

**THE NASDAQ STOCK MARKET LLC
NOTICE OF ACCEPTANCE OF AWC**

Certified, Return Receipt Requested

TO: Aegis Capital Corp.
c/o David Danovitch, Esq.
Sullivan & Worcester LLP
1633 Broadway
New York, New York 10019

FROM: The NASDAQ Stock Market LLC ("Nasdaq")
c/o Financial Industry Regulatory Authority ("FINRA")
Department of Enforcement
9509 Key West Avenue
Rockville, MD 20850

DATE: July 10, 2019

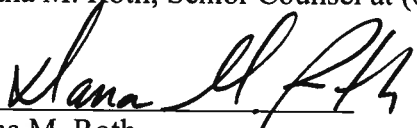
RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent Nos. 2013038210401
and 2014042454901

Please be advised that your above-referenced Letter of Acceptance, Waiver and Consent ("AWC") has been accepted on July 10, 2019 by the Nasdaq Review Council's Review Subcommittee, or by the Office of Disciplinary Affairs on behalf of the Nasdaq Review Council, pursuant to Nasdaq Rule 9216. A copy of the AWC is enclosed herewith.

You are again reminded of your obligation, if currently registered, immediately to update your Uniform Application for Broker-Dealer Registration ("Form BD") to reflect the conclusion of this disciplinary action. Additionally, you must also notify FINRA (or NASDAQ if you are not a member of FINRA) in writing of any change of address or other changes required to be made to your Form BD.

You will be notified by the Registration and Disclosure Department regarding sanctions if a suspension has been imposed and by NASDAQ's Finance Department regarding the payment of any fine if a fine has been imposed.

If you have any questions concerning this matter, please call Dana M. Roth, Senior Counsel at (646) 315-7422.



Dana M. Roth
Senior Counsel
Department of Enforcement, FINRA
Signed on behalf of NASDAQ

Enclosure

**THE NASDAQ STOCK MARKET LLC
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NOS. 2013038210401, 2014042454901**

TO: The NASDAQ Stock Market LLC
c/o Department of Enforcement
Financial Industry Regulatory Authority

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

Pursuant to Rule 9216 of The NASDAQ Stock Market LLC ("Nasdaq") 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, Nasdaq 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 Nasdaq, or to which Nasdaq 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 Nasdaq:

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. The Firm does not have relevant disciplinary history in connection with the subject rule set.

SUMMARY

In Review Nos. 20130382104, 20140424549, 20150467723, the Financial Industry Regulatory Authority's Department of Market Regulation's Offering Surveillance Group ("Market Reg") and Exchange Traded Products Surveillance & Investigations ("ETP") reviewed the Firm's compliance with Rules 101 and 104 of SEC Regulation M ("Reg M"); rules promulgated by Nasdaq and FINRA requiring the Firm to provide various notices as a result of the Firm's participation in a distribution of securities; and related supervisory rules during the third quarter of 2012 through the third quarter of 2013, the first quarter of 2014 through the second quarter of 2014, as well as in connection with an offering that priced on January 8, 2015 (the "Review Period").

As a result of their reviews, Market Reg and ETP (collectively, "FINRA") found that the Firm failed to comply with Rules 101 and 104 of SEC Reg M and Nasdaq Rules 4614, 4619, 4624, 3010, 2110 and 2010A.¹

FACTS AND VIOLATIVE CONDUCT

1. 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[.]"
2. Rule 104 of Reg M ("SEC Rule 104") generally provides that "[i]t shall be unlawful for any person, directly or indirectly, to stabilize, to effect any syndicate covering transaction, or to impose a penalty bid, in connection with an offering of any security, in contravention of the provisions of this section. No stabilizing shall be effected at a price that the person stabilizing knows or has reason to know is in contravention of this section, or is the result of activity that is fraudulent, manipulative, or deceptive under the securities laws, or any rule or regulation thereunder." SEC Rule 104(h) identifies who is required to receive prior notice of stabilizing bids and syndicate covering transactions. For stabilizing bids, prior notice should be made "to the market on which such stabilizing will be effected" and the notice should disclose "its purpose to the person with whom the bid is entered." For syndicate covering transactions, prior notice shall be made "to the self-regulatory organization with direct authority over the principal market in the United States for the security for which the syndicate covering transaction is effected or the penalty bid is imposed."
3. Nasdaq Rule 4614 generally provides that "[a] Nasdaq Market Maker that intends to stabilize the price of a security that is a subject or reference security under SEC Rule 101 shall submit a request to Nasdaq MarketWatch for the entry of a one-sided bid that is identified on Nasdaq as a stabilizing bid in compliance with the standards set forth in this Rule and SEC Rules 101 and 104." Nasdaq Rule 4614(d)(1) provides that the "Nasdaq Market Maker shall confirm its request in writing no later than the close of business the day the stabilizing bid is entered[.]"
4. Nasdaq Rule 4619(e)(1) generally provides that, a firm acting "as a manager (or in a similar capacity) of a distribution of a security that is a subject security or reference security under SEC Rule 101 ... shall provide written notice to Nasdaq MarketWatch and ... [Market Reg] no later than the business day prior to the first entire trading session of the one-day or five-day restricted period under SEC Rule 101, unless later notification is necessary under the specific circumstances." Nasdaq Rule 4619(e)(1)(A) requires that the subject notice "include a request on behalf of each Nasdaq Market Maker that is a distribution participant or an affiliated purchaser."
5. Nasdaq Rule 4624 requires a Nasdaq Market Maker acting as a manager (or in a similar capacity) of a distribution of a security that is a subject or reference security under SEC Rule 101 to "provide written notice to the Corporate Financing Department of FINRA of its intention to impose a penalty bid on syndicate members or to conduct syndicate

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

covering transactions pursuant to SEC Rule 104 prior to imposing the penalty bid or engaging in the first syndicate covering transaction.”

6. Nasdaq Rule 3010 generally provides that “[e]ach member shall establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable Nasdaq rules.”
7. Nasdaq Rule 2010A provides that “[a] member in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.”²

In connection with Review No. 20130382104:

8. 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:
 - a. Purchased 100 shares of common stock on a principal basis in a single transaction on August 2, 2012; and
 - b. Entered quotes into the marketplace on August 2, 2012.

The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 101 and Nasdaq Rule 2110.

9. During the restricted period of the ROSG offering, the Firm acted as a distribution participant and as a manager (or in a similar capacity) in the distribution of securities for the offering. On August 3, 2012, the Firm entered a stabilizing bid into the marketplace in connection with the offering of the ROSG securities, which were listed on the Nasdaq stock market, and failed to provide prior notice of its intent to engage in such activity. Instead, the Firm filed a Notice of Intent on June 10, 2014.

The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 104 and Nasdaq Rules 4614, and Nasdaq Rule 2110.

10. The Firm, while acting as a distribution participant and market maker participating in a distribution of securities of PURE Bioscience, Inc. (“PURE”) that priced on September 11, 2012, purchased 175,000 shares of the security between September 12, 2012 and October 26, 2012 in connection with syndicate covering transactions associated with the distribution, and failed to provide prior notice of its intent to engage in such activity. Instead, the Firm filed a Notice of Intent on June 10, 2014.

The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 104, Nasdaq Rule 4624, and Nasdaq Rule 2110.

11. The Firm, while acting as a manager (or in a similar capacity) in a distribution of securities, which were subject to restricted periods under SEC Rule 101 on behalf of the issuers listed below, failed to timely submit a Nasdaq Rule 4619(e)(1)(A) notice and/or failed to submit a complete Nasdaq Rule 4619(e)(1)(A) notice listing all distribution participants as follows:
 - a. In connection with the ROSG offering discussed above, the Firm failed to submit the notice no later than July 26, 2012, which was the business day prior to the first

² Nasdaq Rule 2010A replaced Nasdaq Rule 2110 on November 21, 2012.

complete trading session of the applicable restricted period (July 27, 2012 through August 2, 2012). Instead, the Firm filed the notice on August 2, 2012, six days late.³

- b. In connection with an offering of Sorrento Therapeutics Inc. ("SRNE") that priced on May 14, 2014, the Firm failed to submit the notice by May 13, 2014, which was the business day prior to the first complete trading session of the applicable restricted period (May 14, 2014). The Firm filed the notification on May 14, 2014, one day late. In addition, the Firm did not identify multiple distribution participants in the notice.
- c. In connection with an offering of 1347 Property Insurance Holdings, Inc. ("PIH") that priced on June 9, 2014, the Firm failed to submit the notice by June 2, 2014, which was the business day prior to the first complete trading session of the applicable restricted period (June 3, 2014 through June 9, 2014). Instead, the Firm filed the notification on June 3, 2014, one day late. In addition, the Firm did not identify a distribution participant in the notice.
- d. In connection with an offering of Venaxis Inc. that priced on November 14, 2012, the Firm did not identify a distribution participant in the notice.

The conduct described in this paragraph constitutes separate and distinct violations of Nasdaq Rules 4619(e)(1)(A), 2110 and 2010A.

In connection with Review No. 20140424549:

- 12. The Firm, while acting as a distribution participant and market maker participating in a distribution of securities of Semler Scientific Inc. ("SMLR") that priced on February 21, 2014, purchased 71,681 shares of the security between February 21, 2014 through April 7, 2014 in connection with syndicate covering transactions associated with the distribution and failed to provide prior notice of its intent to engage in such activity. Instead, the Firm filed a Notice of Intent on May 21, 2015.

The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 104, Nasdaq Rule 4624, and Nasdaq Rule 2010A.

In connection with Review No. 20150467723:

- 13. The Firm, while acting as a distribution participant and a manager (or in a similar capacity) for the Intellicheck Mobilisa, Inc. ("IDN") common stock offering, entered quotes into the marketplace on January 2 and 5, 2015, which was during the security's restricted period (January 2, 2015 through January 8, 2015).

The conduct described in this paragraph constitutes a separate and distinct violation of SEC Rule 101 and Nasdaq Rule 2010A.

- 14. The Firm, while acting as a manager (or in a similar capacity) in a distribution of securities, which was subject to a restricted period under SEC Rule 101 on behalf of the issuer IDN, failed to submit a Nasdaq Rule 4619(e)(1)(A) notice by December 31, 2014, which was the business day prior to the first complete trading session of the applicable restricted period

³ The number of days late is based upon trading days.

(January 2, 2015 through January 8, 2015). Instead, the Firm filed the notice on January 5, 2015, four days late.

The conduct described in this paragraph constitutes a separate and distinct violation of Nasdaq Rules 4619(e)(1)(A) and 2010A.

In connection with all Reviews:

15. During the Review Period, the Firm failed to establish and maintain a reasonable supervisory system to achieve compliance with applicable securities laws and regulations and Nasdaq rules, including reasonable written supervisory procedures ("WSPs").

The Firm's WSPs did not designate specific individuals by title within the procedures themselves 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 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 conduct described in this paragraph constitutes violations of Nasdaq Rules 3010, 2110 and 2010A.

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

A censure and a fine in the amount of \$42,125 (consisting of \$3,750 for the SEC Rule 101 violations, \$9,000 for the SEC Rule 104 and Nasdaq Rule 4614 and 4624 violations, \$4,375 for the Nasdaq Rule 4619 violations, and \$25,000 for the supervisory violations).

The Firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. It 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.

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Formal Complaint issued specifying the allegations against the Firm;
- B. To be notified of the Formal 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 Nasdaq Review Council 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 Regulatory Officer, the Nasdaq Review Council, or any member of the Nasdaq Review Council, 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 Rule 9143 or the separation of functions prohibitions of 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 FINRA's Department of Enforcement and the Nasdaq Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs ("ODA"), pursuant to Nasdaq 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 Nasdaq or any other regulator against the Firm;
 - 2. Nasdaq may release this AWC or make a public announcement concerning this agreement and the subject matter thereof in accordance with Nasdaq Rule 8310 and IM-8310-3; and
 - 3. 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 Nasdaq, or to which Nasdaq is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Firm's right to take legal or factual positions

in litigation or other legal proceedings in which Nasdaq 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 Nasdaq, nor does it reflect the views of Nasdaq 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; that it has agreed to the AWC's 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.

6/18/2019
[Date]


Aegis Capital Corp.
Respondent

By: 

Name: David S. Hentschel

Title: Chief Compliance Officer

Reviewed by:


David Danovitch, Esq.
Counsel for Respondent
Sullivan & Worcester LLP
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New York, NY 10019
(phone) (212) 660-3060
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Accepted by Nasdaq:

July 10, 2019
[Date]



Dana M. Roth
Senior Counsel
Department of Enforcement

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