

**FINRA
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

A.B. WATLEY DIRECT, INC. (BD No.
18663),

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: March 16, 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 A.B. Watley Direct, Inc. (BD No. 18663) ("ABW Direct") submitted an Offer of Settlement (Offer) to Complainant on March 2, 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.

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Under the terms of the Offer, ABW Direct 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 ABW Direct's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

A. Background of Respondent

ABW Direct has been a member of FINRA since February 3, 1987. The firm operates from a single office and employs 3 registered representatives. The firm's primary business is offering online trading to retail customers.

B. Respondent's Disciplinary History

Within the past five years, ABW Direct has the following relevant disciplinary history:

- On or about January 7, 2010, FINRA accepted an Offer of Settlement from ABW Direct wherein the firm was fined \$20,000, censured and, for a period of one year, required to file with FINRA's Advertising Regulation Department all sales literature and advertisements at least 10 days prior to their first use (the "Advertising Settlement"). The firm agreed to the entry of findings that it violated NASD Rules 2110, 2210(D)(1)(a) and 2210(D)(1)(b) where the firm's website and television advertisements contained statements and claims that were misleading, exaggerated or unwarranted and failed to provide a sound basis for evaluating the facts in regard to services. The fine in this matter was reduced pursuant to NTM 06-55.

- On or about October 3, 2007, FINRA accepted an Offer of Settlement from ABW Direct wherein the firm was fined \$10,000 and agreed to the entry of findings that it violated NASD Rule 3370. ABW Direct accepted customer short sale orders in small cap securities and for each order, failed to make an affirmative determination that the firm would receive delivery of the security on behalf of the customer or that the firm could borrow the security on behalf of the customer for the delivery by settlement date.
- On or about July 11, 2007, FINRA accepted an Offer of Settlement from ABW Direct wherein the firm was fined \$175,000 and agreed to the entry of findings that it violated section 17(a) of the Securities Exchange Act of 1934 and Rules 17a-3 and 17a-4 thereunder; and NASD Conduct Rules 2110, 3110, 3010(a). ABW Direct, acting through individuals, failed to observe high standards of commercial honor and just and equitable principles of trade in that mutual fund purchases, sales and/or exchange transactions were entered after close of the market at 4:00 p.m. Eastern Time, but at the mutual fund's NAV, or price, determined as of the market close and executed trades as if the instructions had been received prior to 4:00 p.m. ABW Direct failed to maintain, preserve and produce adequate order memoranda and failed to maintain correspondence. ABW Direct actively assisted customers who they knew to be market timers to trade, or attempt to trade, mutual funds in a deceitful manner and contrary to mutual fund market timing provisions and prohibitions, as outlined in prospectuses received, and in a manner designed to disguise their customers' market-timing from the mutual fund companies. ABW Direct failed to implement, maintain, and enforce an effective supervisory system that would have enabled the firm to

comply with the federal securities laws and NASD's conduct rules; failed to follow its own existing procedures and policies that should have enabled the firms to investigate and determine whether their representatives were complying with applicable securities laws and regulations with respect to mutual fund transactions.

ABW Direct has no other history of prior relevant disciplinary action by the SEC, any self regulatory organization and/or any state securities regulator.

FINDINGS AND CONCLUSIONS

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

SUMMARY

1. Respondent 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.
3. ABW Direct, acting through its President, Respondent Robert Franklyn Malin

("Malin"), conducted a securities business on seven dates in 2005 while it failed to maintain its minimum required net capital. With respect to four of the seven dates, the failure to maintain minimum required net capital can also be attributed to another individual.

4. On four of the seven dates, the firm's net capital requirement was the greater of \$5,000 or the firm's requirement pursuant to SEC Rule 15c3-1(a)(1)(i) (the Aggregate Indebtedness Standard). The net capital violations arose because the firm, failed to record, understated, overstated and/or misclassified numerous items in its net capital calculations. On three of the seven dates, the net capital violations arose after the firm became subject to a \$100,000 net capital requirement because it conducted more than ten trades for its own investment account during a calendar year.

5. In connection with certain net capital issues, ABW Direct was explicitly advised by the Member Regulation staff of FINRA's District 10 office (the "Staff") to cease conducting a securities business but refused to do so for a period of at least two business days.

6. Because ABW Direct failed to record, understated, overstated and/or misclassified items in its net capital calculations, the firm filed at least two inaccurate quarterly FOCUS Reports in 2005.

7. ABW Direct failed to maintain required books and records in that the firm failed to preserve and maintain emails. When the Staff requested that ABW Direct produce certain communications, ABW Direct informed FINRA that emails could not be produced because the firm's server had been damaged.

JURISDICTION

A.B. Watley Direct, Inc.

8. ABW Direct has been a FINRA (formerly known as NASD) member firm since

February 3, 1987.

9. ABW Direct is subject to FINRA's jurisdiction because it is presently an approved FINRA member firm.

10. ABW Direct is a subsidiary of A.B. Watley Group, Inc. (hereinafter "ABW Group"). Former member firm A.B. Watley, Inc. (hereinafter "ABW Inc.") also was a subsidiary of ABW Group. ABW, Inc. is a former FINRA member firm that was expelled from FINRA on July 2, 2004 for failure to pay fines that ABW Inc. had previously agreed to pay when it entered into two settlements with FINRA.

11. Between 2004 and 2005, ABW Direct cleared through two distinct clearing firms (hereinafter, "Clearing Firm A" and "Clearing Firm B").

FIRST CAUSE OF COMPLAINT

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

Broker-Dealer Responsibilities under the AML Rules and Regulations

12. 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.

13. 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.

14. 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*

15. 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.

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

17. 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.

18. 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.

19. 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.

20. 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

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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."

27. 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.

28. 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.

29. 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, ABW Direct violated NASD Conduct Rules 3011 and 2110.

SECOND CAUSE OF COMPLAINT

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

30. 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"

31. 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.

32. 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, ABW Direct violated NASD Conduct Rules 3011 and 2110.

THIRD CAUSE OF COMPLAINT

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

33. 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.”

34. 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.”

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

36. 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.

37. 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, ABW Direct violated NASD Conduct Rules 3011 and 2110.

FOURTH CAUSE OF COMPLAINT

Net Capital Violations

(Violation by ABW Direct of SEC Rule 15c3-1 and NASD Conduct Rule 2110)

ABW Direct Conducted A Securities Business While Under Its Net Capital Requirement

38. On seven dates in 2005, ABW Direct conducted a securities business while failing to maintain its minimum required net capital.

39. ABW Direct's net capital violations mainly resulted from the fact that ABW Direct, acting through Malin and another individual, failed to record, understated, overstated and/or misclassified a number of items in its net capital calculations. ABW Direct, acting through Malin, also failed to take into account that as of October 27, 2005 the firm became subject to a \$100,000 net capital requirement because the firm effected more than ten transactions for its own investment account during a calendar year.

40. Specifically:

- a. On Thursday, June 30, 2005, ABW Direct's minimum required net capital was the greater of \$5,000 or \$19,260.80, pursuant to SEC Rule 15c3-1(a)(1)(i) (the Aggregate Indebtedness Standard). On this date, the firm's actual net capital was (\$189,469.90), a deficiency of \$208,730.70. ABW Direct, acting through

Malin and another individual, conducted a securities business this day while failing to maintain its minimum required net capital.

ABW Direct calculated its net capital on that date to be \$13,588, with a requirement of \$8,619 and resulting excess net capital of \$4,969, a difference of \$203,057.90 from the firm's actual net capital.

ABW Direct, acting through Malin and another individual, failed to record, understated, overstated and/or misclassified a number of items. For example, the firm, *inter alia*, failed to record a settlement agreement that it had entered into with a law firm, failed to record payables due to NASDAQ, failed to record payables due to ECNs, failed to record payables due to the American Stock Exchange (the "AMEX"), underrecorded payables due to the NYSE (the "NYSE"), and failed to record payables due to FINRA Dispute Resolution.

- b. On Wednesday, August 31, 2005, ABW Direct's minimum required net capital was the greater of \$5,000 or \$20,579.34, pursuant to SEC Rule 15c3-1(a)(1)(i) (the Aggregate Indebtedness Standard). On this date, the firm's actual net capital was (\$152,260.53), a deficiency of \$172,839.87. ABW Direct, acting through Malin and another individual, conducted a securities business this day while failing to maintain its minimum required net capital.

ABW Direct calculated its net capital on that date to be \$11,582, with a requirement of \$10,255 and resulting excess net capital of \$1,327, a difference of \$163,842.34 from the firm's actual net capital.

ABW Direct, acting through Malin and another individual, failed to record, understated, overstated and/or misclassified a number of items. For example, the firm, *inter alia*, failed to record a settlement agreement that it had entered into with a law firm, failed to record payables due to NASDAQ, failed to record payables due to ECNs, failed to record payables due to the AMEX, understated payables due to the NYSE, and failed to record payables due to FINRA Dispute Resolution.

- c. On Wednesday, September 28, 2005, when ABW Direct's minimum required net capital was the greater of \$5,000 or \$20,623.83, pursuant to SEC Rule 15c3-1(a)(1)(i) (the Aggregate Indebtedness Standard). On this date, the firm's actual net capital was (\$44,881.59), a deficiency of \$65,505.42. ABW Direct, acting through Malin and another individual, conducted a securities business this day while failing to maintain its minimum required net capital.

ABW Direct calculated its net capital on that date to be \$23,534, with a requirement of \$16,463 and resulting excess net capital of \$7,071, a difference of \$68,415.95 from the firm's actual net capital.

ABW Direct, acting through Malin and another individual, failed to record, understated, overstated and/or misclassified a number of items. For example, the firm, *inter alia*, failed to record a settlement agreement that it had entered into with a law firm, failed to record payables due to NASDAQ, and failed to record payables due to FINRA Dispute Resolution.

- d. On Friday, September 30, 2005, ABW Direct's minimum required net capital was the greater of \$5,000 or \$23,345, pursuant to SEC Rule 15c3-1(a)(1)(i) (the Aggregate Indebtedness Standard). The firm's actual net capital was (\$8,214.88), a deficiency of \$31,560.43. ABW Direct, acting through Malin and another individual, conducted a securities business this day while failing to maintain its minimum required net capital.

ABW Direct calculated its net capital on that date to be \$61,088, with a requirement of \$19,235 and resulting excess net capital of \$41,853, a difference of \$69,302.77 from the firm's actual net capital.

ABW Direct, acting through Malin and another individual, failed to record, understated, overstated and/or misclassified a number of items. For example, the firm, *inter alia*, failed to record a settlement agreement that it had entered into with a law firm, failed to record payables due to NASDAQ, and failed to record payables due to FINRA Dispute Resolution.

- e. On Thursday, October 27, 2005, ABW Direct's minimum required net capital, pursuant to SEC Rule 15c3-1(a)(2)(iii)(B) (proprietary trading), was \$100,000. On this date, the firm's actual net capital was \$34,862.99, a deficiency of \$65,137.01. ABW Direct, acting through Malin, conducted a securities business this day while failing to maintain its minimum required net capital.

ABW Direct calculated its net capital on that date to be \$32,115, with a requirement of \$17,976 and resulting excess net capital of \$14,139, a difference of \$2,747.59 from the firm's actual net capital.

ABW Direct, acting through Malin, failed to account for the fact that it was subject to a \$100,000 net capital requirement.

- f. On Monday, October 31, 2005, ABW Direct's minimum required net capital, pursuant to SEC Rule 15c3-1(a)(2)(iii)(B) (proprietary trading), was \$100,000. On this date, the firm's actual net capital was \$2,445.49, a deficiency of \$97,554.51. ABW Direct, acting through Malin, conducted a securities business this day while failing to maintain its minimum required net capital.

ABW Direct calculated its net capital on that date to be (\$15,284) with a requirement of \$26,839 and resulting net capital deficiency of (\$42,663), a difference of \$18,269.49 from the firm's actual net capital.

ABW Direct, acting through Malin, failed to account for the fact that it was subject to a \$100,000 net capital requirement.

- g. On Thursday, November 10, 2005, ABW Direct's minimum required net capital, pursuant to SEC Rule 15c3-1(a)(2)(iii)(B) (proprietary trading), was \$100,000. On this date, the firm's actual net capital was \$33,446.50, a deficiency of \$66,553.50. ABW Direct, acting through Malin, conducted a securities business this day while failing to maintain its minimum required net capital.

ABW Direct, acting through Malin, failed to account for the fact that it became subject to a \$100,000 net capital requirement.

41. ABW Direct and Malin, were aware of the net capital deficiencies but failed to rectify them and failed to cease conducting a securities business. For example, on August 16, 2005, the Staff spoke with ABW Direct's Financial and Operations Principal ("FINOP") regarding concerns with respect to ABW Direct's net capital calculations.

42. Thereafter, on or about September 2, 2005, the Staff contacted ABW Direct to advise that it had detected that ABW Direct was under its net capital requirement as of August 18, 2005. While ABW Direct filed a notice pursuant to SEC Rule 17a-11 to report a net capital deficiency and while the firm apparently obtained a capital infusion on September 6, 2005, the firm stated that it believed that it was in compliance with the net capital rule.

43. On September 29, 2005, the Staff sent ABW Direct a letter advising the firm to cease conducting a securities business but the firm refused to comply. Specifically:

- a. The Staff sent a letter to Malin stating that ABW Direct:

has not demonstrated to NASD that the firm is in compliance with the Net Capital Rule, SEC Rule 15c3-1. A firm out of compliance with the Net Capital Rule is required by the terms of the rule to cease conducting a securities business. In this regard, should [ABW Direct] conduct a securities business, other than to engage in liquidating transactions, while out of compliance with the Net Capital Rule, the firm and the

responsible individual(s) will be subject to formal disciplinary or other action.

The Staff further directed that ABW Direct file a notice pursuant to SEC Rule 17a-11.

- b. ABW Direct, acting through Malin, responded to the Staff in a September 29, 2005 letter sent by facsimile. Malin stated that the firm was in net capital compliance and that ABW Direct “believes that [the Staff’s] notice of Net Capital violation is insufficient to require us to engage in liquidating transactions under SEC Rule 17a-11.”
- c. In a response to Malin, also dated September 29, 2005 and sent by the Staff, the Staff reiterated that it was ABW Direct’s responsibility to demonstrate net capital compliance and it had not done so and stating that “[t]he firm should also cease conducting a securities business until it is able to demonstrate compliance with the net capital requirements of SEC Rule 15c3-1.
- d. ABW Direct, however, did not cease conducting a securities business. Rather, the firm conducted a securities business on Friday, September 30, 2005 and Monday, October 3, 2005. As set forth herein, on September 30, 2005 ABW Direct was under its net capital requirement.
- e. Malin made the decision on behalf of ABW Direct to continue to conduct a securities business on Friday September 30, 2005 and Monday October 3, 2005.
- f. On or about October 4, 2005, ABW Direct obtained a net capital infusion that temporarily allayed the Staff’s concerns.

Net Capital Problems After the October 4, 2005 HYRF Infusion

44. The net capital infusion received by ABW Direct was in the form of shares of stock of HYRF that was received into a proprietary securities account for ABW Direct from ABW Group. As discussed above, ABW Group had obtained the shares from HO.

45. During the period between October 27, 2005 and November 10, 2005, there were 42 transactions in ABW Direct’s proprietary account that consisted of the liquidation of HYRF, as well as the purchase and sale of another stock, Answers Corp. (“ANSW”).

46. Because ABW Direct engaged in more than ten transactions in its proprietary account as of October 27, 2005, it became subject to a \$100,000 net capital requirement pursuant to SEC Rule 15c3-1(a)(2)(iii).

47. The increased net capital requirements contributed to ABW Direct's aforementioned net capital deficiencies on October 27, 2005, October 31, 2005, and November 10, 2005. The decline in value of the securities positions held in ABW Direct's proprietary account also contributed to the deficiencies.

By reason of the foregoing, ABW Direct violated SEC Rule 15c3-1 and NASD Conduct Rule 2110.

FIFTH CAUSE OF COMPLAINT

Inaccurate FOCUS filings

(Violations by ABW Direct of Section 17(a) of the Securities Exchange Act of 1934 ("Exchange Act"), SEC Rule 17a-5 thereunder, and NASD Conduct Rules 2110)

48. ABW Direct is required to file FOCUS Reports on a quarterly basis.

49. ABW Direct's FOCUS Report for the period of April 1, 2005 through June 30, 2005 (the second quarter of 2005) was filed on July 26, 2005. The filing reported that as of June 30, 2005, ABW Direct's minimum net capital requirement was \$8619, that its net capital was \$13588 and that its excess net capital was \$4969.

50. However, this July 2005 filing was inaccurate in that, among other things, the reporting of ABW Direct's minimum net capital requirement and net capital was inaccurate. As set forth previously, ABW Direct's actual net capital requirement as of June 30, 2005 was \$19,260.80 and the firm's actual net capital was (\$189,469.90), a deficiency of \$208,730.70.

51. ABW Direct's FOCUS Report for the period of July 1, 2005 through September 30, 2005 (the third quarter of 2005) was filed on October 25, 2005. The filing reported that as of

September 30, 2005, ABW Direct's minimum net capital requirement was \$19,235, that its net capital was \$61,089 and that its excess net capital was \$41,854.

52. However, this October 2005 filing was inaccurate in that, among other things, the reporting of ABW Direct's minimum net capital requirement and net capital was inaccurate. As set forth previously, ABW Direct's actual net capital requirement as of September 30, 2005 was \$23,345 and the firm's net capital was (\$188,480.49), a deficiency of \$211,826.04.

By reason of the foregoing, ABW Direct violated Section 17(a) of the Exchange Act, SEC Rule 17a-5 thereunder, and NASD Conduct Rule 2110.

SIXTH CAUSE OF COMPLAINT

Failing to Maintain and Preserve Email

(Violation by ABW Direct of Section 17(a) of the Exchange Act, Rule 17a-4 thereunder and NASD Conduct Rules 3110 and 2110)

53. The Staff requested, by letter dated October 20, 2005 sent pursuant to NASD Procedural Rule 8210, that ABW Direct produce certain communications.

54. In a response dated November 29, 2005, ABW Direct informed the Staff that it could not produce emails that might be responsive to the request because "[i]n June 2004, the firm's email server was damaged" when the firm moved offices. As a result, the firm's emails could not be accessed and thus, could not be produced to the Staff.

55. Even though ABW Direct's server was damaged, ABW Direct's written supervisory procedures provided that hard copies of incoming and outgoing electronic communications were to be initialed by a "designated reviewer" and retained in a file consistent with other correspondence. The firm did not initial and retain the email as provided for in this procedure.

56. Consequently, during the period from June 2002 (when ABW Direct commenced using the server in question) through June 2004, ABW Direct failed to maintain and preserve copies of all of its internal and external electronic email communications, as required.

By reason of the foregoing, ABW Direct violated Section 17(a) of the Exchange Act, Rule 17a-4 thereunder, and NASD Conduct Rules 3110 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 ABW Direct 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 ABW Direct be:

- censured;
- fined \$125,000;
- required to do an undertaking that the firm's general securities principals register for, within 60 days of the date of issuance of this AWC, eight hours of training concerning anti-money laundering, in a program that is not unacceptable to FINRA. ABW Direct shall provide FINRA with evidence of the registrations within ten days of registration. ABW Direct's personnel shall then attend and complete such training within six months of the issuance of this AWC, and shall provide FINRA with evidence that they have completed such training within ten days of completion of the training program.
- required to do an undertaking that the firm shall:

- i) Retain, within 60 days of the date of Notice of Acceptance of this AWC, an Independent Consultant, not unacceptable to FINRA staff, to conduct a comprehensive review of the adequacy of the Firm's policies, systems and procedures (written and otherwise) and training relating to the firm's AML compliance program.
- ii) Exclusively bear all costs, including compensation and expenses, associated with the retention of the Independent Consultant.
- iii) Cooperate with the Independent Consultant in all respects, including by providing staff support. ABW Direct shall place no restrictions on the Independent Consultant's communications with FINRA staff and, upon request, shall make available to FINRA staff any and all communications between the Independent Consultant and the Firm and documents reviewed by the Independent Consultant in connection with his or her engagement. Once retained, ABW Direct shall not terminate the relationship with the Independent Consultant without FINRA staff's written approval; ABW Direct shall not be in and shall not have an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney client privilege or other doctrine or privilege to prevent the Independent Consultant from transmitting any information, reports or documents to FINRA.
- iv) At the conclusion of the review, which shall be no more than 120 days after the date of Notice of Acceptance of this AWC, require the Independent Consultant to submit to the Firm and FINRA staff a Written

Report. The Written Report shall address, at a minimum, (i) the adequacy of the Firm's policies, systems, procedures and training relating to the firm's AML compliance program; (ii) a description of the review performed and the conclusions reached, and (iii) the Independent Consultant's recommendations for modifications and additions to the Firm's policies, systems, procedures and training; and

- v) Require the Independent Consultant to enter into a written agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter in to any other employment, consultant, attorney-client, auditing or other professional relationship with ABW Direct, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Any firm with which the Independent Consultant is affiliated in performing his or her duties pursuant to this AWC shall not, without prior written consent of FINRA staff, enter in to any employment, consultant, attorney-client, auditing or other professional relationship with ABW Direct or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.
- Within 30 days after delivery of the Written Report, ABW Direct shall adopt and implement the recommendations of the Independent Consultant or, if it determines that a recommendation is unduly burdensome or impractical, propose an alternative procedure to the Independent

Consultant designed to achieve the same objective. The firm shall submit such proposed alternatives in writing simultaneously to the Independent Consultant and FINRA staff. Within 30 days of receipt of any proposed alternative procedure, the Independent Consultant shall: (i) reasonably evaluate the alternative procedure and determine whether it will achieve the same objective as the Independent Consultant's original recommendation; and (ii) provide the firm with a written decision reflecting his or her determination. The firm will abide by the Independent Consultant's ultimate determination with respect to any proposed alternative procedure and must adopt and implement all recommendations deemed appropriate by the Independent Consultant.

- Within 30 days after the issuance of the later of the Independent Consultant's Written Report or written determination regarding alternative procedures (if any), ABW Direct shall provide FINRA with a written implementation report, certified by an officer of ABW Direct attesting to, containing documentation of, and setting forth the details of the Firm's implementation of the Independent Consultant's recommendations.
- Upon written request showing good cause, FINRA staff may extend any of the procedural dates set forth above.

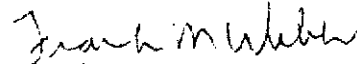
Pursuant to the General Principles Applicable to all Sanction Determinations contained in the Sanction Guidelines, FINRA imposed a lower fine in this case after it considered, among other things, the firm's revenues and financial resources. See Notice to Members 06-55.

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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