

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 80557 / April 28, 2017**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17952**

**In the Matter of**

**Lebenthal & Co., LLC**

**Respondent.**

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

**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) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Lebenthal & Co., LLC (“LebCo” 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 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 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 Sections 15(b) and 21C of the Securities Exchange Act of 1934, 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 Respondent's Offer, the Commission finds that

#### Summary

1. These proceedings arise out of the failure by LebCo, a registered broker dealer, to properly take into account \$4 million borrowed in two loans when calculating and reporting its net capital. LebCo and its parent company, Lebenthal Holdings, Inc. ("Holdings"), were co-borrowers on the loans. LebCo did not record the amounts due on the loans as a liability on its financial statements, given the terms of the loans. Nevertheless, because it was a co-borrower with Holdings, LebCo was required to treat the amounts due on the loans as liabilities in calculating its net capital. LebCo failed to do so when calculating its net capital for the period from the inception of the loans in June 2009 and November 2010 until April 2015. As a consequence, at certain times from June 2009 through March 2015, LebCo operated with a net capital deficiency and violated net capital reporting and books and records provisions.

#### Respondent

2. LebCo is a Delaware limited liability company based in New York, New York. It has been registered with the Commission as a broker-dealer since 2008.

#### Other Relevant Entities

3. Holdings, a Delaware limited liability company based in New York, New York, is the corporate parent of LebCo.

#### Facts

##### **A. The Net Capital Rule**

4. Section 15(c)(3) of the Exchange Act states, in pertinent part, that no broker-dealer shall make use of the mails or any means of interstate commerce to effect a transaction in any security in contravention of such rules as the Commission shall prescribe as necessary or appropriate in the public interest or for the protection of investors to provide safeguards with respect to the financial responsibility of broker-dealers.<sup>1</sup> Utilizing this authority, the Commission adopted Exchange Act Rule 15c3-1, known as the "net capital rule."<sup>2</sup> The net capital rule requires different minimum amounts of net capital based on the nature of a firm's business (for example, whether the firm holds customer funds or securities) and the method a firm uses in computing its net capital. The rule is designed to require a broker-dealer to maintain sufficient liquid assets to meet all

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<sup>1</sup> 15 U.S.C. § 78o(c)(3).

<sup>2</sup> 17 C.F.R. § 240.15c3-1.

obligations to customers and counterparties and have adequate additional resources to wind down its business in an orderly manner without the need for a formal proceeding if the firm fails financially.

5. In particular, the net capital rule requires that a broker-dealer perform two calculations: (i) a computation of the minimum amount of net capital the broker-dealer must maintain; and (ii) a computation of the amount of net capital the broker-dealer is maintaining. The minimum net capital requirement is the greater of a fixed-dollar amount specified in the rule or an amount determined by applying one of two financial ratios. The minimum fixed dollar amount for LebCo during the relevant period was \$250,000.

6. To compute its net capital, a broker-dealer first calculates its net worth (i.e., assets minus liabilities). A broker-dealer's net capital must reflect all assets and liabilities.<sup>3</sup> The broker-dealer then must make certain additional adjustments: adding certain subordinated liabilities as set forth in the net capital rule;<sup>4</sup> subtracting certain assets that are not readily convertible into cash (e.g., real estate), and subtracting certain percentage "haircuts" of the liquid assets (e.g., securities).<sup>5</sup> The resulting figure must be above the firm's required minimum net capital to comply with the net capital rule.

## **B. LebCo's Erroneous Net Capital Calculations**

7. On June 26, 2009, Holdings and LebCo were co-borrowers on a \$2 million loan guaranteed by the Small Business Administration ("SBA") and on November 5, 2010 they were co-borrowers on another \$2 million SBA-guaranteed loan (together, the "SBA Loans").

8. LebCo did not deduct the outstanding balance on the SBA Loans from its net worth in determining the firm's net capital until calculating its net capital for April 2015. In early 2015, LebCo's newly-retained auditor informed LebCo that it should include the loan liabilities in its net capital calculations because LebCo was a co-borrower on the loans.

9. On April 16, 2015, LebCo filed a notice pursuant to Exchange Act Rule 17a-11(b)(1) disclosing that LebCo had failed to treat its loan obligations as a liability, and therefore – contrary to the FOCUS reports for those months – LebCo had been out of net capital compliance for month's end in December 2014, January 2015, and February 2015. LebCo also filed restated FOCUS reports for year end 2014 and for January-March 2015.

10. LebCo's FOCUS reports failed to identify a month end net capital deficiency for 46 of the 70 months during the period from June 2009 through March 2015. During the relevant

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<sup>3</sup> Exchange Act Rule 17a-3(a)(2) [17 C.F.R. § 240.17a-3(a)(2)].

<sup>4</sup> Exchange Act Rule 15c3-1d [17 C.F.R. § 240.15c3-1d].

<sup>5</sup> Exchange Act Rule 15c3-1(c)(2) [17 C.F.R. § 15c3-1(c)(2)].

period, LebCo conducted a securities business while in a net capital deficit on various end of month dates.

11. As a result of the conduct described above, LebCo willfully<sup>6</sup> violated Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder, which require broker-dealers to maintain minimum net capital, and Section 17(a)(1) of the Exchange Act and Rules 17a-3(11) and 17a-5(a) thereunder, which require broker-dealers to make and keep current and preserve books and records, and to make certain reports and filings with the Commission.

#### IV.

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

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

A. Respondent LebCo cease and desist from committing or causing any violations and any future violations of Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder, and Section 17(a)(1) of the Exchange Act and Rules 17a-3 and 17a-5 thereunder.

B. Respondent LebCo is censured.

C. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$150,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

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 and hand-delivered or mailed to:

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<sup>6</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)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

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

Payments by check or money order must be accompanied by a cover letter identifying Lebenthal & Co., LLC as a 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 Sanjay Wadhwa, Senior Associate Director, New York Regional Office, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281.

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 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 Securities and Exchange 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 facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Brent J. Fields  
Secretary