WASHINGTON—Sutherland Asbill & Brennan LLP has completed its review of the disciplinary actions reported by the Financial Industry Regulatory Authority (FINRA) in 2014. By reviewing FINRA’s monthly disciplinary notices and press releases, as well as cases reported in major news sources, Sutherland Partner Brian L. Rubin and Associate Andrew M. McCormick found that in 2014 FINRA’s fines increased significantly. Despite this increase in fines, the number of cases filed by FINRA dropped in 2014. Sutherland also identified FINRA’s top enforcement issues in 2014 and emerging trends.

The Results

Fines and Disciplinary Actions
FINRA imposed fines of approximately $135 million in 2014, an increase of 125% from the $60 million in fines the regulator assessed in 2013. This was the largest amount of fines imposed by FINRA since the financial crisis. Fines have increased by 382% since FINRA reported assessing $28 million in fines in 2008. In addition to the $135 million in fines, FINRA also ordered firms and their representatives to pay approximately $52 million in restitution in 2014, a new record for FINRA, and an increase of 420% from 2013’s $10 million.

This dramatic increase in fines is even more interesting in light of the fact that the number of cases reported by FINRA decreased significantly in 2014. According to FINRA’s “Statistical Review,” 1,397 disciplinary actions were filed in 2014, a decrease of 9% from the 1,535 cases the regulator initiated in 2013.1 Although this was the second year in a row that the number of FINRA cases has declined, the number of cases filed has still grown by 30% since 2008, from 1,073 in 2008 to the 1,397 cases filed in 2014.2

The number of firms expelled by FINRA declined from 24 in 2013 to 18 in 2014, a decrease of 25% (following a 20% decrease in the number of firms expelled during the prior year).3 However, the number of individuals suspended or barred rose in 2014. The number of individuals suspended increased from 670 in 2013 to 705 in 2014, an increase of 5%, and the number of individuals barred jumped from 429 in 2013 to 481 in 2014, an increase of 12%. This is the second year in a row where the number of firms that were expelled decreased significantly, but the number of individuals suspended or barred increased.

“FINRA’s large increase in fines cannot be ignored,” said Brian Rubin, co-author of the Sutherland study. “Even though FINRA has not brought cases of the same magnitude as some of the SEC’s enforcement actions, firms and individuals must still sit up and take notice of the kind of year FINRA had and the messages sent through its enforcement cases.”

The chart below shows the fines and the number of disciplinary actions that
FINRA has reported during each of the past nine years:

The chart below shows the restitution that FINRA has reported during each of the past six years:

**Top Enforcement Issues Measured by Total Fines Assessed**

Below are the top FINRA enforcement issues for 2014 measured by total fines assessed: 6

1. **Research analyst and research report** cases dominated FINRA’s headlines during the last few months of 2014 and, unsurprisingly, this category of cases led to more fines than any other cases in 2014. FINRA fined firms and their representatives more than $59 million in 19 research analyst and research report cases in 2014. Although the 35% increase in the number of these cases from 2013 to 2014 was significant, fines increased by 5,800% during that same time, from $1 million in 2013 to $59 million in 2014. This incredible increase was partially driven by one $15 million fine, FINRA’s largest in 2014, which resulted from allegations that a firm failed to supervise the communications of its equity research analysts with clients and the firm’s sales and trading staff during a nine-year period. As an example, FINRA alleged that improper communications about stock picks took place at “idea dinners” hosted by the firm’s research analysts. Andrew McCormick, co-author of the Sutherland study, noted that “although research analyst and research report issues are not a frequent target for FINRA’s Enforcement staff, these cases can lead to noteworthy fines, as evidenced by this $15 million fine in 2014 and an $11 million fine in 2012, which was the largest fine during that year.” FINRA also announced $43.5 million in fines in a single December 2014 press release for a series of 10 research analyst cases involving the Toys “R” Us initial public offering and the alleged involvement of research analysts in soliciting investment banking business. 8

2. **Advertising** cases resulted in the second-highest amount of fines for FINRA in 2014 as 31 cases resulted in $17.2 million in total fines. Although the number of advertising cases dropped by 42% from 2013 to 2014, from 53 to 31, the amount of fines increased by 514%, from $2.8 million to $17.2 million. This substantial increase is largely attributable to the $15 million research analyst and research report case discussed above, which also involved allegations about improper promotions at IPO road shows. Thus, although 2014 marked the return of advertising cases to Sutherland’s Top Enforcement Issues list after a one-year hiatus (advertising resulted in the most fines in 2010 and 2011 and was fourth in 2012), there is still a recent decline in enforcement activity involving retail advertisements.
remarked that “advertising issues will always be an important issue for FINRA and as new products are brought into the marketplace or as old products act in unanticipated ways, firms can expect to see an increase in cases and fines in this area.”

3. **Best execution** cases resulted in $14 million in fines in 2014, the third-largest total for the year. This represented a 112% increase from the $6.6 million in fines that were assessed in 2013. This substantial increase in best execution fines was nearly matched by the increase in the number of best execution cases, as this number rose from 48 cases in 2013 to 83 cases in 2014, an increase of 79%. One significant 2014 best execution case resulted in a fine of $1.9 million for allegations that a firm allegedly paid unfair prices for distressed securities in more than 700 retail customer transactions during a two-year period. FINRA also ordered the firm to pay more than $540,000 in restitution to affected customers. This is the first time best execution has appeared on Sutherland’s Top Enforcement Issues list.

4. **Anti-money laundering** (AML) cases resulted in the fourth-largest amount of FINRA fines in 2014. There were 34 AML cases in 2014 and $13.2 million in fines. This represented a decrease of 6% from the 36 AML cases brought in 2013, but a 144% increase from the $5.4 million in fines imposed in 2013 AML cases. A significant portion of these 2014 AML fines stemmed from an $8 million fine assessed against a firm for allegedly failing to have an adequate AML program to detect, monitor, and investigate suspicious penny stock trades. The firm executed trades involving at least 6 billion penny stock shares over 4.5 years, but basic trade information was lacking. This is the first time AML has appeared on Sutherland’s Top Enforcement Issues list.

5. **Trade reporting** cases placed fifth on Sutherland’s Top Enforcement Issues list in 2014. FINRA brought 176 trade reporting cases in 2014, a decrease of 11% from the 198 cases initiated in 2013. The fines in trade reporting cases moved down from $12.1 million in 2013 to $11.1 million in 2014, a decrease of 8%. This is the second time, and the second year in a row, that trade reporting has appeared on Sutherland’s Top Enforcement Issues list. Despite decreases in the number of cases and amount of fines in 2014, trade reporting is still a Top Enforcement Issue for FINRA. Rubin noted that “the significant fines imposed in trade reporting cases in the last two years are evidence that FINRA takes very seriously issues that may seem to be administrative or technical concerns.”

**Enforcement Trends**

- “Supersized” Fines. FINRA fines jumped substantially from 2013 to 2014, while the number of cases decreased during that same time. This means that fines in individual cases were much larger in 2014. As Sutherland reported in its 2013 analysis, while the number of “supersized” fines ($1 million or more) decreased in 2013 (from 16 in 2012 to 8 in 2013), there
was an uptick in the final few months of the year, possibly signaling a coming wave of cases resulting in fines of at least $1 million in 2014.\(^1\) This proved to be true. FINRA assessed 25 “supersized” fines in 2014, resulting in more than $100 million in fines, including 10 cases that resulted in a fine of at least $5 million.

- **Suitability.** This is the second time, and the second year in a row, that suitability cases have not appeared on Sutherland’s *Top Enforcement Issues* list. Suitability cases ranked second in 2008 and 2009, fourth in 2010 and 2011, and first in 2012. Although the fines in suitability cases increased slightly in 2014, from $5.1 million in 2013 to $5.6 million in 2014, this is a far cry from the $19.4 million in fines reported in 2012 suitability cases. Likewise, the number of suitability cases increased slightly from 73 in 2013 to 75 in 2014, but fell well short of the 112 suitability cases reported in 2012. This sudden drop in suitability cases over the last two years is likely due to the fact that FINRA has completed most, or possibly all, of its cases relating to the financial crisis.

- **Seniors and Retirees.** FINRA releases, priority letters, and speeches often emphasize that protecting seniors and retirees is a key focus for the regulator, but these types of cases typically did not result in significant fines. This changed dramatically in 2014. Cases involving allegations about seniors and retirees resulted in $8 million in fines in 2014, an increase of 3,656% from the $213,000 in fines imposed in similar cases in 2013. Similarly, restitution in these cases increased substantially from $1.7 million in 2013 to $26 million in 2014, an increase of 1,429%.

**ABOUT SUTHERLAND ASBILL & BRENNAN LLP.**
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\(^2\) Id.

\(^3\) Id.

sanctions data is an estimate that comes from the fines announced in FINRA’s monthly disciplinary reports, FINRA’s press releases, and cases reported by major news sources. FINRA had not released its 2014 annual report by the time this study was published.

5 Id.

6 Because cases may involve more than one alleged violation (e.g., trade reporting and short selling), a case may be included in more than one category in this analysis.


