INITIAL DECISION RELEASE NO. 1388
ADMINISTRATIVE PROCEEDING
FILE NO. 3-18414

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of	:	
	:	INITIAL DECISION
EUGENE TERRACCIANO	:	October 22, 2019

APPEARANCES: Nicholas Margida and Daniel J. Maher for the Division of Enforcement, Securities and Exchange Commission

Gregg J. Breitbart of Kaufman Dolowich & Voluck LLP, for Respondent Eugene Terracciano

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision (ID) suspends Respondent Eugene Terracciano from the securities industry for twelve months.

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings on March 28, 2018, pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, 203(f) of the Investment Advisers Act of 1940, and 9(b) of the Investment Company Act of 1940. On July 6, 2018, pursuant to Terracciano's offer of settlement, the Commission made various findings of fact and conclusions of law, imposed a cease-and-desist order and civil money penalty, and ordered additional proceedings to determine what, if any, "remedial action is appropriate in the public interest." *Eugene Terracciano*, Exchange Act Release No. 83604, 2018 SEC LEXIS 1663, at *20 (Settlement Order). The procedures for the additional proceedings were set with the agreement of the parties. *Eugene Terracciano*, Admin. Proc. Release Nos. 6139, 2018 SEC LEXIS 2733 (A.L.J. Oct. 3, 2018); 6343, 2018 SEC LEXIS 3261 (Nov. 19, 2018); 6458, 2019 SEC LEXIS 178 (A.L.J. Feb. 14, 2019). Accordingly, the Division of Enforcement filed a motion for sanctions, Respondent filed an opposition, and the Division filed a reply. A hearing session, at which Respondent testified,

exhibits were admitted into evidence, and the parties presented oral arguments, was held on March 26, 2019.[1]

The findings and conclusions in this ID are based on the record. Official notice pursuant to 17 C.F.R. § 201.323 is taken of the Commission's public official records and of Financial Industry Regulatory Authority, Inc. (FINRA), records as well. *See Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at *1 n.1 (Apr. 18, 2013), *pet. denied*, 575 F. App'x 1 (D.C. Cir. 2014). Preponderance of the evidence was applied as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 97-104 (1981). All arguments and proposed findings and conclusions that are inconsistent with this ID were considered and rejected.

B. Allegations and Arguments of the Parties

The Division argues that Terracciano should be barred from the securities industry with the right to reapply after two years. Terracciano urges that a lesser sanction, such as a supervisory suspension in the range of twelve months, would be more appropriate in the public interest.

II. FINDINGS OF FACT

For purposes of this ID and pursuant to the offer of settlement, the findings and facts set forth in the Settlement Order are deemed true and incorporated herein. As detailed in the Settlement Order, the proceeding involves anti-money laundering (AML) failures at Aegis Capital Corporation, a FINRA registered broker dealer and Commission registered investment adviser, by Terracciano, who was the firm's AML Compliance Officer (AML CO) from September 2013 to approximately September 2015. Despite red flags and even despite alerts from Aegis's clearing firm, Aegis failed to file Suspicious Activity Reports (SARs), as required by 31 C.F.R. § 1023.320, on hundreds of suspicious transactions during that period. At most, after being alerted by the clearing firm, Terracciano closed customer accounts after allowing their high-volume questionable transactions in low-priced securities to settle and after becoming aware that no one at Aegis was flagging such transactions despite their raising red flags spelled out in Aegis's written supervisory procedures.[2]

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[1] Citations to the transcript are noted as "Tr. __." Citations to exhibits offered by the Division and Respondent are noted as "Div. Ex. __" and "Resp. Ex. __," respectively.

[2] The Settlement Order, 2018 SEC LEXIS 1663, at *708, noted that the written supervisory procedures specified these red flags:

> i. There is a sudden spike in investor demand for, coupled with a rising price in, a thinly-traded or low-priced security;
> ii. The issuer has been through several recent name changes, business combinations or recapitalizations, or the company's officers are also officers of numerous similar companies;
> iii. The issuer's SEC filings are not current, are incomplete, or [are] nonexistent;

Terracciano was employed in the securities industry in a capacity requiring FINRA (or predecessor) registration starting in 1988. Resp. Ex. 1; Eugene William Terracciano BrokerCheck Report, *available at* http://brokercheck.finra.org (last visited Oct. 11, 2019). His first compliance-related position started in 1995. Tr. 19; Resp. Ex. 1; Terracciano BrokerCheck Report. His last such employment was with Merrill Lynch, Pierce, Fenner & Smith, with which he was registered from November 2015 to January 2017. Tr. 41-45; Resp. Ex. 1; Terracciano BrokerCheck Report. He was let go by Merrill as a result of the investigation that led to this proceeding. Tr. 42-45. He has been unemployed since January 2017. Tr. 17, 50. Since then, he has sought, fruitlessly, employment in the securities industry. Tr. 46-47. None of the positions for which he applied related to AML compliance. Tr. 46. He realizes that if he were barred from the securities industry, even with a right to reapply after a specific time, his career in the securities industry would be over, due to the disincentive to any firm to sponsor him for re-registration.[3] Tr. 49. If he were suspended for a fixed period, he would attempt to reenter the industry as a compliance officer. Tr. 50.

Terracciano initially joined Aegis as a director of compliance; when he was interviewed for the position, there was no mention of AML responsibilities. Tr. 22-23. Soon after his arrival at Aegis, he was asked by the Chief Compliance Officer to be AML CO, which he was reluctant to accept. Tr. 23-24. Eventually he yielded to the importunity of the Chief Compliance Officer,

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> iv. The customer appears to be acting as an agent for an undisclosed principal, but declines or is reluctant, without legitimate commercial reasons, to provide information or is otherwise evasive regarding that person or entity;
> v. The customer's account has wire transfers that have no apparent business purpose to or from a country identified as a money laundering risk or a bank secrecy haven; and
> vi. The customer, for no apparent reason or in conjunction with other "red flags," engages in transactions involving certain types of securities, such as penny stocks . . . which although legitimate, have been used in connection with fraudulent schemes and money laundering activity.

[3] The Commission has stated that when it "issues an order pursuant to an administrative proceeding which specifically provides that an application for re-entry may be made after a certain time, the applicant may apply directly to the Commission . . . [and] the Commission upon a proper showing will generally act favorably upon the application." *Applications for Relief from Disqualification*, Exchange Act Release No. 11267, 1975 SEC LEXIS 2166, at *4-5 (Feb. 26, 1975); *see also* 17 C.F.R. §§ 201.193(a)(2), 200.30-4(a)(5). The application must include supporting exhibits, including a written statement by the applicant's proposed employer with descriptions of the compliance and disciplinary history of the office and plan for supervising the applicant. 17 C.F.R. § 201.193(b)(4). Commission decisions describe the conditions in granting or denying such applications. *See, e.g.,, Brett Thomas Graham*, Exchange Act Release No. 84526, 2018 SEC LEXIS 3056 (Nov. 2, 2018); *Michael L. Silver*, Advisers Act Release No. 4691, 2017 SEC LEXIS 1246 (Apr. 26, 2017); *Matthew D. Sample*, Exchange Act Release No. 75893, 2015 SEC LEXIS 3793 (Sept. 10, 2015).

who promised support and training, which never materialized. Tr. 24-26, 31-32, 35-36. Terracciano knew that low-price securities, such as those for which SARs should have been filed, might be used in questionable ways. Tr. 53. Terracciano now realizes that actions that he thought sufficient at the time – closing accounts to stop the activity – were insufficient and not a substitute for filing SARs. Tr. 40. He would not now seek or accept a position with AML reporting responsibilities. Tr. 50. In view of the consequences that he experienced from unwillingly accepting the AML responsibilities at Aegis, his representation that he would not do so again is credible.

III. VIOLATIONS

As stated in the Settlement Order, Terracciano willfully aided and abetted and caused violations by Aegis of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder. Rule 17a-8 requires broker-dealers to comply with the reporting, recordkeeping, and record retention requirements of the Bank Secrecy Act, which include filing SARs, as required by 31 C.F.R. § 1023.320. 17 C.F.R. § 240.17a-8. Failing to file SARs, as required by 31 C.F.R. § 1023.320, is a violation of Exchange Act 17(a) and Rule 17a-8.

IV. SANCTION

The Division requests that Terracciano be barred from the securities industry with the right to reapply after two years, while Terracciano urges a lesser sanction, such as a twelve-month supervisory suspension. A collateral suspension for a period of twelve months will be ordered.[4]

A. Sanction Considerations

The Commission determines sanctions pursuant to a public interest standard. *See* 15 U.S.C. §§ 78*o*(b)(4)(E), 6(A)(i); 80a-9(b)(3); 80b-3(e)(6), (f). The Commission considers factors including:

> the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

[4] The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which became effective on July 22, 2010, provided collateral bars in each of the several statutes regulating different aspects of the securities industry. The conduct that led to the case against Respondents occurred after July 22, 2010. *See Bartko v. SEC*, 845 F.3d 1217 (D.C. Cir. 2017) (holding that a collateral bar cannot be imposed when the violative conduct on which a follow-on proceeding was based ended before the July 22, 2010, effective date of the Dodd-Frank Act). The same reasoning applies to suspensions.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979) (quoting *SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)), *aff'd on other grounds*, 450 U.S. 91 (1981). The Commission also considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation. *Marshall E. Melton*, Advisers Act Release No. 2151, 2003 SEC LEXIS 1767, at *5 (July 25, 2003). Additionally, the Commission considers the extent to which the sanction will have a deterrent effect. *Schield Mgmt. Co.*, Exchange Act Release No. 53201, 2006 SEC LEXIS 195, at *35 & n.46 (Jan. 31, 2006).

B. Sanction

As shown by Terracciano's consent to the Settlement Order as well as his testimony at the hearing, he has recognized the wrongful nature of his conduct. His conduct was recurrent over a period of two years. The egregiousness was somewhat mitigated by his eventually closing accounts that engaged in suspicious transactions. Scienter is not an element of violation of Exchange Act Section 17(a) and rules. However, Terracciano's state of mind was at least negligent, if not reckless. His most recent occupation as a compliance officer in the securities industry, if he were allowed to continue it in the future, would present opportunities for future violations. This factor is mitigated by his credible representation that he would not accept a position involving AML responsibilities. The violation is relatively recent, having ended four years ago. It is not possible to quantify the *direct* harm to the marketplace, but, as the Commission has often emphasized, the public interest determination extends beyond consideration of the particular investors affected by a respondent's conduct to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally. *See Christopher A. Lowry*, Investment Company Act of 1940 Release No. 2052, 2002 SEC LEXIS 2346, at *20 (Aug. 30, 2002), *aff'd*, 340 F.3d 501 (8th Cir. 2003); *Arthur Lipper Corp.*, Exchange Act Release No. 11773, 1975 SEC LEXIS 527, at *52 (Oct. 24, 1975). [5] Weighing these factors in conjunction with the sanctions ordered in the Settlement Order, the sanction requested by the Division is too severe, but a limited supervisory suspension would not suffice.

A limited supervisory suspension would permit Terracciano to work at a regulated entity under supervision and is insufficient as a sanction and as a deterrent. A "collateral" suspension from the industry is appropriate because record-keeping and reporting provisions apply in all elements of the securities industry, even if the violative conduct is limited to the professional capacity in which Terracciano was acting. *See John W. Lawton*, Advisers Act Release No. 3513, 2012 SEC LEXIS 3855, at *42-43 (Dec. 13, 2012), *vacated in part on other grounds*, Advisers Act Release No. 4402, 2016 SEC LEXIS 1926 (May 27, 2016).

[5] The violation did not involve fraud, for which a severe sanction is required because opportunities for dishonesty recur constantly in the securities business. *See Vladimir Boris Bugarski*, Exchange Act Release No. 66842, 2012 SEC LEXIS 1267, at *18 n.26 (Apr. 20, 2012); *Richard C. Spangler, Inc.*, Exchange Act Release No. 12104, 1976 SEC LEXIS 2418, at *34 (Feb. 12, 1976).

V. RECORD CERTIFICATION

Pursuant to Rule 351(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.351(b), it is certified that the record includes the items set forth in the record index issued by the Secretary of the Commission on May 8, 2019.

VI. ORDER

IT IS ORDERED that, pursuant to Sections 15(b) of the Exchange Act and 203(f) of the Advisers Act, EUGENE TERRACCIANO IS SUSPENDED for a period of twelve months from associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock.[6]

IT IS FURTHER ORDERED that, pursuant to Section 9(b) of the Investment Company Act OF 1940, EUGENE TERRACCIANO IS PROHIBITED for a period of twelve months from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111(h) of the Commission's Rules of Practice, 17 C.F.R. § 201.111(h). If a motion to correct a manifest error of fact is filed by a party, then a party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or a motion to correct a manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

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Carol Fox Foelak
Administrative Law Judge

[6] Thus, Terracciano will be suspended from acting as promoter, finder, consultant, or agent; or otherwise engaging in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock, pursuant to Exchange Act Section 15(b)(6)(A), (C).