 17 C.F.R. § 201.360(a)(2), the Administrative Law Judge shall issue an initial decision no later than 120 days from the occurrence of one of the following events: (A) The completion of post-hearing briefing in a proceeding where the hearing has been completed; (B) Where the hearing officer has determined that no hearing is necessary, upon completion of briefing on a motion pursuant to Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250; or (C) The determination by the hearing officer that a party is deemed to be in default under Rule 155 of the Commission's Rules of Practice, 17 C.F.R. § 201.155 and no hearing is necessary.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary