

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013038210402**

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: Aegis Capital Corp., Respondent
Broker-Dealer
CRD No. 15007

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Aegis Capital Corp. (the "Firm" or "Respondent") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. The Firm hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

The Firm has been a member of FINRA since July 20, 1984, and its registration remains in effect. The Firm's headquarters are located in New York City and the Firm currently employs approximately 380 registered persons at its headquarters and 26 branch office locations. The Firm is a retail and institutional broker-dealer. Investment banking is included among the Firm's primary lines of business.

RELEVANT DISCIPLINARY HISTORY

On October 29, 2013, in Matter No. 2011029967801, the Firm consented to a censure and fine of \$5,000 for its Trade Reporting and Compliance Engine ("TRACE") reporting violations during the period of July 1, 2011 through September 30, 2011.

On June 23, 2014, in Matter No. 2011030077101, the Firm consented to a censure and fine of \$50,000 for violations, including: (a) a \$12,500 fine for its TRACE reporting violations during the periods of February 6, 2012 through June 30, 2012, and October 1, 2012 through December 31, 2012; (b) a \$5,000 fine related to TRACE supervisory violations during the period of February 6, 2012 through June 30, 2012; (c) a \$15,000 fine for its Order Audit Trail System ("OATS") reporting violations during the period of October 1, 2011 through December 31, 2012; and (d) a \$5,000 fine related to OATS

supervisory violations during the period of October 1, 2011 through December 31, 2012.

On December 30, 2015, in Matter No. 2014040774901, the Firm consented to a censure and fine of \$17,500 for violations, including a \$5,000 fine for OATS reporting violations during the period of January 1, 2014 through April 30, 2014.

On March 29, 2016, in Matter No. 2013036669201, the Firm consented to a censure and fine of \$145,000 for violations, including: (a) a \$47,500 fine for TRACE reporting violations during the periods of January 1, 2013 through March 31, 2013, January 1, 2014 through March 31, 2014, and October 1, 2014 through December 31, 2014; and (b) a \$15,000 fine for supervisory violations related to TRACE reporting during the period of January 1, 2013 through March 31, 2013.

On July 22, 2016, in Matter No. 2014039943502, the Firm consented to a censure and fine of \$97,500 for violations, including a \$15,000 fine for OATS reporting violations during the period of May 12, 2014 through May 16, 2014.

On March 6, 2017, in Matter No. 2014039874901, the Firm consented to a censure and fine of \$52,000 for violations, including: (a) a \$15,000 fine for OATS reporting violations during the period of January 1, 2015 through April 30, 2015; and (b) a \$7,000 fine for deficient supervisory procedures related to OATS reporting during the period of January 1, 2015 through April 30, 2015. The Firm also agreed to revise its written supervisory procedures.

OVERVIEW

During the period of August 2012 through July 2015 (the "Relevant Period"), the Firm violated FINRA Rules 5110 and 2010 in connection with various public offerings. In addition, during the Relevant Period, the Firm violated SEC Rule 101 of Regulation M ("Reg M"), FINRA Rule 5190, and FINRA Rule 2010 in connection with various offerings. Lastly, during the Relevant Period, the Firm failed to establish and maintain a reasonable supervisory system, including reasonable written supervisory procedures ("WSPs"), to achieve compliance with FINRA Rule 5110, Reg M, and FINRA Rule 5190.

In light of the foregoing, the Firm violated FINRA Rule 5110, Reg M, FINRA Rule 5190, NASD Rules 3010(a) and (b) (for conduct prior to December 1, 2014), FINRA Rules 3110(a) and (b) (for conduct on and after December 1, 2014), and FINRA Rule 2010.¹

FACTS AND VIOLATIVE CONDUCT

1. FINRA Rule 5110 Violations

FINRA Rule 5110(b)(4)(A)(i) requires, *inter alia*, that a firm that anticipates participating in a public offering of securities that is subject to the rule file with FINRA the documents

¹ Related disciplinary action on behalf of Nasdaq is being taken concurrently in conjunction with this matter.

and information with respect to the offering specified in subparagraphs (b)(5) and (b)(6) of the rule no later than one business day after any such documents are filed with, or submitted to, the SEC, unless the documents and information are filed by the issuer, the managing underwriter, or another member.

FINRA Rule 5110(b)(5) identifies the documents required to be filed through FINRA's electronic filing system, which include, but are not limited to, the registration statement, offering memorandum, notification of filing and/or any other document used to offer securities to the public, documents that describe the underwriting or other arrangements in connection with or related to the distribution, and pre and post effective amendments to the registration statement.

a. On twenty-five (25) occasions during the Relevant Period, the Firm participated in public offerings that were subject to Rule 5110, filed documents with the SEC specified in FINRA Rule 5110(b)(5) with respect to the public offerings, and failed to file those same documents with FINRA, in violation of FINRA Rules 5110(b)(4)(A)(i) and (b)(5). The documents concerned nineteen (19) different issuers and included Forms 424A, 424B1, 424B2, 424B4, 424B5, POS AM, RW, and S-1/A. To date, these documents have not been filed with FINRA.

b. In addition, on forty-one (41) occasions during the Relevant Period, the Firm participated in public offerings that were subject to Rule 5110 and failed to timely file certain documents specified in FINRA Rule 5110(b)(5) with FINRA after it had filed such documents with the SEC, in violation of FINRA Rules 5110(b)(4)(A)(i) and (b)(5). The documents concerned twenty-six (26) different issuers and included Forms 424B4, 424B5, F-1, RW, S-1 and S-1/A. The documents at issue were not timely filed with FINRA by the issuer, the managing underwriter, or another member having been filed between four days and over two years late.

FINRA Rule 5110(b)(6)(A)(ii) requires that any person² filing documents with FINRA pursuant to subparagraph (b)(4) provide information with respect to the offering through FINRA's electronic filing system including, *inter alia*, an estimate of the maximum underwriting discount, underwriter's counsel's fees, and a "statement of any other type and amount of compensation which may accrue to the underwriter and related persons."

a. In connection with two (2) prospectuses during the Relevant Period, the Firm failed to disclose a total of \$14,000 in underwriter's counsel's fees and compensation. With respect to one of the prospectuses, the Firm failed to disclose a 7.0% underwriting discount.

The above-described conduct constitutes separate and distinct violations of FINRA Rules

² The term "person" is defined in FINRA Rule 5110(a)(14) "[a]ny natural person, partnership, corporation, association, or other legal entity."

5110 and 2010.³

2. SEC Rule 101 Violations

Rule 101 of Reg M ("SEC Rule 101") generally provides that "[i]n connection with a distribution of securities, it shall be unlawful for a distribution participant ...directly or indirectly, to bid for, purchase, or attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period[.]"

a. During the restricted period of the distribution of securities of the Rosetta Genomics Ltd. (USA) ("ROSG") offering from July 27 through August 2, 2012, while the Firm acted as a distribution participant for the offering, the Firm:

- i. Purchased 100 shares of common stock on a principal basis in a single transaction on August 2, 2012; and
- ii. Entered quotes into the marketplace on August 2, 2012.

b. During the restricted period of the distribution of securities of the Intellicheck Mobilisa, Inc. ("IDN") common stock offering from January 2 through January 8, 2015, while the Firm acted as a distribution participant for the offering, the Firm entered quotes into the marketplace on January 2 and 5, 2015.

The above-described conduct constitutes separate and distinct violations of SEC Rule 101 and FINRA Rule 2010.

3. FINRA Rule 5190 Violations

FINRA Rule 5190(c)(1)(A) requires a firm acting as a manager (or in a similar capacity) of a distribution of any security that is a covered security subject to a restricted period under SEC Rule 101 to provide written notice to FINRA of the following: (a) whether a one-day or five-day restricted period applies under SEC Rule 101; (b) the basis for such determination, including the contemplated date and time of the commencement of the restricted period; (c) the security name and symbol; and (d) the identity of the distribution participants and affiliated purchasers ("Restricted Period Notification"). The firm must provide this Restricted Period Notification to FINRA no later than the business day prior to the first complete trading session of the applicable restricted period, unless later notification is necessary under specific circumstances.

During the Relevant Period, while acting as a manager (or in a similar capacity) in a distribution of covered securities that were subject to restricted periods under SEC Rule 101 on behalf of the issuers listed below, the Firm filed Restricted Period Notifications late, in violation of FINRA Rule 5190(c)(1)(A):

³ FINRA Rule 2010 requires a firm to observe high standards of commercial honor and just and equitable principles of trade.

- a. In connection with the August 2012 ROSG offering discussed above, the Firm should have filed a Restricted Period Notification by July 26, 2012, but filed the notification on August 2, 2012, six days late.⁴
- b. In connection with the Superconductor Technologies, Inc. ("SCON") offering that priced on November 19, 2012, the Firm should have filed a Restricted Period Notification by November 12, 2012, but filed the notification on November 20, 2012, seven days late.
- c. In connection with the Micronet Enertec Technologies, Inc. ("MICT") offering that priced on April 23, 2013, the Firm should have filed a Restricted Period Notification by April 16, 2013, but filed the notification on December 10, 2013, one hundred and seventy-one days late.
- d. In connection with the Aastrom Biosciences Inc. ("ASTM") offering that priced on August 12, 2013, the Firm should have filed a Restricted Period Notification by August 5, 2013, but filed the notification on August 7, 2013, three days late.
- e. In connection with the Sorrento Therapeutics Inc. ("SRNE") offering that priced on May 14, 2014, the Firm should have filed a Restricted Period Notification by May 13, 2014, but filed the notification on May 14, 2014, one day late.
- f. In connection with the 1347 Property Insurance Holdings, Inc. ("PIH") offering that priced on June 9, 2014, the Firm should have filed a Restricted Period Notification by June 2, 2014, but filed the notification on June 3, 2014, one day late.
- g. In connection with the IDN offering discussed above, the Firm should have filed a Restricted Period Notification by December 31, 2014, but filed the notification on January 5, 2015, four days late.

In addition, while acting as a manager (or in a similar capacity) in a distribution of covered securities that were subject to restricted periods under SEC Rule 101 on behalf of the issuers listed below, the Firm filed Restricted Period Notifications that did not identify all distribution participants in the notice, in violation of FINRA Rule 5190(c)(1)(A):

- a. Izea Inc. ("IZEA"), which priced on September 5, 2012;
- b. PURE Bioscience, Inc. ("PURE"), which priced on September 11, 2012;
- c. Ascent Solar Technologies, Inc. ("ASTI"), which priced on September 19, 2012;
- d. CytRx Corporation ("CYTR"), which priced on October 17, 2012;
- e. Xplore Technologies Corp ("XLRT"), which priced on October 25, 2012;
- f. Venaxis Inc. ("APPY"), which priced on November 14, 2012;

⁴ The number of days late is based upon trading days.

- g. Northwest Biotherapeutics, Inc. ("NWBO"), which priced on December 6, 2012;
- h. Echo Therapeutics Inc. ("ECTE"), which priced on December 20, 2012;
- i. Oramed Pharmaceuticals, Inc. ("ORMP"), which priced on July 10, 2013;
- j. Heat Biologics Inc. ("HTBX"), which priced on July 24, 2013;
- k. Vuzix Corporation ("VUZI"), which priced on July 30, 2013;
- l. Opexa Therapeutics Inc. ("OPXA"), which priced on August 7, 2013
- m. ASTM (discussed above);
- n. Cancer Genetics Inc. (CGIX), which priced on August 13, 2013;
- o. Evoke Pharma Inc. ("EVOK"), which priced on September 25, 2013;
- p. SRNE (discussed above);
- q. TOP Ships Inc. ("TOPS"), which priced on June 5, 2014;
- r. PIH (discussed above); and
- s. Signal Genetics, Inc. ("SGNL"), which priced on June 18, 2014.

Further, FINRA Rule 5190(c)(1)(B) requires a firm acting as a manager (or in a similar capacity) of a distribution of any security that is a covered security subject to a restricted period under SEC Rule 101 to provide written notice to FINRA of the pricing of the distribution, including the security name and symbol, the type of security, the number of shares offered, the offering price, the last sale before the distribution, the pricing basis, the SEC effective date and time, the trade date, the restricted period, and identification of the distribution participants and affiliated purchasers ("Trading Notification"). The firm must provide this Trading Notification to FINRA "no later than the close of business the next business day following the pricing of the distribution, unless later notification is necessary under specific circumstances." In the following instance, while acting as a manager (or in a similar capacity) in a distribution of covered securities that were subject to restricted periods under SEC Rule 101, the Firm filed a Trading Notification late, in violation of FINRA Rule 5190(c)(1)(B):

- a. In connection with the April 2013 MICT offering discussed above, the Firm should have filed a Trading Notification by April 24, 2013, but filed the notification on December 9, 2013, one hundred and sixty-four days late.

The above-described conduct constitutes separate and distinct violations of FINRA Rules 5190 and 2010.

4. NASD Rule 3010(a)&(b) and FINRA Rule 3110(a)&(b) Violations

FINRA Rule 3110(a), like its predecessor NASD Rule 3010(a), requires a firm to establish and maintain a system to supervise the activities of its associated personnel that is reasonably designed to achieve compliance with applicable securities laws and

regulations, and with applicable FINRA rules.⁵ FINRA Rule 3110(b) and NASD Rule 3010(b) require a firm to establish, maintain and enforce written procedures to supervise the types of business in which they engage and the activities of their associated persons reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA Rules.

During the Relevant Period, the Firm failed to establish and maintain a reasonable supervisory system, including written supervisory procedures, to achieve compliance with applicable securities laws and regulations, as well as FINRA Rules 5110 and 5190, and Reg M.

The Firm did not set forth in its written supervisory procedures or implement a reasonable process for achieving compliance with the subject rule set. The Firm did not designate specific individuals by title with responsibility for ensuring compliance with the subject rule set, detail how reviews would be undertaken and documented, present a detailed process regarding the information flow at the Firm or describe how the Firm monitored its compliance with the subject rule set in its WSPs or otherwise. In addition, there were no procedures detailing how the Firm ensured that Reg M and related notifications were filed, including on-time. Nor were there specific procedures that addressed real-time monitoring of the Firm's bidding activity during an offering's restricted period to ensure that the Firm did not bid during a restricted period. The Firm subsequently enhanced its written procedures and systems to address the subject rule set.

By virtue of the foregoing, the Firm violated NASD Rules 3010(a)&(b) (for conduct before December 1, 2014), FINRA Rules 3110(a)&(b) (for conduct on or after December 1, 2014), and FINRA Rule 2010.

B. The Firm also consents to the imposition of the following sanctions:

A censure; and

A \$93,125 fine.

The Firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment is due and payable. The Firm has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

The Firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

⁵ FINRA Rule 3110 replaced all sections of NASD Rule 2010, effective December 1, 2014.

II.

WAIVER OF PROCEDURAL RIGHTS

The Firm specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against the Firm;
- B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the Firm specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

The Firm further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

The Firm understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the Firm; and
- C. If accepted:
 - 1. this AWC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the Firm;

2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
4. the Firm may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. The Firm may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Firm's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- D. The Firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the Firm to submit it.

06/18/2019
Date (mm/dd/yyyy)

Reviewed by: [Signature]

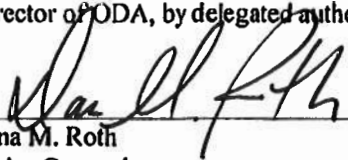
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[Signature]
Aegis Capital Corp.
By: David S. Harkins
CCO

Accepted by FINRA:

July 10, 2019
Date

Signed on behalf of the
Director of ODA, by delegated authority



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This Corrective Action Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff

Corrective Action Statement of Aegis Capital Corp.
FINRA Matter No. 2013038210402

This Corrective Action Statement is submitted by the Respondent, Aegis Capital Corp. ("Aegis" or "the Firm").

Background

Aegis Capital is a full-service brokerage firm that has been a FINRA member since July 1984. Among its full-service operations are investment banking services, which consist of public and private offerings and financings and advisory services for mergers and acquisitions. In connection with the inquiry, Aegis promptly began taking the following corrective actions, including most importantly establishing new relationships with advisors with knowledge and experience in the matters at issue, and, as described in further detail below, bringing in the full compliance functionality in-house.

Corrective Actions Taken

1. The firm has now centralized filing responsibility with its Compliance Staff at 810 7th Avenue, New York City, its headquarters. Consistent with that mandate, the firm has increased its compliance staff from four to eight compliance professionals in the past 2 years.
2. The firm has ensured that its Corporate Compliance Department now receives consistent and substantive continuing education particularly on Reg M and FINRA-related filings. Significantly, all Compliance professionals now several continuing education meetings or programs each year. In fact, the CCO in 2018 attended the FINRA Institute at Georgetown CRCP program and became certified.
3. Engaging new compliance consultants. During 2016 and 2017, Aegis engaged a compliance consulting firm to review certain practices, including Regulation M compliance.
4. New WSPs. As the firm has previously advised the staff and provided to the staff, Aegis has engaged its outside counsel to develop new WSPs reasonably designed to address all requirements under Regulations M (including applicable FINRA and NASDAQ rules) that apply to its current business.
5. Cooperation. During the course of the FINRA inquiry, upon the elevation of its current CCO, the Firm made a deliberate decision to voluntarily cooperate with FINRA. The Firm directed that future inquiries, if any, be responded to promptly and completely by its current CCO and counsel. The Firm's CCO has been very active in speaking with the staff in Market Regulation and has driven home a new culture of compliance within the firm and a much more transparent approach in communication with FINRA.