

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 66248 / January 26, 2012**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-14719**

**In the Matter of**

**Mercury Capital and Lisa R.  
Hyatt,**

**Respondents.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS  
PURSUANT TO SECTIONS 15(b)(4), 15(b)(6)  
AND 21C OF THE SECURITIES  
EXCHANGE ACT OF 1934, MAKING  
FINDINGS, AND IMPOSING REMEDIAL  
SANCTIONS AND CEASE-AND-DESIST  
ORDERS**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b)(4), 15(b)(6) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Mercury Capital (“Mercury”) and Lisa R. Hyatt (“Hyatt”) (collectively “Respondents”).

**II.**

In anticipation of the institution of these proceedings, Respondents each have submitted an Offer of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose 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 them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b)(4), 15(b)(6) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Orders (“Order”), as set forth below.

### III.

On the basis of this Order and Respondents' Offers, the Commission finds<sup>1</sup> that:

#### Summary

1. These proceedings arise from trading access that Mercury Capital, an unregistered firm, extended to an individual who subsequently used that trading access to profit from an account intrusion and market manipulation scheme. On 77 occasions from April 2010 to July 2010, the individual made profitable trades through Mercury contemporaneous with unauthorized trading in the same securities in hijacked online brokerage accounts of innocent and unknowing account holders at multiple U.S. broker-dealers. The individual generated ill-gotten gains of \$433,816 from the scheme through Mercury.

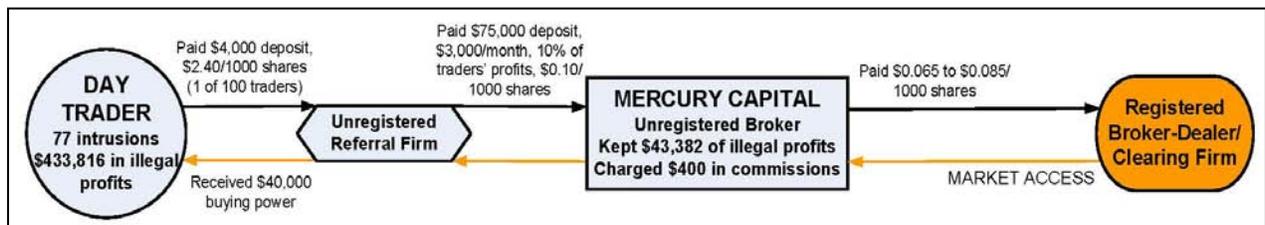
2. By effecting securities transactions for the individual, Mercury acted as an unregistered broker in violation of Section 15(a) of the Exchange Act. Hyatt, Mercury's President, aided and abetted and caused Mercury's failure to register as a broker in violation of Section 15(a).

#### Respondents

3. Mercury Capital is a Nevada corporation that had its principal place of business in La Jolla, California from June 2009 until it ceased operations in November 2010 (the "relevant period"). Mercury has never been registered with the Commission in any capacity. During the relevant period, approximately 600 individuals traded as many as 800 million shares per month on U.S. exchanges through an omnibus account held in Mercury's name at a registered broker-dealer.

4. During the relevant period, Lisa R. Hyatt was President of, and associated with, Mercury. In that capacity, Hyatt caused Mercury to extend market access to traders through Mercury. She also has been Managing Member of a broker-dealer registered with the CBOE Stock Exchange since June 2009. Hyatt held Series 7, 55 and 63 licenses from 2002 to 2005 but did not hold any securities licenses during the relevant period. Hyatt, age 42, is a resident of Escondido, California.

#### Sponsored Market Access



5. Sponsored market access is a form of trading access whereby a broker-dealer permits customers to enter orders into the public market without the orders first passing through the broker-dealer's trading systems. During the relevant period, and with Hyatt's knowledge,

<sup>1</sup> The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other persons or entities in this or any other proceeding.

Mercury received sponsored market access from its registered broker-dealer and passed the sponsored market access on to Mercury's traders.

6. During the relevant period, and with Hyatt's knowledge, Mercury maintained an independent contractor agreement with a Canadian entity that solicited day traders through its website and referred traders to Mercury to receive sponsored market access. Approximately 100 traders who had been referred by the Canadian entity were trading through Mercury's omnibus account via sponsored market access during the relevant period.

7. Under the independent contractor agreement, Mercury charged the Canadian entity a monthly fee of \$3,000 plus a "clearing fee" of \$0.10 per thousand shares traded, which exceeded the commission of \$0.065 to \$0.085 that Mercury paid its registered broker-dealer. With Hyatt's knowledge, Mercury therefore received transaction-based compensation for extending the market access.

8. With Hyatt's knowledge, the Canadian entity made an initial risk deposit of \$75,000 and was responsible for 100% of any trading losses that its traders incurred through Mercury's account.

9. During the relevant period, and with Hyatt's knowledge, Mercury maintained documentation tracking the Canadian entity's deposit balance against all commissions, fees, and profits or losses for all trading activity through Mercury's account by traders referred by the Canadian entity.

10. In April 2010, the Canadian entity referred to Mercury an individual who claimed to be a day trader from Latvia. With Hyatt's knowledge, Mercury provided the Latvian trader with sponsored access trading software and instructed the software provider to assign the Latvian trader a user ID and password so that he could use the software to trade online through Mercury's account. In so doing, Mercury provided and controlled an electronic trading system for the Latvian trader to trade in the public market. The Canadian entity agreed that Mercury could retain 10% of any trading profits generated by the Latvian trader through Mercury's account.

11. The Latvian trader wired \$4,000 of his own money to the Canadian entity as a risk deposit. With Hyatt's knowledge, Mercury then used the trading software to extend the trader \$40,000 in "buying power" through Mercury's account, which was a portion of the trading margin that Mercury received from its registered broker-dealer. Although Mercury extended credit to the trader to purchase securities, Mercury's capital was not ultimately at risk because it was entitled to recoup losses from the Canadian entity and the trading software allowed Mercury to see the Latvian trader's trading in real time and automatically cut off his trading access if he or other traders referred by the Canadian entity incurred losses greater than the Canadian entity's deposit balance.

### **Account Intrusions**

12. On 77 occasions between April 2010 and July 2010, the Latvian trader made profitable trades through Mercury's account contemporaneous with unauthorized trading in the same securities in hijacked online brokerage accounts at multiple U.S. broker-dealers. The unauthorized trading in hijacked online brokerage accounts was conducted by the Latvian trader outside the electronic trading platform provided by Mercury and Hyatt.

13. On each occasion, the trader first established a long or short position in a security through Mercury's account. Then the trader surreptitiously gained access to an online brokerage account and made large unauthorized trades in the same security to manipulate the stock price in his favor, through unauthorized purchases if he held a long position through Mercury or through unauthorized sales or short sales if he held a short position through Mercury. Finally, during or shortly after the manipulative trading in the intruded account, the trader closed out his position through Mercury at the artificial market price to generate a profit.

14. The trader generated ill-gotten gains of \$433,816 from the scheme through Mercury's account. The trader engaged in similar manipulative trading through other unregistered firms, and generated total profits of \$874,886 from 159 account intrusions between June 2009 and August 2010.

15. As a result of providing the Latvian trader with electronic order-taking and order-routing services that he used to conduct an illegal account intrusion and market manipulation scheme, Mercury retained 10% of the trading profits, or \$43,382, and also received \$395.50 in trading commissions.

16. By extending market access to the traders referred by the Canadian entity in the manner described above and allocating trades conducted by the traders against deposits provided by the Canadian entity or the traders themselves, Mercury engaged in the business of effecting transactions in securities for the account of others.

### **Violations**

17. As a result of the conduct described above, Mercury willfully violated Section 15(a) of the Exchange Act, which prohibits certain persons and entities, while acting as brokers, from effecting transactions in securities when such person or entity is not registered with the Commission as a broker.

18. As a result of the conduct described above, Hyatt willfully<sup>2</sup> aided and abetted and caused Mercury's violation of Section 15(a) of the Exchange Act, which prohibits certain persons and entities, while acting as brokers, from effecting transactions in securities when such person or entity is not registered with the Commission as a broker.

### **Disgorgement and Civil Penalty**

19. Respondent Mercury has submitted a sworn Statement of Financial Information dated September 30, 2011 and other evidence and has asserted its inability to pay disgorgement plus prejudgment interest.

20. Respondent Mercury has submitted a sworn Statement of Financial Information dated September 30, 2011 and other evidence and has asserted its inability to pay a civil penalty.

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<sup>2</sup> A willful violation of the securities laws means merely "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)).

#### IV.

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

Accordingly, pursuant to Sections 15(b)(4), 15(b)(6) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondents Mercury and Hyatt cease and desist from committing or causing any violations and any future violations of Section 15(a) of the Exchange Act.

B. Respondents Mercury and Hyatt are censured.

C. Respondent Mercury shall pay disgorgement of \$43,777.50 and prejudgment interest of \$1,970.10, but that payment of such amount is waived based upon Mercury's sworn representations in its Statement of Financial Information dated September 30, 2011 and other documents submitted to the Commission.

D. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Mercury provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of disgorgement and prejudgment interest. No other issue shall be considered in connection with this petition other than whether the financial information provided by Mercury was fraudulent, misleading, inaccurate, or incomplete in any material respect. Mercury may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of disgorgement and interest should not be ordered; (3) contest the amount of disgorgement and interest to be ordered; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

E. Based upon Mercury's sworn representations in its Statement of Financial Information dated September 30, 2011 and other documents submitted to the Commission, the Commission is not imposing a penalty against Mercury.

F. The Division may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Mercury provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Mercury was fraudulent, misleading, inaccurate, or incomplete in any material respect. Mercury may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of a penalty should not be ordered; (3) contest the imposition of the maximum penalty allowable under the law; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

G. Respondent Hyatt shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$35,000 to the United State Treasury. If timely payment is not made, interest shall accrue pursuant to 31 U.S.C. Section 3717. Such payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check, or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Securities and Exchange Commission, Office of Financial Management, 100 F

St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Lisa R. Hyatt as a Respondent in these proceedings and the file number of these proceedings, a copy of which cover letter and check, money order, or wire transfer confirmation shall be sent to Jina L. Choi, Market Abuse Unit, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery St, 26<sup>th</sup> Floor, San Francisco, CA 94104.

By the Commission.

Elizabeth M. Murphy  
Secretary