FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

Department of Enforcement, **Complainant,** **v.** **Electronic Transaction Clearing, Inc., CRD No. 146122,** **Respondent.**	**Disciplinary Proceeding No. 2013037709301** **Hearing Officer _____** **COMPLAINT**

The Department of Enforcement ("Enforcement") alleges:

SUMMARY

1. Electronic Transaction Clearing, Inc. ("ETC" or the "Firm") is a clearing and self-clearing firm that primarily utilizes an electronic order execution platform. ETC's primary business is to execute and clear orders on behalf of its clients. As part of its business, ETC provides direct market access to its customers.

2. During the period of January 1, 2013 through July 31, 2015 (the "relevant period"), ETC failed to implement anti-money laundering ("AML") policies, procedures, and internal controls reasonably expected to detect and cause the reporting of suspicious transactions and reasonably designed to achieve compliance with the Bank Secrecy Act, 31 U.S.C. § 5311, *et seq.*, and the implementing regulations. ETC also committed various net capital, customer protection and supervisory violations, as well as books and records and Regulation SHO violations.

3. During the relevant period, a large percentage of the Firm's business consisted of accounts in which numerous traders used direct market access to trade under a master account number.

4. ETC identified approximately 30 situations in July and August 2014 in which traders given direct market access by the Firm participated in activity the Firm deemed sufficiently suspicious so as to cause it to restrict or prohibit the trader's trading activity, including potential prearranged trading and transactions without an apparent economic purpose.

5. However, in those situations ETC did not take any further investigative steps to assess whether filing a Suspicious Activity Report ("SAR") was warranted, notwithstanding having been notified a short time before that Enforcement was intending to bring charges for the earlier identical violation.

6. The Firm thereby violated FINRA Rules 3310(a) and 2010.

7. ETC also failed to establish adequate written procedures for the Firm's Customer Identification Program ("CIP") reasonably designed to achieve compliance with the Bank Secrecy Act and failed to implement an appropriate due diligence program for at least one customer which was a foreign financial institution ("FFI"), as required by 31 C.F.R. §1010.610, in violation of FINRA Rules 3310(b) and 2010.

8. This again occurred despite ETC having been advised by regulators previously that customers of the Firm may have been FFIs and that the Firm failed to adequately investigate that possibility.

9. The Firm was facing various financial issues during the relevant period, including difficulties in having cash available to meet expenses when they came due. Thus, between August 2013 and March 2014, ETC inappropriately calculated its customer reserve utilizing

projected pass-through fees chargeable to clients in an attempt to free up cash mid-month to pay expenses. In doing so, ETC willfully violated Exchange Act Rule 15c3-3 and violated FINRA Rule 2010.

10. Further, ETC failed to maintain sufficient net capital and customer reserves as a result of flawed or erroneous computations and characterizations of funds held during the relevant period. These resulted from the movement of funds between accounts ETC had with the U.S. broker-dealer affiliate of a Canadian entity (the "Canadian broker-dealer") and a related Canadian bank (the "Canadian bank"), where funds were held, how they were used and how they were reflected in net capital and reserve computations.

11. The Firm further failed to adequately supervise its omnibus account relationship with the U.S. broker-dealer affiliate of a Chinese entity (the "Chinese broker-dealer") entered after it terminated its relationship with the Canadian broker-dealer, failed to properly implement its new account procedures and failed to adequately supervise third party wire transfers. It also had inadequate margin procedures.

12. The Firm's supervisory failings violated NASD Rule 3010 for the period up to November 30, 2014 and FINRA Rule 3110 from December 1, 2014 and after, as well as FINRA Rule 2010.

13. ETC also violated FINRA Rules 4511 and 2010, and willfully violated Exchange Act Rules 17a-3 and 17a-4, as its records did not accurately reflect expenses paid to and shared with its parent company and it did not record customer debits related to fees owed in a timely fashion.

14. Finally, the Firm failed to net all positions for accounts that are related or under common control in order to determine whether sales were long or short and subject to the Short

Sale Rule requirements, thereby willfully violating Rule 200 of Regulation SHO and violating FINRA Rule 2010.

RESPONDENT

15. ETC has been a member of FINRA since July 15, 2009. Its principal place of business and sole registered branch is in Los Angeles, CA. The Firm currently employs 20 registered representatives.

16. FINRA has jurisdiction over ETC pursuant to Article IV, § 1(a)(1) of the By-Laws and FINRA Rule 0140 as the Firm is a FINRA member.

FACTS

17. ETC is a self-clearing broker-dealer that provides high volume execution and clearing services to broker-dealers and non-broker dealers.

18. Throughout the relevant period, the Firm's business and customer base included broker-dealer and non-broker dealer professional trading accounts, the latter being accounts with multiple traders all being provided direct market access by the Firm.

ETC's Suspicious Activity Reporting

19. Pursuant to FINRA Rule 3310, broker-dealers are required to monitor their customers' account activities, including trading in the account, to detect potentially suspicious activity and report such activity when appropriate.

20. Firms must investigate potentially suspicious trading activity adequately to assess whether a SAR should be filed.

21. During the relevant period, ETC monitored trading activity at the individual trader level, as opposed to the customer level, in the professional trading accounts for trade surveillance purposes.

22. The Firm used various exception reports to monitor for various types of potentially suspicious activity such as wash trades, pre-arranged trades, layering and volume concentration.

23. When the Firm identified such potentially suspicious activity, it determined whether there was a legitimate basis for the activity. If not, the Firm restricted, suspended or disabled the individual trader.

24. ETC recorded each restricted or disabled trader in its "Disabled/Restricted Trader List."

25. Included in the "Red Flags" section of the Firm's AML written procedures are types of activity the Firm should investigate and report where appropriate, including market manipulation, prearranged or other non-competitive trading, transactions without an economic purpose and securities fraud.

26. Between June and August 2014, the Firm did not review the trading activity of its customers sufficiently to assess whether problematic trading activity that was identified should be reported as suspicious activity.

27. There were 30 situations in July and August 2014 in which traders given direct market access by the Firm participated in activity that caused ETC to restrict or prohibit the trader's trading activity. Those included potential prearranged trades and transactions without an apparent economic purpose.

28. However, in those situations ETC did not take any further investigative steps to assess whether filing a SAR was warranted.

29. Those situations occurred shortly after the Firm had been advised of problems related to its review of potentially suspicious activity.

30. On April 14, 2014, the FINRA staff advised ETC that it made a preliminary determination to recommend that disciplinary action be brought against the Firm for, *inter alia*, its failure to take adequate investigative steps to assess whether a SAR was warranted in those situations where ETC restricted or prohibited the trader's trading activity for a time period prior to the relevant period.

31. ETC settled that charge in February 2016 without admitting or denying the findings that it failed to adequately investigate in those situations.

Foreign Financial Institution

32. Pursuant to 31 C.F.R. §1010.610, broker-dealers must determine whether a correspondent account is an FFI subject to 31 C.F.R. §1010.610(b) and assess the money laundering risk presented by each such correspondent account. The risk-based procedures for monitoring the correspondent account must include a periodic review of the correspondent account activity.

33. ETC had no written procedures relating to any due diligence for correspondent accounts of FFIs in accordance with 31 CFR §1010.610(a).

34. Both FINRA and the Securities and Exchange Commission advised the Firm prior to 2015 that previous customers may have been FFIs and that the Firm failed to adequately investigate that possibility.

35. ETC approved an account for a customer based in Bulgaria (the "Bulgarian customer") on January 21, 2015.

36. The Bulgarian customer was an EU registered broker-dealer.

37. In its ETC Confidential Business Profile, the Bulgarian customer identified itself as a registered broker-dealer with 3 offices.

38. ETC obtained a copy of the Bulgarian customer's Articles of Association (translated from Bulgarian). According to this document, the scope of activity of the Bulgarian customer is the receipt and transmission of orders for clients.

39. The Firm's client file also included pages from the Bulgarian customer's website, on which the Bulgarian customer described itself as a "...Sofia, Bulgaria-based broker-dealer...."

40. Emails between ETC and the Bulgarian customer suggested that the Bulgarian customer was representing clients and was not acting solely as a proprietary trading firm.

41. ETC did nothing to determine whether the Bulgarian customer was a foreign financial institution and it did none of the due diligence required by 31 CFR §1010.610.

Net Capital, Customer Protection and Other Financial Issues

42. Broker-dealers are required to maintain at all times specified minimum levels of liquid assets, or net capital, sufficient to enable a firm that falls below its minimum capital requirement to liquidate in an orderly fashion.

43. Broker-dealers that carry customer accounts are required to make a periodic computation ("customer reserve formula") to ascertain the amount of money the firm holds that is either customer money or money obtained from the use of customer securities.

44. As the business volume of the Firm increased, so did ETC's needs for immediate cash for such things as wire requests and payments to vendors.

45. ETC charged its customers at the end of each month for execution fees (or "pass-through fees") for trading activity that had occurred during the month.

46. The pass-through fees were monies owed to ETC by the customer charged to the customer at month end when ETC received a bill for the execution fees.

47. Between August 2013 and March 2014, ETC calculated its customer reserve utilizing projected pass-through fees chargeable to clients to reduce the overall free credit balance included in the reserve formula.

48. The projected pass-through fees were included in every reserve formula computation, not just month-end. Actual debits, however, were not processed into the customer accounts for pass-through fees until the Firm received a bill towards the end of the month and determined the accurate pass-through fee per client.

49. That handling of pass-through fees resulted in a deficiency in the customer reserve formula. For example, during the period January 31, 2014 to March 21, 2014, the Firm had deposited funds that were less than required by approximately between $2 million and $3.5 million.

50. In addition to the regular customer accounts held by a clearing broker on behalf of the introducing broker, an introducing broker may itself maintain a proprietary trading account, or PAIB, with a clearing broker. The PAIB reserve computation is similar to the customer reserve formula, the primary difference being that the PAIB computation deals solely with the assets of other brokers-dealers held at the clearing firm.

51. ETC had an omnibus clearing agreement with the Canadian broker-dealer as well as a secondary agreement with the Canadian bank for purposes of obtaining margin lending.

52. Under the terms of ETC's agreement with the Canadian bank, customer and PAIB account balances were transferred to the Canadian bank from the Canadian broker-dealer on an end of day basis. Accordingly, the Canadian bank was the Firm's credit counterparty rather than the Canadian broker-dealer which effectively served as an agent to the omnibus transactions.

53. This arrangement impacted ETC's net capital and reserve computations.

54. Receivables due from the Canadian bank under the arrangement were deemed to be unsecured and were not otherwise allowable per the provisions of Exchange Act Rule 15c3-1, leading to deficiencies.

55. Similarly, receivables due from the Canadian bank were invalid debits for purposes of computing the firm's PAIB and customer reserve formula deposit requirements.

56. The Customer Protection Rule requires broker-dealers to safeguard both the cash and securities of their customers so that customer assets can be quickly returned if the firm fails.

57. A broker-dealer cannot use customer assets to finance the business activities of the firm.

58. Reserve computations should reflect accurately where and how customer assets are held.

59. Any device, window dressing or restructuring of transactions made solely to reduce an excess of credits over debits in the Rule 15c3-3 formula computation and not otherwise a normal business transaction may be considered a circumvention of the rule.

60. ETC moved funds between omnibus accounts and other accounts for a variety of purposes, including for customer purposes and for Firm operating expenses.

61. In doing so, ETC made withdrawals from omnibus accounts that were in excess of omnibus customer withdrawals and unrelated to customer account activity.

62. Customer omnibus funds were utilized for a variety of non-customer purposes which included meeting the Firm's reserve deposit requirement, non-omnibus customer withdrawals and Firm fees and expenses.

63. The money movements and use of funds were not accurately reflected in the Firm's reserve computations, making the Firm's net capital and customer reserve calculations misleading or inaccurate.

64. ETC also established individual omnibus accounts at the Canadian broker-dealer for certain customers whose transactions were subject to omnibus clearance.

65. ETC failed to communicate to the Canadian broker-dealer which accounts belonged to customers and non-customers, respectively, which impacted ETC's net capital and reserve computations.

66. The Canadian broker-dealer, incorrectly, considered all of the accounts as PAIB accounts.

67. In addition, ETC did not communicate possession or control instructions to the Canadian broker-dealer on a daily basis.

68. ETC computed pro-forma customer and PAIB reserve formula computations with regard to the Canadian broker-dealer account which included end of day projected balances in 2013.

69. Based on those computations, ETC computed a reserve excess which was a result of overstated debit and understated credit balances and made withdrawals in excess of the Firm's deposit requirements.

70. Those improper pro-forma reserve formula computations on two dates examined by FINRA staff, March 26, 2013 and April 30, 2013, caused hindsight deficiencies of approximately $7.9 million and $18.7 million respectively.

71. ETC also failed to act in a timely fashion to resolve a stock deficiency.

72. The Firm had a deficiency in the common stock of Riviera Tool Co (RIVT) created on May 12, 2015 due to a customer short position.

73. That deficiency remained unresolved for longer than 30 days, although ETC took no action to resolve the deficit or file an extension.

74. ETC filed for the initial extension on December 10, 2015, only after FINRA brought the matter to its attention.

Chinese Broker-Dealer Supervision Issues

75. Firms must take appropriate steps to protect securities deposited by customers under the Customer Protection Rule.

76. Included in those steps is maintaining possession or control of all fully paid securities, including calculating on a daily basis which and how many securities must be secured in a good control location.

77. The possession or control requirement is designed to ensure that broker-dealers do not put customers at risk by borrowing their securities.

78. ETC entered into a new omnibus account relationship with the Chinese broker-dealer in or around late 2014 or early 2015.

79. The Firm's omnibus account with the Chinese broker-dealer held customer securities and was a good control location.

80. ETC was required to provide the Chinese broker-dealer segregation instructions on a daily basis detailing which particular securities and how many shares of each security were required to be locked up.

81. ETC's system utilized in early 2015 to calculate daily positions frequently generated inaccurate information. As a result, the segregation instructions sent by the Firm to

the Chinese broker-dealer contained inaccurate information and misstated how many shares of particular securities were required to be locked up on multiple days during the period from February 2015 through June 2015.

82. Although the system utilized by ETC in early 2015 was new, the Firm did not have a process in place at that time to verify the accuracy of the information it was generating and, in turn, the accuracy of the segregation instructions the Firm sent to the Chinese broker-dealer.

83. The inaccurate segregation instructions provided by the Firm to the Chinese broker-dealer had a practical impact, with the Chinese broker-dealer delivering out customer securities that should have been locked up.

84. In a sample reviewed by FINRA staff for the period of May 11 to May 15, 2015, the staff identified three fully paid customer securities during that week that were not fully segregated by the Chinese broker-dealer because of inaccurate segregation instructions provided by ETC.

85. ETC held both customer long and short positions in each of the three securities.

86. The Firm had established long and short sub accounts within its customer omnibus account at the Chinese broker-dealer. Because the instructions provided by ETC to the Chinese broker-dealer did not accurately identify short positions and did not accurately reflect whether certain positions were long or short in the three securities, the Chinese broker-dealer's records reflected only net long positions in the three securities and did not accurately reflect how many shares were held long and how many short.

87. As a result, the Chinese broker-dealer only segregated what it understood to be the long positions, which allowed it to deliver what should have been segregated shares to cover customer short sales.

88. These erroneous entries went undetected because the Firm did not reconcile its stock record positions to the long and short sub account level at the Chinese broker-dealer.

89. Similarly, the Firm's calculations for the sufficiency of positions held at the Chinese broker-dealer were inaccurate as of May 2015.

90. Firms are required to regularly compare what is held for them at a good control location to their segregation requirement to determine any excesses or deficits.

91. ETC compared its own inaccurate records of total customer long positions to the segregation requirement for each security to determine possession or control excesses and deficits, rather than comparing the number of shares actually held at the Chinese broker-dealer to the segregation requirement.

92. The Firm's excess margin calculation process also produced inaccurate segregation requirements.

93. Firms are permitted to exclude a percentage of margined securities from the lock up requirement.

94. ETC was required to use same day positions and market values when performing margin calculations for customer share lock up.

95. Instead ETC used the prior day's market values when calculating excess margin shares for the close of the current business day as of May 2015.

96. Problems with the system utilized by ETC in early 2015 also resulted in incorrect trade information being provided to the Chinese broker-dealer for transactions to be cleared by the Chinese broker-dealer.

97. ETC's customer trade file submitted to the Chinese broker-dealer for January 27, 2015 contained inaccurate information such as wrong sub-account types (i.e., long vs short sub-account) and inaccurate execution prices. Also, the Firm submitted duplicate customer trade files for the February 26, 2015 daily activity.

98. These operational issues caused by the Firm's system errors resulted in voluminous trade cancellations initiated by the Chinese broker-dealer.

Margin Procedures

99. Under NASD Rule 3010(b), member firms were required to establish written procedures to supervise the types of business in which they engaged that were reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable FINRA rules.

100. The procedures had to be tailored to the specific nature of the business engaged in by the firm and set out mechanisms for ensuring compliance with applicable rules.

101. ETC provided margin lending to its customers in 2013.

102. The Firm had inadequate written supervisory procedures ("WSPs") in 2013 regarding margin lending. While it had certain procedures in place, it failed to adequately document all relevant procedures.

103. ETC's WSPs for monitoring customer margin did not discuss the systems used by the Firm to monitor customer accounts, the margin required for different types of securities was

not clear, the WSPs did not address "house requirements," and the Firm failed to memorialize a process to regularly review its margin customers to determine if they required additional margin.

Third Party Wires

104. ETC sent out wires to third parties at the request of customers. The Firm's written procedures provided that no funds were to be paid or sent to a third party out of a customer's account without a Letter of Authorization ("LOA") or a Power of Attorney ("POA") being obtained prior to the transfer.

105. The procedures further required that the LOA or POA had to be fully completed, contain clear instructions to be followed and signed by the customer. The LOA or POA had to be reviewed by the Firm's president or his designee prior to the transfer of any funds out of a customer's account, and the completed and approved LOA had to accompany the request to disburse funds or send securities to a third party.

106. During the relevant period, ETC failed to properly supervise the issuance of third party wires, such that funds were sent to third parties without the necessary review and documentation.

107. HI was a professional trading group customer that had multiple accounts at the Firm.

108. On September 8, 2014, a wire request was submitted by FM, who was not a Firm customer, to transfer funds from an HI customer account in the amount of $855,015.

109. FM was authorized by the customer to transfer funds to and from certain HI accounts.

110. In this particular wire request the beneficiary information was listed as HI for further credit to an entity controlled by FM.

111. The LOA attached to the request was signed by the customer in May 2014 and approved by the Firm president on the same date.

112. The wire request was reviewed by both of the president's designees. However, no one at ETC confirmed the request with HI, checked to determine if the amount was consistent with the lending agreement, reviewed FM's authorization over the particular HI account, or questioned any of the information included on the wire request itself.

113. Three days later, on September 11, 2014, FM requested $745,483 from a different HI account.

114. In this request the beneficiary was listed as HI for further credit to SA, another entity controlled by FM.

115. The LOA on file, signed and dated in August 2014, indicated the SA account name and bank account number. However, ETC had no document to show that FM had authority to transfer funds from the particular HI account and a lending agreement between HI and FM did not reference that particular account number.

116. The wire was approved by ETC without anyone noting the documentation issues.

117. ETC also failed to properly supervise journals to a HI account from another customer of the Firm, CWH.

118. In five instances on November 26 and November 27, 2013, ETC journaled a total of over $4 million from multiple CWH accounts to an HI account.

119. The president of the Firm approved the transfers by email without any LOA or request or approval from CWH.

120. The Firm had no written evidence of a relationship between CWH and HI or any standing LOAs.

New Account Procedures

121. ETC also failed to properly implement the procedures it had in place to identify its customers.

122. ETC had a process to review information prior to opening a new account during the relevant period. Specifically, the WSPs stated "the Firm exercises reasonable diligence in acquiring (and maintaining) the essential facts concerning every client and concerning the authority of each person acting on behalf of such client."

123. As a result of its inadequate implementation of those procedures, ETC failed to detect and adequately investigate negative information about certain individuals given authority over accounts.

124. HI initially opened an account at ETC in October 2012 and had six accounts open during the relevant period.

125. ETC was given the names of 17 individuals who had authority over the HI accounts, but conducted background checks on only 10 of the 17 individuals.

126. One individual listed on the Client Authorization Forms for HI was FM. HI gave FM authority over some of HI's accounts in November 2013.

127. The Firm did not do any type of investigation of FM at the time and, as a result, failed to detect and investigate an SEC Administrative Proceeding against FM in May 2012.

128. ETC also failed to detect or investigate negative information concerning two individuals related to another customer, TDT LLC.

129. TDT LLC had an account at ETC from approximately August 2013 through August 2014.

130. ETC failed to investigate a FINRA disciplinary action against one of the individuals authorized to act for the account, failing to detect that the individual was suspended for 18 months, from March 2013 through September 2014, which includes the entire period the TDT LLC account was open.

131. The Firm failed to detect that the other individual authorized to act for the TDT LLC account had been barred by the SEC in May 1992 from association with any broker or dealer, municipal securities dealer, investment adviser or investment company, and thus did not investigate the circumstances that led to the bar.

Books and Records

132. FINRA Rule 4511 requires member firms to "make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules."

133. In turn, Exchange Act Rules 17a-3 and 17a-4 require member firms to make and keep current certain books and records relating to their business activities.

134. Each broker-dealer must make a record reflecting each expense incurred relating to its business and any corresponding liability, regardless of whether the liability is joint or several with any person and regardless of whether a third party has agreed to assume the expense or liability.

135. ETC had an expense-sharing agreement with its parent company, ETCGH, dated April 29, 2011. The agreement described services to be provided to the Firm by ETCGH, fees to be paid by the Firm and reimbursements to be paid by ETC for expenses paid by ETCGH on its behalf.

136. During 2013, the Firm failed to maintain supporting documentation outlining the composition of the management and incentive fee paid to ETCGH.

137. In addition, the expense sharing agreement described an incentive fee payable to ETCGH contingent upon bonus payouts to Firm employees. The Firm was unable to reconcile actual amounts paid to the percentage of bonus payout described in the agreement.

138. As discussed above, certain fees were passed through by the Firm to its customers.

139. Customer debits in 2015 related to customer pass-through fees wired to various exchanges were not booked in customer accounts timely to accommodate certain customers' requests.

140. This created an erroneous intraweek inflation of the customer's account equity.

141. Since the Firm utilized such equity to determine daily buying power and market access credit limits, this erroneous overstatement of equity would potentially give certain customers greater buying power and increase their credit limit exposure.

Regulation SHO

142. Rule 200(g) of Regulation SHO requires a broker-dealer to mark sell orders in any equity security as long or short.

143. Under Regulation SHO, firms are required to "net" all positions for accounts that are related or under common control in order to determine whether sales were long or short and subject to the Short Sale Rule requirements.

144. During 2013, ETC failed to net all positions for accounts that were related or under common control in order to determine whether sales were long or short.

145. At that time, the Firm determined net positions at the trader level, not at the customer level, in the professional trading accounts.

146. In all other regards, however, ETC has treated the professional trading account holders as the customers, with the individual traders related to or under common control of the customers.

147. Accordingly, the Firm should have determined net positions at the customer level for purposes of Regulation SHO.

FIRST CAUSE OF ACTION

ANTI-MONEY LAUNDERING

Violation of FINRA Rules 3310(a) and 2010

148. Enforcement realleges and incorporates by reference paragraphs 1 through 31 above.

149. FINRA Rule 3310 requires FINRA members to develop and implement a written AML program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act, 31 U.S.C. §5311, *et seq.*, and the regulations promulgated thereunder.

150. The United States Department of the Treasury issued the implementing regulation, 31 C.F.R. § 103.19(a)(1) on July 2, 2002. It provided that, with respect to any transaction after December 31, 2002, "[e]very broker or dealer in securities within the United States . . . shall file with FinCEN . . . a report of any suspicious transaction relevant to a possible violation of law or regulation."

151. In August 2002, FINRA issued Notice to Members ("NTM") 02-47, which set forth the final AML rules promulgated by the United States Department of the Treasury for the

securities industry. This NTM further advised broker-dealers of their duty to file a SAR for any suspicious transactions occurring after December 31, 2002.

152. The SAR form used by broker-dealers identifies 20 "Type[s] of suspicious activity" that must be reported, including: "Market manipulation," "Prearranged or other non-competitive trading," "Securities fraud," "Wash or other fictitious trading," and "Other."

153. Between June and August 2014, ETC failed to implement AML policies, procedures, and internal controls reasonably expected to detect and cause the reporting of suspicious transactions and reasonably designed to achieve compliance with the Bank Secrecy Act, 31 U.S.C. § 5311, *et seq.*, and the implementing regulations promulgated thereunder by the Department of the Treasury.

154. The activity that caused ETC to restrict or prohibit the trader's trading activity in the 30 situations in July and August 2014 was the type of activity required to be investigated for purposes of determining whether it should be reported on a SAR.

155. The Firm, however, failed to take additional steps to assess whether the activity that led to the suspension or disabling of the traders warranted the filing of a SAR.

156. By virtue of this conduct, ETC violated FINRA Rules 3310(a) and 2010.

SECOND CAUSE OF ACTION

FOREIGN FINANCIAL INSTITUTION

Violation of FINRA Rules 3310(b) and 2010

157. Enforcement realleges and incorporates by reference paragraphs 1 through 16 and 32 through 41 above.

158. 31 C.F.R. §1010.610 requires covered financial institutions, including broker-dealers, to have due diligence programs that include appropriate, specific, risk-based, and, where

necessary, enhanced policies, procedures, and controls that are reasonably designed to enable the institution to detect and report known or suspected money laundering activity conducted through or involving any correspondent account established for a foreign financial institution.

159. Despite being advised by both FINRA and the Securities and Exchange Commission that previous customers may have been FFIs, ETC failed to establish and implement an appropriate due diligence program for FFIs.

160. ETC had no written procedures relating to any due diligence for correspondent accounts of FFIs in accordance with 31 CFR §1010.610(a).

161. The Firm failed to identify the Bulgarian customer as an FFI or make the initial determination of whether the Bulgarian customer was an FFI under the terms of 31 C.F.R. §1010.610, and then failed to perform the required due diligence.

162. By virtue of this conduct, ETC violated FINRA Rules 3310(b) and 2010.

THIRD CAUSE OF ACTION

PASS-THROUGH FEES

Willful Violation of Exchange Act Rule 15c3-3 and Violation of FINRA Rule 2010

163. Enforcement realleges and incorporates by reference paragraphs 1 through 16 and 42 through 49 above.

164. The Customer Protection Rule, Exchange Act Rule 15c3-3, requires a broker-dealer to maintain a "Special Reserve Bank Account for the Exclusive Benefit of Customers" ("Reserve Account") and to fund the Reserve Account in accordance with the provisions of Exhibit A to Rule 15c3-3. Exhibit A sets forth in detail the computational "Formula for Determination of Reserve Requirement for Brokers and Dealers" (the "customer reserve formula").

165. Between August 2013 and March 2014, ETC calculated its customer reserve mid-month utilizing projected pass-through fees chargeable to clients instead of actual amounts not known until month-end.

166. That practice resulted in a recurring deficiency in the customer reserve formula throughout the period in which the practice was followed.

167. By virtue of this conduct, ETC willfully violated Exchange Act Rule 15c3-3 and violated FINRA Rule 2010.

FOURTH CAUSE OF ACTION

OTHER FINANCIAL VIOLATIONS

Willful Violations of Exchange Act Rules 15c3-1 and 15c3-3 and Violation of FINRA Rule 2010

168. Enforcement realleges and incorporates by reference paragraphs 1 through 16 and 50 through 74 above.

169. The Net Capital Rule, Exchange Act Rule 15c3-1, requires every broker-dealer to maintain at all times specified minimum levels of liquid assets, or net capital, sufficient to enable a firm that falls below its minimum capital requirement to liquidate in an orderly fashion.

170. FINRA Rule 3110(a) requires firms to "establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules."

171. As noted above, ETC's agreements with the Canadian broker-dealer and the Canadian bank impacted ETC's net capital and reserve computations.

172. Receivables due from the Canadian bank under the arrangement discussed above were deemed to be unsecured and were not otherwise allowable per the provisions of Exchange Act Rule 15c3-1, leading to deficiencies.

173. Similarly, receivables due from the Canadian bank were invalid debits for purposes of computing the firm's PAIB and customer reserve formula deposit requirements.

174. ETC's treatment of receivables due from the Canadian bank as described was inconsistent with the provisions of Exchange Act Rules 15c3-1 and 15c3-3.

175. ETC's movement of funds between accounts and use of customer funds, as described above, were not accurately reflected in the Firm's reserve computations, making the Firm's net capital and customer reserve calculations misleading or inaccurate.

176. ETC's failures regarding individual omnibus accounts for customers established at the Canadian broker-dealer, as described above, resulted in the mishandling and incorrect reporting of ownership of funds and related computations.

177. Rule 15c3-3(d)(4) requires firms to resolve short deficiencies within 30 days or request an extension.

178. The Firm had a deficit in the common stock of Riviera Tool Co (RIVT) created on May 12, 2015 due to a customer short position.

179. The Firm took no action to resolve the deficit or file an extension until December 10, 2015.

180. By virtue of the foregoing activity, ETC willfully violated Exchange Act Rules 15c3-1, 15c3-3 and 15c3-3(d)(4) and violated FINRA Rule 2010.

FIFTH CAUSE OF ACTION

CHINESE BANK SUPERVISION VIOLATIONS

Violations of FINRA Rules 3110 and 2010

181. Enforcement realleges and incorporates by reference paragraphs 1 through 16 and 75 through 98 above.

182. As described above, ETC failed to adequately supervise its position data processing and customer reserve calculations between February 2015 and June 2015, resulting in inaccurate segregation instructions being provided the Chinese broker-dealer.

183. As a result, the Chinese broker-dealer delivered out customer securities that should have been locked up and failed to properly segregate shares.

184. In addition, the Firm's calculations for the sufficiency of positions held at the Chinese broker-dealer were inaccurate as of May 2015, the Firm's excess margin calculation process produced inaccurate segregation requirements and the Firm provided incorrect trade information to the Chinese broker-dealer for transactions to be cleared by the Chinese broker-dealer.

185. By virtue of the foregoing activity, ETC violated FINRA Rules 3110 and 2010.

SIXTH CAUSE OF ACTION

INADEQUATE WRITTEN PROCEDURES

Violation of NASD Rule 3010(b) and FINRA Rule 2010

186. Enforcement realleges and incorporates by reference paragraphs 1 through 16 and 99 through 103 above.

187. NASD Rule 3010(b) required firms to establish adequate written procedures to supervise the types of business in which they engaged.

188. As discussed above, the Firm's WSPs for monitoring customer margin were inadequate in 2013.

189. By virtue of the foregoing, ETC violated NASD Rule 3010(b) and FINRA Rule 2010.

SEVENTH CAUSE OF ACTION

THIRD PARTY WIRE AND NEW ACCOUNT SUPERVISION VIOLATIONS

Violations of NASD Rule 3010(a) and FINRA Rule 2010

190. Enforcement realleges and incorporates by reference paragraphs 1 through 16 and 104 through 131 above.

191. As noted above, ETC failed to properly implement its procedures regarding third party wires.

192. As a result, funds were wired to third parties without the Firm having proper documentation or doing adequate review to support the transfer of funds.

193. In addition, ETC failed to properly implement its new account procedures, failing to detect and adequately investigate negative information about certain individuals given authority over accounts.

194. By virtue of the foregoing, ETC violated NASD Rule 3010(a) and FINRA Rule 2010.

EIGHTH CAUSE OF ACTION

BOOKS AND RECORDS VIOLATIONS

Violations of FINRA Rules 4511 and 2010 and Willful Violations of Exchange Act Rules 17a-3 and 17a-4

195. Enforcement realleges and incorporates by reference paragraphs 1 through 16 and 132 through 141 above.

196. As described above, ETC failed to adequately document payments made to ETCGH and the reasons or basis for those payments.

197. The Firm also failed in 2015 to record customer pass-through fees in customer accounts in a timely fashion.

198. By virtue of the foregoing activity, ETC violated FINRA Rules 4511 and 2010, and willfully violated Exchange Act Rules 17a-3 and 17a-4.

NINTH CAUSE OF ACTION

REGULATION SHO VIOLATIONS

Willful Violation of Rule 200 of Regulation SHO and Violation of FINRA Rule 2010

199. Enforcement realleges and incorporates by reference paragraphs 1 through 16 and 142 through 147 above.

200. During 2013, ETC failed to net all positions for accounts that were related or under common control in order to determine whether sales were long or short and subject to the Short Sale Rule requirements, as required by Regulation SHO.

201. As a result, ETC willfully violated Rule 200 of Regulation SHO and violated FINRA Rule 2010.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

A. make findings of fact and conclusions of law that Respondent 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 the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and

D. make specific findings that Respondent ETC willfully violated Rules 15c3-1, 15c3-3, 15c3-3(d)(4), 17a-3 and 17a-4 and Rule 200 of Regulation SHO of the Exchange Act.

FINRA DEPARTMENT OF ENFORCEMENT

DATED: March 20, 2017

Respectfully submitted,

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