

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Fusion Analytics Securities, LLC
CRD No. 124245,

Respondent.

Disciplinary Proceeding
No. 2018058871601

Hearing Officer—DW

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: June 16, 2020

INTRODUCTION

Disciplinary Proceeding No. 2018058871601 was filed on April 10, 2020, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA or Complainant). Respondent Fusion Analytics Securities, LLC (“FAS” or “Respondent”) submitted an Offer of Settlement (Offer) to Complainant dated June 8, 2020. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint (as amended by the Offer), 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, to the entry of findings and violations consistent with the allegations of the Complaint (as amended by the Offer), and to the imposition of the sanctions set forth below, and fully

understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

FAS registered with FINRA and the SEC on March 25, 2003. The Firm is located in Coral Springs, Florida and conducts a retail brokerage business.

The Firm employs approximately nine registered persons and four non-registered fingerprint persons.

Under Article IV of the FINRA By-Laws, FINRA possesses jurisdiction over FAS because: (a) the Firm currently is a FINRA member; and (b) the Complaint charges the Firm with misconduct committed while it was a FINRA member.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

SUMMARY

Between September 2014 and May 2018 (the "Relevant Period"), Respondent failed to comply with critical books and records and net capital rules established by the Securities and Exchange Commission and FINRA.

FAS conducted a securities business on 26 days during which it failed to maintain the required minimum net capital. Therefore, the Firm violated Section 15(c) of the Exchange Act and Rule 15c3-1 thereunder (the "Net Capital Rule"), and violated FINRA Rules 4110(b) and 2010.

Moreover, FAS failed to file with the SEC and FINRA a notice of financial deficiency disclosing that FAS did not maintain the minimum net capital required during the following periods: September 30, 2014 through and including February 3, 2017; on January 31, 2018; and

on April 30, 2018. Therefore, FAS violated Section 17(a) of the Exchange Act and Rule 17a-11 thereunder, and violated FINRA Rule 2010.

In addition, FAS filed inaccurate quarterly FOCUS Reports. Therefore, FAS violated Section 17(a) of the Exchange Act and Rule 17a-5 thereunder, and violated FINRA Rules 4511 and 2010.

Finally, the Firm made and preserved inaccurate balance sheets, trial balances, general ledgers, and net capital computations. FAS thereby violated Section 17(a) of the Exchange Act and Rule 17a-3 thereunder, and violated FINRA Rules 4511 and 2010.

FACTS

The Firm Received and Held Customer Securities Without Promptly Forwarding or Delivering Them

During the Relevant Period, Registered Representative A received securities certificates for deposit to the Firm's customers' accounts.

Specifically, between August 6, 2014 and November 30, 2017 and between May 16, 2018 and May 22, 2018, the Firm, through Registered Representative A, held for its customers 42 securities certificates without promptly forwarding or delivering them (*i.e.*, by noon on the business day after receipt) to its clearing firm.

The Firm improperly held the customers' securities identified on Table A.

The Firm Conducted a Securities Business While It Failed to Maintain the Minimum Required Net Capital

The Net Capital Rule requires each broker-dealer to maintain, at all times, a certain minimum amount of net capital. The Net Capital Rule sets forth required minimum net capital depending on the type of securities business conducted by a broker-dealer.

Throughout the Relevant Period, the Net Capital Rule required FAS to maintain \$5,000 in minimum net capital; however, the Firm was required to maintain \$250,000 in minimum net

capital on days in which it held customers' securities or funds without promptly forwarding them.

On 24 days between September 2014 and October 2017, the Firm conducted a securities business while it failed to maintain the \$250,000 minimum net capital required on those days, as set forth in Table B.

The Net Capital Rule also prohibits a broker or dealer from having its aggregate indebtedness exceed 1500 percent of its net capital (*i.e.*, the Aggregate Indebtedness Standard). The Aggregate Indebtedness Standard requires a broker-dealer that commenced business more than one year ago to maintain net capital at least equal to six and two-thirds percent of the sum of its aggregate indebtedness.

Fusion conducted a securities business on two dates when it failed to maintain the minimum net capital required pursuant to the Aggregate Indebtedness Standard.

On January 31, 2018, the Firm had aggregate indebtedness of \$191,282; therefore, the Firm's minimum required net capital was \$12,752, pursuant to the Aggregate Indebtedness Standard. However, the Firm's actual net capital on that day was negative \$63,584, a deficiency of \$76,336.

The Firm conducted a securities business on January 31, 2018.

On April 30, 2018, the Firm had aggregate indebtedness of \$264,520; therefore, the Firm's minimum required net capital was \$17,635 pursuant to the Aggregate Indebtedness Standard. The Firm's actual net capital on that day was negative \$27,375, a deficiency of \$45,010.

The Firm conducted a securities business on April 30, 2018.

The Firm Failed to File Financial Notifications

When a firm's net capital falls below the minimum net capital required, it is required to file a notice of such deficiency with the SEC and its designated examining authority (*i.e.*, FINRA).

Between September 30, 2014 and February 3, 2017, and on both January 31, 2018, and April 30, 2018, the Firm's net capital fell below the minimum net capital requirement.

On those days, however, FAS failed to provide notice to the SEC and FINRA of its net capital deficiencies.

The Firm Created and Maintained Inaccurate Books and Records

During the Relevant Period, the Firm created and maintained inaccurate balance sheets, trial balances, general ledgers, net capital computations, and FOCUS Reports.

These inaccurate records resulted from the Firm's failure to: (1) accrue certain expenses; (2) record the balances in two of its clearing firm accounts; (3) accurately record assets and liabilities; and (4) accurately record its required minimum net capital.

Specifically, FAS failed to accrue the following expenses on its balance sheet, trial balance, general ledger, net capital computations, and FOCUS Reports:

- a. From December 2014 through June 2016, FAS failed to accrue and record expenses related to its Coral Springs, Florida office;
- b. From June 2016 through August 2016, the Firm failed to accrue and record expenses for its email retention provider, for a market data subscription and order entry system, and for certain salaries; and
- c. From March 2017 through June 2018, the Firm failed to accrue and record certain legal expenses.

In addition, at various times from January 2017 through April 2018, FAS failed to record the balances for two of its clearing firm accounts on its balance sheets, trial balances, general ledger, net capital computations, and FOCUS Reports.

In addition, between March 2017 and April 2018, the Firm's stock certificates for Issuer K contained a restrictive legend; therefore, they were not readily marketable and were not allowable assets.

Yet, FAS inaccurately recorded its shares of Issuer K's stock as an allowable asset in its net capital computations and FOCUS Reports.

Moreover, as of January 31, 2018, FAS inaccurately classified \$764 in commissions receivable from November 2017 as an allowable asset on its net capital computation even though the receivable was outstanding longer than 30 days.

Finally, between at least January 2017 and April 2018, FAS inaccurately offset inter-company receivables and payables for different affiliated entities.

This offset is not permitted under the Net Capital Rule.

As a result, the Firm inaccurately recorded a higher net worth, higher net capital, lower liabilities, and lower aggregate indebtedness on its balance sheets, trial balances, and net capital computations.

FIRST CAUSE OF ACTION
FAS Conducted a Securities Business While it failed to
Maintain the Minimum Required Net Capital
(Violations of Exchange Act Section 15(c) and Rule 15c3-1 thereunder and Violations of
FINRA Rules 4110(b) and 2010)

Exchange Act Rule 15c3-1 requires each broker-dealer to maintain, at all times, a certain minimum amount of net capital. The Rule sets forth various amounts of required net capital depending on the type of securities business conducted by a broker-dealer.

Pursuant to FINRA Rule 4110(b), “a member shall suspend all business operations during any period in which it is not in compliance with applicable net capital requirements set forth in [the Net Capital Rule].”

FAS held customers’ securities, without promptly forwarding or delivering them, from August 6, 2014 through November 30, 2017, and from May 16, 2018 through May 22, 2018.

As a result, the Firm was required to maintain \$250,000 minimum net capital but failed to do so.

On the 24 days described in paragraph 15 above and Table B, the Firm conducted a securities business while failing to maintain \$250,000 minimum net capital requirement.

In addition, Exchange Act Rule 15c3-1(a) requires broker-dealers to “have and maintain net capital no less than the greater of the highest minimum requirement applicable to its ratio requirement under paragraph (a)(1) of [the Net Capital Rule], or to any of its activities under paragraph (a)(2) of [the Net Capital Rule]...”

Exchange Act Rule 15c3-1(a)(1)(i) states that “[n]o broker or dealer...shall permit its aggregate indebtedness to all other persons to exceed 1500 percent of its net capital” when it has been a broker-dealer for more than one year.

On January 31, 2018 and April 30, 2018, the Firm conducted a securities business while failing to maintain the greater of \$5,000 or the Aggregate Indebtedness Standard. The Firm’s net capital was therefore deficient on those days.

As a result of the foregoing conduct, FAS violated Section 15(c) of the Exchange Act and Rule 15c3-1 thereunder and FINRA Rules 4110(b) and 2010.

SECOND CAUSE OF ACTION
FAS Failed to Provide Notice of its Net Capital Deficiencies
(Violations of Exchange Act Section 17(a) and Rule 17a-11 thereunder and Violation of
FINRA Rule 2010)

Exchange Act Rule 17a-11 requires every broker or dealer registered with the SEC to file notifications with the SEC and its designated examining authority (*i.e.*, FINRA) on the same day its net capital declines below the minimum amount required pursuant to the Net Capital Rule.

The Firm failed to file notice of its net capital deficiencies with the SEC or FINRA on days that it was net capital deficient; namely, on the days listed in Table A between September 30, 2014 and February 3, 2017; on January 31, 2018; and on April 30, 2018.

As a result of the foregoing conduct, FAS violated Section 17(a) of the Exchange Act and Rule 17a-11 thereunder and FINRA Rule 2010.

THIRD CAUSE OF ACTION
FAS Filed Inaccurate Quarterly FOCUS Reports
(Violations of FINRA Rules 4511 and 2010 and
Violations of Exchange Act Section 17(a) and Rule 17a-5 thereunder)

Exchange Act Rule 17a-5 requires every broker or dealer registered pursuant to Section 15 of the Exchange Act to file FOCUS Reports with the SEC.

During the Relevant Period, FAS filed quarterly FOCUS Reports.

FINRA Rule 4511 requires members to “make and preserve books and records as required under the FINRA Rules, the Exchange Act, and the applicable Exchange Act rules.” Implicit in this requirement is that the books and records be accurate.

Between September 2014 and September 2017, FAS prepared and filed 13 inaccurate quarterly FOCUS Reports when it:

- a. Inaccurately recorded its minimum net capital requirement;
- b. Inaccurately recorded its shares of Issuer K stock as an allowable asset; and

- c. Did not accrue expenses for its email retention provider, for a market data subscription and order entry system, certain legal expenses, certain salaries, and its Coral Springs, Florida office.

As a result of the foregoing conduct, FAS violated Section 17(a) of the Exchange Act and Rule 17a-5 thereunder and FINRA Rules 4511 and 2010.

FOURTH CAUSE OF ACTION
FAS Made and Preserved Inaccurate Books and Records
(Violations of Exchange Act Section 17(a) and Rule 17a-3 thereunder and Violations of
FINRA Rules 4511 and 2010)

Section 17(a) of the Exchange Act and Rule 17a-3(a)(2) thereunder requires broker-dealers to make and keep current “[l]edgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts.”

Exchange Act Rule 17a-3(a)(11) generally requires that a broker-dealer make and keep current a record of ledger accounts in the form of trial balances and a record of the computation of aggregate indebtedness and net capital as of the trial balance date.

During the Relevant Period, FAS made and preserved inaccurate balance sheets, trial balances, general ledgers, and net capital computations when it:

- a. Inaccurately recorded its minimum net capital requirement;
- b. Inaccurately recorded its shares of Issuer K stock as an allowable asset;
- c. Did not accrue expenses for its email retention provider, for a market data subscription and order entry system, certain legal expenses, certain salaries, and its Coral Springs, Florida office;
- d. Inaccurately offset inter-company receivables and payables for different affiliated entities;
- e. Failed to include the assets and liabilities for two of its clearing firm accounts; and

- f. Inaccurately classified as allowable assets commissions receivable that were outstanding more than thirty days.

As a result of the foregoing conduct, FAS violated Section 17(a) of the Exchange Act and Rule 17a-3 thereunder and violated FINRA Rules 4511 and 2010.

Based on the foregoing, Respondent violated Section 15(c) of the Exchange Act and Rule 15c3-1 thereunder, Section 17(a) of the Exchange Act and Rules 17a-3, 17a-5, and 17a-11 thereunder, and FINRA Rules 4110(b), 4511, and 2010.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent be censured and fined \$25,000.

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

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

SO ORDERED.

FINRA

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

Kathryn Wilson

Kathryn M. Wilson, Sr. Counsel
Authorized House Counsel
Member NY and CT Bars
FINRA Department of Enforcement
5200 Town Center Circle
Tower 1, Suite 200
Boca Raton, FL 33486