

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2012035298101**

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: Electronic Transaction Clearing, Inc.
Respondent
CRD No. 146122

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Electronic Transaction Clearing, Inc. ("ETC," "the firm" or "Respondent") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against Respondent alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent hereby accepts and consents, without admitting or denying the findings, 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, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

ETC first became a FINRA-regulated firm on July 15, 2009. ETC is also registered with the following exchanges: BATS, EDGA, EDGX, BX, PHLX, NQX, ARCA, NYSE-MKT, NYSE, and NSX.

The firm's principal place of business is in Los Angeles, California. It has one branch and employs approximately 19 registered persons.

OVERVIEW

During the period December 2009 through June 2013 (the "review period"), ETC failed to establish and implement anti-money laundering ("AML") policies, procedures, and internal controls reasonably expected to detect and cause the reporting of suspicious transactions and reasonably designed to achieve compliance with the Bank Secrecy Act, 31 U.S.C. § 5311, *et*

seq., and the implementing regulations promulgated thereunder by the Department of the Treasury, in violation of NASD Conduct Rule 3011(a) and FINRA Rules 3310(a) and 2010

The firm identified approximately 370 situations between May 2010 and September 2011 in which traders given direct market access by the firm participated in activity that caused Respondent to restrict or prohibit the trader's trading activity. However, in those situations where ETC restricted or prohibited the trader's trading activity, Respondent did not take any further investigative steps to assess whether a Suspicious Activity Report ("SAR") was warranted

During the review period, a large percentage of the firm's business consisted of accounts in which numerous traders used third party order management system ("OMS") service bureaus to trade for a single account number. In those instances where the firm restricted or prohibited a trader's trading activity, or activity for multiple traders for the same customer, the firm did not sufficiently consider whether the customer associated with the trader(s) had engaged in suspicious activity.

ETC also failed to have adequate written AML procedures because after the firm made changes to its AML supervisory system, Respondent failed to update the written procedures to reflect the then current policies

FACTS AND VIOLATIVE CONDUCT

Deficiencies Relating to the AML Program

ETC is a clearing and self-clearing broker-dealer that provides high volume execution and clearing services to broker-dealers and non-broker-dealers. The firm executes and clears orders for its customers and provides direct market access ("DMA") to certain of its customers and provides market access via third-party OMS service bureaus to certain of its other customers.

During the review period, all non-broker-dealer accounts at ETC were opened by and in the name of professional trading firms. ETC provided certain of its clients online trading access to U.S. securities markets through front end third party OMS service providers. The OMS software allowed each trader using the trading firm's account to effect transactions instantly and directly to a selected exchange or market center. These foreign and domestic traders – trading through the professional trading firms' accounts – therefore had the ability to enter trades in securities on U.S. markets.

ETC utilized a number of exception reports during the review period to monitor trading activity. The reports were designed to identify whether certain types of suspicious or improper trading activity had occurred at the firm. Before September 2011, the exception reports were used primarily for trading supervision and were not used specifically for any AML purpose, however. As a result, while the firm used the reports to take action against traders, it did not assess whether the problematic trading activity that was identified should be reported as suspicious activity until approximately September 2011.

In certain instances after the firm determined that potentially suspicious or manipulative activity occurred, it limited the relevant trader's activity, either on a long term or short term basis. In some situations, the firm permanently disabled the trader associated with the potentially manipulative trade, meaning that the trader could not trade through ETC going forward. In other situations, ETC restricted the trader associated with the suspicious trade from entering certain types of orders. If the trader engaged in subsequent suspicious trading activity, ETC then disabled the trader.

Although the firm had been restricting or disabling traders since the start of the review period, it did not initially keep a record of all of the disciplined traders. ETC developed a Disabled/Restricted Trader List to track such traders in the first half of 2010 and the first entry occurred on May 27, 2010. Between May 27, 2010 and September 28, 2011, ETC disabled or restricted approximately 370 traders. In each instance, registered persons at the firm investigated and analyzed the activity in question and deemed it necessary to suspend or disable the trader.

The firm, however, failed to take additional steps to assess whether the activity that led to the suspension or disabling of the traders warranted the filing of a SAR. The SAR form used by broker-dealers identifies 20 "Type[s] of suspicious activity," including: "Market manipulation," "Prearranged or other non-competitive trading," "Securities fraud," "Wash or other fictitious trading," and "Other." The activity that led to the approximately 370 traders being placed on the Disabled/Restricted Trader List between May 27, 2010 and September 28, 2011 may have otherwise met the requirements for the filing of a SAR and may have fit at least one or more of these categories. Despite ETC's analysis of the trading and the determinations made to suspend or disable, the firm did not consider whether a SAR should be filed in any of those situations before September 2011.

The firm's monitoring of the account activity was also unreasonable in that it did not consider the customer account when analyzing potentially suspicious activity. The account holders at ETC were professional trading firms, not the individual traders. Individual traders traded through the account of the trading firm.

From an AML standpoint, trading in those accounts was monitored by ETC during the review period primarily at the trader level. Although certain exception reports allowed ETC to monitor customer-level trading for trade surveillance purposes, the firm did not regularly monitor for potentially suspicious activity at the customer account level nor in such a way as to gauge whether any groups of traders were potentially working together within the account of a particular professional trading firm. The firm took no action to monitor whether traders entered potentially manipulative trades paired with trades entered by other traders in the same professional trading firm's account.

Nobody at ETC monitored trading activity to detect recurring types or patterns of activity by various traders within a customer's account. The professional trading firms who were the account holders were never included on the Disabled/Restricted Trader List. That list only included individual traders.

ETC changed its policies in September 2011 with regard to the review of trading activity that led to a trader being included on the Disabled/Restricted Trader List and the filing of SARs. Although the revised process was being followed between late September 2011 and June 2013, the firm did not update its WSPs to reflect the changes. During that time, the WSPs did not describe the procedures to be followed relating to filing a SAR when a trader was restricted or disabled. ETC failed to update its written procedures despite having that failure pointed out in its 2012 independent AML audit.

FINRA Rule 3310 (known as NASD Rule 3011 until January 1, 2010) 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 ”

Title 31 U.S.C. § 5318(g) authorizes the Department of the Treasury to issue suspicious activity reporting requirements for broker-dealers. The Department of the Treasury issued the implementing regulation, 31 C.F.R., § 103.19(a)(1), on July 1, 2002. It provided that, with respect to any transaction 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 ” Section (a)(2) of that regulation specifically 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 of 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

In April 2002, FINRA issued Notice to Members (“NTM”) 02-21, which reminded broker-dealers that they were required to establish and implement AML programs designed to achieve

compliance with the Bank Secrecy Act and the regulations promulgated thereunder. The Notice further advised broker-dealers that their AML procedures must address a number of areas including monitoring of account activities, "including but not limited to, trading and the flow of money into and out of accounts." In August 2002, FINRA issued NTM 02-47, which set forth the suspicious activity reporting rule promulgated by the U.S. Department of the Treasury for the securities industry. This NTM further advised broker-dealers of their duty to file a SAR for any suspicious transactions occurring after December 30, 2002.

By virtue of the foregoing conduct, Respondent ETC violated NASD Conduct Rule 3011(a) and FINRA Rules 3310(a) and 2010.

B. Respondent also consents to the imposition of the following sanctions:

1. A censure; and
2. A fine of \$125,000.

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

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. ETC has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

II.

WAIVER OF PROCEDURAL RIGHTS

ETC specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against it;
- B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, ETC specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

ETC further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

ETC understands that

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against it; and
- C. If accepted
 - 1. this AWC will become part of ETC's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;
 - 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. ETC may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. ETC may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects ETC's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- D ETC may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. ETC understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned on behalf of ETC, who certifies that he is a person duly authorized to act on the firm's behalf, has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that Respondent has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce Respondent to submit it.

Electronic Transaction Clearing, Inc.

By Monique Sanguet

Name. Monique Sanguet

Title CCO

Date: 1/20/16

Reviewed by



Ivan P. Harris, Esquire
Morgan, Lewis & Bockius LLP
200 S Biscayne Blvd., Suite 5300
Miami, FL 33131-2339
Counsel for Respondent Electronic Transaction Clearing, Inc.

Accepted by FINRA:

2/24/16
Date

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

A handwritten signature in black ink, appearing to read "J.P. Bloom".

Jeffrey P. Bloom
Senior Special Counsel
FINRA, Department of Enforcement
15200 Omega Drive, 3rd Floor
Rockville, Maryland 20850-3241
Tel: (301) 258-8564