WASHINGTON—As reported on February 19, 2015 in Sutherland’s annual analysis of Financial Industry Regulatory Authority (FINRA) disciplinary actions, anti-money laundering (AML) cases generated the fourth-highest amount of fines for the regulator in 2014.¹ This past year, FINRA reported $13.2 million in fines from 34 cases involving alleged AML violations.² This Sutherland FINRA Focus looks more closely at the regulator’s recent enforcement actions and examines a few key 2014 AML cases. AML cases can involve issues such as failing to verify new customer account information, not obtaining sufficient trade information, or failing to investigate suspicious trading activity.

The chart below shows the total number of AML cases and fines FINRA has reported during each of the past seven years.

These statistics show that there was a significant increase in the amount of AML fines in 2014. The amount of fines imposed in AML cases has increased every year since 2010 and by 633% since $1.8 million in fines were reported in 2008 AML cases.

One of the largest fines of 2014—in any category—was an $8 million fine announced in February 2014 in an AML case where FINRA alleged that the firm had “substantial anti-money laundering compliance failures” and did not have a sufficient AML program to detect, monitor, and investigate penny stock trades.³ FINRA alleged that the firm executed transactions or delivered securities for at least six billion shares of penny stocks during a four-and-a-half-year period. The firm executed these trades even though it was unable to obtain basic trade information, including the seller’s relationship to the issuer, how the stock was obtained, and the identity of the stock’s beneficial owner. FINRA also alleged that the firm did not investigate suspicious penny stock trades and that the firm ignored red flags and recommendations from its own compliance department for two years. To emphasize the potential significance of these issues, FINRA noted that the penny stock trades generated at least $850 million in proceeds for the firm’s customers during this period. Brad Bennett, FINRA’s Executive Vice President of Enforcement, said that the “firm opened its doors to undisclosed sellers of penny stocks from secrecy havens without regard for who was behind those transactions, or whether the stock was properly registered or exempt from registration.” Mr. Bennett emphasized that this “case is a reminder to firms of what can happen if they choose to engage in the penny stock liquidation business when they lack the ability to manage the risks involved.” This case is also significant because the firm’s former Global AML Compliance Officer was fined $25,000 and suspended one month.

Another significant 2014 AML case resulted in a combined fine of $1.5 million for
two affiliated firms that allegedly failed to subject 220,000 new customer accounts to a required identity-verification process over a nine-year period. FINRA noted that the Customer Identification Program (CIP) is a “key aspect of the anti-money laundering program for broker-dealers.” This program requires broker-dealers to obtain and verify identification information when a customer opens an account. FINRA alleged that the firms’ CIP systems were deficient because of a design flaw that recycled identification information from closed accounts, preventing 220,000 new accounts from being subjected to the CIP program during a nine-year period. Mr. Bennett emphasized the importance of testing supervisory systems, noting that even though the “firms eventually discovered the flaws, it took far too long, resulting in hundreds of thousands of accounts to open and often close without the required identification process ever taking place.”

The substantial fines in these two cases, and the significant increase in the number of AML fines in recent years, reveals that this is an important enforcement issue for FINRA. According to Brian Rubin, a Partner for Sutherland’s Securities Litigation and Enforcement Group, “AML compliance can be a very challenging compliance issue for firms because there are many potential landmines, ranging from penny stock transactions to account opening documentation, which has led FINRA to warn firms that they should conduct vigorous testing in this area.”

ABOUT SUTHERLAND ASBILL & BRENNAN LLP.
Sutherland is an international legal service provider helping the world’s largest companies, industry leaders, sector innovators, and business entrepreneurs solve their biggest challenges and reach their business goals. More than 435 lawyers across seven major practice areas—corporate, energy and environmental, financial services, intellectual property, litigation, real estate and tax—provide the framework for an extensive range of focus areas. Sutherland is composed of associated legal practices that are separate entities, doing business in the United States as Sutherland Asbill & Brennan LLP, and as Arbis Sutherland LLP in London and Geneva.

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1 Brian Rubin and Andrew McCormick, Annual Sutherland Analysis of FINRA Sanctions Reveals Blockbuster Year in Fines for FINRA, but Decrease in the Number of Cases, Feb. 19, 2015, available at http://www.sutherland.com/NewsCommentary/Press-Releases/170501/Annual-Sutherland-Analysis-of-FINRA-Sanctions-Reveals-Blockbuster-Year-in-Fines-for-FINRA-but-Decrease-in-the-Number-of-Cases. Over the next two days, Sutherland will issue additional Sutherland FINRA Focus reports analyzing other top 2014 FINRA enforcement issues, including mutual funds and trade reporting.

2 The amount of fines comes from the Disciplinary and Other FINRA Actions report that FINRA publishes each month, FINRA press releases, and stories published in major news sources. Many of these cases also involved other allegations, making it impossible to attribute the exact amount of any particular fine to a specific allegation.

