

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 77971 / June 1, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17270

In the Matter of

Albert Fried & Company, LLC,

Respondent.

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

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Albert Fried & Company, LLC (“Albert Fried” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “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 to which the Commission is a party, and without admitting or denying the findings herein, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds that:

SUMMARY

From at least August 2010 through October 2015, Albert Fried & Company, LLC (“Albert Fried”), a registered broker-dealer, failed to file Suspicious Activity Reports (“SARs”) when it knew, suspected, or had reason to suspect that certain transactions involved the use of the broker-dealer to facilitate fraudulent activity or had no business or apparent lawful purpose. At the time, Albert Fried’s anti-money laundering (“AML”) policies and procedures listed a number of specific examples of suspicious activities that should have triggered internal reviews and, in a number of instances, SAR filings. The policies highlighted a number of red flags, including widely regarded indicia of potential securities fraud, such as “trading that constitutes a substantial portion of all trading for the day in a particular security,” “heavy trading in low-priced securities,” and “unusually large deposits of funds or securities.” Despite the suspiciousness of its customers’ transactions, the related red flags, and the requirements of its written policies, Albert Fried never filed a SAR during the relevant, more than five-year period.

By failing to file SARs as required, Albert Fried willfully¹ violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

RESPONDENT

1. **Albert Fried & Company, LLC** is a registered broker-dealer located and organized in New York, NY. Albert Fried has been registered with the Commission since January 13, 1952. The firm engages in equity and fixed income trading, prime brokerage, stock loan and borrow services, correspondent clearing services, and the production of investment research. Albert Fried is self-clearing. The firm has approximately 250 registered accounts for a predominantly institutional clientele.

FACTS

Background

2. Albert Fried was founded in 1919 as a specialist firm on the New York Stock Exchange and has been a registered broker-dealer with the Commission since 1952.

3. From its offices in New York, Albert Fried provides services primarily to institutional investors. Those include execution and clearing of equity transactions for approximately 250 registered accounts.

4. Beginning in 2010, Albert Fried received large-volume deposits of low-priced securities from at first one and then a number of customers. Shortly after the shares were deposited, the customers engaged in sales that accounted for a substantial portion of the daily

¹ A willful violation of the securities laws means merely “that the person charged with the duty knows what he is doing.” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

volume in the thinly traded penny stocks, often until the customer's entire position was sold. Those transactions, in light of other information known to Albert Fried at the time, raised or should have raised red flags for the firm. Given the suspiciousness of its customers' transactions, related red flags, and the requirements of its written policies, in a number of instances, Albert Fried should have filed a SAR.

Albert Fried's AML Policies & Procedures

5. In an attempt to meet its AML obligations, Albert Fried adopted policies and procedures ("the policies") concerning its customer relationships, security deposits, and customer transactions. Albert Fried purchased template AML policies and procedures from a third-party compliance firm and tailored the policies to reflect its business model. Among other things, the resulting policies required Albert Fried to take certain steps related to knowing its customers, approving deposits of low-priced securities, and monitoring large volume trading.

6. In 2010, Albert Fried introduced a process for reviewing its customers' deposits, a process that Albert Fried refers to as "DSR" (for Deposit Security Request). The primary focus of the DSR review was to ensure that the securities being deposited were eligible for resale on the open market.

7. To identify suspicious activity after securities were deposited, Albert Fried relied on employee reporting, detection through ongoing review, transaction information, operations personnel education, and clearing firm reports. Under the policies, once potentially suspicious activity was identified, it should have been reviewed and investigated by Albert Fried's AML officer to determine whether the obligation to file a SAR had been triggered. Compliance staff was required to retain notes and other documented reviews created while investigating suspicious activities and other red flags. Under the policies, a SAR should have been filed within 30 days of Albert Fried's staff becoming aware of a suspicious transaction.

8. The policies required Albert Fried to file SARs "for transactions that may be indicative of money laundering activity." Suspicious activities were defined as "a wide range of questionable activities," including "trading that constitutes a substantial portion of all trading for the day in a particular security," "heavy trading in low-priced securities," and "unusually large deposits of funds or securities."

9. Albert Fried's policies also contemplated the interaction between criminal inquiries and its SAR filing obligations. If the firm received a grand jury subpoena concerning one of its customers, the policies required the AML officer to "conduct a risk assessment of the customer subject to the subpoena as well as review the customer's account activity." If the customer's trading was determined to be suspicious in light of the risk assessment and review, the policies required the firm to file a SAR. However, under the policies, the mere receipt of a grand jury subpoena concerning a customer did not require the firm to file a SAR.

10. Albert Fried failed to comply with its statutory responsibilities, or to implement its own policies, related to the high-volume sales of penny stocks and other red flags related to certain of its customers' transactions. In sum, Albert Fried failed to sufficiently evaluate or monitor its

customers trading for suspicious activity and its actual practices did not comport with its documented procedures. As a result, Albert Fried failed to file SARs as required by Section 17(a) of the Exchange and Rule 17a-8.

Suspicious Trading

11. As noted above, beginning in 2010 with one and then expanding to a number of its institutional customers, Albert Fried allowed its customers to deposit hundreds of millions of shares of low-priced securities obtained from convertible debentures.

12. As its customers then engaged in sales of the recently deposited securities, Albert Fried failed to respond to or investigate suspicious activity. These sales were often in large volumes and constituted a substantial percentage of the daily market volume in the security. On more than one occasion, a single customer's trading in a security on a given day exceeded 80% of the overall market volume. In another instance, on three of the four days in which one customer sold a particular security, the customer's trading accounted for more than 59% of the daily market volume—ranging from 59.07% to 77.65%.

13. These liquidations were coupled with other indicia that should have further heightened suspicion and raised concerns for Albert Fried. For example, its customers were trading in certain issuers that were delinquent in their SEC filings or that had ongoing penny stock promotional campaigns, executive employees with histories of securities fraud, or significant accumulated deficits. In other instances, Albert Fried became aware of additional suspicious transactions or other red flags related to its customers subsequent to their suspicious penny stock trading. For example:

- Albert Fried received regulatory inquiries and grand jury subpoenas concerning its customers' trading.
- Other broker-dealers rejected Albert Fried's attempts to transfer its customer's securities.
- Immediately following the liquidation of an issuer's securities, an Albert Fried customer transferred the entirety of its cash proceeds out of its Albert Fried account.
- Albert Fried became aware of a customer's executive being charged with criminal securities fraud charges.
- Albert Fried knew or should have known that the Commission suspended trading in a security that was recently liquidated by its customer.

14. Albert Fried failed to properly evaluate its customers' already suspicious high-volume trading in light of these red flags. And despite the express requirement to do so under its policies, Albert Fried never conducted a documented risk assessment and review of its customers' trading in the wake of regulatory and criminal inquiries concerning certain customers' conduct.

15. Despite its customers' trading regularly constituting a substantial percentage of the daily market volume, and even in the presence of additional red flags, Albert Fried never filed a SAR. This lack of scrutiny contravened Albert Fried's written policies, which required it to detect and investigate suspicious transactions and to file SARs, if necessary. In determining whether to file a SAR, Albert Fried relied on its DSR process, which was aimed at reviewing deposits for unregistered offerings, but did not conduct separate AML reviews concerning the suspiciousness of its customers' systematic sale of low-priced securities shortly after they were deposited.

16. For example, on at least one occasion, the extent of the regulatory inquiries into one customer's trading resulted in Albert Fried ceasing to conduct business with that customer. The customer had recently engaged in numerous transactions in multiple thinly-traded penny stocks that constituted a high portion of the daily volume for the issuers. In light of Albert Fried's conclusion that the customer's behavior warranted a cessation of their business relationship, Albert Fried had reason to suspect that the customer's recent transactions were improper and should have filed a SAR. No SAR was filed.

17. As outlined in the illustrative transactions below, Albert Fried was aware of red flags regarding its customers and the microcap issuers in whose securities those clients traded; however, Albert Fried failed to file SARs regarding the suspicious conduct in contravention of its policies and the requirements of the Bank Secrecy Act ("BSA") and Exchange Act.

Illustrative Transactions

Customer A

18. Customer A deposited with and sold through Albert Fried more than 119 million shares of four penny stocks over a four month period. On numerous occasions, Customer A's trading represented more than 50% of the day's market volume in a single issuer. On one date, Customer A traded 86.67% of the daily volume in a single stock.²

19. During and immediately following this time period, Albert Fried was or should have been aware³ of a number of additional red flags that should have further raised suspicions concerning Customer A's trading, including:

² For the specific days of high-volume trading identified in this Order, Albert Fried's customers' trading proceeds ranged from approximately \$2,000 to \$13,000 on those dates.

³ National Association of Securities Dealers ("NASD") Notice to Members ("NTM") 02-21 provided a non-exhaustive list of red flags that broker/dealers should monitor transactions for as indicative of suspicious activity. NTM 02-21 emphasized that firms have a duty to detect red flags and perform additional due diligence, particularly when the red flags are related to penny stock transactions. NASD NTM 02-47 also reiterated that broker/dealers must determine whether customer activities surrounding transactions are suspicious "*after examining the available facts,*" including the customer's background, possible purposes for the transaction, and the red flags enumerated in NTM 02-21. (quoting 31 C.F.R. § 1023.320(a)(2)(iii)) (emphasis added). FINRA and FinCEN have similarly identified red flags specifically related to penny stock transactions in FinCEN's The SAR Activity Review Trends Tips & Issues, Issue 15, "In Focus: The Securities and Futures Industry" and FINRA's Updated Small Firm Template Anti-Money Laundering (AML) Program (updated as of January 1, 2010).

- Albert Fried knew or should have known that two of the issuers were the subject of promotional campaigns at the time of Customer A's trading.
- Albert Fried was aware that an issuer underwent a 5:1 stock split shortly after Customer A deposited that issuer's securities into its Albert Fried account.
- Albert Fried received numerous regulatory and criminal inquiries regarding Customer A's trading in three securities.
- Based on concerns about the accuracy and adequacy of publicly disseminated information about the company, the Commission suspended trading in an issuer's stock only three months after Customer A sold large volumes of the issuer's securities.

20. At the end of the four-month period, Customer A became frustrated with the delays in depositing additional shares of Issuer Z, one of the issuers under regulatory inquiry, and attempted to transfer its shares out of Albert Fried. The attempts to transfer shares of Issuer Z were independently rejected by two broker-dealers who were unwilling to accept the shares. Customer A ultimately directed Albert Fried to return the shares to the transfer agent. In this context and based on the regulatory interest in Customer A's account, Albert Fried chose to no longer conduct business with Customer A.

21. Despite the substantial daily volume of trading by Customer A in these securities and the other red flags associated with the transactions, Albert Fried never filed a SAR.

Customers B, C, and D and their Trading in Issuer Y

22. Issuer Y trades on OTC Markets and was continually delinquent in filing its reports with the SEC during the relevant time period. During this five-month period, Albert Fried Customers B, C, and D deposited and sold large numbers and substantial volumes of Issuer Y shares.

23. Customer B deposited and sold more than 451 million shares of Issuer Y, averaging 37.79% of the overall market volume at an average price of \$.00099 per share. On one date, Customer B's trading accounted for more than 89% of the day's volume in Issuer Y. Customer B originally obtained its shares from a convertible debenture purchased from Issuer Y and subsequently sold portions of its note to Customers C and D.

24. Customers C and D also traded substantial volumes of Issuer Y in concert with Customer B. Customer C liquidated its entire position in Issuer Y over four days, accounting for an average of 51.59% of the overall market volume. On three of the four days that Customer C sold shares of Issuer Y, Customer B also sold shares. On two dates, their combined trading constituted more than 95% of the overall market volume in Issuer Y. Within two weeks of its final sale in Issuer Y, Customer C transferred the entirety of its cash proceeds out of its Albert Fried account.

25. Customer D also sold its entire position in Issuer Y over ten days. On two dates, Customer D's trading in Issuer Y constituted more than 60% of the overall market volume. On four dates, Customers B and D both sold shares of Issuer Y with their combined trading accounting for more than 40% of the overall market. On one date, their combined trading constituted 71.88% of the overall market.

26. Despite the substantial daily trading volume by three customers, at times in concert, in Issuer Y, Issuer Y's delinquent filings with the SEC, and Customer C's withdrawal of all funds following its liquidation, Albert Fried never filed a SAR.

Customer E's Trading in Issuer X

27. Issuer X trades on OTC Markets and, during the relevant period, had an accumulated deficit of more than \$15 million since its inception, according to its SEC filings. During this period, Issuer X issued numerous press releases touting its business operations and signed a promotional coverage agreement with a known promotional firm to provide an e-mail campaign.

28. Albert Fried cleared trades for Customer E. Customer E sold 555,556 shares of Issuer X—its entire holdings in the security—through Albert Fried over ten trading days at an average price of \$.103154 per share. On six of the 10 trading days, Customer E's trading constituted more than 20% of the day's overall volume. On one date, its trading accounted for 61.78% of the day's volume in Issuer X.

29. Five months after this trading, Albert Fried learned that the president of Customer E had been criminally charged by the Department of Justice and sued by the SEC for his alleged involvement in a pump-and-dump scheme involving trading in an unrelated security at another broker-dealer. Despite the substantial volume of Customer E's sales in Issuer X and Albert Fried's discovery that the president of Customer E was an alleged participant in a market manipulation scheme, Albert Fried never filed a SAR.

Albert Fried's Cooperation

30. From the outset, Albert Fried cooperated with the Commission's investigation. Albert Fried entered into two tolling agreements. Albert Fried also prepared a 57- page summary of its conduct explaining its AML policies, providing background for each transaction, and reviewing the DSR process for each deposit.

31. Albert Fried has also taken a number of remedial measures in response to this matter. Albert Fried voluntarily retained a third-party AML compliance firm to improve compliance with the BSA's SAR filing requirement and the execution of its written policies and procedures. Albert Fried has also revised its policies to reflect updated regulatory guidance and input. This includes maintaining a written list of all low-price securities transactions where an AML inquiry was conducted, but the firm determines that it is not required to file a SAR. In addition, Albert Fried has added a low-priced security checklist to its DSR process and a customer AML risk assessment component to its account opening procedures.

VIOLATION

32. The BSA, and implementing regulations promulgated by Financial Crimes Enforcement Network (“FinCEN”), require that broker-dealers file SARs with FinCEN to report a transaction (or a pattern of transactions of which the transaction is a part) conducted or attempted by, at, or through the broker-dealer involving or aggregating to at least \$5,000 that the broker-dealer knows, suspects, or has reason to suspect: (1) involves funds derived from illegal activity or is conducted to disguise funds derived from illegal activities; (2) is designed to evade any requirement of the BSA; (3) has no business or apparent lawful purpose and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts; or (4) involves use of the broker-dealer to facilitate criminal activity. 31 C.F.R. § 1023.320(a)(2) (“SAR Rule”).

33. Exchange Act Rule 17a-8 requires broker-dealers to comply with the reporting, record-keeping, and record retention requirements of the BSA. The failure to file a SAR as required by the SAR Rule is a violation of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

34. As a result of its customers’ activity described in Section III above, Albert Fried knew, suspected, or had reason to suspect that its customers were using their Albert Fried accounts to facilitate unlawful activity. Furthermore, Albert Fried’s customers’ deposits and subsequent liquidations of penny stocks were suspicious because they lacked any apparent business or lawful purpose.

35. By failing to file SARs with FinCEN as required by the BSA with respect to any of its customers’ activity described above, Albert Fried willfully⁴ violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Albert Fried’s Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act it is hereby ORDERED that Albert Fried:

- A. 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. is censured;
- C. shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$300,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section

⁴ See note 1, *supra*.

21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Albert Fried as Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Antonia Chion, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

- D. Respondent acknowledges that the Commission is not imposing a civil penalty in excess of \$300,000 based upon its cooperation in this Commission investigation. If at any time following the entry of the Order, the Division of Enforcement obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding, the Division of Enforcement may, at its sole discretion and with prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay an additional civil penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether it knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Brent J. Fields
Secretary