

**FINRA
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ROBERT FRANKLYN MALIN
(CRD No. 1178312),

and

LINUS NWAIGWE (CRD No. 2613032),

Respondents.

Disciplinary Proceeding No. 2005001121401

Hearing Officer -- RH

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: April 8, 2010

INTRODUCTION

Disciplinary Proceeding No. 2005001121401 was filed on April 29, 2009, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Linus Nwaigwe (CRD No. 2613032) ("Nwaigwe") submitted an Offer of Settlement (Offer) to Complainant on March 23, 2010. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.¹

¹ The findings herein are pursuant to Respondent Nwaigwe's Offer of Settlement and are not binding on any other person or entity named as a respondent in this or any other proceeding.

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Under the terms of the Offer, Nwaigwe has consented, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, to the entry of findings and violations consistent with the allegations of the Complaint, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of Nwaigwe's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

A. Background of Respondent

Nwaigwe first became registered with FINRA on July 14, 1995 as a General Securities Representative ("GSR") through an association with a member firm.

From October 10, 2001 through February 4, 2004, Nwaigwe was registered with FINRA as a GSR and as a General Securities Principal ("GSP") through former member firm A.B. Watley Inc. From July 18, 2002 until September 27, 2007, Nwaigwe was registered through A.B. Watley Direct, Inc. (BD No. 18663) as a GSR and as a GSP.

Nwaigwe held the title of Chief Compliance Officer at both ABW Inc. and ABW Direct at all relevant times. Nwaigwe was also ABW Direct's designated AMLCO.

Nwaigwe is currently not registered with FINRA or associated with any FINRA member firm.

Pursuant to Article V, Section 4 of FINRA's By-Laws, Nwaigwe remains subject to FINRA's jurisdiction as this action was commenced within two years of the termination of his most recent FINRA registration.

B. Respondent's Disciplinary History

Nwaigwe has the following relevant disciplinary history with the SEC, any self-regulatory organization and any state securities regulator:

- Nwaigwe was a respondent in NASD Disciplinary Proceeding No. E102003025201. On July 11, 2007, an Offer of Settlement was approved where Nwaigwe agreed to the entry of findings that Section 17(a) of the Securities Exchange Act of 1934 and Rules 17a-3 and 17a-4 thereunder, NASD Conduct Rules 2110, 3110, 3010(a) and 3010(b).

Nwaigwe, caused ABW Direct and ABW Inc. to violate, by failing to maintain, preserve and produce records of order memoranda and failed to maintain correspondence concerning restrictions, warnings and other notifications with respect to customers' ability to trade mutual funds due to market timing activities. Nwaigwe failed to implement, maintain and enforce an effective supervisory system that would have enable ABW Direct and ABW Inc. to comply with federal securities laws and NASD's Conduct Rules. Nwaigwe also failed to follow his firms' existing policies and procedures that should have enable the firms to investigate and determine whether representatives were complying with applicable securities laws and regulations with respect to mutual fund transactions. Nwaigwe also caused the failure of ABW Direct and ABW Inc. to implement policies and procedures reasonably designed to address mutual fund market timing and mutual fund late trading. Nwaigwe was suspended for six months in a principal capacity and fined \$20,000.

- Nwaigwe was a respondent in SEC Administrative Proceeding File No. 3-13481. That proceeding was instituted on May 21, 2009 pursuant to SEC Rule 15(b) following Nwaigwe's criminal conviction in United States District Court for the Eastern District of New York ("EDNY") on a single felony conspiracy charge in the case *United States v.*

Mahaffy, No. 05-CR-613 (JG). On December 11, 2009, an Initial Decision Release No. 391 was issued granting the SEC's motion for summary disposition. The Initial Decision found that the criminal conviction constituted estoppel in favor of the SEC and found that Nwaigwe should be barred from association with any broker or dealer. On February 25, 2009, a Notice that Initial Decision has become Final was issued after the time for Nwaigwe to file a petition for review of the initial decision expired and Nwaigwe had not filed such a petition. See *Linus N. Nwaigwe*, Exchange Act Rel. No. 61581, Admin. Proceeding No. 3-13481 (Feb. 25, 2010) at <http://www.sec.gov/litigation/aljdec/2010/34-61581.pdf>; *David G. Ghysels, Kenneth E. Mahaffy, Jr. and Linus N. Nwaigwe*, Initial Decision Rel. No. 391 (Dec. 11, 2009), at <http://www.sec.gov/litigation/aljdec/2009/id391rgm.pdf>.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

SUMMARY

1. ABW Direct had a deficient anti-money laundering ("AML") program between 2003 and 2006, violated the net capital rule in 2005, filed inaccurate FOCUS Part IIA reports (hereinafter FOCUS Reports") in 2005, and failed to retain all of its electronic communications between at least June 2002 through June 2004.
2. More specifically, ABW Direct acting through its Compliance Officer ("CCO") and Anti-Money Laundering Compliance Officer ("AMLCO"), Respondent Linus Nwaigwe ("Nwaigwe"), failed to establish and enforce an adequate and reasonable AML program. ABW Direct, acting through Nwaigwe, failed to: (a) detect and investigate red flags of possible suspicious activity that occurred between at least May 2004 and January 2005 in at least six

ABW Direct customer accounts, and failed to timely report such activity; (b) perform independent testing of the AML program in 2004 and 2005 and failed to perform adequate independent testing of the program in 2006; and (c) maintain adequate written AML procedures, as required, from August 2003 through June 2006.

FIRST CAUSE OF COMPLAINT

**Failure to Establish and Enforce an Adequate Anti-Money Laundering Program
(Violation by Nwaigwe of NASD Conduct Rules 3011 and 2110)**

Broker-Dealer Responsibilities under the AML Rules and Regulations

3. NASD Conduct Rule 3011, adopted on April 24, 2002 and amended on October 22, 2002, requires all member firms to “develop and implement a written anti-money laundering program reasonably designed to achieve and monitor the firm’s compliance with the requirements of the Bank Secrecy Act (31 U.S.C. § 5311, *et seq.*), and the implementing regulations promulgated thereunder by the Department of the Treasury.” The Rule requires FINRA members to establish and implement policies and procedures “that can be reasonably expected to detect and cause the reporting of” suspicious activity and transactions.

4. The Department of Treasury issued the implementing regulation, 31 CFR § 103.19 (a)(1), on July 2, 2002, for suspicious transaction reporting for broker-dealers. It provides that, with respect to any transaction occurring 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.” FinCEN is the Financial Crimes Enforcement Network of the United States Department of the Treasury (Treasury). Section (a)(2) of that regulation provides:

A transaction requires reporting . . . if it is conducted or attempted by, at, or through a broker-dealer, it involves or aggregates funds or other assets of at least \$5,000, and the broker-dealer

knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

- (i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;
- (ii) Is designed, whether through structuring or other means, to evade any requirements of this part or any other regulations promulgated under the Bank Secrecy Act, . . . ;
- (iii) Has no business or apparent lawful purpose or is not the sort 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, including the background and possible purpose of the transaction; or
- (iv) Involves use of the broker-dealer to facilitate criminal activity.

5. Broker dealers report suspicious activity to FinCEN by filing a Suspicious Activity Report by the Securities and Futures Industries or SAR-SF.

*Background of Customer ML and the
ABW Direct accounts over which he had trading authorization*

6. During the period beginning in at least February 2004, customer ML maintained at least one account at ABW Direct in the name of a corporate entity that he co-owned, CCG.

7. ML also had trading authorization over at least five accounts for entities owned by another individual, HO.

8. ML is a former FINRA registered representative with disciplinary and customer complaint history. Specifically:

- a. In 1997, ML was disciplined by FINRA for executing unauthorized trades in a customer's account.

- b. On December 31, 2004, ML agreed to a bar in an Offer of Settlement to resolve an action commenced by FINRA on June 30, 2003. ML consented to findings that he failed to execute a customer's written sell order and failed to appear for an on-the-record interview.
- c. According to records at FINRA's Central Registration Depository ("CRD"), ML has been named as a respondent in at least five arbitrations between 1993 and 2003 and was involved in at least two additional customer complaints in 1993 and 1996.
- d. On April 10, 2008, the Securities and Exchange Commission filed a complaint against ML, CCG and others alleging an unlawful public offering and securities fraud charges in connection with the security 21st Century Technologies, Inc. ("21st Century"), which is one of the stocks discussed further herein.

9. ML sometimes day-traded from ABW Direct's premises. ML also had a consulting arrangement with ABW Group where he was paid to assist ABW Group in various business dealings.

10. HO is an Irish national. He maintained at least five accounts at ABW Direct in the name of at least three entities, KL, YI and RHL. These entities were domiciled in the Turks and Caicos Islands.

11. In October 2005, HO indirectly provided capital to ABW Direct (through a transaction with ABW Group) at a time when FINRA had requested that the firm cease conducting a securities business because it was under its net capital requirement. Specifically, HO, through the KL entity he controlled, entered into an October 3, 2005 promissory note with ABW Group whereby ABW Group received 500,000 shares of Hydroflo, Inc. ("HYFL") stock (which ABW Group then transferred to ABW Direct as discussed further herein).

Failure to Investigate Suspicious Activity and Timely File Suspicious Activity Reports

12. ABW Direct, acting through Nwaigwe, failed to establish and enforce an adequate and reasonable AML program. ABW Direct, acting through Nwaigwe, failed to detect and

investigate red flags of possible suspicious activity that occurred between at least May 2004 and January 2005 in the six accounts described above for which ML had trading authorization, and failed to timely report such activity.

13. The red flags should have caused ABW Direct and Nwaigwe to perform additional due diligence before proceeding with transactions. Instead, ABW Direct and Nwaigwe took no action and made no additional inquiries. The red flags or indicia of possible suspicious activity or transactions included, *inter alia*:

- a. ML's questionable background, including a history of arbitrations, customer complaints, and regulatory actions. ABW Direct and Nwaigwe knew or should have known ML's background.
- b. Blocks of multiple penny stock issues were delivered into the six accounts and then within days or weeks the securities were sold and proceeds wired from the accounts.
- c. Following the sales of penny stocks, there were extensive wire transfers. During a review period of May through September 2004, there were 62 wires of more than \$8.9 million from the CCG, KL and YI accounts.
- d. There was also an additional amount of at least \$4.5 million wired from the HO's RHL account between September 2004 and January 2005.
- e. With respect to the shares of one penny stock, Pacel Corp. ("Pacel"), during a review period between May and September 2004, 1.7 billion shares were delivered into and sold in the CCG and KL accounts at prices ranging between .01 and .0147 cents per share. Blocks of shares were delivered in on 67 separate occasions between May 3, 2004 and September 29, 2004. Within days of the sale transactions, the proceeds were wired from the accounts.
- f. Pacel had been named, 14 months before the transactions, as a defendant in an SEC action for its role in the fraudulent offering of another penny stock.
- g. With respect to shares of another penny stock, American Energy Production, Inc., between May 11, 2004 and August 10, 2004, blocks of shares were delivered into HO's KL account (and an additional 515,000 purchased in the CCG and KL accounts). These shares were then sold within days or weeks in 51 different transactions at prices ranging between \$0.0295 and 0.41 cents per share. Shortly thereafter, the proceeds were wired from the account.

- h. With respect to shares in penny stock S3I Holdings Inc. ("S3I"), between May 7, 2004 and September 7, 2004, there were approximately 78 million shares of S3I delivered into the CCG and KL accounts through 31 separate transactions (and an additional 1,000,000 shares purchased by KL on June 29, 2004). These shares were then sold in 83 transactions at prices between \$0.03 and 0.053 cents per share. Proceeds were then wired from the accounts soon thereafter.
- i. With respect to 21st Century, the stock for which ML and CCG have been named in a securities fraud action brought by the SEC, between September 22, 2004 and January 28, 2005, the RH account received 339 million shares of 21st Century delivered in twelve separate blocks. These shares were then liquidated within days of receipt in 48 separate transactions at prices between \$0.005 and 0.075 cents per share. Soon after the sales, there were 19 wires from the RH account totaling more than \$4.5 million.
- j. HO maintained at least five accounts under the names of three different entities: KL, YI and RHL. Each of these entities was domiciled in the Turk and Caicos.

14. The above described red flags should have alerted ABW Direct to suspicious activity, including *inter alia*, potential market manipulation, securities fraud and/or the sale of unregistered securities. However, ABW Direct, acting through Nwaigwe, made no inquiries to investigate either the customers or the activity in the accounts.

15. The red flags should have given the firm reason to suspect that the activity required filing of a SAR-SF in light of the firm's own procedures that provided, *inter alia*, that ABW Direct employees should be on alert for certain specified money laundering red flags.

16. Despite the above procedures, which were drafted by Nwaigwe, Nwaigwe improperly believed that ABW Direct did not have responsibility to conduct any inquiry into the transactions in question. He believed that any responsibility for investigation or due diligence with respect to the securities rested with the clearing firm upon receipt of the securities into the accounts.

17. In or about June 2005, Clearing Firm A asked ABW Direct questions concerning the five accounts owned by HO. Specifically, Clearing Firm A stated that it had noticed that the accounts had "large transaction and wire volumes." Clearing Firm A requested that someone from ABW Direct "take a look at these accounts and send us a written explanation."

18. ABW Direct's response to this inquiry was inadequate. For example:

- a. after Clearing Firm A sent a June 22, 2005 email to Malin concerning the accounts, Malin forwarded the email to ML for a response. Thus, rather than undertaking to inquire into the HO's customer's activities, ABW Direct turned to the subject of the inquiry (ML, a third party who had trading authorization over HO's accounts), for an explanation rather than conducting its own inquiry.
- b. When Clearing Firm A's inquiry was forwarded by Malin to Nwaigwe, Nwaigwe's response to Malin was insufficient and evidenced no additional effort to investigate the activity in the accounts. Rather than undertake an independent inquiry, Nwaigwe merely forwarded to Malin an email from another ABW Direct employee that summarized obvious facts with respect to the account activity. For example the response notes, *inter alia*, that the accounts are based in the Turks and Caicos, receive stock certificates, that the client (or ML) liquidates positions and the funds are wired to bank accounts in the Turks and Caicos for the benefit of the customer.

19. Notwithstanding Clearing Firm A's inquiries and the above-referenced red flags, ABW Direct, acting through Nwaigwe, failed to timely file a SAR-SF concerning the activity in the six accounts.

20. In sum, ABW Direct, acting through Nwaigwe, operated an AML program that was inadequate in that ABW Direct, acting through Nwaigwe, failed to detect and investigate red flags of possible suspicious activity that occurred between at least May 2004 and January 2005 in the aforementioned six ABW Direct accounts, and failed to timely report such activity.

By reason of the foregoing, Nwaigwe violated NASD Conduct Rules 3011 and 2110.

SECOND CAUSE OF COMPLAINT

Failure to Establish and Enforce an Adequate Anti-Money Laundering Program

(Violation by Nwaigwe of NASD Conduct Rules 3011 and 2110)

21. NASD Rule 3011(c) provides that firms must “[p]rovide for annual . . . independent testing for compliance to be conducted by member personnel or a qualified outside party”

22. ABW Direct, acting through Nwaigwe, has claimed that it performed annual independent AML testing in 2004, 2005, and 2006. However:

- a. the firm has produced no record or documentation establishing that the independent testing, purportedly performed by ABW Direct temporary employee SM, occurred in 2004 and 2005; and
- b. the only record the firm produced to show that the independent testing occurred in 2006, purportedly performed by ABW Direct temporary employee JJ, was a single page of handwritten notes.

23. Based on the foregoing, ABW Direct, acting through Nwaigwe failed to perform the required independent AML testing in 2004 and 2005 and performed an inadequate independent AML test in 2006.

By reason of the foregoing, Nwaigwe violated NASD Conduct Rules 3011 and 2110.

THIRD CAUSE OF COMPLAINT

Failure to Establish and Enforce an Adequate Anti-Money Laundering Program
(Violation by Nwaigwe of NASD Conduct Rules 3011 and 2110)

24. NASD Conduct Rule 3011(a) requires that member firms “[e]stablish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder.”

25. Rule 3011(b) requires that member firms “[e]stablish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder.”

26. Nwaigwe was responsible for drafting ABW Direct's written AML procedures in effect during the period of August 2003 to June 2006.

27. ABW Direct's written AML procedures in effect from August 2003 to June 2006 were deficient in that they were silent regarding the firm's obligation with respect to the following matters:

- a. Monitoring for Suspicious Activity – With respect to ABW Direct's procedures for describing how the firm will monitor accounts for suspicious activity, the firm's procedures were inadequate in that they failed to include a number of the "red flags" identified in FINRA's Notice to Members 02-21 that the firm should have included in light of the firm's retail brokerage business.
- b. Suspicious Transactions and BSA Reporting – Broker/dealers are required to maintain procedures for finding suspicious transactions and determining if they needed further investigation or warranted filing a SAR-SF. ABW Direct's procedures were deficient in that there were:
 - (i) No procedures for filing SAR-SFs. The only procedures addressing the filing of SAR-SFs improperly placed responsibility on Clearing Firm B. However, as evidenced by the six accounts at issue in this case, ABW Direct also cleared through Clearing Firm A. There were no procedures dealing with filing SAR-SFs for accounts that cleared through Clearing Firm A and the procedures were silent as to transactions through Clearing Firm A.
 - (ii) No procedures regarding transfers of \$3,000 or more under the Joint and Travel Rule.

28. As a result, during the period of August 2003 to June 2006, ABW Direct's written AML procedures were not reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder.

By reason of the foregoing, Nwaigwe violated NASD Conduct Rules 3011 and 2110.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Nwaigwe from any future

misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Nwaigwe be:

- fined \$20,000; and
- suspended for a period of nine months in all principal capacities.

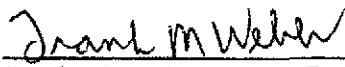
The fine shall be due and payable either immediately upon reassociation with a member firm following the nine month suspension noted above, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

SO ORDERED.

FINRA

Signed on behalf of the
Director of ODA, by delegated authority


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