

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MARCUS C. RODRIGUEZ
(CRD No. 2561801),

Respondent.

Disciplinary Proceeding
No. 2012033239202

Hearing Officer—KBW

DEFAULT DECISION

December 29, 2014

Respondent violated NASD Rule 3010 and FINRA Rule 2010 by failing to establish and maintain an adequate supervisory system and written supervisory procedures. Respondent violated FINRA Rules 3310(a) and 2010 by failing to establish and implement reasonable AML policies and procedures. Rodriguez is suspended in all principal capacities for two years and is fined a total of \$50,000.

Appearances

Jennifer L. Crawford, Esq., and Perry C. Hubbard, Esq., for the Department of Enforcement.

No appearance by or on behalf of Marcus C. Rodriguez.

DECISION

I. Introduction

The FINRA Department of Enforcement (“Enforcement”) filed the attached Complaint with the Office of Hearing Officers against Respondent Marcus C. Rodriguez (“Rodriguez”) on August 13, 2014. From February 11, 2010, to June 15, 2011, (the “relevant period”), Rodriguez was the President, Chief Compliance Officer (“CCO”), and Anti-Money Laundering (“AML”) Officer of a now defunct broker-dealer, Title Securities, Inc. (“Title Securities” or the “Firm”). The Complaint charges Rodriguez with: (1) failure to establish, implement, and enforce an

adequate supervisory system and adequate written supervisory procedures (“WSPs”), in violation of NASD Rule 3010 and FINRA Rule 2010; and (2) failure to develop and implement an adequate written AML program, in violation of FINRA Rules 3310(a) and 2010. Rodriguez failed to answer or otherwise respond to the Complaint.

On October 31, 2014, Enforcement filed a Motion for Entry of Default Decision and Supporting Memorandum of Law (“Default Motion”) with the Office of Hearing Officers. The Default Motion is supported by the Declaration of Jennifer L. Crawford in Support of the Department of Enforcement’s Motion for Entry of Default Judgment (“Crawford Decl.”) and three attached exhibits marked CX-1 through CX-3. Rodriguez did not respond to the Default Motion.

II. Rodriguez’s Background

Rodriguez first became registered as a General Securities Representative in 1994 while he was associated with a FINRA member firm. In 1995, Rodriguez became registered as a General Securities Principal (“GSP”). In addition to his Series 7 and 24 licenses, Rodriguez also holds Series 3, 4, 14, 27, 53, 55, 63, and 65 securities licenses. Rodriguez registered with Title Securities in January 2009.¹

From January 2, 2009 to February 10, 2010, Rodriguez served as Title Securities’ Limited Principal – Financial and Operations and GSP. From February 11, 2010, to June 15, 2011, Rodriguez served as Title Securities’ President, CCO, and AML Officer.² Rodriguez remained registered with Title Securities until August 2011.³

¹ Complaint (“Compl.”) ¶ 3.

² Compl. ¶ 4.

³ CX-1, at 6.

Shortly thereafter, Rodriguez became registered with another FINRA member firm.⁴ Rodriguez remained registered with that firm until April 25, 2014.⁵ He is currently not registered with a FINRA member firm.⁶

III. Jurisdiction

FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the effective date of termination of Rodriguez's registration with a member firm, namely April 25, 2014; and (2) the Complaint charges Rodriguez with misconduct that commenced while he was associated with a member firm.

IV. Origin of Investigation

In July 2012, FINRA received a referral from the Chicago Equities Surveillance Group of NYSE Arca, Inc. concerning the detection of potentially manipulative trading occurring in a customer account at Title Securities. Based on this referral, as well as referrals from FINRA's Department of Market Regulation, Enforcement initiated an investigation into the activities of Title Securities and Rodriguez.⁷

V. Rodriguez's Default

On August 13, 2014, Enforcement sent a Notice of Complaint and the Complaint (collectively, the "First Notice") to Rodriguez by certified mail, return receipt requested, and by first-class mail.⁸ Enforcement sent the First Notice to Rodriguez's most recent residential address

⁴ CX-1, at 6.

⁵ Crawford Decl. ¶ 6; CX-1, at 7-8.

⁶ Crawford Decl. ¶ 6.

⁷ Crawford Decl. ¶ 5.

⁸ Crawford Decl. ¶ 8.

recorded in FINRA's Central Registration Depository ("CRD address").⁹ Enforcement has no knowledge of any other business or residential address for Rodriguez.¹⁰

The U.S. Postal Service returned both copies of the First Notice to Enforcement. The envelope for each copy was marked "Return to Sender/Attempted – Not Known/Unable to Forward/Return to Sender."¹¹

According to the First Notice, Rodriguez's Answer was due no later than September 10, 2014.¹² Rodriguez did not file an Answer by that date.¹³

On September 11, 2014, Enforcement sent a Second Notice of Complaint and the Complaint (collectively, "Second Notice") to Rodriguez at his CRD address.¹⁴ Enforcement sent the Second Notice by certified mail, return receipt requested, and by first-class mail.¹⁵

The U.S. Postal Service returned both copies of the Second Notice to Enforcement. The envelope for the certified mailing was marked, "Return to Sender/Unclaimed/Unable to Forward/Return to Sender."¹⁶ The envelope for the first-class mailing was marked, "Return to Sender/Attempted-Not Known/Unable to Forward/Return to Sender."¹⁷

According to the Second Notice, Rodriguez's Answer was due no later than September 29, 2014. Rodriguez did not file an Answer by that date.¹⁸

⁹ Crawford Decl. ¶ 8.

¹⁰ Crawford Decl. ¶ 8.

¹¹ Crawford Decl. ¶ 9; CX-2, at 2, 4.

¹² Crawford Decl. ¶ 10; CX-2, at 5.

¹³ Crawford Decl. ¶ 10.

¹⁴ Crawford Decl. ¶ 11.

¹⁵ Crawford Decl. ¶ 11; CX-3, at 2, 4.

¹⁶ Crawford Decl. ¶ 12; CX-3, at 2.

¹⁷ Crawford Decl. ¶ 12; CX-3, at 4.

¹⁸ Crawford Decl. ¶ 13.

The Hearing Officer finds that Enforcement properly served Rodriguez with the Complaint and Rodriguez received constructive notice of this proceeding. The Hearing Officer further finds that Rodriguez defaulted by failing to file an Answer. Accordingly, the Hearing Officer deems the allegations in the attached Complaint admitted pursuant to FINRA Rules 9215(f) and 9269(a).

VI. Findings of Fact and Conclusions of Law

A. Background

Title Brokerage Holdings Corp. (“Title Brokerage”) purchased Title Securities before Respondent joined the Firm.¹⁹ Title Brokerage was owned by an irrevocable trust established by an individual, GE.²⁰ GE was the sole owner of HIL, an unregistered proprietary trading firm domiciled in Cyprus and Title Securities’ largest customer.²¹ GE personally funded the purchase of Title Securities for the sole purpose of having Title Securities provide HIL with direct market access to the U.S. markets.²²

HIL engaged in algorithmic, high-frequency trading through Title Securities.²³ HIL traded as many as three billion shares per month through Title Securities and had approximately 1,700 to 1,800 traders in approximately 100 or more locations throughout the world (all outside the United States), with approximately 920 of those traders located in China (“HIL traders”).²⁴ Some of the HIL traders were high-frequency, algorithmic traders.²⁵

¹⁹ Compl. ¶ 9; CX-1, at 2.

²⁰ Compl. ¶¶ 10, 11.

²¹ Compl. ¶ 10.

²² Compl. ¶ 10.

²³ Compl. ¶ 11.

²⁴ Compl. ¶ 11.

²⁵ Compl. ¶ 26.

During the relevant period, HIL utilized an unregistered third-party trading firm, TTI, to provide a proprietary trading platform, administrative and technology support, and training to HIL's traders. TTI was solely owned by GE.²⁶

During the relevant period, FINRA identified more than 6,300 instances of suspicious trading activity involving potentially manipulative wash sales, layering, and pre-arranged trading in the HIL account.²⁷ FINRA sent Title Securities, care of Rodriguez, 11 inquiries requesting documents and information from Title Securities on more than 5,000 of the 6,300 instances.²⁸ Many of these inquiries asked Title Securities to provide the economic rationale, trading strategy, and pricing decisions behind the wash sales, layering activity, and pre-arranged trading in the HIL account.²⁹ These 5,000 instances and the FINRA inquiries should have served as red flags, alerting Rodriguez of the potentially manipulative and/or suspicious trading activity at Title Securities.³⁰ Rodriguez, however, ignored these red flags and continued to allow Title Securities to provide HIL traders with direct market access, without implementing reasonable controls or procedures to supervise HIL's trading activity.³¹

Rodriguez never identified any manipulative activity.³²

B. First Cause of Action – Deficient Supervisory System and Written Supervisory Procedures

In the first Cause of Action, Enforcement alleged that Rodriguez violated NASD Rules 3010(a) and (b) and FINRA Rule 2010 by failing both to (1) establish and maintain a supervisory

²⁶ Compl. ¶ 12.

²⁷ Compl. ¶ 16.

²⁸ Compl. ¶ 16.

²⁹ Compl. ¶¶ 2, 16.

³⁰ Compl. ¶¶ 2, 16.

³¹ Compl. ¶ 16.

³² Compl. ¶ 21.

system at Title Securities that was reasonably designed to achieve compliance with applicable securities laws and regulations, NASD rules, and FINRA rules, and (2) establish WSPs at Title Securities that were tailored to the Firm's business, including procedures for reasonably ensuring compliance with applicable securities laws and regulations, NASD rules, and FINRA rules.

1. Deficient Supervisory Controls and System

As the President and CCO, Rodriguez was solely responsible for establishing and maintaining Title Securities' supervisory systems.³³ "Supervisory procedures play a critical role in the self-regulation of the securities industry."³⁴ NASD Rule 3010(a) requires each member to establish and maintain a supervisory system that is reasonably designed to achieve compliance with applicable securities laws and regulations, NASD rules, and FINRA rules.³⁵ Each member firm "must adopt and implement a supervisory system that is tailored specifically to the member's business."³⁶ "Whether a particular supervisory system or set of written procedures is in fact 'reasonably designed to achieve compliance' depends on the facts and circumstances of each case."³⁷ Given the nature of Title Securities' business and the 11 inquiries received from FINRA, Title Securities' supervisory system to review for manipulative trading was deficient.

Title Securities principally relied on its clearing firms to identify and notify it of potentially manipulative trading.³⁸ However, despite this reliance on Title Securities' clearing firms, Rodriguez failed to:

³³ Compl. ¶¶ 15, 29.

³⁴ *Dep't of Market Regulation v. Lane*, Complaint No. 20070082049, 2013 FINRA Discip. LEXIS 34, at *48 (FINRA NAC Dec. 26, 2013).

³⁵ *Lane*, 2013 FINRA Discip. LEXIS 34, at *47.

³⁶ *Richard F. Kresge*, Exchange Act Release No. 55988, 2007 SEC LEXIS 1407, at *27 n.24 (June 29, 2007) (quoting NASD Notice to Members 99-45, 1999 NASD LEXIS 20, at *5 (June 1999)).

³⁷ *Kresge*, 2007 SEC LEXIS 1407, at *27.

³⁸ Compl. ¶ 23.

- (1) review the exception reports generated from the clearing firms' reviews;
- (2) implement a system at Title Securities to review the reports;
- (3) implement a system at Title Securities to review the parameters that each clearing firm used to create the reports; and
- (4) contribute to the parameters that each clearing firm used to create the exception reports.³⁹

Title Securities' supervisory system provided for a review of its trading activity to identify potentially manipulative trading activity.⁴⁰ However, in light of the high volume of trading through the Firm, Title Securities' reviews were neither reasonable nor adequate.⁴¹ This surveillance was manual and performed primarily for profit and loss purposes.⁴²

Title Securities' supervisory system to review for manipulative trading was also deficient because TTI – not Title Securities – added traders to the order management system utilized by Title Securities and issued IDs to the traders.⁴³ Rodriguez failed to control or monitor TTI's issuance and termination of trader IDs.⁴⁴ Rodriguez's failure enabled traders to obtain multiple IDs and thereby circumvent surveillance monitoring conducted at the trader ID level.⁴⁵ This failure also potentially permitted a trader whose original trader ID had been terminated to continue trading under a different trader ID.⁴⁶

³⁹ Compl. ¶¶ 2, 23.

⁴⁰ Compl. ¶ 22.

⁴¹ Compl. ¶ 22.

⁴² Compl. ¶ 22.

⁴³ Compl. ¶ 24.

⁴⁴ Compl. ¶ 24.

⁴⁵ Compl. ¶ 25.

⁴⁶ Compl. ¶ 25.

Accordingly, the facts alleged establish that Rodriguez violated NASD Rule 3010(a) by failing to establish and maintain a supervisory system reasonably designed to achieve compliance with applicable securities laws and regulations, NASD rules, and FINRA rules. In violating NASD Rule 3010(a), Rodriguez also violated FINRA Rule 2010.⁴⁷

2. Deficient WSPs

During the relevant period, Rodriguez was solely responsible for establishing, maintaining and enforcing Title Securities' WSPs.⁴⁸ NASD Rule 3010(b) requires each member to establish, maintain, and enforce WSPs that are reasonably designed to ensure compliance with applicable securities laws and regulations, NASD rules, and FINRA rules.⁴⁹ Reasonably designed WSPs "serve as a 'frontline' defense to protect investors from fraudulent trading practices and help to ensure that members are complying with rules designed to promote the transparency and integrity of the market."⁵⁰ A firm's WSPs "should include a description of controls and procedures used by the firm to deter and detect misconduct and improper activity."⁵¹ Thus, it is a violation of NASD Rule 3010(b) to fail to (1) describe the operation of the supervisory system in WSPs or (2) enforce WSPs.⁵²

⁴⁷ *Dep't of Enforcement v. The Dratel Group, Inc.*, Complaint No. 2008012925001, 2014 FINRA Discip. LEXIS 6, at *81-2 (FINRA NAC May 2, 2014) (by failing to establish, maintain, and enforce adequate supervisory procedures, respondent violated NASD Rule 3010(a) and (b) and just and equitable principles of trade).

⁴⁸ Compl. ¶¶ 15, 30.

⁴⁹ *La Jolla Capital Corp.*, Exchange Act Release No. 41,755, 1999 SEC LEXIS 1642, at *13 (Aug. 18, 1999); *Dist. Bus. Conduct Comm. v. Lobb*, Complaint No. C07960105, 2000 NASD Discip. LEXIS 11, at *16 (NASD NAC Apr. 6, 2000).

⁵⁰ *Lane*, 2013 FINRA Discip. LEXIS 34, at *48 (quoting NASD Notice to Members 98-96, 1998 NASD LEXIS 121 at *2 (Dec. 1998)).

⁵¹ *Lane*, 2013 FINRA Discip. LEXIS 34, at *48 (quoting NASD Notice to Members 98-96, 1998 NASD LEXIS 121 at *6 (Dec. 1998)).

⁵² NASD Notice to Members 98-96, 1998 NASD LEXIS 121, at *5.

Rodriguez did not establish, maintain, and enforce WSPs at Title Securities reasonably designed to supervise HIL's trading activity.⁵³ Specifically, the Firm's procedures did not include sufficient provisions for reviewing for and identifying potentially manipulative trading activity.⁵⁴ In particular, Title Securities' WSPs failed to provide adequate guidance to its registered persons on how to review for and identify potentially manipulative trading activity and what actions to take if any such activity was found or reported.⁵⁵ For example, the WSPs provided no guidance as to the type of conduct or trading activity that could be manipulative.⁵⁶

Title Securities' WSPs failed to describe accurately the operation of the Firm's supervisory system. Specifically, even though Title Securities relied principally on its clearing firms for trading surveillance, the WSPs failed to indicate that Title Securities was relying on the clearing firms' trade surveillance to perform its supervisory reviews and failed to identify the type of reports relied on by Title Securities.⁵⁷

Accordingly, the facts alleged establish that Rodriguez violated NASD Rule 3010(b) by failing to establish, maintain, and enforce WSPs reasonably designed to achieve compliance with applicable securities laws and regulations, NASD rules, and FINRA rules. In violating NASD Rule 3010(b), Rodriguez also violated FINRA Rule 2010.⁵⁸

⁵³ Compl. ¶ 27.

⁵⁴ Compl. ¶ 27.

⁵⁵ Compl. ¶ 27.

⁵⁶ Compl. ¶ 27.

⁵⁷ Compl. ¶ 27.

⁵⁸ *The Dratel Group, Inc.*, 2014 FINRA Discip. LEXIS 6, at *81-2 (by failing to establish, maintain, and enforce adequate supervisory procedures, respondent violated NASD Rule 3010(a) and (b) and just and equitable principles of trade).

C. Second Cause of Action – Deficient AML Policies and Procedures

During the relevant period, Rodriguez was Title Securities' AML Officer, designated as "AML Principal" in the WSPs, and was solely responsible for establishing, maintaining, and enforcing Title Securities' AML policies and procedures.⁵⁹ FINRA Rule 3310(a) requires each member to establish and implement policies and procedures that can reasonably be expected to detect and cause the reporting of transactions required under 15 U.S.C. 5318(g) and its implementing regulations. The implementing regulations require brokers and dealers to report suspicious transactions to the Department of Treasury.⁶⁰ As Title Securities' AML Officer and AML Principal, Rodriguez was responsible for ensuring that all accounts were monitored for suspicious activity.⁶¹

Appropriately tailored AML policies and procedures are mandated by federal law.⁶² To be effective, AML procedures "must reflect the firm's business model and customer base."⁶³ "[I]n developing an appropriate AML program . . . , [a firm] should consider factors such as its . . . business activities, the types of accounts it maintains, and the types of transactions in which its customers engage."⁶⁴ A firm's AML procedures must address a number of areas

⁵⁹ Compl. ¶¶ 15, 35.

⁶⁰ *Amendment to the Bank Secrecy Act Regulations – Requirement that Brokers or Dealers in Securities Report Suspicious Transactions*, 67 FR 44048 (July 1, 2002); *Self-Regulatory Organizations; National Association of Securities Dealers, Inc. and New York Stock Exchange, Inc.; Order Approving Proposed Rule Changes Relating to Anti-Money Laundering Compliance Programs*, 67 FR 20854, 20854 – 55 (Apr. 26, 2002).

⁶¹ Compl. ¶ 35.

⁶² *Dep't of Enforcement v. Domestic Sec, Inc.*, Complaint No. 2005001819101, 2008 FINRA Discip. LEXIS 44, at *23 (FINRA NAC Oct. 2, 2008).

⁶³ NASD Notice to Members 02-21, 2002 NASD LEXIS 24, at *17 (Apr. 2002).

⁶⁴ NASD Notice to Members 02-21, 2002 NASD LEXIS 24, at *20.

including “monitoring of account activities, including but not limited to trading and the flow of money into and out of the account.”⁶⁵

Title Securities’ AML policies and procedures were not reasonably designed to achieve compliance with the requirements of the Bank Secrecy Act and its implementing regulations.⁶⁶ Specifically, they were not reasonably designed to detect, and cause the reporting of, suspicious transactions, as required by FINRA Rule 3310(a).⁶⁷

Both FINRA (through its inquiries) and the clearing firms (through their alerts) repeatedly sent Rodriguez information placing him on notice of suspicious trading activity occurring in the HIL account, but Rodriguez failed to ensure that Title Securities had controls, such as electronic surveillance or exception reports, to monitor for the type of suspicious activity detected by FINRA and the Firm’s clearing firms.⁶⁸

Title Securities’ AML policies and procedures were deficient with respect to the Firm’s reliance on automated exception reports. Title Securities’ AML procedures provided that the Firm would monitor for potential money laundering and suspicious activity by using automated exception reports to detect “unusual size, volume, pattern or type of transactions.”⁶⁹ However, Title Securities’ AML procedures failed to describe or list any exception reports that the Firm was supposed to monitor for suspicious activity.⁷⁰ In addition, other than alerts from its clearing firm, Title Securities had no reports, automated or otherwise, to flag suspicious activity.⁷¹ With

⁶⁵ NASD Notice to Members 02-21, 2002 NASD LEXIS 24, at *21.

⁶⁶ Compl. ¶ 34.

⁶⁷ Compl. ¶ 34.

⁶⁸ Compl. ¶ 40.

⁶⁹ Compl. ¶ 36.

⁷⁰ Compl. ¶ 36.

⁷¹ Compl. ¶ 36.

respect to the alerts from the clearing firms, Rodriguez failed both to (1) review the alerts and (2) implement a system at Title Securities to review the alerts.⁷²

Title Securities' AML policies and procedures were deficient in that Rodriguez did not establish parameters for identifying suspicious transactions. Title Securities' AML procedures required Rodriguez to create monitoring parameters to determine "whether a transaction lacks financial sense or is suspicious because it is an unusual strategy for that customer."⁷³ Rodriguez never created any such monitoring parameters and did not contribute to the monitoring parameters established by the clearing firms for their trade surveillance reports.⁷⁴

Accordingly, the facts alleged establish that Rodriguez violated FINRA Rules 3310(a) and 2010 by failing to establish and implement policies and procedures that can reasonably be expected to detect, and cause the reporting of, transactions required to be reported by 31 U.S.C. 5318(g) and the implementing regulations thereunder.

VII. Sanctions

A. First Cause of Action – Deficient Supervisory System and Written Supervisory Procedures

For supervisory violations, the FINRA Sanction Guidelines ("Guidelines") recommend the imposition of a fine ranging from \$5,000 to \$50,000 and a suspension of up to 30 business days in all principal capacities.⁷⁵ In egregious cases, the Guidelines recommend suspending the responsible individual in all capacities for up to two years or barring the responsible individual.⁷⁶

⁷² Compl. ¶¶ 2, 23, 37.

⁷³ Compl. ¶ 38.

⁷⁴ Compl. ¶ 38.

⁷⁵ FINRA Sanction Guidelines at 103 (2013), <http://www.finra.org/sanctionguidelines>.

⁷⁶ Guidelines at 103.

For deficient written supervisory procedures, the Guidelines recommend imposing a fine ranging from \$1,000 to \$25,000.⁷⁷ In egregious cases, the Guidelines recommend suspending the responsible individual in any or all capacities for up to one year.⁷⁸

Rodriguez's violations of NASD Rule 3010 and FINRA Rule 2010 were egregious because of the duration and extent of the deficiencies and because Rodriguez did not correct these deficiencies despite numerous red flags. Accordingly, for these violations, Rodriguez is fined \$30,000 and suspended for two years in all principal capacities.

B. Second Cause of Action – Deficient AML Policies and Procedures

There is no guideline for failure to implement procedures regarding the investigation and reporting of suspicious activities. The Guidelines for deficient written supervisory procedures under NASD Rule 3010 are the most analogous.⁷⁹

Like Rodriguez's violations of NASD Rule 3010, Rodriguez's violations of FINRA Rules 3310(a) were egregious because of the duration and extent of the deficiencies and because Rodriguez did not correct these deficiencies despite numerous red flags. Accordingly, for this violation, Rodriguez is fined \$20,000 and suspended for one year in all principal capacities, to run concurrently with the suspension for the supervisory violations.⁸⁰

⁷⁷ Guidelines at 104.

⁷⁸ Guidelines at 104.

⁷⁹ *Domestic Sec.*, 2008 FINRA Discip. LEXIS 44, at *22 n.9 (“[W]e find that the Guidelines for deficient written supervisory procedures under NASD Rule 3010 are the most analogous [to Guidelines for deficient AML procedures] and apply them here.”) (citing Guidelines 1 (encouraging adjudicators to look to the most analogous Guidelines when determining sanctions for violations not specifically addressed in the Guidelines)).

⁸⁰ *Dep't of Enforcement v. Kelly*, Complaint No. E9A2004048801, 2008 FINRA Discip. LEXIS 48, at *38 n.40 (FINRA NAC Dec. 16, 2008) (ordering suspensions to be served concurrently).

VIII. Order

Marcus C. Rodriguez violated NASD Rule 3010(a) and (b) and FINRA Rule 2010 by failing to establish and maintain an adequate supervisory system and by failing to establish, maintain, and enforce adequate written supervisory procedures. He also violated FINRA Rules 3310(a) and 2010 by failing to establish and implement reasonable AML policies and procedures. For these violations, Rodriguez is suspended in all principal capacities for two years and is fined \$50,000 (\$30,000 for Count One and \$20,000 for Count Two). If this Default Decision becomes FINRA's final disciplinary action, Rodriguez's suspension shall commence on the open of business on February 2, 2015, and end at the close of business on February 1, 2017. The fine shall be due and payable if and when Rodriguez re-enters the securities industry.



Kenneth Winer
Hearing Officer

Copies to: Marcus C. Rodriguez (via overnight courier and first-class mail)
 Jennifer L. Crawford, Esq. (via first-class and electronic mail)
 Perry C. Hubbard, Esq. (via electronic mail)
 Jeffrey D. Pariser, Esq. (via electronic mail)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Marcus C. Rodriguez
CRD No. 2561801

Respondent.

DISCIPLINARY PROCEEDING
No. 2012033239202

HEARING OFFICER:

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From February 11, 2010 to June 15, 2011 ("Relevant Period"), Respondent Marcus C. Rodriguez, while serving as the President, Chief Compliance Officer ("CCO") and Anti-Money Laundering ("AML") Officer of Title Securities, Inc. ("Title Securities" or "Firm"), a now defunct broker-dealer, failed to: (a) establish and maintain a supervisory system at Title Securities that was reasonably designed to achieve compliance with the federal securities laws and NASD/FINRA rules; (b) establish, maintain, and enforce written supervisory procedures ("WSPs") at Title Securities to identify and prevent manipulative trading activity; and (c) establish and implement AML policies and procedures at Title Securities that could be reasonably expected to detect and cause the reporting of suspicious transactions under the Bank Secrecy Act and its implementing regulations.

2. While Rodriguez served as Title Securities' President, CCO, and AML Officer, the Firm received eleven inquiries from FINRA requesting documents and information related to over 5,000 suspicious and potentially manipulative trades involving wash sales, layering, and pre-arranged trading. These inquiries, many of which requested the economic rationale, trading strategy, and pricing decisions behind the wash sales and layering activity, should have alerted Rodriguez of the potentially manipulative and/or suspicious trading activity at the Firm. Despite these inquiries, Rodriguez failed to establish and maintain a reasonable supervisory system and written supervisory procedures to review for and identify potentially manipulative trading activity and AML procedures at the Firm to monitor, detect, and report suspicious trading activity. Instead, Rodriguez improperly relied on Title Securities' clearing firms to conduct the Firm's supervisory reviews and trade surveillance. Rodriguez failed to review the exception reports generated from the clearing firms' reviews, contribute to the clearing firms' monitoring parameters, and establish written procedures that indicated the Firm was relying on the clearing firm for these functions. As a result, Rodriguez violated NASD Rules 3010(a) and 3010(b) and FINRA Rules 3310(a) and 2010.

RESPONDENT AND JURISDICTION

3. Rodriguez first became registered as a General Securities Representative (Series 7) in 1994 while he was associated with a FINRA member. In 1995, he became registered as a General Securities Principal ("GSP") (Series 24). Rodriguez also holds his Series 3, 4, 14, 27, 53, 55, 63, and 65 securities licenses. In 1996, Rodriguez terminated his registration with the firm and subsequently was registered with 16 other FINRA members before registering with Title Securities on January 2, 2009.

4. From January 2, 2009 to February 10, 2010, Rodriguez served as Title Securities' Limited Principal—Financial and Operations ("FINOP") and GSP. From February 11, 2010 to June 15, 2011, Rodriguez served as the Firm's President, CCO, and AML Officer.

5. From October 13, 2011 until April 25, 2014, Rodriguez was registered with another FINRA member where he served as the firm's CCO, FINOP, and GSP.

6. Rodriguez is not currently registered or associated with a FINRA member.

7. Although Rodriguez is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because: (a) the Complaint was filed within two years after the effective date of termination of Rodriguez's registration with a FINRA member, specifically, April 25, 2014; and (b) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

FACTS COMMON TO BOTH CAUSES OF ACTION

8. Title Securities (f/k/a Direct Access Brokerage Services, Inc.) was a broker-dealer registered with FINRA from February 9, 1993 until the Firm's registration was terminated on January 7, 2013.

9. The Firm changed its name from Direct Access Brokerage Services, Inc. to Title Securities, Inc. after it was purchased by Title Brokerage Holdings Corp. ("Title Brokerage").

10. During the Relevant Period, Title Brokerage was wholly owned by an irrevocable trust established by GE, the sole owner of HIL, Title Securities' largest and most profitable customer. GE personally funded the purchase of Title Securities for the sole purpose of having the Firm provide direct market access to the U.S. markets to HIL.

11. HIL was an unregistered proprietary trading firm domiciled in Cyprus that engaged in algorithmic, high-frequency trading through Title Securities. HIL traded as many as three billion shares per month through Title Securities. HIL had approximately 1,700-1,800 traders (250-300 being characterized as “active”) in approximately 100 or more locations throughout the world (all outside the U.S.), with over half of those traders (approximately 920) in various locations in China (“HIL traders”).

12. During the Relevant Period, HIL utilized an unregistered third party trading firm, TTI, which was also solely owned by GE, to provide a proprietary trading platform, administrative and technological support, and training to HIL’s traders.

13. In addition to its business with HIL, Title Securities serviced, in a DVP/RVP capacity, approximately three institutional customers with equity orders.

14. During the Relevant Period, Title Securities primarily utilized one order management system (“OMS”) to facilitate the online order entry and routing of HIL orders. Title Securities also cleared HIL’s trades through two clearing firms where it had fully disclosed clearing arrangements.

15. During the Relevant Period, Rodriguez was solely responsible for establishing, maintaining, and enforcing Title Securities’ WSPs and AML policies and procedures. Likewise, he was solely responsible for establishing and maintaining Title Securities’ supervisory systems.

16. During the Relevant Period, FINRA identified over 6,300 instances of suspicious trading activity involving potentially manipulative wash sales, layering, and prearranged trading in the HIL account. FINRA sent Title Securities, care of Rodriguez, eleven letters requesting documents and information from the Firm on over 5,000 of the 6,300 instances. These patterns of

trades and FINRA's inquiries, many of which requested Title Securities to provide explanations concerning the economic rationale, trading strategy, and pricing decisions behind the transactions, should have alerted Rodriguez of the potentially manipulative and/or suspicious trading activity at the Firm. Rodriguez, however, ignored these red flags and continued to allow Title Securities to provide HIL traders with direct market access, without implementing any reasonable controls or procedures to supervise the trading activity of the Firm's largest and most profitable customer.

FIRST CAUSE OF ACTION
(Deficient Supervisory System and WSPs)
(NASD Rule 3010 and FINRA Rule 2010)

17. The Department realleges and incorporates by references paragraphs 1 to 16 above.

18. NASD Rule 3010(a) requires each member to establish and maintain a system to supervise the activities of its registered and associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations and NASD/FINRA Rules.

19. NASD Rule 3010(b) requires each member to "establish, maintain, and enforce written procedures to supervise the types of business in which it engages" and supervise the activities of its registered and associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations and NASD/FINRA Rules.

20. FINRA Rule 2010 requires members and associated persons, in the conduct of their business, to "observe high standards of commercial honor and just and equitable principles of trade."

A. Deficient Supervisory Controls and Systems

21. During the Relevant Period, Rodriguez caused Title Securities to have a deficient system in place to review for potentially manipulative trading activity and Rodriguez never identified any manipulative activity, despite receiving inquiries relating to over 5,000 transactions involving potentially manipulative wash sales, layering, and pre-arranged trading.

22. The Firm's supervisory system provided for a manual review of its trading activity to identify potentially manipulative trading activity, but this surveillance was done primarily for profit and loss purposes. The Firm also manually reviewed for manipulative trading activity in real-time. In light of the high volume of trading through Title Securities, the Firm's manual and real-time reviews were neither reasonable nor adequate.

23. Title Securities principally relied on its clearing firms to identify and notify it of potentially manipulative trading. Despite relying on its clearing firms to conduct these reviews, Rodriguez failed to implement a system at the Firm to review the reports it was provided by each clearing firm or the parameters that each clearing firm used to create the exception reports. Rodriguez also failed to contribute to the monitoring parameters established by the Firm's clearing firms.

24. Additionally, Rodriguez failed to establish a supervisory system to control or monitor the unfiltered access the Firm provided HIL to the U.S. markets. TTI – not Title Securities – added traders to the OMS and issued the traders IDs. TTI also established the risk parameters for each trader in OMS and had the ability to change the parameters at its discretion.

Rodriguez failed to control or monitor TTI's issuance and termination of trader IDs and the risk parameters that were established or changed for HIL traders.

25. Rodriguez's failure to establish a supervisory system to control and monitor TTI's control and use of the OMS at the Firm enabled multiple trader IDs to bypass pre-trade risk parameters established for unique trade IDs, to circumvent surveillance monitoring conducted at the trader ID level, and to have access to higher trading limits through the use of multiple IDs. This failure also permitted traders to potentially continue trading under a different trader ID after their original trader ID had been terminated.

B. Deficient WSPs

26. During the Relevant Period, Title Securities had at least 5 different versions of WSPs in effect, dated February 12, 2010, March 15, 2010, June 8, 2010, January 12, 2011, and March 15, 2011. The WSPs were not tailored to the Firm's business of providing direct market access to high-frequency, algorithmic traders, like the HIL traders.

27. Rodriguez did not establish, maintain, and enforce written procedures at the Firm reasonably designated to supervise HIL's trading activity. Specifically, the Firm's procedures did not include sufficient provisions for reviewing for and identifying potentially manipulative trading activity. The WSPs also failed to provide adequate guidance to its registered persons on how to review for and identify potentially manipulative trading activity and what actions to take if any such activity was found or reported. In fact, the WSPs failed to provide any guidance to its registered persons as to the type of conduct or trading activity that could be manipulative.

28. In addition, although the Firm relied principally on its clearing firms for trading surveillance, the Firm's WSPs failed to indicate that it was relying on the clearing firms' trade

surveillance to perform its supervisory reviews and failed to identify the type of reports relied upon by the Firm.

29. As the President and CCO, Rodriguez was solely responsible for establishing and maintaining a supervisory system at Title Securities that was reasonably designed to achieve compliance with applicable securities laws and regulations and NASD/FINRA Rules. As detailed above, Rodriguez failed to review for and identify potentially manipulative trading activity, even after receiving eleven inquiries by FINRA identifying over 5,000 instances of such activity.

30. Likewise, as President and CCO of Title Securities, Rodriguez was solely responsible for establishing, maintaining, and enforcing Title Securities WSPs. As discussed above, Rodriguez failed to establish WSPs at Title Securities that were tailored to the Firm's business, including procedures for reasonably ensuring compliance with the federal securities laws and rules and NASD/FINRA rules.

31. As a result of the foregoing conduct, Rodriguez violated NASD Rules 3010(a) and (b) and FINRA Rule 2010.

SECOND CAUSE OF ACTION

(Deficiencies in Written Anti-Money Laundering Compliance Program) (FINRA Rules 3310(a) and 2010)

32. The Department realleges and incorporates by reference Paragraphs 1 to 31 above.

33. FINRA Rule 3310, formerly NASD Rule 3011, adopted on April 24, 2002, requires all member firms to "develop and implement a written anti-money laundering program

reasonably designed to achieve and monitor the member'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."

34. Pursuant to FINRA Rule 3310(a), firms are required to establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions as required by the Bank Secrecy Act and the implementing regulations thereunder. Title Securities' AML policies and procedures were not reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder or with FINRA's AML rules. Specifically, they were not reasonably designed to monitor, detect, and cause the reporting of suspicious transactions, as required by FINRA Rule 3310(a).

35. During the Relevant Period, Rodriguez was Title Securities' AML Officer and designated "AML Principal" in the WSPs. As the Firm's AML Principal, he was responsible for ensuring that all accounts were monitored for suspicious activity.

36. Title Securities' AML procedures provided that it would monitor for potential money laundering and suspicious activity by using automated exception reports to detect "unusual size, volume, pattern or type of transactions." However, other than the wash sale and odd lot filters implemented in the OMS (which did not flag suspicious activity or generate exception reports) and relying on alerts from its clearing firm, Title Securities had no reports or surveillance, automated or otherwise, to monitor for suspicious and potentially manipulative trading activity. Moreover, the Firm's AML procedures failed to describe or list any exception reports that the Firm was supposed to monitor for suspicious activity.

37. As discussed above, Title Securities, through Rodriguez, also did not monitor for suspicious activity by using the clearing firms' automated exception reports because he failed to either receive or review the clearings firms' exception reports.

38. The Firm's AML procedures also required the AML Principal to create the monitoring parameters to determine "whether a transaction lacks financial sense or is suspicious because it is an unusual strategy for that customer." Rodriguez never created any such monitoring parameters in the OMS or elsewhere, nor did he contribute to the monitoring parameters established by the clearing firm's trade surveillance reports.

39. FINRA has reminded firms that they should tailor their AML programs to the risks of their business, which may include computerized surveillance of account activity to detect suspicious transactions. NASD Notice to Members 02-21.

40. Rodriguez failed to tailor Title Securities' AML policies and procedures to its business. He also failed to adopt a risk-based approach in designing and implementing Title Securities' AML procedures and controls by monitoring for money movement alone, and not monitoring for suspicious and potentially manipulative trading.

41. Rodriguez was repeatedly placed on notice of the suspicious trading activity occurring in the HIL account by FINRA through its inquiries and by its clearing firms through their alerts, yet he failed to ensure that Title Securities had controls, such as electronic surveillance or exception reports, to monitor for the type of suspicious activity detected by FINRA and its clearing firms.

42. As a result of the foregoing conduct, Rodriguez violated FINRA Rules 3310(a) and 2010.


RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Rodriguez committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and
- C. order that Rodriguez bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: August 13, 2014


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