

Stradley Ronon Stevens & Young, LLP  
2005 Market Street  
Suite 2600  
Philadelphia, PA 19103-7018  
215.564.8000 Telephone  
215.564.8120 Facsimile  
www.stradley.com

With other offices in:  
Washington, D.C.  
New York  
New Jersey  
Illinois  
Delaware



www.meritas.org

*Our firm is a member of Meritas – a worldwide business alliance of more than 180 law offices in 86 countries, offering high-quality legal services through a closely integrated group of independent, full-service law firms.*

Information contained in this publication should not be construed as legal advice or opinion or as a substitute for the advice of counsel. The enclosed materials may have been abridged from other sources. They are provided for educational and informational purposes for the use of clients and others who may be interested in the subject matter.

Copyright © 2017  
Stradley Ronon Stevens & Young, LLP  
All rights reserved.

## Broker-Dealers Beware: The SEC is Actively Engaged in Anti-Money Laundering Enforcement

*by Michael J. Engle and Ashley E. Shapiro*

Historically, Anti-Money Laundering (AML) and Bank Secrecy Act (BSA) enforcement efforts have been undertaken by the Department of Justice, the Financial Crimes Enforcement Network (FinCEN), the Internal Revenue Service and federal bank examiners. However, recently the U.S. Securities and Exchange Commission (SEC) has commenced enforcement actions in the AML arena. Earlier this year, the Office of Compliance Inspections and Examinations of the SEC announced that Anti-Money Laundering was on the list of examination priorities for 2017, signaling a shift in this regulatory area for broker-dealers.

Broker-dealers registered with the SEC are deemed to be “financial institutions” pursuant to the BSA, and they are also required to be members of the Financial Industry Regulatory Authority (FINRA). Consequently, registered broker-dealers must undertake AML compliance as set forth in FINRA Rule 3310, which requires that four essential issues be addressed: (1) policies and procedures reasonably designed to detect and report suspicious activity, (2) periodic independent testing of the AML compliance program, (3) designation of a person responsible for overseeing the AML program, and (4) continuous training of all appropriate personnel.

Broker-dealers must therefore establish and implement written AML and customer-identification programs (CIP); file suspicious activity reports (SARs) with FinCEN describing suspicious transactions that take place through their firms; and comply with other filing, due diligence and record-keeping requirements. Failure to properly comply can lead to civil and/or criminal liability for corporate officers and/or owners when the BSA violation or the aiding and abetting of a violation can be deemed willful.

Recently, the SEC made it clear that AML is one of its top enforcement priorities by utilizing Rule 17a-8 under the Securities Exchange Act of 1934 as an enforcement tool. In *SEC v. Alpine Securities Corp.*, No. 7:17-CV-4179 (S.D.N.Y. June 5, 2017), the SEC filed suit against a broker-dealer alleging it violated Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-8, which specifically requires broker-dealers to comply with the record-keeping, retention and reporting obligations of the BSA. The complaint alleged that “Alpine’s policies and procedures did not result in the filing of a SAR in the manner required by the BSA and by Alpine’s BSA Compliance Program” and that it “routinely and systematically failed to identify and report suspicious activity in its SAR filings of which it was aware.” Although the broker-dealer defendant had an AML compliance program, the complaint asserted that the defendant failed to meaningfully implement the program and that the required SARs were either deficient or not actually filed.

In order to avoid becoming a target for the SEC or other regulators, broker-dealers should establish and execute an AML program with strict guidelines while keeping the following key points in mind:

1. Broker-dealers should create an AML compliance program, with detailed policies and procedures, that is tailored to the unique characteristics of the firm and the identifiable risks presented by the firm's business engagements. The AML program must adequately address all four pillars of an effective program as required by FINRA Rule 3110.
2. Broker-dealers must diligently monitor for potentially suspicious or illegal activity, including the offer and sales of restricted securities. If so-called red flags are identified, broker-dealers should perform an investigation into the activity and/or customer in order to determine whether a SAR should be filed. If a SAR must be filed, it should be completed with a concise yet accurate description of the activity, it should not omit any information, and it should be filed no later than 30 days after the initial detection by the reporting broker-dealer. SAR filings are the primary device for AML/BSA enforcement; thus, the failure to file a SAR or the failure to file a sufficient SAR can become the basis for an enforcement action.
3. Broker-dealers should create a culture of compliance and establish a written BSA/AML process in which all

employees are properly trained. This training protocol will ensure that all employees follow the same process for any suspicious activities. Additionally, broker-dealers should implement management-level SAR review and quality control processes.

4. Broker-dealers should have a procedure in place to conduct effective self-audits. This will allow the firm to review the efficiency of its AML process and confirm that all electronic monitoring systems are adequately and accurately detecting suspicious conduct.

#### How can we help?

- Stradley Ronon lawyers can assist in developing a robust AML/BSA compliance program and/or analyzing a current set of policies and procedures used by a broker-dealer.
- If a broker-dealer detects AML red flags, we can conduct an effective and efficient internal investigation in order to assist in the critical determinations related to filing a SAR.
- Stradley attorneys can conduct in-house training for broker-dealers on BSA/AML guidelines, compliance and procedures.
- We can assist a broker-dealer with the recurring self-auditing process to ensure AML compliance.



**Michael J. Engle**



**Ashley E. Shapiro**

*For more information, contact Michael J. Engle at 215.564.8737 or [mengle@stradley.com](mailto:mengle@stradley.com) or Ashley E. Shapiro at 215.564.8113 or [ashapiro@stradley.com](mailto:ashapiro@stradley.com).*