

## SEC Pursues Compliance Officers at Broker-Dealer for Aiding and Abetting AML Violations

April 27, 2018

On March 28, 2018, the Securities and Exchange Commission (“SEC”) announced settlements with Aegis, Inc. (“Aegis”), a registered broker-dealer, and two of its officers for alleged violations related to Aegis’ failure to submit suspicious activity reports (“SARs”) required under the Bank Secrecy Act (“BSA”). According to the SEC, Aegis failed to submit SARs and to maintain proper records related thereto, despite direct knowledge of “red flags” in suspicious trading activity of low-priced securities. These settlements demonstrate the SEC’s continued commitment to ensuring broker-dealers comply with their SAR reporting obligations and emphasis on individual accountability, and we expect to see additional SEC actions involving individual AML compliance failures in the future. Accordingly, compliance professionals should continue to be diligent in ensuring that their companies’ SAR reporting and other AML-related obligations are met, to take notice of and respond to red flags as they are raised, and keep clear written records regarding determinations whether to file SARs.

### The Aegis Settlement Orders

The SEC announced three separate orders on March 28, 2018 in connection with the conduct at issue (collectively, the “Aegis Orders”): (1) a settlement order with Aegis alleging violations of the broker-dealer recordkeeping requirements, in which Aegis agreed to pay a \$750,000 civil penalty and retain a compliance expert; (2) a settlement order with Aegis’ CEO and former AML compliance officer for causing and aiding and abetting Aegis’ securities law violations, in which the CEO and compliance officer agreed to pay civil penalties in the amounts of \$40,000 and \$20,000 respectively and the compliance officer agreed to a ban on serving in a compliance or AML capacity, with the right to reapply; and (3) a litigated order alleging that a second former AML compliance officer also aided and abetted Aegis’ violations.<sup>1</sup>

The Aegis Orders allege that, between 2012 and 2014, Aegis and its compliance officers failed to submit SARs related to potential market manipulation (among other suspicious activities) in the face of numerous red flags regarding potential money laundering activity, including red flags that were specifically identified in the company’s own written supervisory procedures. Moreover, the compliance officers allegedly failed to create written analyses or compile other records indicating that they considered filing SARs. According to the SEC, these failures were in violation of Aegis’ obligation under the BSA to file a SAR whenever a transaction “by, at or through the firm that involves or aggregates at least \$5,000” is known, suspected, or provides reason to suspect that the transaction “involved funds derived from illegal activity, had no

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<sup>1</sup> *In re Aegis Capital Corporation*, SEC Administrative Proceeding File No. 3-18412 (Mar. 28, 2018) (order instituting administrative and cease-and-desist proceedings); *In re Kevin McKenna and Robert Eide*, SEC Administrative Proceeding File No. 3-18413 (Mar. 28, 2018) (order instituting administrative and cease-and-desist proceedings); *In re Eugene Terracciano*, SEC Administrative Proceeding File No. 3-18414 (Mar. 28, 2018) (order instituting administrative and cease-and-desist proceedings). On Mar. 28, 2018, FINRA announced a settlement with Aegis covering the same conduct in which Aegis agreed to pay a \$500,000 penalty.

business or apparent lawful purpose, or involved using [the firm] to facilitate illegal activity,” among other things.<sup>2</sup> Specifically, the orders allege that the red flags related to suspicious trading activity in low-priced securities, including, for example, trading shares of issuers who had changed names and business line or sales of large quantities of shares during spikes in price and volume or during paid promotional campaigns. These circumstances were listed in Aegis’ AML written supervisory procedure and noted in FINRA guidance as triggers for submission of a SAR. Further, the suspicious activity was allegedly brought to the attention of the compliance officers during their respective consecutive tenures through multiple avenues, ranging from AML alerts from Aegis’ clearing firm, which eventually threatened to close Aegis’ account, to concerns expressed by lower-level employees and communications from regulators. The order also alleges that Aegis’ CEO was made aware of suspicious activity in at least one case by a letter addressed to him from the SEC’s Office of Compliance Inspections and Examinations describing the conduct at issue, after which Aegis closed the account in question.

According to the SEC, Aegis’ alleged violation of its SAR filing requirements under the BSA is also a violation of its broker-dealer record-keeping and reporting requirements under Section 17(a) and Rule 17a-8 of the Securities Exchange Act. The SEC found that the CEO and compliance officers willfully caused and aided and abetted Aegis’ violations by failing to take adequate steps to ensure that Aegis met its SAR filing requirements.

### **Individual Liability for AML Violations**

The SEC’s action against Aegis and its officers – the fifth BSA/AML-related enforcement action against a broker-dealer since SEC Chair Jay Clayton was sworn in on May 4, 2017 – reflects the agency’s commitment to make AML compliance and SAR filings an examination priority.<sup>3</sup> The SEC, like the banking regulators, appears to have become increasingly focused on individual liability in the BSA/AML context, a trend that reflects the SEC’s focus on individual accountability for violations of the securities laws.<sup>4</sup> However, regulators have more often than not pursued individuals for corporate BSA/AML violations only where, as here, direct and willful misconduct is at issue, rather than programmatic or systemic failures by their employers.<sup>5</sup> Here, the SEC specifically noted that Aegis’ failure to file SARs “went beyond its inadequate systems to surveil for suspicious activity” and involved senior personnel failing to file SARs despite being aware of transactions that exhibited numerous AML red flags and also failing to investigate or analyze in writing why Aegis’ surveillance systems failed to detect the suspicious activity.

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<sup>2</sup> *In re Kevin McKenna and Robert Eide*, SEC Administrative Proceeding File No. 3-18413 (Mar. 28, 2018) (order instituting administrative and cease-and-desist proceedings), at 4.

<sup>3</sup> See U.S. SECURITIES AND EXCHANGE COMMISSION, OFFICE OF COMPLIANCE INSPECTIONS AND EXAMINATIONS, 2018 NATIONAL EXAM PROGRAM EXAMINATION PRIORITIES, available at: <https://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2018.pdf>.

<sup>4</sup> See, e.g., *U.S. Dep’t of Treasury v. Haider*, No. 15-CV-1518, 2016 WL 107940 (D. Minn. Jan. 8, 2016) (Chief Compliance Officer failed to address specific AML failings despite direct knowledge); *In re Windsor Street Capital L.P. and John David Telfer*, SEC Administrative Proceeding File No. 3-17813 (Jan. 25, 2017) (order instituting administrative and cease-and-desist proceedings) (AML officer failed to file SARs despite constructive knowledge of pump and dump scheme).

<sup>5</sup> See, e.g., *In re Brown Brothers & Harriman, & Co.* FINRA Case No. 2013035821401 (Feb. 4, 2014) (Letter of Acceptance, Waiver, and Consent) (AML Chief Compliance Officer failed to act despite awareness of risk and direct knowledge of red flags in certain business lines); *In re Yaffar-Pena*, SEC Administrative Proceeding File No. 3-17637 (Oct. 19, 2016) (order instituting administrative and cease-and-desist proceedings) (CEO failed to verify identity of beneficial owners of foreign entities trading securities despite direct knowledge). *But see In re Raymond James & Assocs., Inc.*, FINRA Case No. 2014043592001 (May 18, 2016) (Letter of Acceptance, Waiver, and Consent) (AML compliance officer fined and suspended for company’s failure to establish and implement adequate AML procedures).

Individual liability for compliance officers is, understandably, a cause for concern for those in the industry. However, what may appear at first blush to be an expansion of AML-related compliance liability is instead another step in the evolution of the SEC's pattern of holding individuals responsible for willful misconduct, regardless of the title of the actor. While the Aegis settlements demonstrate that conduct amounting to willful blindness or worse by compliance officers may well lead to liability, it does not necessarily mean that AML compliance personnel who make reasoned, risk-based decisions with respect to SAR filing and appropriately document their decision making are at increased risk of liability. Companies should continue to emphasize the consistent application and reflective examination of their AML policies to ensure that their compliance programs meet or exceed standards across the full range of their compliance obligations.

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If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

***New York***

<b>Martine M. Beamon</b>	<b>212 450 4262</b>	<a href="mailto:martine.beamon@davispolk.com">martine.beamon@davispolk.com</a>
<b>Angela T. Burgess</b>	<b>212 450 4885</b>	<a href="mailto:angela.burgess@davispolk.com">angela.burgess@davispolk.com</a>

***Washington DC***

<b>Linda Chatman Thomsen</b>	<b>202 962 7125</b>	<a href="mailto:linda.thomsen@davispolk.com">linda.thomsen@davispolk.com</a>
<b>Neil H. MacBride</b>	<b>202 962 7030</b>	<a href="mailto:neil.macbride@davispolk.com">neil.macbride@davispolk.com</a>
<b>Kenneth L. Wainstein</b>	<b>202 962 7141</b>	<a href="mailto:ken.wainstein@davispolk.com">ken.wainstein@davispolk.com</a>
<b>Jeanine P. McGuinness</b>	<b>202 962 7150</b>	<a href="mailto:jeanine.mcguinness@davispolk.com">jeanine.mcguinness@davispolk.com</a>
<b>Will Schisa</b>	<b>202 962 7129</b>	<a href="mailto:will.schisa@davispolk.com">will.schisa@davispolk.com</a>
<b>Britt Mosman</b>	<b>202 962 7151</b>	<a href="mailto:britt.mosman@davispolk.com">britt.mosman@davispolk.com</a>
<b>Stefani Johnson Myrick</b>	<b>202 962 7165</b>	<a href="mailto:stefani.myrick@davispolk.com">stefani.myrick@davispolk.com</a>

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