Securities Regulation Daily Wrap Up, BROKER-DEALERS—S.D.N.Y.: Alpine's SARs violations warrant $12M penalty, (Sept. 16, 2019)

Securities Regulation Daily Wrap Up

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By Amy Leisinger, J.D.

While the SEC's requested penalty of $22,736,000 falls within the range of what that could reasonably be imposed, in consideration of the company's financial condition, a penalty of $12,000,000 is more appropriate, the court found.

The Southern District of New York has imposed a permanent injunction and a $12 million civil penalty against Alpine Securities Corporation for deficient suspicious activity reports (SARs). According to the court, Alpine's misconduct was egregious and conducted on a massive scale, and the SEC met its burden to prove on summary judgment over 2,700 separate violations of Exchange Act Rule 17a-8 premised on thousands of reporting issues in the SARs the company filed. Further, the scale and duration of the violations undermine Alpine's assertion that its conduct was merely negligent, the court stated, and Alpine continues to fail to acknowledge its wrongdoing. However, the court found that, in light of Alpine's financial condition, a penalty less than that originally requested by the Commission, but still substantial, is more appropriate (*SEC v. Alpine Securities Corporation*, September 12, 2019, Cote, D.).

Deficient SARs. Alpine is a broker-dealer that primarily provides clearing services for microcap securities in the OTC market, and most of the SARs at issue were originated by a brokerage owned by the same principals. In its complaint, the SEC alleged that Alpine violated Exchange Act Rule 17a-8, which requires compliance with Bank Secrecy Act (BSA) regulations that govern the filing of SARs by broker-dealers, by filing fatally deficient SARs or by failing to file any SAR when it had a duty to do so. The SEC moved for partial summary judgment using exemplar SARs in each of four categories: (1) failure to include pertinent information; (2) failure to file additional or continuing SARs for certain suspicious patterns of transactions; (3) filing SARs after the filing period had elapsed; and (4) failure to maintain supporting information for SARs as required.

The district court granted partial summary judgment in favor of the SEC, finding the SARs presented to be deficient as the SEC claimed and only denying the agency's motion as to a record keeping issue. The SEC appropriately argued that Alpine omitted essential elements from some narratives, including that none of the narratives described who the client is by describing the nature of its business or specifically explained why the underlying transactions were suspicious, the court found.

The SEC then moved for a permanent injunction against further violations and for imposition of a $22,736,000 civil penalty. Alpine opposed the imposition of any injunction and contended that the civil penalty should not exceed $720,000.

Sanctions. The court noted that "Alpine's SAR narratives were woefully inadequate" and that over half of the SARs on which summary judgment was granted "were deficient in several significant respects." The grant of summary judgment reflects an "extremely conservative finding regarding the extent of Alpine's disregard of its legal obligations," the court stated.

The SEC seeks civil penalties in the amount of $10,000 for each deficient narrative SAR and failure to report, as well as a penalty of $1,000 for each support file violation, resulting in a total civil penalty of $22,736,000, the court explained. In examining the factors used to determine the appropriate amount for a civil penalty, the court stated that "it is easy to find that Alpine's misconduct was egregious" and that "the breadth and regularity" of its violations warrant a substantial civil penalty. As to scienter, the court found that the violations were "systemic and enduring" and involved conduct that was "plainly" violative of federal reporting requirements and that Alpine was

aware of the extent of its SAR violations. Alpine also continues to deny that it had a deficient SAR-filing regime and to resist its legal obligations, the court noted.

According to the court, the magnitude of the violations warrants a substantial penalty. The SEC is entitled to seek an individual penalty for each separate violation, the court stated, and the amount the agency has requested falls in the lower end of the acceptable range. Further, the $22,736,000 civil penalty the Commission seeks is not grossly disproportional to the proven violations so as to violate the Eighth Amendment. However, the court found, in light of Alpine's financial condition, a tier-one civil penalty in the amount of $12,000,000 is more appropriate.

"This penalty is substantial; it reflects the seriousness of Alpine's violations and the need for a remedy that is adequate to punish and deter such violations [and] is reasonable in light of all the facts and circumstances," according to the court.

Further, the court explained, Alpine's refusal to admit its misconduct demonstrates a substantial likelihood that the company will continue to violate federal law. As such, a permanent injunction against further violations of Section 17(a) and Rule 17a-8 is warranted, the court concluded.

The case is No. 1:17-cv-04179-DLC.

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Companies: Alpine Securities Corp.

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