



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

DIVISION OF  
CORPORATION FINANCE

September 14, 2015

Linda S. Riefberg  
Cozen O'Connor  
277 Park Avenue  
New York, NY 10172

Michael H. Ference  
Sichenzia Ross Friedman Ference LLP  
61 Broadway  
New York, NY 10006

**Re: In the Matter of Aegis Capital Corp.  
Waiver of Disqualification under Rule 506(d)(2)(ii) of Regulation D  
FINRA Disciplinary Proceeding No. 2011026386002  
Order Accepting Offer of Settlement, August 3, 2015**

Dear Ms. Riefberg and Mr. Ference:

This letter responds to your letter dated August 31, 2015 ("Waiver Letter"), written on behalf of Aegis Capital Corp. ("Aegis") and constituting an application for a waiver of disqualification under Rule 506(d)(2)(ii) of Regulation D. In the Waiver Letter, you requested relief from any disqualification that will arise as to Aegis under Rule 506 of Regulation D resulting from the suspension of Aegis' chief executive officer and sole shareholder ("Aegis Principal") imposed by the Financial Industry Regulatory Authority's order accepting offer of settlement dated August 3, 2015 ("Order").

Based on the facts and representations in the Waiver Letter and assuming the Aegis Principal complies with the Order, the Division of Corporation Finance, acting for the Commission pursuant to delegated authority, has determined that Aegis has made a showing of good cause under Rule 506(d)(2)(ii) that it is not necessary under the circumstances to deny reliance on Rule 506 of Regulation D by reason of the suspension of the Aegis Principal. Accordingly, the relief requested in the Waiver Letter regarding any disqualification that may arise as to Aegis under Rule 506 of Regulation D by reason of the suspension of the Aegis Principal is granted on the condition that the Aegis Principal fully complies with the terms of the Order. Any different facts from those represented or failure to comply with the terms of the Order would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Very truly yours,

Elizabeth M. Murphy  
Associate Director  
Division of Corporation Finance



August 31, 2015

VIA E-MAIL AND REGULAR MAIL

**Linda S. Riefberg**

Direct Phone 212-883-2248

Direct Fax 646-461-2097

lriefberg@cozen.com

Sebastian Gomez Abero, Esq.  
Chief, Office of Small Business Policy  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

**Re: In the Matter of Aegis Capital Corp.**

Dear Mr. Gomez Abero:

This letter is submitted by Linda S. Riefberg of Cozen O'Connor and Michael H. Ference of Sichenzia Ross Friedman Ference LLP on behalf of our client Aegis Capital Corp. ("Aegis"). The Chief Executive Officer and sole shareholder (the "Aegis Principal") of Aegis<sup>1</sup> was recently the subject of a matter with FINRA wherein FINRA alleged that he failed to disclose certain tax liens on his Form U-4. Aegis hereby requests pursuant to Rule 506(d)(2)(ii) of Regulation D of the Commission promulgated under the Securities Act of 1933 (Securities Act") a waiver from applicable disqualifications that will result as a result of the settlement of the matter. This request for a waiver is predicated on the Aegis Principal's suspension in all capacities for fifteen business days that will result from his entering into an Offer of Settlement ("OOS"), which was approved by FINRA on August 3, 2015. This settlement will have material, adverse, collateral consequences to Aegis and its employees whose business focuses on private placement offerings under Rule 506 of Regulation D in that Aegis and these employees will not be able to conduct their core business during the period of the suspension without relief from the Commission.

Aegis regularly acts as (a) a "placement agent" for private placements of securities offered by third-party issuers ("Private Placements")<sup>2</sup>; and (b) "solicitor" pursuant to selling agreements for funds managed by third-parties (the "Funds"). Private Placements and Funds are offered and sold in reliance on the exemptions under Rule 506<sup>3</sup>. Aegis is a full service broker-dealer registered with the Commission.

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<sup>1</sup> In addition to holding the position of Chief Executive Officer, the Aegis Principal is also the Chairman, President and Chief Legal Officer of Aegis.

<sup>2</sup> Third-party issuers may offer a range of products such as, but not limited to, equity, debt and other securities.

<sup>3</sup> Many of the Funds and issuers of Private Placements that sell their securities through Aegis in Rule 506 offerings have placement agent, solicitor and promoter (i.e. selling) agreements with Aegis that are long-standing and were negotiated without taking into account the possible disqualification of Aegis under Rule 506.

The issuers of Private Placements and the Funds have entered in placement agent agreements and selling agreements, as appropriate to each product, with Aegis.

Aegis offers the Private Placements and Funds to its qualified high net worth and institutional customers.<sup>4</sup>

Aegis respectfully requests, pursuant to Rule 506(d)(2)(ii), waivers of any disqualifications from relying on exemptions under Rule 506 that are a consequence of the suspension. The Commission has the authority under Rule 506(d)(2)(ii) to waive the Rule 506 disqualification upon a showing of good cause that it is not necessary under the circumstances that an exemption be denied. We respectfully submit that Aegis has shown good cause, for the reasons provided below.

### **Background**

The OOS between FINRA and the Aegis Principal centers solely upon the isolated issue of his non-disclosure of tax liens<sup>5</sup> on his Form U-4.<sup>6</sup> This conduct is the subject of an OOS by FINRA that relates to a violation of Article V, Section 2 (c) of the FINRA By-Laws and FINRA Rules 1122 and 2010, which are civil, non-scienter-based rules. Notably, as part of the settlement with FINRA, the violation is for a non-willful failure to disclose the tax liens. In fact, the Aegis Principal denies knowing about the tax liens, has confirmed throughout the investigation that he was not aware of the existence of the tax liens, and confirmed that his accountants and attorneys handle his payment of taxes and real estate matters. There has been no evidence that establishes that the Aegis Principal had knowledge of the existence of any tax liens at any time prior to the commencement of the investigation. Further, by the time that the existence of the liens had been brought to his attention, the liens had already been satisfied. In the OOS, the Aegis Principal agreed to a censure, a suspension of 15 business days and a \$15,000 fine along with a single charge for the non-disclosure of the liens.

### **Discussion**

Aegis understands that the suspension resulting from the acceptance by FINRA of the Aegis Principal's OOS will disqualify it, affiliated entities and others from relying on certain exemptions under Rule 506 of Regulation D promulgated under the Securities Act. Specifically, under Rule 506(d)(1), a covered person includes:

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<sup>4</sup> The customers to whom Aegis offers the Private Placements and Funds are all accredited investors and the substantial majority are "qualified purchasers".

<sup>5</sup> The Offer relates to three liens. The first lien in the amount of \$111,751 was recorded by the Internal Revenue Service on or about January 22, 2009. It was satisfied and released February 2, 2011. The second lien (\$156,462) was recorded by the IRS on or about February 19, 2009. It was satisfied and released May 10, 2011. The third lien (\$372,568) was recorded by the IRS on or about February 3, 2010. It was satisfied and released on May 10, 2011.

<sup>6</sup> It is important to note that at the time the investigation commenced, none of the tax liens were outstanding, rather, all of the tax obligations had been satisfied in full. In fact, in one of the instances, the Aegis Principal received a tax refund resulting from an overpayment of his tax obligations.

any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with sales of securities in the offering (which we refer to as a "compensated solicitor"); and any director, executive officer, other officer participating in the offering, general partner, or managing member of any such compensated solicitor.

Thus, as Aegis acts as a compensated solicitor for such offerings, the Aegis Principal as the sole shareholder and Chief Executive Officer would in turn trigger the disqualification of the firm. The disqualifying event would be the SRO suspension, pursuant to 506(c)(1)(vi),

“for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade.”

See 17 CFR Parts 200, 230, and 239; Release No. 33-9414; File No. S7-21-11.

Aegis is concerned that, should it or any of its affiliated entities be deemed to be an issuer, predecessor of the issuer, affiliated issuer, general partner or managing member of the issuer, promoter, underwriter of securities, or in any other capacity described in the Securities Act, its affiliated issuers with which it is associated in one of those listed capacities and which rely upon or may rely upon these offering exemptions when issuing securities would be prohibited from doing so. The Commission has the authority to waive the exemption disqualifications upon a showing of good cause that such disqualifications are not necessary under the circumstances. *See* 17 C.F.R. § 230.506(d)(2)(ii).

Aegis requests that the Commission waive any disqualifying event arising from the suspension of the Aegis Principal and Aegis be permitted to engage in offerings under Rule 506 of Regulation D based on the following indications of good cause:

1. *The Misconduct Was Non-Scienter Based.*

The Aegis Principal's suspension relates to a violation of Article V, Section 2 (c) of the FINRA By-Laws and FINRA Rules 1122 and 2010, which are civil, non-scienter-based Rules. There are no criminal allegations or conviction involved in the violation.

2. *The Misconduct Did Not Involve the Offer and Sale of Securities, the Misconduct was Isolated to the Aegis Principal.*

The conduct as addressed in the OOS involves violations relating to the Aegis Principal's non-disclosure of tax liens on his Form U-4, and does not in any way pertain to activities undertaken by either the Aegis Principal or by Aegis, its affiliates, or its subsidiaries in connection with offerings by Aegis under Regulation D.

The Aegis Principal intends to fully comply with the terms of the OOS and will not conduct a securities business during the suspension period.

3. *Remedial Steps Were, and Continue to Be, Undertaken.*

Aegis has taken remedial steps to ensure that the non-disclosure of such events does not reoccur including ensuring that the Aegis Principal's disclosures on his Form U-4 are accurate and up to date. To that end, since 2011, Aegis' Compliance Department has followed a procedure whereby the Chief Compliance Officer meets specifically with the Aegis Principal annually to ensure that his U-4 disclosures are accurate and complete. This enhanced procedure is in addition to the other measures employed by the Aegis Compliance Department to ensure all registered persons disclosure documents are up to date and accurate, including, but not limited to, annual attestations and annual compliance meetings addressing the importance of timely and accurate disclosure by all registered persons.

Aegis has also incorporated a module on Form U-4 disclosure compliance into its annual compliance meeting and created and circulated a firm-wide Judgment/Lien Alert notification to update its entire staff about changes effected by FINRA with respect to reporting judgements and liens on Form U-4.

4. *Material and Disproportionate Impact of Waiver Denial on Aegis, its Affiliates, Issuers of Private Placements, and Most Importantly, their Customers/Clients.*

Disqualification of Aegis pursuant to Rule 506(d) for any period of time would have a material negative effect on its public customers, Issuers who have retained or in the future may retain Aegis in connection with transactions that rely upon exemptions under Rule 506, as well as Aegis' hundreds of employees and Aegis itself.

Aegis is an independently owned broker-dealer owned 100% by the Aegis Principal. The non-willful non-disclosure of tax liens by the Aegis Principal on his Form U-4 was an individual action and not related to the firm operations, the sale of securities or to the compliance functions of the firm. It would be a hardship to Aegis, its over 450 employees and its public customers if it were disqualified from engaging in private offerings for fifteen business days due to one individual's non-disclosure. Such an adverse impact on third parties is an unintended consequence of one individual's discipline and is disproportionate to the discrete fact relating to that individual's non-disclosure.

According to *PrivateRaise*, since January 2013 to date, Aegis has completed no less than 38<sup>7</sup> separate closings for Regulation D private placement transactions, where Aegis and its affiliates raised gross proceeds in excess of \$500,000,000 and generated fees for Aegis and its affiliates in excess of \$40,000,000. Currently, Aegis and its affiliates are actively involved with 12 Regulation D, Rule 506 private offerings where Aegis and its affiliates would be raising

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<sup>7</sup> *PrivateRaise* is an industry publication which tracks and reports data relating to, among other things, private offerings, that lists all of the transactions, in excess of \$1,000,000 in gross proceeds. In addition to the 38 transactions reported by *Private Raise*, Aegis has completed 8 other Regulation D private placement transactions during the same period for a total of 46 transactions. The gross proceeds of the 8 other Regulation D private placement transaction was approximately \$15,100,000 and generated fees to Aegis and its affiliates of approximately \$1,100,000.

approximately \$120,000,000 in gross proceeds with anticipated fees to Aegis in the amount of \$10,100,000.

Aegis is currently actively engaged in marketing a Rule 506 private offering for an Issuer wherein Aegis has been retained to raise up to \$25,000,000 (the offering could be increased in size up to \$40,000,000 if the over-allotment option is exercised), of which approximately \$2,000,000 in subscriptions from investors have already been received and are currently being held in an escrow account. The denial of a waiver would immediately cause Aegis to cease its efforts in connection with this offering, would jeopardize the offering itself and would prevent Aegis from undertaking or engaging in any similar offerings that are time sensitive and that may be presented during the period of disqualification. Aegis' private equity banking department<sup>8</sup> is currently comprised of 24 individuals whose compensation is commission based, who do not receive any base salary, and who generate a material portion of Aegis' overall revenues.<sup>9</sup> If the waiver is denied, this department and these individuals would not be able to generate any income for themselves during the relevant period. Further, if the offering was to be terminated and never close, these individuals would never be compensated for their efforts on this offering. Moreover, the other registered persons at Aegis who offer private placements as an alternative investment to their customers would also be immediately and materially negatively impacted by the denial of a waiver.

a. *Impact on Aegis' Customers*

Aegis has been in business for over 30 years and currently has over 450 employees in 24 offices. Aegis is a full service broker-dealer with retail and institutional clients, and engages, as a material part of its business, in investment banking, private placements and advisory services. Aegis' customers include public customers, hedge funds, mutual funds and institutional clients and Aegis offers access to private placements to a substantial majority of them.

Aegis' ability to engage in transactions that rely on exemptions under Rule 506 benefit its eligible high net worth customers and institutional clients by offering a wide array of investment options beyond traditional stock and mutual fund investments. The composition of Aegis' customer base and their investment objectives are driving forces behind Aegis' pursuit of opportunities to act as a placement agent in Private Placements. In so doing, Aegis is constantly seeking opportunities that match the investment preferences and needs of its customer base. A denial of a waiver would materially negatively impact Aegis' ability to provide access to the investment opportunities sought by its customers. As described herein below, if Aegis were to be prohibited from participating in private placements during the period of disqualification the customers and clients of Aegis would be substantially negatively impacted by losing access to investment options represented by private placements.

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<sup>8</sup> Aegis also engages in material Investment Banking, Debt Capital Markets, Private Equity Banking and Wealth Management operations which would all be materially negatively impacted by the denial of a waiver.

<sup>9</sup> In 2014, revenues generated directly or indirectly by the affected individuals and/or departments represented between 20-25% of the firm's overall revenue. The revenue generated from the current transaction, if the maximum amount is raised, would represent as much as 40% of the monthly revenue during the month the transaction closed and between 2-3% of the firm's annual revenue.

b. *Impact on Aegis' Employees, Affiliates and Aegis itself*

If Aegis were to be prohibited from participating in private placements because of disqualification not only would the customers and clients of Aegis be negatively impacted by losing access to investment options represented by private placements, but also, many Aegis customers might respond by transferring their accounts to broker-dealers that are able to offer the securities issued in reliance upon Rule 506. If Aegis were to lose even a small portion of these accounts, that would impact the financial resources of Aegis and the scope of the services it offers. Additionally, Aegis' ability to retain and recruit personnel in its banking operations would be materially negatively impacted since personnel could decide to move to third party broker-dealers in order to ensure that their clients continue to have access to investments that are offered in reliance on the Rule 506 safe harbor, which, in turn would also negatively impact its customers and clients. While the disqualification is for 15 days, the possibility of these actions occurring is real and would cause substantial harm to Aegis and its employees if this were to occur.

c. *Impact on Issuers of Private Placements*

Aegis regularly acts as a placement agent for Private Placements of securities offered by third-party issuers and as a solicitor or promoter pursuant to selling agreements for Funds

Aegis currently has approximately 12 engagements for new private placement transactions that would rely on the exemptions under Rule 506(b) and regularly seeks to identify new private placements that it can offer to its customers. If the Commission does not grant the requested waiver to Aegis, then if Aegis enters into any proposed and future engagements with private placement issuers, the issuers of private placements will themselves be disqualified from relying on Rule 506 and therefore would be unable to offer interests in reliance on Rule 506 at all. This restriction would materially adversely impact the number of third parties that would engage Aegis to assist with the private placement process. Again, while the disqualification is for 15 days, the possibility of these actions occurring is real and would cause substantial harm to Aegis and its employees if this were to occur.

5. *Disclosure of Written Description of Offer to Investors*

For the period that the disqualifying limitation is in effect after the date of the Order, if Aegis receives the requested waiver they will furnish (or cause to be furnished) to each purchaser in a Rule 506 offering that would otherwise be subject to disqualification under Rule 506(d)(1) as a result of the Order, a description in writing of the Order a reasonable time prior to the sale.

**Conclusion**

Based on the elements of good cause shown as well as the material adverse impact that a disqualification would necessarily have on Aegis' business, employees and public customers, and the isolated nature of the Aegis Principal's infraction, we respectfully request that Aegis be given a waiver of such disqualification under Regulation D based on the suspension of the Aegis Principal.

Sincerely,

COZEN O'CONNOR



By: Linda S. Riefberg

SICHENZIA ROSS FRIEDMAN FERENCÉ LLP



By: Michael H. Ference

LSR:sfc