

UNITED STATES OF AMERICA
Before
the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11086 / July 28, 2022

SECURITIES EXCHANGE ACT OF 1934
Release No. 95390 / July 28, 2022

INVESTMENT ADVISERS ACT OF 1940
Release No. 6076 / July 28, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20940

In the Matter of

AEGIS CAPITAL CORP.,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933 AND SECTIONS
15(b) AND 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, AND SECTION
203(e) OF THE INVESTMENT ADVISERS
ACT OF 1940, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS AND
A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (the “Commission” or “SEC”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Section 203(e) of the Investment Advisers Act of 1940 (“Advisers Act”) against Aegis Capital Corp. (“Aegis” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”), which the Commission has determined to accept. Solely for the purposes of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b) and 21C of the Securities Exchange Act of 1934, and Section 203(e) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and the Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of unsuitable recommendations of highly-complex variable interest rate structured products (“VRSPs”) by certain Aegis Registered Representatives (“Aegis RRs”) to forty-eight-retail customers (“Customers”). It also relates to Aegis’s supervisory failures relating to unauthorized trading and material misstatements and omissions made by Aegis RRs concerning the VRSPs.
2. Eleven Aegis RRs in Aegis’s Melville, New York branch office (“Melville Branch”) and three Aegis RRs in Aegis’s Boca Raton, Florida branch office (“Boca Branch”) recommended VRSPs to forty-eight Customers for whom the investments were unsuitable in light of each Customer’s investor profile and account information.
3. An Aegis RR in the Boca Branch (“Aegis RR1”), who also was a Managing Director, made at least 1,000 unauthorized trades in seven Customers’ non-discretionary brokerage accounts between September 2015 and May 2019. Aegis RR1 and another Aegis RR in the Boca Branch (“Aegis RR2”) made material misstatements and omissions about the VRSPs to Customers, falsely stating, in substance, that the Customers were guaranteed to receive their full invested principal at maturity from investing in VRSPs that, in fact, did not guarantee principal protection.
4. From January 2015 through May 2019, Aegis failed reasonably to implement its: (1) Written Supervisory Procedures (“WSPs”); (2) structured products procedures, including the training requirements for structured products; and (3) policies and procedures concerning unauthorized trading, all with a view to preventing and detecting Aegis RRs’s violations of Sections 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.
5. In addition, from January 2015 through May 2019, Aegis also failed to create certain required records relating to customer accounts. In particular, Aegis failed to make and keep current a record, as required by Rule 17a-3(a)(17)(i)(B)(1) under the Exchange Act, indicating that it furnished to each customer, at intervals no greater than thirty-six months, a copy of the account record or an alternate document with all information required by Rule 17a-3(a)(17)(i)(A) under the Exchange Act, including, among other things, the customer’s annual income and net worth, and the account’s investment objectives.
6. Further, Aegis failed to make and keep current a record indicating that, for each change in a customer’s account investment objectives, Aegis furnished the customer with a copy of the updated account record or alternative document containing the information required by Rule 17a-3(a)(17)(i)(B)(1) on or before the thirtieth day after receiving notice of a change, as required by Rule 17a-3(a)(17)(i)(B)(3).

¹ The findings herein are made pursuant to Respondent’s Offer and are not binding on any other person or entity in this proceeding or any other proceedings.

Respondent

7. Aegis, a New York corporation with its principal office in New York, New York, has been registered with the Commission as a broker-dealer since 1984 and as an investment adviser since 2010. Aegis acts as an introducing broker to retail and institutional customers through twenty-three branch offices located across the United States.² During the relevant period, Aegis at times employed more than 400 registered representatives.

Variable Interest Rate Structured Products

8. The VRSPs are complex, structured securities, typically issued by large well-known financial institutions, that offer guaranteed periodic fixed-interest rate payments, typically for one to three years. After the fixed-interest rate periods end, however, the VRSPs make periodic variable-interest rate payments, but only if a spread exists in which the long-term Constant Maturity Swap (“CMS”) rate is greater than the short-term CMS rate and certain reference securities indexes, such as the S&P 500 and/or the Russell 2000 stock indexes, do not decline by more than a specified percentage. Consequently, once the fixed-interest rate payment periods end, the Customers are not guaranteed to receive any further interest payments from the VRSPs. The prospectuses for several of the VRSPs at issue expressly disclosed the risk of non-payment of interest, stating, for example, that, “there can be no assurance that [investors] will receive a contingent interest payment on any interest payment date” and that “the securities are not a suitable investment for investors who require regular fixed income payments, since the contingent interest payments are variable and may be zero.”

9. All of the VRSPs are “principal-at-risk” securities, which means that the Customers can lose some or all of their invested principal if the VRSPs’ respective reference securities indexes fail to perform within pre-determined ranges at maturity. For example, preliminary prospectuses for VRSPs sold to the Customers expressly warned that: “There is no minimum payment at maturity on the securities. Accordingly, investors may lose up to their entire initial investment in the securities.”

10. Furthermore, the VRSPs typically have maturity periods of fifteen years or more and are not certain to trade in a liquid secondary market. For example, a preliminary prospectus for a VRSP offered by Aegis specifically warns, “The securities will not be listed on any securities exchange. Therefore, there may be little or no secondary market for the securities.... Even if there is a secondary market, it may not provide enough liquidity to allow you to trade or sell the securities easily.... Accordingly, you should be willing to hold your securities to maturity.”

Aegis RRs Made Unsuitable Recommendations of VRSPs

11. Prior to recommending a security to a customer, a broker-dealer must satisfy its customer-specific suitability obligations by making a determination that a particular investment is suitable for the customer in light of the customer’s investment profile, as determined by the customer’s financial situation and needs, which include, among other things, age, liquidity needs, investment objectives, investment time horizon and risk tolerance. *See F.J. Kaufman and Co. of Virginia and Frederick J. Kaufman, Jr.*, Exch. Act Rel. No. 27535, at *3, 50 S.E.C. 164 (Dec. 13, 1989) (Comm. Op., sustaining NASD findings) (suitability obligation “requires a broker-dealer to make a customer-specific determination of suitability and to tailor his recommendations to the customer’s financial profile and investment objectives”).

² At all times relevant to this matter, Aegis had over 40,000 retail customers. The conduct at issue in this matter did not affect institutional customers.

12. Broker-dealers and their associated persons who make unsuitable recommendations violate Sections 17(a)(2) and 17(a)(3) of the Securities Act.³ *See, e.g., Integral Financial, LLC and Weiming “Frank” Ho*, Exch. Act Rel. No. 92537 (July 30, 2021) (settled order finding that a broker and its principal, through the firm’s registered representatives’ recommendations of VRSPs in violation of the customer-specific suitability requirements, failed reasonably to supervise and violated Sections 17(a)(2) and 17(a)(3) of the Securities Act); *Herbert J. Sims and Co., Inc.*, Exch. Act Rel. No. 92538 (July 30, 2021) (settled order finding that the broker-dealer failed reasonably to supervise its registered representatives and violated Sections 17(a)(2) and 17(a)(3) of the Securities Act as a result of its registered representatives’ recommendations of VRSPs in violation of the customer-specific suitability requirements).

13. From January 2015 through May 2019, fourteen Aegis RRs recommended VRSPs to forty-eight Customers for whom the securities were unsuitable based on each Customer’s financial situation and needs, as reflected by their risk tolerance, investment objectives, age, investment experience, liquidity needs, and investment time horizons. In July 2017, Aegis established procedures expressly prohibiting the sale of structured products, such as VRSPs, to customers who did not have “High” or “Maximum” risk tolerances and an investment objective of “Aggressive Growth / Aggressive Income” or “Speculation”. None of these Customers had the requisite risk tolerances. The Customers, variously, had minimum, low, or moderate risk tolerances, along with investment objectives of preservation of principal/income, balanced growth, growth, or aggressive growth/aggressive income; moderate or higher liquidity needs; and investment time horizons of less than fifteen years. They also sought periodic interest payments from their investments and to recover their entire invested principal at maturity. As discussed above, the VRSPs are structured securities with long-term maturity periods, which do not guarantee periodic interest payments following the fixed-interest rate period, do not guarantee return of principal at maturity, and provide no assurance of liquidity.

14. The information concerning the VRSPs, as well as the Customers’ investor profile information, were available for the Aegis RRs to use in determining whether the VRSPs were suitable investments for the Customers. Accordingly, the Aegis RRs knew, were reckless in not knowing, or should have known that in light of the Customers’ respective financial situations and needs, investor profiles, and risk tolerances, the VRSPs were unsuitable for the Customers at the time that the Aegis RRs, including Aegis RR1 and Aegis RR2, recommended the investments.

Aegis’s Policies and Procedures

15. From January 2015 through February 2018, Aegis assigned responsibility for implementing Aegis’s policies and procedures in the Melville Branch, including the firm’s WSPs and structured products procedures, to, among others in Melville, the Branch Manager in the Melville Branch (“Supervisor 1”). During this period, Supervisor 1 was also the designated supervisor in the Melville Branch responsible for conducting daily trade order reviews under the WSPs.

³ A violation of Sections 17(a)(2) and 17(a)(3) of the Securities Act does not require scienter and may rest on a finding of negligence. *See Aaron v. SEC*, 446 U.S. 680, 701–02 (1980); *see also SEC v. Wey*, 246 F. Supp. 3d 894, 912 (S.D.N.Y. 2017) (“Unlike claims brought under Section 10(b), Rule 10b–5, and Section 17(a)(1), the SEC need only allege that a defendant acted with negligence in order to plead violations of Sections 17(a)(2) and 17(a)(3).”).

16. From June 2016 through May 2019, Aegis assigned responsibility for implementing Aegis's policies and procedures in the Boca Branch, including the firm's WSPs and structured products procedures, to the Branch Manager in the Boca Branch ("Supervisor 2"). During this period, Supervisor 2 was also the designated supervisor in the Boca Branch responsible for conducting daily trade order reviews under the WSPs.

17. Aegis's WSPs required Aegis RRs to comply with the customer-specific suitability requirements set forth in FINRA Rule 2111. FINRA Rule 2111 states that, when making a customer-specific suitability determination, a broker-dealer must consider factors such as age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information provided by the customer. The WSPs also required that Aegis RRs have reasonable and adequate bases for their securities' recommendations. Aegis designated supervisors in each of its branch offices to conduct daily reviews of trade orders to monitor for Aegis RRs's compliance with these suitability requirements and to conduct additional suitability analyses as needed.

18. The WSPs additionally emphasized that structured products, including VRSPs, "warrant particular care in how they are scrutinized and sold to customers" and that the complexity of the products "imposes additional obligations....to supervise their sale."

19. In February 2016, Aegis established structured products procedures solely in the Melville Branch. These procedures, which were communicated to the Melville Branch supervisors and registered representatives by an email marked "High" importance, required Aegis RRs in the Melville Branch to take structured products training and review and complete a Structured Products Disclosure Form ("Disclosure Forms") prior to recommending VRSPs to customers. The Disclosure Forms required Aegis RRs to attest that they had "a reasonable basis to believe that the transaction is suitable for said client," and acknowledge that: "(1) the client has been informed, in general terms, of various features of Structured Products, such as the liquidity features (and potential illiquidity); potential surrender fees; investor suitability standards; and market risk; (2) the client has been provided with the appropriate prospectus of the company relating to the shares being purchased; and (3) each particular Structured Product, as a whole, is suitable for this client based on the information obtained from the client including liquidity needs, liquid net worth, net worth, risk tolerance, objectives, tax status, and other reasonable information." Supervisors were required to confirm that they reviewed the Disclosure Forms as part of their suitability reviews for structured products orders in the Melville Branch by signing each form.

20. The information required to be included in the Disclosure Forms was a compliance procedure for registered representatives to confirm that they had made suitability determinations prior to recommending a structured product to a customer and for designated supervisors to assess whether Aegis RRs had undertaken the requisite suitability determinations.

21. Subsequently, in December 2016, Aegis added new requirements to the structured products procedures that it had established in the Melville Branch in February 2016. The December 2016 structured products procedures, which also were communicated to the Melville Branch supervisors and registered representatives by an email marked "High" importance, prohibited Aegis RRs from selling structured products to customers who did not have a minimum investment objective of Aggressive Growth/Aggressive Income and a minimum risk tolerance of High Risk or Maximum Risk. The establishment of the minimum investment objective and risk tolerance requirements were compliance procedures intended to ensure that structured products, such as the VRSPs, were recommended only to customers for whom they were suitable. The policies also made it easier for supervisors to evaluate, as a threshold matter, whether a transaction

was unsuitable pursuant to Aegis's policies and procedures or whether an additional suitability determination needed to be made by the Aegis RR.

22. The December 2016 structured products procedures additionally required Melville Branch Aegis RRs and supervisors to sign Structured Products Attestations ("Attestations") prior to recommending structured products. The Attestations, which were substantively identical to the Disclosure Forms, required Aegis RRs in the Melville Branch to attest, "that the transaction is suitable for each client," and acknowledge that: "(1) the client has been informed, in general terms, of various features of Structured Products, such as the liquidity features (and potential illiquidity); potential surrender fees; investor suitability standards; and market risk; (2) the client has been provided with the appropriate prospectus of the company relating to the shares being purchased; and (3) each particular Structured Product, as a whole, is suitable for this client based on the information obtained from the client including liquidity needs, liquid net worth, net worth, risk tolerance, objectives, tax status, and other reasonable information." Designated supervisors in the Melville Branch were required to sign the Attestations to confirm their review of the representations made in the Attestation.

23. In July 2017, Aegis established firm-wide structured products procedures that also applied to the Boca Branch. As with the prior promulgations for the Melville Branch, these procedures were communicated to all Aegis RRs and supervisors via a "High" importance email. These firm-wide structured products procedures mirrored the structured products procedures that previously had been established solely for the Melville Branch, and included mandatory structured products training for Aegis RRs that, among other things, specifically cautioned, "Don't guarantee anything. Markets might not cooperate."

24. The firm-wide structured products procedures further required supervisors to review "on a case by case basis for suitability" recommendations of structured products made to customers seventy years of age and older. The age-focused suitability review requirement was a compliance procedure by which Aegis's designated supervisors could determine whether Aegis RRs were complying with the customer-specific suitability requirements for sales of structured products to senior investors.

25. Aegis's WSPs in effect during the relevant time specifically prohibited unauthorized trading by Aegis RRs, stating:

No employee may enter a transaction before contacting the owner of the account ... unless the employee has specific written authorization to act on the customer's behalf. Engaging in unauthorized transactions subjects the employee to regulatory and Firm discipline which may include fines and/or termination depending on the seriousness of the violations.

26. In July 2017, Aegis established a firm-wide requirement that certain frequently-traded, non-discretionary customer accounts have on file "Active Trading Letters" signed by Aegis RRs, designated supervisors, and customers. Designated supervisors, including Supervisor 2, were required to send an Active Trading Letter to each affected customer to confirm they were aware of and authorized the activity in their accounts. The Active Trading Letters stated, in relevant part, that customers "have full control" over their accounts and that customers are "aware of all activity in [their] account including, but not limited to, commission/markup or markdown/fees, transactions, holdings, balance and margin debit, if applicable." Aegis also required its designated supervisors to send the Active Trading Letters to monitor whether Aegis RRs had obtained required authorizations prior to executing trades in certain customers' non-discretionary accounts.

Aegis Failed to Develop Reasonable Systems to Implement its Policies and Procedures

27. Section 15(b)(4)(E) of the Exchange Act provides that the Commission may sanction a registered broker-dealer for failing reasonably to supervise, with a view to preventing and detecting violations of the federal securities laws, another person subject to its supervision who commits such a violation.

28. Aegis failed to develop reasonable systems to implement its policies and procedures in the Melville Branch and Boca Branch with a view to preventing and detecting Aegis RRs's violations of the customer-specific suitability requirements for recommendations of VRSPs, unauthorized trading, and misstatements and omissions about the VRSPs.

29. Aegis failed to develop reasonable systems to implement its policies and procedures and to monitor whether Supervisor 1 and Supervisor 2 reasonably conducted reviews of trade orders for suitability and reasonably reviewed recommendations of VRSPs to twenty-three Customers who were seventy years of age and over, on a case-by-case basis. Supervisor 1 and Supervisor 2 failed to reasonably review, consistent with Aegis's policies and procedures, trade orders or the related recommendations for suitability purposes. As a result of Aegis's failure to develop reasonable systems to implement these policies and procedures, Aegis failed to prevent and detect the Aegis RRs's unsuitable recommendations to those Customers, including unsuitable recommendations by Aegis RR1 and Aegis RR2.

30. Aegis further failed to develop reasonable systems to implement its structured products procedures that were in effect in the Melville Branch, beginning in February 2016, and in the Boca Branch, beginning in July 2017. Supervisor 1, who was one of the designated supervisors in the Melville Branch, and Supervisor 2 as well as the Aegis RRs, including Aegis RR1 and Aegis RR2, failed to follow the procedures for Disclosure Forms and Attestations and to adhere to the requirement that structured products could only be sold to Customers with a minimum investment objective of Aggressive Growth/Aggressive Income and minimum risk tolerances of High Risk or Maximum Risk. Supervisor 1 and Supervisor 2 also failed to confirm whether the Aegis RRs under their respective supervision had completed the Disclosure Forms and Attestations and failed to review the Customers' investment objectives and risk tolerances relating to VRSP orders. Here, the Customers did not have the requisite investment objectives and/or risk tolerances. If Aegis had developed reasonable systems to implement its structured products procedures, Aegis would have prevented and detected the Aegis RRs's unsuitable recommendations, including unsuitable recommendations made by Aegis RR1 and Aegis RR2.

31. Aegis failed to develop reasonable systems to implement its policies and procedures prohibiting unauthorized trading. As discussed above, Aegis's WSPs prohibited Aegis RRs from engaging in unauthorized transactions in non-discretionary customer accounts. Beginning in July 2017, Aegis required its designated supervisors, including Supervisor 2, to send Active Trading Letters to certain customers with actively traded accounts. That letter would assist in confirming that the customers had "full control" over their accounts and had authorized each transaction in their accounts.

32. Aegis RR1 did not sign any Active Trading Letters, did not have customers sign such letters, and did not obtain written trading authorization from seven Customers. Supervisor 2 failed to confirm whether any Active Trading Letters had been sent by Aegis RR1. If Aegis had developed reasonable systems to implement its policies and procedures concerning unauthorized trading, and monitored whether Supervisor 2 was complying with its policies and procedures, Aegis would have prevented and detected Aegis RR1's unauthorized trading.

33. Aegis also failed to develop reasonable systems to implement its structured products

training requirements. As a result, Supervisor 2 failed to confirm whether Aegis RRs in the Boca Branch, including Aegis RR1 and Aegis RR2, had taken the structured products training, which would have trained them on the characteristics and risks of structured products and the suitability considerations and requirements concerning such investments. Aegis RR1 and Aegis RR2 both failed to take the requisite training and made misstatements and omissions to Customers, assuring them, in substance, that they were guaranteed to receive their full invested principal at maturity from investing in the VRSPs. In fact, as explained in Aegis's structured products training, the VRSPs were not principal protected and, because Customers were at risk of losing some or all of their invested principal at maturity, brokers selling these securities should not make any guarantees about future performance.

34. Aegis failed to develop reasonable systems to implement its training requirements and, as a result, it failed to prevent and detect the Aegis RRs's unsuitable recommendations and Aegis RR1's and Aegis RR2's misstatements and omissions about the VRSPs.

Aegis Failed to Make and Keep Current Required Broker-Dealer Records

35. Rule 17a-3(a)(17)(i)(B)(1), promulgated under Section 17(a)(1) of the Exchange Act, requires that, for each account with a natural person as a customer or owner, a broker-dealer must make and keep current a record indicating that it has furnished to each customer or owner, within thirty days of the opening of the account and thereafter at intervals no greater than thirty-six months, a copy of the account record or an alternate document with all information required by Rule 17a-3(a)(17)(i)(A), including the customer's annual income, net worth, and investment objectives. Rule 17a-3(a)(17)(i)(B)(3), promulgated under Section 17(a)(1) of the Exchange Act, requires that, for each account with a natural person as customer or owner, a broker-dealer must make and keep current a record indicating that for "each change in the [customer] account's investment objectives [the broker-dealer] has furnished to each customer or owner a copy of the updated customer account record or alternative document with all information required to be furnished by paragraph (a)(17)(i)(B)(1) . . . on or before the 30th day after the date the [broker-dealer] received notice of any change"

36. The Commission has described the records required to be kept under Exchange Act Rule 17a-3 as "the basic source documents" of a broker-dealer and has emphasized that the rule serves as "a keystone of the surveillance of brokers and dealers by our staff and by the securities industry's self-regulatory bodies." *See Statement Regarding the Maintenance of Current Books and Records by Brokers and Dealers*, Exch. Act Rel. No. 10756 (April 6, 1974); *see also Edward J. Mawod & Co.*, 46 S.E.C. 865, 873 n.39 (1977), *aff'd*, 591 F.2d 588 (10th Cir. 1979).

37. Aegis WSPs required new customers to submit account opening applications, which provided the firm with, among other things, information concerning customers' investment profiles, including their age, risk tolerance, investment objectives, net worth, annual income, investment time horizons, and investment experience. The WSPs also required the Aegis RRs to obtain updated customer investment profile information when making recommendations.

38. From January 2015 through May 2019, Aegis failed to make and keep current a record indicating that it had furnished to customers copies of their account records or alternate documents with the required information at intervals no greater than thirty-six months as required pursuant to Rule 17a-3(a)(17)(i)(B)(1).

39. Also during this period, Aegis failed to make and keep current a record indicating that, for each change in a customer account's investment objectives, Aegis had furnished to each customer a copy of the updated customer account record or alternative document with the required information on or before the 30th day after Aegis received notice of any change as required pursuant to Rule 17a-3(a)(17)(i)(B)(3).

Violations and Supervisory Failures

40. As a result of the foregoing, Aegis willfully violated Sections 17(a)(2) and 17(a)(3) of the Securities Act and Exchange Act Section 17(a)(1) and Rules 17a-3(a)(17)(i)(B)(1) and 17a-3(a)(17)(i)(B)(3) promulgated thereunder.⁴

41. Also as a result of the foregoing, Aegis failed reasonably to supervise Aegis RRs with a view to preventing and detecting their violations of Sections 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

Disgorgement

42. The disgorgement and prejudgment interest ordered in paragraph V.C. is consistent with equitable principles and does not exceed Respondent's net profits from its violations and will be distributed to harmed investors, if feasible. The Commission will hold funds paid pursuant to paragraph V.C. in an account at the United States Treasury pending a decision whether the Commission in its discretion will seek to distribute funds. If a distribution is determined feasible and the Commission makes a distribution, upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Exchange Act.

IV.

Aegis's Remedial Actions

43. During the Commission staff's investigation in this matter, Aegis voluntarily retained a compliance consultant in January 2021 to review and rewrite its written supervisory procedures in all respects, including with regard to suitability determinations, unauthorized trading, supervision, record retention, and sales of structured products. The revised WSPs expressly prohibit the firm and its associated persons from purchasing VRSPs for retail customer accounts.⁵ Aegis also implemented a new trade order review system with a view to preventing and

⁴ "Willfully," for purposes of imposing relief under Sections 15(b) of the Exchange Act and 203(e) of the Advisers Act, "means no more than that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

⁵ VRSPs are structured products that exhibit each of the following risks and characteristics:

detecting, among other things, the kinds of trading misconduct described in this Order. The compliance consultant's engagement further provides for annual reviews for three years following Aegis's implementation of the revised WSPs, to assess whether the procedures are functioning as expected, with written reports to Aegis's senior management containing any recommendations made by the compliance consultant after each annual review.

44. Aegis no longer employs certain of the individuals whose conduct gave rise to the violations charged in this matter, including Aegis RR1, Aegis RR2, and Supervisor 2, has closed its Boca Branch where most of the conduct at issue herein took place, and replaced supervisors in its Melville Branch, where the remaining misconduct occurred.

45. Aegis has provided the Commission with a sworn certification by its Chief Executive Officer ("CEO") attesting that the remedial measures described above, with the exception of the compliance consultant's three annual reviews, have been fully implemented.

46. In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent and the CEO's sworn certification.

V.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Aegis's Offer.

Accordingly, pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, and Section 203(e) of the Advisers Act it is hereby ORDERED that:

A. Aegis shall cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act and Section 17(a)(1) of the Exchange Act and Rules 17a-3(a)(17)(i)(B)(1) and 17a-3(a)(17)(i)(B)(3) promulgated thereunder;

B. Aegis is censured; and

C. Aegis shall within ten (10) days of the entry of this Order, pay disgorgement of \$165,828 plus prejudgment interest of \$55,037 and a civil money penalty in the amount of \$2,300,000 to the SEC. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, transfer them to the general fund of the United States Treasury,

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- maturity periods of ten (10) years or more;
 - a fixed-interest rate period of five (5) years or less, followed by a variable-interest rate with a capped, floating coupon payment contingent on the differences, if any, between shorter term (e.g., two (2) years) and longer-term (e.g., thirty (30) years) Constant Maturity Swap rates and the closing value of one or more underlying reference securities indexes such as the S&P 500 and/or the Russell 2000, with the risk of zero percent (0%) periodic coupon payments; and
 - the return of invested principal at maturity is contingent on whether the value of one or more underlying reference securities indexes meets or exceeds predetermined barrier levels, established by the issuer, at the security's maturity date, with the risk of loss of some or all of invested principal at maturity for the holder of the security; and an inability for the beneficial owner of the security to participate in any appreciation in the value of the underlying reference securities indexes.

subject to Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the "Securities and Exchange Commission (for transfer to the general fund of United States Treasury in accordance with Exchange Act Section 21F(g)(3))" and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch HQ
Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169.

Payment made by check or money order must be accompanied by a cover letter identifying Aegis Capital Corp. as Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Yuri B. Zelinsky, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549-5041.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within thirty (30) days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same findings in this Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary