

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 62811 / September 1, 2010**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-14026**

**In the Matter of**

**Pinnacle Capital Markets LLC and  
Michael A. Paciorek,**

**Respondents.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
MAKING FINDINGS, AND IMPOSING  
REMEDIAL SANCTIONS, PENALTIES AND A  
CEASE-AND-DESIST ORDER PURSUANT TO  
SECTIONS 15(b)(4) AND 21C OF THE  
SECURITIES EXCHANGE ACT OF 1934**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b)(4) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Pinnacle Capital Markets LLC and Michael A. Paciorek (“Respondents”).

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or in which the Commission is a party, and without admitting or denying the findings contained herein, except as to the Commission’s jurisdiction over Respondents and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions, Penalties and a Cease-and-Desist Order Pursuant to Sections 15(b)(4) and 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.

### III.

On the basis of this Order and Respondents' Offer, the Commission finds that:<sup>1</sup>

#### Respondents

1. Pinnacle Capital Markets LLC ("Pinnacle") is a North Carolina limited liability company headquartered in Raleigh that has been registered with the Commission as a broker-dealer since October 10, 2002. Pinnacle is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act and is a member of the Financial Industry Regulatory Authority, Inc. ("FINRA"). Michael A. Paciorek is the president and chief compliance officer of Pinnacle.

#### Summary

2. These proceedings arise out of Pinnacle's violations of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder, which require a broker-dealer to comply with the reporting, recordkeeping and record retention requirements in regulations implemented under the Bank Secrecy Act ("BSA"),<sup>2</sup> including the requirements in the customer identification program ("CIP") rule applicable to broker-dealers.<sup>3</sup> The CIP rule generally requires a broker-dealer to establish, document, and maintain procedures for identifying customers and verifying their identities. Pinnacle's business primarily involves order processing with direct market access ("DMA") software for foreign institutions comprised mostly of banks and brokerage firms (many carrying omnibus accounts) and foreign individuals. Pinnacle established, documented and maintained a CIP that specified it would identify and verify the identities of all of its customers. However, from October 2003 through August 2006, Pinnacle did not verify the identities of many of its corporate account holders. Further, from October 2003 to November 2009, Pinnacle did not identify or verify the identities of the vast majority of its corporate customers' omnibus accounts' sub-account holders, even though the sub-account holders were Pinnacle's customers for purposes of the CIP rule. Consequently, Pinnacle's documented procedures differed materially from its actual procedures.

3. By failing to document accurately its customer verification procedures, Pinnacle willfully violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.<sup>4</sup>

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<sup>1</sup> The findings herein are made pursuant to Respondents' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

<sup>2</sup> Currency and Foreign Transactions Reporting Act of 1970 (commonly referred to as the Bank Secrecy Act), 12 U.S.C. § 1829b, 12 U.S.C. §§ 1951-1959, and 31 U.S.C. § 5311-5330.

<sup>3</sup> 31 C.F.R. § 103.122.

<sup>4</sup> The Financial Industry Regulatory Authority ("FINRA") has fined Pinnacle \$300,000 for violating NASD Rules 3011(a) and (b) and 2110 by failing to establish and implement Anti-Money Laundering procedures reasonably designed to verify the identity of its customers stemming in part from the facts

4. In addition, as the firm's compliance officer, Paciorek was obligated to ensure that Pinnacle complied with its anti-money laundering ("AML") obligations, including the obligation to maintain an accurate CIP. Paciorek's failure to do so was a cause of Pinnacle's violations.

### **Findings**

5. Pinnacle is a small broker-dealer based in Raleigh with registered representatives stationed in the United Kingdom, Argentina and Canada who act as independent contractors and whose primary function is to seek and introduce new customers to Pinnacle. Pinnacle's business primarily involves order processing with direct market access software for foreign institutions comprised mostly of banks and brokerage firms (many carrying omnibus accounts) and foreign individuals. More than 99% of Pinnacle's customers reside outside the United States. Pinnacle's customers are both corporate and retail customers holding both corporate and individual accounts ("regular" accounts). Many of Pinnacle's corporate customers that are foreign entities also hold omnibus accounts through which, in some instances, these foreign entities in turn carry sub-accounts for their own corporate or retail customers. These foreign entity omnibus sub-accounts are not the foreign entities' own proprietary accounts.

6. Pinnacle treats the sub-account holders of the foreign entity omnibus accounts ("omnibus sub-account holders") in the same manner as it does its regular account holders. The vast majority of Pinnacle's regular account holders, as well as the omnibus sub-account holders, use DMA software to enter securities trades directly and instantly through their own computers. As a result, these account holders, including the omnibus sub-account holders, have direct, unfiltered control over how securities transactions are effected in the accounts. The foreign entity holding the omnibus account does not intermediate these trades. Using the DMA software, the omnibus sub-account holders are able to directly and instantly effect securities transactions without having the foreign entity intermediate the transaction. The DMA software allows the omnibus sub-account holders to route their securities transactions directly to the relevant market centers, including the New York Stock Exchange and the NASDAQ system, without intermediation. The omnibus sub-account holder's transactions are executed and confirmed through the DMA software provided to the sub-account holders, without intermediation.

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underlying the instant action, and for failing to detect and report suspicious activity. *See* Letter of Acceptance, Waiver and Consent No. 2006006637101. As part of its settled action with FINRA, Pinnacle also consented to a censure and certain undertakings.

7. As of 2004, Pinnacle had a documented AML program that included a CIP section. Among other things, Pinnacle's CIP provided that, upon creation of a new account, the "designated person" at Pinnacle should "follow the 'New Account Checklist (Corporate or Retail)' in order to gather and verify customer information." In most instances, Michael Paciorek, Pinnacle's president and chief compliance officer, was the designated person for AML compliance purposes. The CIP set forth procedures for the identification and verification of the corporate accounts and the individual accounts and called for this information to be recorded in a document that was to be kept with the customer's account form.

8. With respect to business or corporate accounts, Pinnacle's CIP procedures required the designated person to follow the Corporate New Account checklist in order to gather and verify customer information and to maintain all information collected with the customer's account form.

9. For verification of this information, Pinnacle's CIP procedures required the designated person to: (1) obtain a copy of the document confirming the existence of the business (e.g., certificate or articles of incorporation); (2) obtain a financial statement regarding the business; and (3) in appropriate circumstances, conduct a site visit. Actual verification was required to be made at least five days from the account opening and documentation of the verification was to be kept and evidenced on the checklist.

10. Pinnacle's written CIP listed the information that Pinnacle should obtain from new individual customers.

11. The verification procedures set forth in Pinnacle's CIP required the designated person to verify the individual customer's identity by, among other things: (a) reviewing a current unexpired photo on a government-issued identification and visibly comparing the photograph with the customer; (b) confirming the address, date of birth and other information provided by the customer by either (i) viewing a utility bill, or (ii) contacting the customer; (c) utilizing an information verification process, such as a credit report; (d) inquiring and documenting a conversation about the source of the customer's assets and income to determine whether the inflow and outflow of money and securities was consistent with the customer's financial status; and (e) gaining an understanding of what the customer's likely trading pattern would be so that any deviations from the patterns could be detected.

12. Between 2003 and November 2009, Pinnacle collected identifying information for its regular account holders. However, it did not verify information regarding corporate accounts as documented in its CIP procedures, and it did not collect or verify all identifying information for the vast majority of its approximately 3,000 omnibus sub-account holders.

13. With respect to the procedures governing the verification of corporate accounts, Pinnacle collected identifying information for its corporate accounts as outlined in its written CIP; however, its verification procedures were deficient in such a way that

Pinnacle did not, and in some instances could not, verify some of its customers' identities. For example, between October 2003 and August 2006, Pinnacle did not verify a significant number of its corporate account holders' identities. Specifically, out of a sampling of 55 corporate accounts opened between October 2003 and August 2006, Pinnacle either did not verify or could not verify the identities of 34 of those account holders.

14. For the majority of this sample of corporate brokerage accounts, Pinnacle either did not obtain the information listed in Paragraph 9 or obtained those documents in foreign languages that no one on Pinnacle's staff could understand. Pinnacle also did not record any non-documentary steps to verify the identities of these corporate account holders in ways required by its CIP. Pinnacle therefore failed to follow the verification procedures set forth in its CIP.

15. With respect to the procedures governing the identification of the omnibus account sub-account holders, in some but not all instances, Pinnacle collected from its corporate customer omnibus account holders limited identifying information about the corporate customers' omnibus sub-account holders, such as a name and occupation. Addresses and other identifying information were not obtained. With the exception of this limited information, Pinnacle and its representatives did not know the identities of the omnibus sub-account holders.

16. Michael Paciorek was Pinnacle's president and chief compliance officer during the entire period relevant to this Order. Throughout this period, Paciorek directed all of Pinnacle's actions with respect to its CIP procedures and the identification and verification of its customers.

### **Legal Discussion**

17. Section 17(a) of the Exchange Act and Rule 17a-8 thereunder require a broker-dealer to comply with the reporting, recordkeeping and record retention requirements in the regulations implemented under the BSA, which includes the CIP rule.<sup>5</sup> The CIP rule requires that broker-dealers establish procedures for making and maintaining records of all information obtained to comply with the rule, including records describing the methods and results of any measures undertaken to verify the identities of customers.<sup>6</sup>

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<sup>5</sup> The BSA, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Pub. L. 107-56), directed the Department of Treasury and the Commission to jointly issue regulations requiring, among other things, broker-dealers to implement reasonable procedures to verify the identity of any person seeking to open an account (to the extent reasonable and practicable) and to maintain records of the information used to verify the person's identity. *See* Exchange Act Release No. 34-47752 (April 29, 2003), 68 FR.25113 (May 9, 2003).

<sup>6</sup> 31 C.F.R. § 103.122(b)(3).

18. Pinnacle's written CIP specified that it would identify and verify the identities of its customers.

19. Pinnacle did not, in many instances, verify the identities of its customers that were corporate account holders. In many cases, Pinnacle failed to take steps toward verifying its corporate customers' identities, and in other instances, could not verify its corporate customers' identities because it collected verification documents in languages no one at Pinnacle could understand. In addition, Pinnacle did not record its non-documentary steps to verify the identities of these corporate account holders as required by its CIP. Accordingly, because Pinnacle neither verified the identities of all of its corporate account holders nor recorded its non-documentary verification steps, Pinnacle did not accurately document its CIP as required under the CIP rule.

20. Pinnacle also did not collect identifying information or verify the identities of its corporate customers' omnibus sub-account holders. In addition to being customers of the foreign entities holding the omnibus accounts, the omnibus sub-account holders are Pinnacle's customers for purposes of the CIP rule because the omnibus sub-account holders effect securities transactions directly and without the intermediation of the customer omnibus account holders.<sup>7</sup> The omnibus sub-account holders effect transactions for their own accounts, do not act on behalf of the foreign entity, and are not proprietary accounts of the foreign entity. Accordingly, because Pinnacle did not identify the omnibus sub-account holders or verify their identities, Pinnacle did not accurately document its CIP as required under the CIP rule.

21. As a result of the conduct described above, Pinnacle willfully violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder by failing to document accurately its CIP.

22. As a result of the conduct described above, Paciorek was a cause of Pinnacle's violations of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

#### IV.

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<sup>7</sup> On October 1, 2003, staff from the Commission's Division of Trading and Markets (f/k/a Division of Market Regulation) and the Financial Crimes Enforcement Network ("FinCEN"), a bureau within the Department of Treasury that administers the BSA, published a "Question and Answer" ("Q&A") regarding a broker-dealer's CIP obligations with respect to transactions in omnibus accounts and sub-accounts. *See* Question and Answer Regarding the Broker-Dealer Customer Identification Program Rule (31 CFR 103.122) at <http://sec.gov/divisions/marketreg/qa-bdidprogram.htm>. The Q&A addressed non-exclusive circumstances under which a broker-dealer could treat an omnibus account holder as the only customer for the purposes of the CIP rule and would not also be required to treat the underlying beneficial owner as a customer. Among other things, the Q&A contemplated a scenario in which all securities transactions in the omnibus account or sub-account would be initiated by the financial intermediary holding the omnibus account, and the beneficial owner of the omnibus account or sub-account would have no direct control of the transactions effected in the account. In contrast, Pinnacle's foreign entity omnibus accounts were not true intermediated relationships, as Pinnacle treated the omnibus sub-account holders as its own customers. Specifically, the omnibus sub-account holders directly effected transactions through their sub-accounts with the DMA software, routing the trades to the relevant market centers, including the New York Stock Exchange and the NASDAQ system, without intermediation.

In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondents and the cooperation afforded the Commission staff.<sup>8</sup>

V.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed upon in Respondents' Offer of Settlement.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondents shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder;

B. Pinnacle is censured pursuant to Section 15(b)(4) of the Exchange Act;

C. Pursuant to Section 21B of the Exchange Act, Pinnacle shall, within 30 days of the entry of this Order, pay a civil money penalty of \$25,000.00 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, United States Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover of a letter that identifies Pinnacle Capital Markets LLC and Michael A. Paciorek as the Respondents in these proceedings and the file number of these proceedings. A copy of the cover letter and money order or check shall be sent to Tom Sporkin, Chief of the Office of Market Intelligence, Division of Enforcement, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-5631.

By the Commission.

Elizabeth M. Murphy  
Secretary

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<sup>8</sup> As noted, *see supra* note 4, Pinnacle agreed to certain undertakings in settling the related action with FINRA .

## Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings and Imposing Remedial Sanctions, Penalties and a Cease-and-Desist Order Pursuant to Section 15(b)(4) and 21C of the Securities Exchange Act of 1934 ("Order"), on the Respondents and their legal agents.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray  
Chief Administrative Law Judge  
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