



DIVISION OF  
CORPORATION FINANCE

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

March 28, 2018

Michael H. Ference, Esq.  
Sichenzia Ross Ference Kesner LLP  
1185 Avenue of the Americas, 37<sup>th</sup> Floor  
New York, NY 10036

**Re: In the Matter of Aegis Capital Corporation  
Waiver of Disqualification under Rule 506(d)(2)(ii) of Regulation D  
Exchange Act Release No. 82956, March 28, 2018  
Administrative Proceeding File No. 3-18412**

Dear Mr. Ference:

This letter responds to your letter dated March 19, 2018 (“Waiver Letter”), written on behalf of Aegis Capital Corporation (“Aegis”), and constituting an application for a waiver of disqualification under Rule 506(d)(2)(ii) of Regulation D under the Securities Act of 1933. In the Waiver Letter, you requested relief from any disqualification that arises by virtue of the Commission’s order entered March 28, 2018, in the Matter of Aegis Capital Corporation, pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Section 203(e) of the Investment Advisers Act of 1940, Release No. 82956 (the “Order”).

Based on the facts and representations in the Waiver Letter and assuming Aegis complies with the Order, we have determined that Aegis has made a showing of good cause under Rule 506(d)(2)(ii) of Regulation D that it is not necessary under the circumstances to deny reliance on Rule 506 of Regulation D by reason of the entry of the Order. Accordingly, the relief requested in the Waiver Letter regarding any disqualification that would arise as to Aegis under Rule 506 of Regulation D by reason of the entry of the Order is granted on the condition that Aegis 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.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Sincerely,

/s/

Elizabeth M. Murphy  
Associate Director  
Division of Corporation Finance

March 19, 2018

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

Re: In the Matter of Aegis Capital Corp.

Dear Mr. Gomez Abero:

We submit this letter on behalf of our client, Aegis Capital Corp. (“Aegis” or the “Firm”), in connection with the settlement of the above-referenced matter with the Securities and Exchange Commission (“SEC” or “Commission”) against the Firm. The settlement will result in an Order Making Findings and Imposing Remedial Sanctions (the “Order”) against the Firm.<sup>1</sup> The Firm hereby requests, pursuant to Rule 506(d)(2)(ii) of Regulation D promulgated under the Securities Act of 1933 (the “Securities Act”), a waiver of any disqualifications from relying on the exemption under Rule 506 of Regulation D that will be applicable as a result of the entry of the Order against the Firm. This settlement will have material, adverse and collateral consequences to the Firm and its employees whose business focuses on private placement offerings under Rule 506 of Regulation D in that the Firm and these employees will not be able to conduct their core business during the period of the that the Independent Consultant is performing its review and recertification without relief from the Commission.

The Firm respectfully requests, pursuant to Rule 506(d)(2)(ii), a waiver of any disqualifications from relying on exemptions under Rule 506 that are a consequence of the entry of an Order requiring the Firm to engage an independent compliance consultant to comply with the undertaking contained within the Order. 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 the Firm has shown good cause for the reasons provided below.

## BACKGROUND

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<sup>1</sup> The Order will also include the suspension of two of the Firm’s former Anti-Money Laundering Compliance Officers (the “AMLCOs”) whom the Commission found became aware of transactions that exhibited numerous AML red flags through alerts from the Firm’s clearing firms (“AML Alerts”). The AMLCOs were the primary points of contact for the clearing firms as it related to suspicious activity. Although the AML Alerts raised many red flags – including many red flags listed in the Firm’s written supervisory procedures as examples of suspicious activities – the AMLCOs did not file SARs on the Firm’s behalf regarding these transactions, and they did not create written analyses or compile other records indicating that they considered filing SARs.

The Firm has engaged in settlement discussions with the Staff of the Division of Enforcement in connection with the above-captioned administrative proceeding. As a result of those discussions, the Firm has submitted an Offer of Settlement pursuant to which the Firm has agreed to consent to the issuance of the Order. On the basis of the Order and the Offer of Settlement to be submitted by the Firm in connection therewith, the Commission found that during the time period of 2012 through 2014, the Firm, a registered broker-dealer, had various DVP/RVP<sup>2</sup> accounts that effected transactions with the Firm in low-priced securities.

The Order also found that the Firm had specific written supervisory procedures concerning compliance with its anti-money laundering (“AML”) responsibilities. The written supervisory procedures stated that all Firm employees were obligated to promptly report any known or suspected violations of AML policies as well as other suspected violations or crimes. The Order found that the Firm was required to file Suspicious Activity Reports (“SARs”) for transactions by, at, or through the Firm that involved or aggregated at least \$5,000 if the Firm knew, suspected, or had reason to suspect that, among other things, the transactions involved funds derived from illegal activity, had no business or apparent lawful purpose, or involved using the Firm to facilitate criminal activity.

The Order found that the Firm’s internal trade review mechanisms to identify the AML red flags, particularly for DVP/RVP accounts, listed in its written supervisory procedures were ineffective. The Order found that certain Firm personnel should have become aware of specific transactions that exhibited AML red flags via alerts from the Firm’s clearing firm but did not. The Order further found that the AMLCOs<sup>3</sup> did not file SARs even though numerous low-priced securities transactions effected through the Firm exhibited several AML red flags that the Firm specifically identified in its written supervisory procedures. The Order found that the AMLCOs also failed to create sufficient written documentation evidencing that they had analyzed and considered whether or not to file a SAR.

Under the Order<sup>4</sup>, the Firm is (1) ordered to cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder; (2) censured; (3) ordered to pay a civil monetary penalty; and (4) ordered to comply with the undertakings to retain an independent compliance consultant (the “Consultant”) not unacceptable to the Staff to conduct a review of the Firms’ policies and procedures as they relate to compliance with the Bank Secrecy Act, the Patriot Act, and the Firm’s AML program. The Consultant is required to submit a report to the Firm and the Staff (the “Report”), and the Firm will be required to adopt and implement all recommendations of the Consultant in the Report

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<sup>2</sup> DVP means “Delivery Versus Payment”. DVP is a securities industry settlement procedure in which the buyer's payment for securities is due at the time of delivery. RVP means “Receive Versus Payment”. RVP is a settlement procedure in which an institutional sell order is accompanied by the requirement that cash only be accepted in exchange for delivery upon settlement of the financial transaction.

<sup>3</sup> AML CO means Anti-Money Laundering Compliance Officer.

<sup>4</sup> Concurrently with the entry of the Order, the Firm is entering into resolutions with both FINRA and FinCEN regarding the same subject matter as part of a global resolution with all three regulatory bodies.

unless the Firm considers a recommendation unnecessary, unduly burdensome, impractical or inappropriate, in which case, the Consultant and the Firm will have the opportunity to agree on an alternate proposal. The Firm will be required to adopt all of the Consultant's recommendations contained in the Report within 60 days of receipt and will be required subsequently to certify to the Staff as to such adoption and implementation. Within 210 days of the Order, the Consultant shall be required to certify that the Firm has implemented all of its recommendations. Thereafter, one year from the issuance of the Report, the Consultant shall be required to certify that the Firm remains in compliance with the recommendations made in the Report.

## DISCUSSION

The Firm is a registered full-service broker-dealer registered with the Commission. The Firm regularly acts as a "placement agent" for private placements of securities offered by third-party issuers ("Private Placements")<sup>5</sup>. Private Placements are offered and sold in reliance on the exemptions under Rule 506.<sup>6</sup> The issuers of Private Placements have entered into placement agent agreements and selling agreements, as appropriate to each product, with the Firm. The Firm offers the Private Placements to eligible customers and institutional clients.<sup>7</sup>

The Firm understands that the entry of the Order will disqualify the Firm and certain issuers associated with the Firm in one of the capacities listed below from relying on the exemption under Rule 506. Should the Firm be deemed to be the issuer, a predecessor of the issuer, an affiliated issuer, a general partner or managing member of the issuer, a beneficial owner of twenty (20%) percent or more of the issuer's outstanding voting equity securities, a promoter connected with the issuer in a capacity at the time of the filing, offer or sale, an investment manager of the issuer, a person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with the sale of securities of the issuer (a "solicitor"), a general partner or managing member of an investment manager or solicitor of the issuer, or deemed to act in any other capacity described in Rule 506 for the purposes of Rule 506(d), the Firm, as well as the other issuers with which the Firm is associated in one of those listed capacities and which rely upon or may rely upon those offering exemptions when issuing securities, would be prohibited from doing so.

Thus, as the Firm acts as a compensated solicitor for such offerings, the requirement to retain an Independent Consultant has the effect of placing a "limitation on the activities, functions or operations" of the Firm and would in turn trigger the disqualification of the Firm. The Commission has the authority to waive the exemption disqualifications upon a showing of

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<sup>5</sup> Third-party issuers may offer a range of products such as, but not limited to, equity, debt, and other securities.

<sup>6</sup> Many of the issuers of Private Placements which sell their securities through the Firm in Rule 506 offerings, have placement agent (*i.e.* selling) agreements with the Firm that are long-standing.

<sup>7</sup> The customers to whom the Firm offers the Private Placements are all accredited investors and the substantial majority are "qualified purchasers".

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good cause that such disqualifications are not necessary under the circumstances. *See* 17 C.F.R. § 230.506(d)(2)(ii).

The Firm requests that the Commission waive any disqualifying effects that entry of the Order against the Firm will have under Rule 506 based on the following indications of good cause:

*1. The Violations in the Order Do Not Arise out of the Offering or Sale of Securities*

The conduct addressed in the Order does not arise out of the offering and sale of securities. Rather, the conduct alleged in the Order relates to the failure to implement the Firm's procedures regarding certain AML supervisory activities in a manner that would reasonably be expected to identify and fully investigate certain red flags, and, where appropriate, file SARs.

*2. The Violations Are Not Scier-Based and Are Not Criminal in Nature*

The Order does not involve any allegation that the Firm committed scier-based violations of the Securities Act, the Exchange Act, or any other federal securities laws with respect to the conduct. The matter addressed by the Order pertains solely to alleged civil violations and does not involve any criminal offenses.

*3. Individuals Responsible for the Misconduct*

The Order finds that two former chief compliance officers (who also served as the Firm's AMLCOs) failed to file SARs or, in the alternative, failed to create written analyses or compile other records indicating that they considered filing a SAR. The Order finds that one of the former chief compliance officers remains employed with the Firm; however, that individual has not been a member of the Firm's compliance department since June 2013 nor will he ever become a part of the compliance department again. Currently, he is a branch manager at the Firm; in that role, his responsibilities are administrative. His primary responsibilities include: facility management; management of support staff; update and maintenance of the Firm's "do not call" registry; initial review of on-boarding documents for new employees; and initial review, but not approval of, customer documents including new accounts, journal entries, trade corrections, extensions and margin applications. The other former chief compliance officer is no longer with the Firm and is not currently registered with any Member firm. The Order further finds that the chief executive officer did not take adequate steps to ensure that the Firm, through its AMLCOs, filed SARs<sup>8</sup>. Moreover, the chief executive officer's sanction is a monetary fine and does not include any suspension in any capacity.

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<sup>8</sup> The Order found that such conduct caused the Firm's violation of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

#### 4. *Duration*

The Order reflects that the wrongful conduct occurred from late 2012 through early April 2014.

The Firm has taken remedial steps to enhance its AML procedures and ensure the effective implementation of same. The implementation of the remedial steps, coupled with the Firm's almost complete exit<sup>9</sup> from the subject business line, has and will prevent the reoccurrence of the misconduct. In 2015, the Firm retained an independent consultant (the "Independent Consultant") to review its procedures. The Independent Consultant issued its report on June 15, 2016 and the Firm has implemented the recommendations made by the Independent Consultant.<sup>10</sup> As evidence of its continued commitment to have a state of the art compliance program, the Firm implemented a series of training seminars and presentations for its staff, including registered, non-registered and supervisory personnel, conducted annually by outside counsel with particular expertise in AML issues. Moreover, the Firm has increased the quantity and improved the quality of SARs filed. The Firm has added an AML module to its annual continuing education program as well as an additional midyear module specifically focused on AML that all firm personnel complete. The Firm also now maintains a working file evidencing its review of potential "red flags" where, after investigating, an informed decision is made whether to file a SAR.

#### 5. *Material Impact of Waiver Denial on the Firm, its Affiliates, Issuers of Private Placements, and Most Importantly, their Customers/Clients.*

Disqualification of the Firm 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

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<sup>9</sup> The Firm on a limited basis and in limited circumstances, will process DVP/RVP transactions as an accommodation to existing clients. However, the Firm does not open any new accounts for the purpose of effecting DVP/RVP transactions in low priced securities (*i.e.* stocks that trade under \$5 per share that are not traded on NASDAQ and/or a major exchange).

<sup>10</sup> The Independent Consultant made the following recommendations: (1) the Firm hire a minimum of two additional full-time Compliance Staff who would be fully dedicated to AML Compliance (completed July 2016); (2) the Firm provide meaningful ongoing AML Compliance training for all Firm personnel, with more specialized training to its AML Compliance Staff (implemented in August 2016 and ongoing); (3) the Firm revise the sections in its Written Supervisory Procedures covering its Anti-Money Laundering program (completed August 2016); (4) broaden the Firm's procedures related to the review and submission of deposits of low-priced securities (implemented April 2016); (5) place the Private Equity Banking Group in access-controlled offices that separate them from "public side" personnel (construction plans submitted August 2016, permits have been issued, construction pending building consent); (6) amend Written Supervisory Procedures addressing conflicts of interest issues between Research and Investment Banking (completed August 2016); (7) extend chaperoning, direct email prohibitions, and related procedures to communications between Private Equity Banking and the Firm's research analysts (completed July 2016); (8) consistently apply AML procedures when accepting investments from Private Equity Banking clients who do not hold regular retail brokerage accounts (implemented June 2016); and (9) engage in bona fide market making or cease representing that it makes markets in the securities the Firm underwrites (implemented April 2016).

retain, the Firm in connection with transactions that rely upon exemptions under Rule 506, as well as the Firm's hundreds of employees and the Firm itself.

It would be a hardship to the Firm, it's over 450 employees, and its thousands of public customers if it were disqualified from engaging in private offerings. Such an adverse impact on third parties is not the purpose of the Firm's requirement to engage an independent consultant.

Since January 2013 to date, the Firm and its affiliates raised gross proceeds in excess of \$500,000,000 and generated fees for the Firm and its affiliates in excess of \$40,000,000 in connection with Regulation D private placement transactions. Currently, the Firm and its affiliates are actively involved, as a placement agent, with 10 Regulation D, Rule 506 private offerings where the Firm and its affiliates would be raising approximately \$136,757,000 in gross proceeds with anticipated fees to the Firms in the amount of \$12,200,000.

The denial of a waiver would immediately cause the Firm to cease its efforts in connection with these offerings, would jeopardize the offerings themselves and would prevent the Firm from undertaking or engaging in any similar offerings that are time sensitive and that may be presented during the period of disqualification.

The Firm's private equity banking group<sup>11</sup> is currently comprised of approximately 24 individuals whose compensation is commission based, who do not receive any base salary, and who generate a material portion of the Firm's overall revenues.<sup>12</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 were to be terminated and never close, these individuals would never be compensated for their efforts on these offerings. Moreover, the other registered persons at the Firm 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.

Rule 506 provides a "safe harbor" in that an offering that meets the requirements of the rule will not be considered a public offering under Section 4(a)(2) of the 1933 Act. Relying on Rule 506 is generally considered preferable to taking the position that an offering does not involve a public offering under Section 4(a)(2) because of the greater legal certainty afforded by the Rule. The Firm believes that the issuers, as well as many of its potential investors, will expect the greater legal certainty associated with reliance on the Rule 506 safe harbor and may be unwilling to invest in or participate in an offering that does not rely on the Rule.<sup>13</sup> In

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<sup>11</sup> The Firm 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>12</sup> In 2015-2016, the revenues generated directly or indirectly by the affected individuals and/or departments represented between 20-25% of the Firm's overall revenue.

<sup>13</sup> As a contractual condition to serving as a placement agent for an offering that relies upon Rule 506, the Firm agrees to expressly covenant that "None of the Placement Agent or its affiliates, or any person acting on behalf of the foregoing has taken nor will it take any action that conflicts with the conditions and requirements of, or that

addition, because a significant number of (if not most) potential investors reside within the United States, reliance on Regulation S is not a viable alternative.

a. *Impact on the Firm's Customers*

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

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

b. *Impact on the Firm's Employees, Affiliates and the Firm itself*

If the Firm were to be prohibited from participating in private placements because of disqualification not only would the customers and clients of the Firm be negatively impacted by losing access to investment options represented by private placements, but many of the Firm's customers might respond by transferring their accounts to broker-dealers that are able to offer the securities issued in reliance upon Rule 506. If the Firm were to lose even a small portion of these accounts, it would impact the financial resources of the Firm and the scope of the services it offers. Additionally, the Firm's ability to retain and recruit personnel in its banking operations would be materially and 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 the Firm and the Firm's customers and clients.

*c. Impact on Issuers of Private Placements*

The Firm regularly acts as a placement agent for Private Placements of securities offered by third-party issuers.

The Firm is at all times engaged for 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 the Firm, then if the Firm 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 and adversely impact the number of third-parties that would engage the Firm to assist with the private placement process. The possibility of these actions occurring is real and would cause substantial harm to the Firm and its employees if it occurred.

*6. Disclosure of Written Description of Order to Investors*

During the time period that the Firm is subject to the Order's requirement to retain a compliance consultant to review certain of its policies and procedures, the Firm will furnish (or caused 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.

## **REQUEST FOR WAIVER**

In light of the grounds for relief discussed above, we believe that the Firm has shown good cause that the Commission should grant the requested relief. Accordingly, we respectfully request that the Commission, pursuant to Rule 506(d)(2)(ii) of Regulation D, waive the disqualification provisions in Rule 506 of Regulation D to the extent they may apply as a result of the entry of the Order.<sup>14</sup>

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<sup>14</sup> We note in support of this request that the Commission has granted relief under Rule 506 of Regulation D for similar reasons or in similar circumstances. *See, e.g.*, In the Matter of Pacific Investment Management Company LLC (Dec. 1, 2016); Merrill Lynch, Pierce, Fenner & Smith and Merrill Lynch Professional Clearing Corp. (June 1, 2015); BlackRock Advisors, LLC (Apr. 20, 2015); H.D. Vest Investment Securities, Inc. (Mar. 4, 2015); In the Matter of Oppenheimer & Co. Inc. (Jan. 27, 2015); In the Matter of Citigroup Global markets, Inc. (Aug. 19, 2015); In the Matter of Guggenheim Partners Investment Management, LLC (Aug. 10, 2015); Barclays Capital Inc., Rel. No. 33-9651 (Sept. 23, 2014); Wells Fargo Advisors, LLC, Rel. No. 33-9649 (Sept. 22, 2014); Dominick & Dominick LLC, Rel. No. 33-9619 (July 28, 2014); Jefferies LLC, (Mar. 12, 2014); Credit Suisse Group AG (Feb. 21, 2014); Instinet, LLC (Dec. 26, 2013).

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We appreciate your consideration of this request. Please feel free to contact me with any questions.

Very truly yours,

SICHENZIA ROSS FERENCE KESNER LLP



Michael H. Ference

MHF/er