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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16463

In the Matter of

AEGIS CAPITAL, LLC, CIRCLE ONE WEALTH MANAGEMENT, LLC, DIANE W. LAMM, STRATEGIC CONSULTING ADVISORS, LLC, and DAVID I. OSUNKWO,

Respondents.

DIVISION'S MOTION FOR ENTRY OF DEFAULT AND IMPOSITION OF SANCTIONS AS TO RESPONDENTS AEGIS CAPITAL, LLC AND CIRCLE ONE WEALTH MANAGEMENT, LLC

Pursuant to Rules of Practice 154(b) and 155(a) [17 C.F.R. § 201.154(b), .155(a)], as well as the Court's March 10, 2016 Order Following Prehearing Conference, the Division of Enforcement ("Division") respectfully files this Motion for Entry of Default and Imposition of Sanctions as to Respondents Aegis Capital, LLC ("Aegis") and Circle One Wealth Management, LLC ("Circle One") (collectively, "Respondents"). In its Motion, the Division seeks a censure against Respondents.[1]

I. BACKGROUND

A. Procedural History

The Securities and Exchange Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP) in this matter on March 30, 2015. Respondents Aegis and Circle One were served in compliance with Rule of Practice 141 [17 C.F.R. § 201.141], but failed

[1] As explained below, Respondents were registered investment advisers at the time of the violations at issue, but are now defunct entities no longer registered with the Commission.

to file answers or otherwise respond to the OIP. Respondents are, therefore, in default pursuant to Rule 155(a). By Order dated March 10, 2016, this Court directed the Division to file a motion for default and sanctions against Respondents by March 24, 2016.

B. Allegations in the OIP

In the OIP, the Division alleges that investment advisers Aegis and Circle One failed to file timely and accurate reports with the Commission and to maintain required books and records. In particular, Forms ADV filed with the Commission in March 2010 and March 2011, Registrants, affiliated because of common control, grossly overstated their assets under management ("AUM") and total number of client accounts. Indeed, in March 2011, Registrants overstated their AUM by over $119 million, or 190%, and total number of client accounts by at least 1,000 accounts, or over 340%. Moreover, Registrants' books and records were unsegregated and mixed together with affiliated entities at the level of the parent holding company. As a result, Registrants were unable to provide adviser-specific financial records in response to examination staff's queries in a timely manner. OIP ¶1.

1. Respondents

Aegis is a North Carolina limited liability company with its principal place of business in Mount Pleasant, South Carolina. Aegis terminated its Commission registration on or about March 27, 2012, and is listed as dissolved on the North Carolina Secretary of State's website. In its inaccurate December 31, 2009 Form ADV, filed March 31, 2010, Aegis claimed to have nearly $165 million in AUM and 1,540 client accounts. In fact, Aegis overstated these amounts. OIP ¶3.

Circle One is a Florida limited liability company, formerly an investment adviser and currently listed as "Inactive" in the records of the Florida Department of State/Division of Corporations. According to its inaccurate December 31, 2010 Form ADV, filed March 31, 2011,

Circle One had $182 million in AUM and 1,289 client accounts. In fact, as described below, Circle One overstated these amounts. On March 28, 2012, Circle One withdrew its Commission registration by filing a partial withdrawal on Form ADV-W. On May 7, 2012, Circle One filed a "full" Form ADV-W, declaring that it was no longer in business and terminating its registration status with state regulators. OIP ¶4. Both Aegis and Circle One are owned by Capital L Group, LLC, Respondents' parent holding company. OIP ¶5.

2. Respondents' False Form ADV Filings

On March 31, 2010, Aegis filed its Form ADV for the December 31, 2009 year end. In that Form ADV, Aegis reported that it had $164,994,972 in AUM and 1,540 advisory accounts. OIP ¶10. Aegis's Form ADV for that year was filed based on inaccurate information concerning AUM and the number of client accounts of Aegis. OIP ¶11. Aegis did not file an annual update for the December 31, 2010 year end. On March 27, 2012, Aegis filed a Form ADV-W to withdraw its registration status with the Commission. OIP ¶12.

On March 31, 2011, Circle One filed a Form ADV for the December 31, 2010 year end. In that Form ADV, Circle One reported that it had $182,000,000 in AUM and 1,289 advisory accounts. OIP ¶14. The AUM and number of advisory accounts claimed by Circle One were, however, false. In fact, Respondents' *combined* AUM as of December 31, 2010 was only $62,862,270.28 – an overstatement of AUM of $119,137,728.72 by Circle One.[2] Respondents also overstated their total client accounts by at least 1,000 accounts as of December 31, 2010.

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[2] The Division references the combined AUM of Aegis and Circle One in order to demonstrate the magnitude of the overstatement. As mentioned above, Aegis did not file an annual update for the December 31, 2010, and so the AUM for that subsidiary of Capital L Group, LLC were not otherwise disclosed on a Form ADV at that time. OIP ¶12.

Registrants' AUM and the number of client accounts as of December 31, 2009, were similarly overstated. OIP ¶17.

3. Respondents' Failure To Maintain Required Books And Records

Between 2009 and 2011, Aegis failed to keep books and records in a segregated fashion, but instead created and maintained such records in the name of Capital L. Thus, Aegis's records were unsegregated and mixed together with affiliated entities at the level of the parent holding company. Specifically, Aegis failed to make and keep advisory-specific trial balances, financial statements, and internal working papers; journals, including cash receipts and disbursements, and any other records of original entry forming the basis of entries into ledgers; general ledgers reflecting asset, liability reserve, capital, income and expense accounts; checkbooks, bank statements, cancelled checks and cash reconciliations; and bills or statements, paid or unpaid. OIP ¶18.

Between 2010 and 2011, Circle One similarly failed to keep books and records in a segregated fashion, but instead created and maintained such records in the name of Capital L. Specifically, Circle One failed to make and keep separate, advisory-specific trial balances, financial statements, and internal working papers; journals, including cash receipts and disbursements, and any other records of original entry forming the basis of entries into ledgers; general ledgers reflecting asset, liability reserve, capital, income and expense accounts; checkbooks, bank statements, cancelled checks and cash reconciliations; and bills or statements, paid or unpaid. OIP ¶19.

In August 2011, Commission staff requested that Respondents produce the following books and records: Respondents' balance sheet, trial balance, income statement, and cash flow statements as of the end of its most recent fiscal year and the most current year to date;

Respondents' cash receipts and disbursements journal; Respondents' general ledger and chart of accounts; and any loans from clients to the Respondents or sales of Respondents' stock to clients. Respondents were not able to comply with the Commission staff's requests, and Respondents did not produce the requested books and records. OIP ¶20-21.

II. LEGAL ANALYSIS

A. Aegis and Circle One Should be Deemed in Default

Rule of Practice 155(a) provides that a party to a proceeding may be deemed in default, and the proceeding may be determined against him, if that party fails to file an Answer to the OIP or otherwise defend the proceeding. See 17 C.F.R. § 201.155(a)(2).

As the Court found in its May 18, 2015 Order to Show Cause as to Aegis Capital, LLC and Circle One Wealth Management, LLC, Respondents Aegis Capital and Circle One were served with the OIP by April 8, 2015, and accordingly, Aegis's and Circle One's Answers were due by May 1, 2015. See Administrative Proceedings Ruling No. 2684, citing 17 C.F.R. §§ 201. 141(a)(2)(ii), .160(b), .220(b). No Answer or responsive filing has been made on behalf of either Aegis or Circle One.

The Division, therefore, requests that the Court enter an order of default against Respondents Aegis and Circle One. The Division further requests that the Court deem the allegations in the OIP to be true, determine this proceeding against Aegis and Circle One, and impose the relief discussed below.

B. The Court Should Censure Aegis and Circle One for Their Violations

Section 203(e) of the Advisers Act authorizes the Commission to sanction any investment adviser if it is in the public interest and the Commission finds that the adviser has willfully violated, or willfully aided and abetted the violation of, any provision of the federal securities laws.

In this case, the Court should censure Respondents based on their violations of the federal securities laws, as detailed below.

1. Respondents Willfully Violated Section 207 of the Advisers Act

Section 207 of the Advisers Act provides that it is "unlawful for any person willfully to make any untrue statements of material fact in any registration application or report filed with the Commission under Section 203[] or 204 ...." A Form ADV is a report filed with the Commission under Section 204. Material misstatements and omissions in a Form ADV can violate Section 207. *See SEC v. Moran*, 922 F. Supp. 867, 898-99 (S.D.N.Y. 1996). A violation of Section 207 does not require proof of scienter. Anthony Fields, CPA, Exchange Act Rel. No. 74344, 2015 WL 728005, at *16 n.101 (Feb. 20, 2015) (Commission opinion). Moreover, a finding of willfulness does not require an intent to violate, but merely an intent to do the act that constitutes a violation. Wonsover v. SEC, 205 F.3d 408, 413-15 (D.C. Cir. 2000).

As set forth in detail above, Respondents willfully overstated Respondents' AUM and number of client accounts in Form ADV filings. The actions of those responsible for Respondents' Forms ADV were willful because, as stated in Wonsover, willfulness in this context means merely an intent to do the act that constitutes a violation. In Wonsover, the D.C. Circuit rejected the defendant's arguments that a finding of willfulness requires knowledge of the rule or regulation violated. Id. The records of the Commission demonstrate that the Forms ADV at issue were filed, which here is the act that constitutes the violation. As a result, Respondents willfully made untrue statements in violation of Section 207.

2. Aegis Willfully Violated Section 204 of the Advisers Act and Rule 204-1(a)(1) Thereunder

Section 204 of the Advisers Act and Rule 204-1(a)(1) require registered investment advisers to amend their Form ADV "[a]t least annually, within 90 days of the end of [their] fiscal year ... [and] [m]ore frequently, if required by the instructions to Form ADV." An investment adviser's failure to file annual amendments updating its Form ADV constitutes a willful violation of Section 204 and Rule 204-1 thereunder.

Here, Aegis willfully violated Rule 204-1 by failing to file with the Commission an annual amended Form ADV for the year ended December 31, 2010. See In re Hammon Capital Mgmt. Corp., Advisers Act Release No. 989, 1985 WL 548332, at *1 (Sept. 24. 1985) (Commission opinion) (finding that investment adviser, aided and abetted by its sole officer who was the principal responsible for compliance, willfully violated Section 204 and Rule 204-1 by failing to amend its Form ADV and file required annual reports with the Commission). The evidentiary basis for this violation is reflected within the records of the Commission, which show that no 2010 Form ADV for Aegis exists.

3. Respondents Willfully Violated Section 204 of the Advisers Act and Rule 204-2(a) Thereunder

Section 204 of the Advisers Act requires investment advisers to "make and keep ... such reports as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors," and further provides that such records are subject to periodic examinations by the Commission. Scienter is not required in order to establish a violation of Section 204. See Disraeli & Lifeplan Assocs., Inc., Exchange Act Release No. 57027, 2007 WL 4481515, at *14 (Dec. 21, 2007) (Commission opinion); SEC v. World-wide Coin Invs., Ltd., 567 F. Supp. 724, 749, 751 (N.D. Ga. 1983). Moreover, a registered investment adviser may be found

to have violated Section 204 by failing to furnish copies of the prescribed books and records to the Commission in connection with a scheduled examination. See Roman S. Gorski, Advisers Act Rel. No. 214, 1967 WL 87764 at *4 (Dec. 22, 1967).

Rule 204-2(a) sets forth certain categories of books and records that registered investment advisers are required to make and keep, including, among others:

- A journal or journals, including cash receipts and disbursements, records, and any other records of original entry forming the basis of entries in any ledger (Rule 204-2(a)(1));
- General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income, and expense accounts (Rule 204-2(a)(2));
- All check books, bank statements, cancelled checks, and cash reconciliations of the investment adviser (Rule 204-2(a)(4));
- All bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment adviser (Rule 204-2(a)(5)); and
- All trial balances, financial statements, and internal audit working papers relating to the business of such investment adviser (Rule 204-2(a)(6)).

As set forth above and in the allegations of the OIP, Respondents failed to maintain or furnish to the examination staff various required books and records within the scope of Rule 204-2(a) for their advisory businesses, including financial statements, trial balances, income and expense statements, bank records, cash receipts and disbursement records, and general or auxiliary ledgers. Respondents attempted belatedly to produce financial statements to the examination staff, but the financial statements were not adviser specific and instead were kept at the parent holding company level and combined with affiliated funds and entities. In addition to being improperly combined with other funds and entities, the financial statements proved to be unreliable.

As such, Respondents violated Section 204 of the Advisers Act and Rules 204-2(a)(1), (2), (4), (5), and (6) thereunder.

4. An Order Censuring Respondents is Appropriate in this Case

In determining sanctions, the Commission considers these factors:

> the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 480 U.S. 91 (1981). The Commission's inquiry into the appropriate sanction to protect the public interest is a flexible one, and no single factor is dispositive. Gary M. Kornman, Advisers Act Rel. No. 2840, 2009 WL 367635 at *6 (Feb. 13, 2009), *pet. Denied*, 592 F.3d 173 (D.C. Cir. 2010).

Censure is the minimum administrative sanction available to the Commission in administrative actions against regulated persons or entities. See e.g., Teicher v. SEC, 177 F.3d 1016, 1018 (DC Cir. 1999) (stating that sanctions for securities law violations range "...from censure to an outright ban..."). Because Respondents were registered investment advisers at the time of the violations at issue, they are subject to censure pursuant to Sections 203(e) of the Advisers Act, which provides in pertinent part:

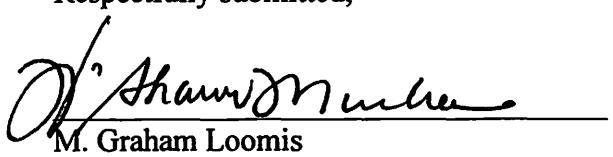
> *Censure, Denial, or Suspension of Registration; Notice and Hearing.* The Commission, by order, shall censure . . . any investment adviser if it finds, on the record after notice and opportunity for hearing, that such censure . . . is in the public interest and that such investment adviser . . . (5) has willfully violated any provision of . . . this title, . . . or the rules or regulations under [this] statute[ ] . . . .

15 U.S.C. § 80b-3(e).

A censure is warranted here.[3] As shown above, Aegis is liable for willfully violating Section 204 of the Advisers Act, Rules 204-1(a)(1) and 204-2(a) thereunder, and Section 207 of the Advisers Act, and Circle One is liable for willfully violating Section 204 of the Advisers Act and Rule 204-2(a) thereunder, as well as Section 207 of the Advisers Act. The Division, thus, respectfully requests the Court to censure Aegis and Circle One based on these violations of the federal securities laws.

Dated: March 24, 2016

Respectfully submitted,



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[3] In light of Aegis's and Circle One's prior withdrawal from registration and their current status as defunct corporate entities, the Division is not seeking relief such as a cease-and-desist order or civil monetary penalties.

CERTIFICATE OF SERVICE

Undersigned Counsel for the Division of Enforcement hereby certifies that he has served a copy of this DIVISION'S MOTION FOR ENTRY OF DEFAULT AND IMPOSITION OF SANCTIONS AS TO RESPONDENTS AEGIS CAPITAL, LLC AND CIRCLE ONE WEALTH MANAGEMENT, LLC by electronic mail and by United Parcel Service addressed as follows:

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