**FINANCIAL INDUSTRY REGULATORY AUTHORITY**
**OFFICE OF HEARING OFFICERS**

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| Department of Enforcement,<br><br>Complainant,<br><br>v.<br><br>Aegis Capital Corp.<br>(CRD No. 15007),<br><br>Charles D. Smulevitz<br>(CRD No. 5099387),<br><br>and<br><br>Kevin C. McKenna<br>(CRD No. 1343870),<br><br>Respondents. | Disciplinary Proceeding<br>No. 2011026386001<br><br>Hearing Officer Rochelle S. Hall<br><br>**ORDER ACCEPTING OFFER OF SETTLEMENT**<br><br>Date: August 3, 2015 |

## INTRODUCTION

Disciplinary Proceeding No. 2011026386001 was filed on August 12, 2014, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondents Aegis Capital Corp., Charles D. Smulevitz, and Kevin C. McKenna submitted an Offer of Settlement (Offer) to Complainant dated July 17, 2015. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondents have consented, without admitting or denying the allegations of the Complaint, as amended by the Offer of Settlement, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, to the entry of findings and violations consistent with the allegations of the Complaint, as amended by the Offer of Settlement, and to the imposition of the sanctions set forth below, and fully understand that this Order will become part of Respondents' permanent disciplinary records and may be considered in any future actions brought by FINRA.

**BACKGROUND**

Aegis Capital Corp. is a retail and institutional broker-dealer. It is a FINRA member and has been such since July 1984.The firm is headquartered in New York City. It maintains 16 branch offices and has approximately 415 registered persons, most of whom work from its offices in Melville, New York and New York City. Under Article IV of the FINRA By-Laws, FINRA possesses jurisdiction over Aegis because: (a) the firm currently is a FINRA member; and (b) the Complaint charges the firm with securities-related misconduct committed while it was a FINRA member.

Charles D. Smulevitz entered the securities industry in February 2006, shortly after he graduated from college. He subsequently acquired Series 4, 7, 24, 53, 55, 66, and 87 licenses. At various times from 2006 through the present, Smulevitz has been registered with four FINRA members. On June 1, 2009, Aegis filed a Form U4 for Smulevitz, commencing his association with it as of that day. On July 20, 2012, Aegis filed a Form U5 for Smulevitz, terminating his association with it as of that day. While associated with Aegis, Smulevitz was registered with FINRA, through the firm, in several capacities, including as a General Securities Representative ("GSR") and General Securities Principal ("GSP"). Smulevitz currently is associated with

another FINRA member and registered with FINRA, through the firm, in several capacities, including as a GSR and GSP. Under Article V of the FINRA By-Laws, FINRA possesses jurisdiction over Smulevitz because: (a) he currently is associated with a FINRA member and registered with FINRA; and (b) the Complaint charges him with securities-related misconduct committed while he was associated with a FINRA member and registered with FINRA.

Kevin C. McKenna entered the securities industry in 1981. He subsequently acquired Series 7, 8, 23, and 63 licenses. At various times from 1981 through the present, McKenna has been associated with five FINRA members. On June 9, 2010, Aegis filed a Form U4 for McKenna, commencing his association with it as of that day. McKenna has been associated with the firm since that day. He currently is registered with FINRA, through Aegis, as a GSR, General Securities Sales Supervisor, General Securities Principal Sales Supervisor, and Operations Professional. Under Article V of the FINRA By-Laws, FINRA possesses jurisdiction over McKenna because: (a) he currently is associated with a FINRA member and registered with FINRA; and (b) the Complaint charges him with securities-related misconduct committed while he was associated with a FINRA member and registered with FINRA.

## FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

## SUMMARY

1. Between April 2009 and June 2011 (the "relevant period"), Aegis Capital Corp. liquidated nearly 3.9 billion shares of five microcap stocks that seven customers deposited into their accounts at the firm. The shares were not registered with the SEC, nor were the transactions exempt from registration. From the illicit sales, the customers generated over $24.5 million in proceeds and Aegis collected over $1.1 million in commissions.

2. Although ML was not a client of Aegis, he referred each of the seven customers to Aegis and also controlled the activity in several of the accounts. Before the customers engaged in the illicit sales, ML had been the subject of three significant regulatory actions—two of which are exceedingly relevant here. In a 2008 civil case in federal court, the SEC charged ML with, among other offenses, aiding and abetting securities fraud and participating in a scheme to evade the registration requirements of Section 5 of the Securities Act of 1933 ("Section 5")—the same type of misconduct that forms the basis for the Section 5 charge here. In November 2009, during the relevant period, ML settled the SEC action for significant sanctions, including a five-year bar from participating in penny stock offerings. In a related Administrative Proceeding the following month, the SEC barred ML from associating with any broker or dealer. Separately, in 2004, the NASD barred ML for failing to cooperate with an investigation.

3. The activity in the seven referenced accounts followed the same pattern. The customers generally acquired shares of the five microcap stocks in a similar manner. A third party acquired a debt instrument from the issuer. The third party (or another third party who subsequently acquired the instrument) held (or collectively held) the instrument for a period of time. The customers then acquired the debt instrument from the third party and negotiated with the issuer to make the debt instrument convertible to stock (if it was not already convertible to stock). Shortly thereafter, the customers converted the debt instrument to stock. The customers then deposited the shares of the microcap stocks into their accounts at Aegis, liquidated the shares shortly after depositing them, and wired the proceeds out of their accounts shortly after the sales.

4. The sales of the five microcap stocks by the seven customers—which amounted to a significant percentage of the outstanding shares of each stock—were a part of plans or

schemes to evade the registration requirements of Section 5. By selling shares of microcap stocks for its customers that were not registered with the SEC in transactions that were not exempt from registration, Aegis acted in contravention of Section 5, and thus violated FINRA Rule 2010.

5. In addition, during the relevant period, Aegis, as well as Charles D. Smulevitz and Kevin C. McKenna during their respective tenures as the firm's Chief Compliance Officer ("CCO") (collectively "Respondents"), failed to establish, maintain, and enforce a supervisory system, including written supervisory procedures ("WSPs"), reasonably designed to achieve compliance with Section 5 for sales of unregistered shares of microcap stocks. The firm's supervisory system for sales of control and restricted stock of microcap issuers was deficient because: (a) the WSPs did not provide sufficient guidance on how to conduct an adequate searching inquiry into the registration requirements of Section 5 and exemptions therefrom; and (b) the procedures for conducting a searching inquiry relied too heavily on information obtained from interested parties (*i.e.*, the customer, issuer, and persons associated with the issuer) and failed to require that the inquiry include appropriate independent due diligence and analyses into the registration requirements of Section 5 and exemptions therefrom.

6. During the relevant period, Respondents also failed to conduct reasonable and meaningful inquiries of the circumstances surrounding the customers' illicit sales of five microcap stocks by the referenced accounts, and they similarly failed to conduct reasonable and meaningful inquiries into the sales of another five microcap stocks by other customers. Respondents performed inadequate inquiries on the supposed registration exemptions for sales of the ten microcap stocks, despite the presence of "red flags" indicating that the sales were or could be illicit distributions of unregistered stocks. Although Respondents collected some documents and information about the transactions, they failed to adequately and meaningfully

analyze the collected documents and information and to independently verify the provided information. In reality, their collection efforts merely served to "paper the file" for Aegis' dubious microcap stock liquidation business. As a result of the foregoing, Respondents violated NASD Rule 3010(a) and (b) and FINRA Rule 2010.

7. During the relevant period, Aegis, as well as Smulevitz and McKenna during their respective tenures as the firm's Anti-Money Laundering Compliance Officer ("AMLCO"), also failed to adequately implement the firm's anti-money laundering ("AML") program. Respondents failed to reasonably detect and investigate "red flags" indicative of potentially suspicious transactions, namely: deposits of billions of unregistered shares of microcap stocks of ten issuers in several accounts, including the referenced accounts, which were controlled and/or referred by persons who had been the subject of regulatory actions; liquidations of the shares shortly after their deposits, sometimes amidst periods of suspicious promotional activity and increased trading volume; and transfers of the resulting proceeds out of the accounts shortly after the liquidations. Because of these failures, Respondents did not make a reasoned determination whether or not to report the suspicious transactions to the Financial Crimes Enforcement Network ("FinCEN") by filing a Suspicious Activity Report ("SAR"), as appropriate. As a result of the foregoing, Aegis and Smulevitz violated NASD Rule 3011(a) and FINRA Rules 3310(a) and 2010, and McKenna violated FINRA Rules 3310(a) and 2010.

## RESPONDENTS AND JURISDICTION

### Aegis Capital Corp.

8. Aegis is a retail and institutional broker-dealer. It is a FINRA member and has been such since July 1984.

9. The firm is headquartered in New York City. It maintains 16 branch offices and has approximately 415 registered persons, most of whom work from its offices in Melville, New York and New York City.

10. Under Article IV of the FINRA By-Laws, FINRA possesses jurisdiction over Aegis because: (a) the firm currently is a FINRA member; and (b) the Complaint charges the firm with securities-related misconduct committed while it was a FINRA member.

**Charles D. Smulevitz**

11. Smulevitz entered the securities industry in February 2006, shortly after he graduated from college. He subsequently acquired Series 4, 7, 24, 53, 55, 66, and 87 licenses. At various times from 2006 through the present, Smulevitz has been registered with four FINRA members.

12. On June 1, 2009, Aegis filed a Form U4 for Smulevitz, commencing his association with it as of that day. On July 20, 2012, Aegis filed a Form U5 for Smulevitz, terminating his association with it as of that day. While associated with Aegis, Smulevitz was registered with FINRA, through the firm, in several capacities, including as a General Securities Representative ("GSR") and General Securities Principal ("GSP").

13. Smulevitz currently is associated with another FINRA member and registered with FINRA, through the firm, in several capacities, including as a GSR and GSP.

14. Under Article V of the FINRA By-Laws, FINRA possesses jurisdiction over Smulevitz because: (a) he currently is associated with a FINRA member and registered with FINRA; and (b) the Complaint charges him with securities-related misconduct committed while he was associated with a FINRA member and registered with FINRA.

**Kevin C. McKenna**

15. McKenna entered the securities industry in 1981. He subsequently acquired Series 7, 8, 23, and 63 licenses. At various times from 1981 through the present, McKenna has been associated with five FINRA members.

16. On June 9, 2010, Aegis filed a Form U4 for McKenna, commencing his association with it as of that day. McKenna has been associated with the firm since that day. He currently is registered with FINRA, through Aegis, as a GSR, General Securities Sales Supervisor, General Securities Principal Sales Supervisor, and Operations Professional.

17. Under Article V of the FINRA By-Laws, FINRA possesses jurisdiction over McKenna because: (a) he currently is associated with a FINRA member and registered with FINRA; and (b) the Complaint charges him with securities-related misconduct committed while he was associated with a FINRA member and registered with FINRA.

**FACTS COMMON TO ALL CAUSES OF ACTION**

**The Accounts Controlled by ML**

18. In 2008, ML introduced HO, an Irish citizen and attorney based in the Turks and Caicos Islands, to Aegis. ML was not an individual client of Aegis.

19. Between April and June 2008, four entities incorporated and located in Turks and Caicos—GIL, ICL, OIL, and XIL—opened accounts at Aegis. HO was an officer of each entity.

20. According to their New Account Applications, all four entities shared the same physical address in Turks and Caicos, phone number, and email address, which belonged to HO.

21. At account opening, all four entities provided written trading authorization to ML to place trades in their accounts.

22. ML had a questionable background before each entity opened its account and granted trading authority to him.

23. In 2004, pursuant to an Offer of Settlement, the NASD barred ML from association with any NASD member for failing to execute a customer's sell order and for failing to provide documents, information, and testimony to the NASD in connection with an investigation.

24. In April 2008—the same month when the first of the aforementioned accounts referred by ML was opened at Aegis—the SEC filed a Complaint against ML and others in the United States District Court for the District of Nevada. In the Complaint, the SEC charged ML with: aiding and abetting securities fraud; participating in sales of unregistered securities (*i.e.*, employing a scheme to evade the registration requirements of Section 5); inducing or attempting to induce the purchase of securities without being associated with a broker-dealer registered with the SEC; and failing to file a Schedule 13D or 13G with the SEC upon acquiring more than 5% of the outstanding equity of a company. In November 2009, during the relevant period and pursuant to a consent agreement, the Court entered a Final Judgment against ML, wherein he was, among other things, ordered to disgorge trading profits of $750,000 and to pay a civil penalty of $50,000 and was barred from participating in any penny stock offering for five years. The SEC issued separate releases regarding the Complaint and Final Judgment.

25. In December 2009, in a related Administrative Proceeding based on the aforementioned Final Judgment, the SEC issued an Order, wherein it barred ML from association with any broker or dealer.

26. On April 22, 2009, Aegis advised its clearing firm to revoke ML's trading authority over the GIL, ICL, OIL, and XIL accounts. Aegis, nonetheless, continued to allow ML to direct trades in the accounts.

27. In September 2009, TIL, another entity incorporated and located in Turks and Caicos, opened an account at Aegis. HO was the President of TIL.

28. According to its New Account Application, TIL had the same physical address in Turks and Caicos as GIL, ICL, OIL, and XIL. TIL did not identify its phone number or email address on its New Account Application.

29. In October 2010, SIL, another entity incorporated and located in Turks and Caicos, opened an account at Aegis. HO was the President of SIL.

30. According to its New Account Application, SIL had the same physical address in Turks and Caicos as TIL, GIL, ICL, OIL, and XIL and the same phone number and email address as the latter four entities.

31. ML did not have the requisite written authority to place trades in the TIL and SIL accounts at Aegis.

32. ML, however, exercised authority over the GIL, ICL, OIL, XIL, SIL, and TIL (collectively, the "Entities") accounts at Aegis by placing trades in them. Aegis permitted ML to exercise that authority, even after it had revoked his written trading authority over the GIL, ICL, OIL, and XIL accounts and even though he never had written trading authority over the SIL and TIL accounts.

33. The ML Entities all engaged in the same type of activity at Aegis—deposits and liquidations of shares of microcap stocks, with the resulting proceeds being wired out of the

accounts shortly after the liquidations. On multiple days during the relevant period, the Entities converted and/or sold shares of the same microcap stocks.

34. From April 2009 through June 2011, the Entities generated over $19 million in proceeds from their liquidations of the three billion-plus unregistered shares of microcap stocks at issue. Aegis collected nearly $800,000 in commissions from the liquidations.

**The SCI Account Referred by ML**

35. In September 2009—after being referred to Aegis by ML—SS opened an account for SS's company, SCI, at Aegis.

36. In 2003, pursuant to a Letter of Acceptance, Waiver and Consent, the NASD suspended SS from association with any NASD member in all capacities for 40 days and fined him $5,000 for his failure to timely respond to requests to appear for an on-the-record interview.

37. Between September and October 2009, SCI deposited and liquidated over 13.5 million shares of a microcap stock in its account at Aegis, generating over $565,000 in proceeds from the liquidations. Aegis collected approximately $28,000 in commissions from the sales.

**The Account Controlled by ML's Brother-in-Law**

38. In October 2009—after being referred to Aegis by ML—JF, ML's brother-in-law, opened an account for JF's company, JCI, at Aegis.

39. JCI, like the Entities and SCI, deposited and liquidated shares of microcap stocks in its account at Aegis. Between October 2009 and May 2011, JCI deposited and liquidated over 800 million shares of five microcap stocks in its account at Aegis, generating approximately $4.5 million in proceeds from the liquidations. Aegis collected approximately $225,000 in commissions from the sales.

40. On multiple days during the relevant period, JCI converted and/or sold shares of the same unregistered stocks as did one or more of the Entities.

**The Suspicious Pattern of Activity in the Referenced Accounts**

41. The referenced accounts—the Entities, SCI, and JCI—engaged in a similar pattern of activity involving unregistered shares of microcap stocks. The customers generally: (a) acquired shares of microcap stocks by acquiring debt owed by the issuer and converting the debt to stock; (b) deposited the shares into their accounts at Aegis shortly after the conversions; (c) liquidated the shares shortly after the deposits, often for substantially more than they paid to acquire the debt; and (d) wired the sales proceeds out of their accounts shortly after the liquidations.

42. This pattern of activity involved the shares of stock of five issuers—China Crescent Enterprises, Inc., TAO Minerals Ltd., NewMarket Technology, Inc., Numobile, Inc., and AlterNet Systems, Inc.

43. The shares of stock of the five issuers sold by the ML-affiliated entities were not registered with the SEC nor were the sales transactions exempt from registration.

**The Sales of Unregistered Shares of China Crescent Enterprises, Inc. Stock**

44. China Crescent Enterprises, Inc. ("CCTR") is a Nevada corporation headquartered in Dallas, Texas. In early 2007, the company changed its name from Intercell International Corp. to NewMarket China, Inc. The following year, it changed its name to China Crescent Enterprises, Inc.

45. According to its Form 10-K for fiscal year ending 2008 filed in March 2009, CCTR sells "information technology products and services" and "provides systems integration

services" in mainland China. In its Form 10-K, CCTR reported revenue of approximately $42 million and net income of $638,319 for 2009.

46. In 2007—the same year that CCTR changed its name from Intercell International Corp. to NewMarket China, Inc.—the NASD issued an Investor Alert, entitled "'China' Stocks—Look Beyond the Name Before You Invest," wherein the NASD, among other things, cautioned investors and advised its members about scams that promote hot China stocks.

47. During the relevant period, GIL, JCI, and SIL engaged in a pattern of depositing shares of CCTR stock into their accounts, liquidating the shares shortly after depositing them, and wiring the proceeds out of their accounts shortly after the sales.

48. GIL, JCI, and SIL—all of which were connected to ML—provided documents to Aegis reflecting that they generally acquired most of their shares of CCTR stock in the same manner. The documents reflect that the entities acquired the shares of CCTR stock by purchasing debt owed by CCTR and converting the debt to CCTR stock. In some of the documents, the three entities falsely represented that they acquired the stock for investment purposes only, and not with a view toward resale or distribution.

49. Between approximately April 2009 and March 2011, GIL, JCI, and SIL collectively converted debt owed by CCTR to 1,994,122,736 shares of CCTR stock.

50. In 77 transactions between April 2009 and June 2010, GIL deposited 492,994,277 shares of recently converted CCTR stock into its account. In 18 transactions between February 2010 and February 2011, JCI deposited 470,156,968 shares of recently converted CCTR stock into its account. In 21 transactions between November 2010 and March 2011, SIL deposited 1,030,971,491 shares of recently converted CCTR stock into its account. In total, the three entities deposited 1,994,122,736 shares of recently converted CCTR stock into their accounts.

51. Despite the customers' representations that the shares were acquired for investment purposes only, between April 2009 and March 2011, all three customers liquidated all of their shares of recently converted CCTR stock shortly after the conversions and wired the proceeds out of their accounts shortly after the sales. From their liquidations of the foregoing shares of CCTR stock, GIL, JCI, and SIL collectively generated nearly $17 million in proceeds.

52. The foregoing shares of CCTR stock were not registered with the SEC.

53. The foregoing shares of CCTR stock also were sold in transactions that were not exempt from registration with the SEC.

54. As of June 30, 2009, GIL had sold approximately 40 percent of the outstanding shares of CCTR stock into the market (per the company's filings with the SEC). As of December 31, 2009, GIL had sold approximately 60 percent of the outstanding shares of CCTR stock into the market (per the company's filings with the SEC). As of August 18, 2010, GIL and JCI collectively had sold approximately 85 percent of the outstanding shares of CCTR stock into the market (per the company's filings with the SEC). As of December 31, 2010, GIL, JCI, and SIL collectively had sold approximately 65 percent of the outstanding shares of CCTR stock into the market (per the company's filings with the SEC).

55. In addition, the sales of CCTR stock by GIL, JCI, and SIL, which generally ranged in price from a fraction of a cent to approximately eight cents per share, accounted for a substantial portion of trading in the stock on several days—a "red flag" in Aegis' AML procedures.

56. The foregoing sales of CCTR stock were part of a plan or scheme to evade the registration requirements of Section 5.

57. Aegis collected approximately $790,000 in commissions from the foregoing sales of unregistered shares of CCTR stock.

**The Sales of Unregistered Shares of TAO Minerals Ltd. Stock**

58. TAO Minerals Ltd. ("TAON") is a Nevada corporation headquartered in Medellin, Columbia. According to its Form 10-K for fiscal year ending January 31, 2010 filed in May 2010, TAON is in the mineral exploration business in Columbia and is "an exploration stage company that has not yet generated or realized any revenues from [its] business operations." As of May 11, 2010, TAON had no employees other than its officers and directors.

59. During the relevant period, XIL, OIL, and JCI engaged in a pattern of depositing shares of TAON stock into their accounts, liquidating the shares shortly after depositing them, and wiring the proceeds out of their accounts shortly after the sales.

60. XIL, OIL, and JCI—all of which were connected to ML—provided documents to Aegis reflecting that they generally acquired their shares of TAON stock in the same manner. The documents reflect that the entities acquired the shares of TAON stock by purchasing convertible debentures issued by TAON and converting the instruments to TAON stock. In some of the documents, the three entities falsely represented that they acquired the stock for investment purposes only, and not with a view toward resale or distribution.

61. Between approximately June 2010 and May 2011, XIL, OIL, and JCI collectively converted debt owed by TAON to 254,481,978 shares of TAON stock.

62. In 27 transactions between June 2010 and May 2011, XIL deposited 191,883,495 shares of recently converted TAON stock into its account. In five transactions between August 2010 and October 2010, OIL deposited 17,169,912 shares of recently converted TAON stock into its account. In four transactions between December 2010 and January 2011, JCI deposited

45,428,571 shares of recently converted TAON stock into its account. In total, the three entities deposited 254,481,978 shares of recently converted TAON stock into their accounts.

63. Despite the customers' representations that the shares were acquired for investment purposes only, between June 2010 and June 2011, the three customers collectively liquidated 254,387,056 shares of recently converted TAON stock and wired the proceeds out of their accounts shortly after the sales. During that time period, XIL, OIL, and JCI liquidated 191,788,573, 17,169,912, and 45,428,571 shares of recently converted TAON stock, respectively. From the liquidations of the foregoing shares of TAON stock, the three customers collectively generated approximately $2.4 million in proceeds.

64. The foregoing shares of TAON stock were not registered with the SEC.

65. The foregoing shares of TAON stock also were sold in transactions that were not exempt from registration with the SEC.

66. As of September 29, 2010, XIL and OIL collectively sold approximately 40 percent of the outstanding shares of TAON stock into the market (per the company's filings with the SEC). As of January 27, 2011, XIL, OIL, and JCI collectively sold approximately 75 percent of the outstanding shares of TAON stock into the market (per the company's filings with the SEC). As of June 22, 2011, the three customers collectively sold approximately 75 percent of the outstanding shares of TAON stock into the market (per the company's filings with the SEC).

67. In addition, the sales of TAON stock by XIL, OIL, and JCI, which generally ranged in price from a fraction of a cent to under seven cents per share, accounted for a substantial portion of trading in the stock on several days—a "red flag" in Aegis' AML procedures.

68. The foregoing sales of TAON stock were part of a plan or scheme to evade the registration requirements of Section 5.

69. Aegis collected approximately $115,000 in commissions from the foregoing sales of unregistered shares of TAON stock.

**The Sales of Unregistered Shares of NewMarket Technology, Inc. Stock**

70. NewMarket Technology, Inc. ("NWMT") is a Nevada corporation headquartered in Dallas, Texas. Since its incorporation in 1997, the company has changed its name three times, most recently to NewMarket Technology, Inc. in 2004. According to its Form 10-K for fiscal year ending December 31, 2010 filed in April 2011, NWMT's principal business is "systems integration" and its revenue primarily comes from software licensing, technical consulting, and systems integration products and services. In its Form 10-K, NWMT reported revenue of approximately $118 million and comprehensive income of approximately $881,000 for 2010.

71. The Form 10-K further reflects that:

a. NWMT is headquartered in the same office suite as CCTR;

b. NWMT has the same CFO as CCTR;

c. NWMT's Chairman of the Board is a Director of CCTR;

d. The CEO of NWMT was a former Director of CCTR; and

e. NWMT has business dealings with CCTR, Numobile, Inc., and AlterNet Systems, Inc., other issuers whose microcap stock the ML-affiliated entities sold during the relevant period.

72. During the relevant period, TIL and JCI engaged in a pattern of depositing shares of NWMT stock into their accounts, liquidating the shares shortly after depositing them, and wiring the proceeds out of their accounts shortly after the sales.

73. TIL and JCI—both of which were connected to ML—provided documents to Aegis reflecting that they generally acquired their shares of NWMT stock in the same manner. The documents reflect that the customers acquired the shares of NWMT stock by purchasing debt owed by NWMT and converting the debt to NWMT stock. In some of the documents, JCI falsely represented that it acquired the stock for investment purposes only, and not with a view toward resale or distribution.

74. Between approximately November 2009 and May 2011, TIL and JCI collectively converted debt owed by NWMT to 1,013,355,622 shares of NWMT stock.

75. In 62 transactions between November 2009 and May 2011, TIL deposited 760,268,666 shares of recently converted NWMT stock into its account. In 14 transactions between January 2010 and May 2011, JCI deposited 253,086,956 shares of recently converted NWMT stock into its account. In total, TIL and JCI deposited 1,013,355,622 shares of recently converted NWMT stock into their accounts.

76. Between November 2009 and May 2011, TIL liquidated all of its shares of recently converted NWMT stock shortly after the conversions and wired the proceeds out of its account shortly after the sales. Despite JCI's representations that the shares were acquired for investment purposes only, between January 2010 and April 2011, JCI liquidated all of its shares of recently converted NWMT stock shortly after the conversions and wired the proceeds out of its account shortly after the sales. From their liquidations of the foregoing shares of NWMT stock, TIL and JCI collectively generated approximately $3.7 million in proceeds.

77. The foregoing shares of NWMT stock were not registered with the SEC.

78. The foregoing shares of NWMT stock also were sold in transactions that were not exempt from registration with the SEC.

79. As of December 31, 2009, TIL had sold nearly 30% percent of the outstanding shares of NWMT stock into the market (per the company's filings with the SEC). As of May 26, 2010, TIL and JCI collectively had sold approximately 85% percent of the outstanding shares of NWMT stock into the market (per the company's filings with the SEC). As of May 31, 2011, they collectively had sold approximately 35% percent of the outstanding shares of NWMT stock into the market (per the company's filings with the SEC).

80. In addition, the sales of NWMT stock by TIL and JCI, which generally ranged in price from a fraction of a cent to 25 cents per share, accounted for a substantial portion of trading in the stock on several days—a "red flag" in Aegis' AML procedures.

81. The foregoing sales of NWMT stock were part of a plan or scheme to evade the registration requirements of Section 5.

82. Aegis collected over $175,000 in commissions from the foregoing sales of unregistered shares of NWMT stock.

**The Sales of Unregistered Shares of Numobile, Inc. Stock**

83. Numobile, Inc. ("NUBL") is a Nevada corporation headquartered in Louisville, Kentucky. In 2004, the company changed its name from Thoroughbred Interests, Inc. to Phoenix Interests, Inc. In July 2009, the company changed its name to Numobile, Inc. According to its Form 10-K for fiscal year ending December 31, 2009 filed in April 2010, in connection with its most recent name change, NUBL changed its business operations from "purchasing, training and selling thoroughbred horses" to "creat[ing] a comprehensive and global mobile computing technology business." The Form 10-K reflects that in 2009, NUBL's revenue was $177,815 and the company incurred a net loss of approximately $1.5 million.

84. During the relevant period, SCI, JCI, and GIL engaged in a pattern of depositing shares of NUBL stock into their accounts, liquidating the shares shortly after depositing them, and wiring the proceeds out of their accounts shortly after the sales.

85. During the relevant period, SCI, JCI, and GIL—all of which were connected to ML—provided documents to Aegis reflecting that they generally acquired most of their shares of NUBL stock in the same manner. The documents reflect that they acquired the shares of NUBL stock by purchasing debt owed by NUBL and converting the debt to NUBL stock. In some of the documents, the three customers falsely represented that they acquired the stock for investment purposes only, and not with a view toward resale or distribution.

86. Between approximately September 2009 and March 2011, SCI, JCI, and GIL collectively converted debt owed by NUBL to 618,260,593 shares of NUBL stock.

87. In six transactions in September and October 2009, SCI deposited 13,514,167 shares of recently converted NUBL stock into its account. In seven transactions in October and November 2009, JCI deposited 27,970,855 shares of recently converted NUBL stock into its account. In 37 transactions between September 2010 and March 2011, GIL deposited 576,775,571 shares of recently converted NUBL stock into its account. In total, the three customers deposited 618,260,593 shares of recently converted NUBL stock into their accounts.

88. Despite the customers' representations that the shares were acquired for investment purposes, all three customers liquidated all of their shares of recently converted NUBL stock shortly after the conversions and wired the proceeds out of their accounts shortly after the sales. SCI liquidated its shares of NUBL stock in September and October 2009. JCI liquidated its shares of NUBL stock in October and November 2009. GIL liquidated its shares of

NUBL stock between October 2010 and March 2011. From their liquidations of the foregoing shares of NUBL stock, SCI, JCI, and GIL collectively generated over $1.3 million in proceeds.

89. The foregoing shares of NUBL stock were not registered with the SEC.

90. The foregoing shares of NUBL stock also were sold in transactions that were not exempt from registration with the SEC.

91. As of November 13, 2009, SCI and JCI collectively had sold approximately 30 percent of the outstanding shares of NUBL stock into the market (per the company's filings with the SEC). As of November 5, 2010, after a one for 50 reverse stock split, SCI, JCI, and GIL collectively had sold nearly 30 percent of the outstanding shares of NUBL stock into the market (per the company's filings with the SEC). As of March 23, 2011, the three customers collectively had sold approximately 13 percent of the outstanding shares of NUBL stock into the market (per the company's filings with the SEC).

92. In addition, the sales of NUBL stock by SCI, JCI, and GIL, which generally ranged in price from a fraction of a cent to approximately six cents per share, accounted for a substantial portion of trading in the stock on several days—a "red flag" in Aegis' AML procedures.

93. The foregoing sales of NUBL stock were part of a plan or scheme to evade the registration requirements of Section 5.

94. Aegis collected over $66,000 in commissions from the foregoing sales of unregistered shares of NUBL stock.

**The Sales of Unregistered Shares of AlterNet Systems, Inc. Stock**

95. AlterNet Systems, Inc. ("ALYI") is a Nevada corporation headquartered in Miami, Florida. In 2001, the company changed its name from North Pacific Capital Corp. to

SchoolWeb Systems Inc. The following year, it changed its name to AlterNet Systems, Inc. According to its Form 10-K for fiscal year ending December 31, 2009 filed in April 2010, ALYI "offers long-distance telecommunications services, mobile transaction services and internet content management solutions for the North and South American markets." In 2009, ALYI's revenue was $277,551 and it incurred a net loss of $685,896.

96. Between April and June 2010, JCI engaged in a pattern of depositing shares of ALYI stock into its account at Aegis, liquidating the shares shortly after depositing them, and wiring the proceeds out of its account shortly after the sales.

97. In support of its deposits, JCI provided Aegis with two Debt Settlement Agreements dated January 15, 2010 and April 22, 2010. The documents reflect that JCI acquired debt owed by ALYI from a lender in October 2009 and then obtained the right to convert the debt to ALYI stock pursuant to the Debt Settlement Agreements. In both Debt Settlement Agreements, JCI falsely represented that it was acquiring ALYI stock "for investment purposes only, and not with a view to, or for, resale, distribution or fractionalization thereof . . . ."

98. Between April and May 2010, JCI converted the debt to 6,334,757 shares of ALYI stock.

99. In six separate transactions between May and early June 2010, JCI deposited the 6,334,757 shares of ALYI stock into its account.

100. Despite the foregoing representations in the Debt Settlement Agreements that the shares were acquired for investment purposes only, between April and June 2010, JCI liquidated the 6,334,757 shares of ALYI stock and wired the proceeds out of its account shortly after the sales. JCI generated approximately $245,000 in proceeds from the liquidations.

101. The foregoing shares of ALYI stock were not registered with the SEC.

102. The foregoing shares of ALYI stock also were sold in transactions that were not exempt from registration with the SEC.

103. In less than two months, JCI sold approximately 16 percent of the outstanding shares of ALYI stock into the market (per the company's filings with the SEC). On 16 of the 20 days that JCI sold its shares of ALYI stock, its sales accounted for more than 40% of the total market volume of ALYI stock sales. Accordingly, the sales of ALYI stock by JCI, which generally ranged in price from approximately two to eight cents per share, accounted for a substantial portion of trading in the stock on several days—a "red flag" in Aegis' AML procedures.

104. The foregoing sales of ALYI stock were part of a plan or scheme to evade the registration requirements of Section 5.

105. Aegis collected approximately $12,000 in commissions from JCI's sales of unregistered shares of ALYI stock.

**FIRST CAUSE OF ACTION**
**UNREGISTERED SECURITIES—SALES OF**
**(VIOLATIONS OF FINRA RULE 2010 BY AEGIS)**

106. The Department realleges and incorporates by reference paragraphs 1 through 105 above.

107. Section 5 of the Securities Act of 1933 prohibits sales of securities that are not registered with the SEC, unless the sales are exempt from registration.

108. Section 4(1) of the Securities Act (n/k/a/ Section 4(a)(1) of the Securities Act) exempts "transactions by any person other than an issuer, underwriter, or dealer" from the registration requirements of Section 5. Rule 144 provides a safe harbor from the statutory definition of the term "underwriter," compliance with which establishes that a person or entity is

not an "underwriter," and thus has the ability to claim the Section 4(1) exemption. The Preliminary Note to Rule 144, however, provides that Rule 144 "is not available to any person with respect to any transaction or series of transactions that, although in technical compliance with Rule 144, is part of a plan or scheme to evade the registration requirements of the [Securities] Act." As detailed above, the Section 4(1) exemption is unavailable to Aegis because the subject sales were a part of plans or schemes to evade the registration requirements of the Securities Act.

109. Section 4(4) of the Securities Act (n/k/a/ Section 4(a)(4) of the Securities Act) exempts "brokers' transactions executed upon customers' orders on any exchange or in the over-the-counter market but not the solicitation of such orders" from the registration requirements of Section 5. Among other conditions a firm must meet to take advantage of the exemption under Section 4(4), a firm must conduct a reasonable inquiry such that it is unaware of circumstances indicating that the customer is an underwriter of the securities sold or that the transaction is part of a distribution of the issuer's securities. As detailed below, the Section 4(4) exemption is unavailable to Aegis because it failed to conduct reasonable inquiries of the circumstances surrounding the foregoing sales of shares of CCTR, TAON, NUBL, NWMT, and ALYI stock.

110. FINRA Rule 2010 requires members, in the conduct of their business, to "observe high standards of commercial honor and just and equitable principles of trade."

111. Aegis sold the foregoing shares of CCTR, TAON, NUBL, NWMT, and ALYI stock for the Entities, SCI, and JCI through the use of the means or instruments of transportation or communication in interstate commerce and the mails, including by selling the shares through the over-the-counter ("OTC") market and by using the mail, email, phones, and facsimiles in connection with the sales.

112. No registration statement has been filed with the SEC or was in effect for the foregoing shares of CCTR, TAON, NUBL, NWMT, and ALYI stock.

113. The shares of the five stocks also were sold in transactions that were not exempt from registration with the SEC.

114. The sales of the shares of the five stocks were a part of plans or schemes to evade the registration requirements of Section 5.

115. By engaging in these sales of unregistered securities in transactions not subject to an exemption from the registration requirements, Aegis acted in contravention of Section 5, and thus violated FINRA Rule 2010.

**FACTS COMMON TO THE SECOND AND THIRD CAUSES OF ACTION**

**The Sales of Unregistered Shares of Lithium Exploration Group, Inc. Stock**

116. Lithium Exploration Group, Inc. ("LEXG") is a Nevada corporation headquartered in Scottsdale, Arizona. LEXG was incorporated in May 2006 as Mariposa Resources, Ltd. The company adopted its current name in November 2010. According to its Form 10-K for the fiscal year ending June 30, 2011, LEXG is "an exploration stage company that engages principally in the acquisition, exploration, and development of resource properties." According to the Form 10-K, LEXG reported no revenue and had operating expenses of $24,269,435.

117. In the same Form 10-K, LEXG noted that trading in its common stock on the OTC Bulletin Board "is often thin." The only bid price for its common stock for the quarter ending December 31, 2010 was ten cents per share.

118. In a Form 10-Q filed with the SEC on February 22, 2011 for the quarter ending December 31, 2010, LEXG indicated that it is a shell corporation.

119. In December 2010, Hong Kong residents CC and WV each opened an account at Aegis. The firm's initial contact with both customers was through the Internet.

120. On or about February 16, 2011, a few months after LEXG's name change, CC and WV deposited 2,250,000 and 2,126,400 shares of LEXG stock in physical certificate form into their respective accounts. The certificates were issued on December 15, 2010.

121. Both customers submitted documents to Aegis, wherein they represented that they acquired their shares through a series of stock purchase agreements. The documents reflect that CC paid $40 for his 2,250,000 shares (after a ten for one stock split) and that WV paid $110 for his 2,126,500 shares (after a ten for one stock split).

122. Consistent with the representation in its Form 10-K, LEXG stock was thinly traded. Between February 1, 2011 and March 21, 2011, LEXG traded only on one day, at prices ranging from seven to ten cents per share.

123. From approximately late March through April 2011, LEXG was the subject of multiple promotional newsletters and press releases, touting the company and its business prospects. For example, a newsletter issued by The Stock Detective, entitled "The Next Exxon," touted LEXG's prospects to return profits "as high as 1000% or more within the next twelve months," with a price target of $10 per share. This newsletter was financed by one of LEXG's restricted stock shareholders, which also financed a similar promotional newsletter in early April 2011. LEXG issued four separate press releases from March 24-30, 2011, including a March 28th press release that stated that LEXG had acquired 100% of the mineral rights to 113,000 acres in Western Alberta, Canada when, in fact, the actual agreements only provided LEXG with the option to acquire the mineral rights upon meeting certain conditions.

124. After the wave of promotional materials and press releases, LEXG's share price rose from 12 cents per share on the morning of March 22, 2011 to a high of $1.35 per share on March 30, 2011. On April 29, 2011, the stock opened at $10.64 per share and closed at $3.70 per share.

125. On or about March 28, 2011, amidst the appreciation in LEXG stock and not long after their stock certificates were issued, CC and WV began liquidating their shares of LEXG stock. Between late March and late April 2011, they each generated over $4 million in proceeds from their sales. Shortly thereafter, they wired most of the sales proceeds to their respective banks in Hong Kong.

126. CC and WV did not buy or sell any other securities in their accounts between February and April 2011.

127. Aegis collected commissions totaling approximately $306,000 on the sales.

128. No registration statement was filed with the SEC or was in effect for the shares of LEXG stock sold by CC and WV.

129. Respondents failed to conduct a reasonable searching inquiry to determine if the foregoing sales of shares of LEXG stock were exempt from registration under Section 5.

**The Sales of Unregistered Shares of 8,000 Inc. Stock**

130. 8,000 Inc. ("EIGH") was originally incorporated in Nevada in July 2007. According to its March 31, 2010 Initial Public Disclosure Document, EIGH sought "to acquire a portfolio of companies under the umbrella of 8000inc across the media and technology arenas as well as extending its investment arm into luxury property development and construction."

131. EIGH stock traded on the OTC market, except from November 4-17, 2010, when the SEC suspended trading in the stock because of questions concerning the accuracy and

adequacy of publicly disseminated information regarding a cash dividend that the company announced it would pay and an acquisition the company supposedly made in September 2010.

132. EIGH was a non-reporting company and had no effective registration statement for sales of shares of its stock during the relevant time period.

133. On August 18, 2009, JB, a citizen of the United Kingdom, opened an account at Aegis.

134. In December 2009 and April 2010, JB deposited a total of 29.5 million shares of EIGH stock into his account. According to documents submitted to Aegis, JB purchased the shares from EIGH's former CEO shortly before he deposited the shares into his account. The shares were not registered with the SEC.

135. Between December 2009 and March 2011—before, during, and after the SEC trading halt—JB sold over 20 million shares of EIGH stock from his account. In fact, from November 4-8, 2010—during the SEC's trading suspension—JB bought and sold a total of 270,000 shares of EIGH stock in his account.

136. JB's sales of EIGH stock generated proceeds of approximately $1.4 million for JB and commissions of approximately $59,000 for Aegis.

137. No registration statement was filed with the SEC or was in effect for the shares of EIGH stock sold by JB.

138. Respondents failed to conduct a reasonable searching inquiry to determine if the foregoing sales of shares of EIGH stock were exempt from registration under Section 5.

**The Sales of Unregistered Shares of Stem Cell Assurance, Inc. Stock**

139. Stem Cell Assurance, Inc. ("SCLZ") is a Nevada corporation with its principal place of business in Jupiter, Florida. SCLZ was incorporated in June 1997 as Columbia River

Resources Inc. The company changed its name to Traxxec Inc. in August 2008, to Stem Cell Assurance, Inc. in June 2009, and to BioRestorative Therapies, Inc. in August 2011.

140. In the Form 10-Q for the period ending September 30, 2011—the first Form 10-Q after the most recent name change—the company identified itself as a "development stage enterprise whose primary activities since inception have been the development of its business plan, negotiating strategic alliances and other agreements, and raising capital." According to the Form 10-Q, the company had no revenues and had operating expenses of $853,005.

141. On or about August 24, 2009, less than two months after the company changed its name to Stem Cell Assurance, Inc., JB transferred 36,269,935 shares of SCLZ stock from another broker-dealer to his account at Aegis. In connection with the transfer, JB represented that he acquired the shares in April 2009 after converting debt issued in April 2007 to stock and that he had been a ten percent owner of SCLZ within the past three months.

142. On or about August 27, 2009, JB journaled five million shares of SCLZ stock from his account to two third-party accounts at Aegis, which were maintained by EBFI c/o TB and GCI c/o TB (collectively, the "TB Accounts"). The TB Accounts were opened at Aegis in early August 2009, shortly before receiving the shares.

143. Between September and December 2009, a period during which trading in SCLZ stock increased significantly over prior months, JB and the TB Accounts sold their shares of SCLZ stock, as well as an additional 2.95 million shares that they had purchased, generating total proceeds of approximately $323,000. JB wired a significant portion of the proceeds out of his account shortly after the sales.

144. Aegis collected over $11,000 in commissions from the foregoing sales of SCLZ stock.

145. No registration statement was filed with the SEC or was in effect for the shares of SCLZ stock that were transferred into JB's account.

146. Respondents failed to conduct a reasonable searching inquiry to determine if the foregoing sales of shares of SCLZ stock were exempt from registration under Section 5.

**The Sales of Unregistered Shares of Kendall Square Research Corp. Stock**

147. Kendall Square Research Corp. ("KSQR") was incorporated in Nevada in 2005 as a development stage shell company. The company changed its name from Kendall Square Research Corp. to National Hyperbaric Rehab Center, Inc. and then to Sancuro Corp. In September 2009, the company again became known as Kendall Square Research Corp. KSQR de-registered with the SEC in June 2008.

148. In July 2010, OGFI c/o AA opened an account at Aegis.

149. Aegis obtained reports from McDonald Information Services, Inc. ("MIS"), a company that provides due diligence and negative news research on individuals and entities, on both OGFI and AA. The MIS report for AA noted a trade renege in excess of $20,000 at another broker-dealer. Smulevitz noted on a document related to the opening of this account: "liquidation business only – ok."

150. On August 4, 2010, OGFI deposited five million shares of KSQR stock in physical certificate form dated July 30, 2010 into its account.

151. In connection with the deposit, OGFI provided Aegis with multiple documents, including a completed Deposit Security Request form ("DSRQ Form"), a form required by Aegis' clearing firm that required disclosures from the customer related to proposed deposits or transfers of securities. The DSRQ Form claimed that the shares were exempt from registration under Rule 144. In addition to the DSRQ Form, OGFI also provided the following information:

(a) documents reflecting the conversion of a debt instrument to shares of KSQR stock that were subsequently purchased by OGFI; and (b) an April 21, 2010 opinion letter from attorney GJP, claiming that the shares of KSQR stock could be issued without a restrictive legend under Rule 144 because the indebtedness had been held for over a year. The DSRQ Form also provided that the reason for the deposit of the security was "resale" and that OGFI intended to deposit more securities in the future.

152. When OGFI deposited and liquidated shares of KSQR stock in its account, GJP, the attorney who drafted the opinion letter, was on the OTC Markets' list of prohibited attorneys and had been on the list since April 2010. Because of Aegis' inadequate inquiry, the firm was unaware of this important fact.

153. Between late August and late September 2010, OGFI liquidated all five million shares of KSQR stock that it deposited into its account on August 4, 2010. From the sales, OGFI generated proceeds of approximately $47,000, which it wired out of its account shortly after the sales.

154. During this period, OGFI's sales of shares of KSQR stock represented a significant percentage of the daily trading volume in the stock.

155. No registration statement was filed with the SEC or was in effect for the shares of KSQR stock sold by OGFI.

156. Respondents failed to conduct a reasonable searching inquiry to determine if the foregoing sales of shares of KSQR stock were exempt from registration under Section 5.

**The Sales of Unregistered Shares of Paradigm Oil and Gas, Inc. Stock**

157. Paradigm Oil and Gas, Inc. ("PDGO") is a Nevada corporation that was incorporated as Paradigm Enterprises, Inc. in July 2002 and changed its name to Paradigm Oil

and Gas, Inc. in February 2005. In August 2008, the company effected a symbol change to PDGO in conjunction with a one for 300 reverse stock split. According to the company's April 4, 2014 Form 10-12G, in January 2010, the company underwent a reverse acquisition by entering into a "[s]hare exchange agreement with the shareholders of Integrated Oil and Gas Solutions Inc., a Texas corporation." The acquisition date became the inception date of the company. According to the Form 10-12G, the company is engaged "in the exploration, development, acquisition and operation of oil and gas properties" and has yet to generate any revenues since its inception date.

158. PDGO's Form 10-K for the year ending December 31, 2009 that was filed with the SEC on April 15, 2010 reported only $121 in total assets, no revenue, and a going concern statement from the auditor noting that the company "has no business operations and has a working capital deficiency, both of which raise substantial doubt about its ability to continue as a going concern." According to its May 25, 2010 Form 10-Q, as of March 31, 2010, the company had yet to generate any revenues from business operations.

159. In December 2009, MIL c/o AB, a Canadian citizen, opened an account at Aegis.

160. On April 14, 2010, MIL deposited 2.3 million shares of PDGO stock in physical certificate form into its account. The certificates were issued on April 12, 2010—only two days before MIL deposited the shares.

161. In the related DSRQ Form, MIL indicated that the reason for the deposit was "resale" and that PDGO had not been through a recent name change, despite the fact that company went through a reverse acquisition in January 2010. The approximate value of the shares in the DSRQ was listed as $2.3 million. According to documents submitted by MIL to

Aegis, MIL purchased the shares from another entity for $23,000 on February 14, 2010—two months before the deposit.

162. From May 3-28, 2010, within approximately a month and a half after depositing its shares of PDGO stock, MIL liquidated all 2.3 million shares, generating proceeds of over $3.3 million, a substantial portion of which it wired out of its account that month. Aegis collected nearly $140,000 in commissions from the sales.

163. In May 2010, MIL's sales of PDGO stock represented a significant percentage of the trading volume of the stock. In addition, the average daily trading volume in PDGO stock in May 2010 was substantially greater than the average daily trading volume for the preceding 30 days.

164. Significant suspicious promotional activity in PDGO was released during the period when MIL deposited and liquidated the PDGO shares at Aegis. Despite the bleak financial picture disclosed in the April 2010 10-K, in April and May 2010, PDGO issued a number of press releases touting its recent acquisitions and business prospects. For example, a May 25, 2010 press release announced that PDGO had committed to a minimum order of 1,000 transportable service platforms that "exhibits a business potential of over $500 million per year."

165. During May 2010, a number of websites, including EnergyStockAlerts.com, began issuing investor alerts touting PDGO. On May 7, 2010, the website noted that PDGO's property acquisitions include "probable reserves of over 10 million barrels" worth an estimated $800 million and included a long-term price projection of $15.69 per share, when PDGO was trading at $1.55 per share.

166. No registration statement was filed with the SEC or was in effect for the shares of PDGO stock sold by MIL.

167. Respondents failed to conduct a reasonable searching inquiry to determine if the foregoing sales of shares of PDGO stock were exempt from registration under Section 5.

**SECOND CAUSE OF ACTION**
**SUPERVISORY PROCEDURES—DEFICIENT WRITTEN SUPERVISORY PROCEDURES AND SUPERVISION—FAILURE TO SUPERVISE**
**(VIOLATIONS OF NASD RULE 3010 AND FINRA RULE 2010 BY ALL RESPONDENTS)**

**Aegis' Supervisory Structure**

168. The Department realleges and incorporates by reference paragraphs 1 through 167 above.

169. In 2009, the lawyer who referred ML to Aegis also referred Smulevitz to Aegis.

170. In or about June 2009, Aegis hired Smulevitz to serve as its CCO and AMLCO. At the time, Smulevitz was 25 years old and had less than three and a half years of experience in the securities industry. Smulevitz served as the firm's CCO and AMLCO from approximately June 1, 2009 until June 9, 2010, when he became Aegis' Deputy CCO, Director of Compliance.

171. In or about June 2010, Aegis hired McKenna to serve as its CCO and AMLCO. McKenna held those positions from June 9, 2010 until approximately June 2013.

172. During their respective tenures as CCO and AMLCO, Smulevitz and McKenna were responsible for establishing Aegis' supervisory procedures, including its WSPs.

173. During their respective tenures as CCO and AMLCO, Smulevitz and McKenna were responsible for supervising sales of control and restricted securities to ensure that Aegis did not sell unregistered, non-exempt securities for its customers, including sales that were part of a plan or scheme to evade the registration requirements of Section 5.

174. During their respective tenures as CCO and AMLCO, Smulevitz and McKenna also were responsible for supervising the activity in Aegis' "house accounts," which included the accounts maintained by the Entities, SCI, and JCI.

**Regulatory Notice 09-05**

175. In January 2009, FINRA issued Regulatory Notice 09-05 ("RN 09-05"), entitled "Unregistered Resales of Restricted Securities," wherein FINRA reminded firms and associated persons of their obligation to determine whether securities are eligible for public sale because "[f]irms that do not adequately supervise or manage their role in such distributions run the risk of participating in an illegal, unregistered distribution."

176. In RN 09-05, FINRA identified ten examples of "situations in which firms should conduct a searching inquiry to comply with their regulatory obligations under the federal securities laws and FINRA rules." The non-exhaustive, illustrative list of "red flags" situations, which also were set forth in Aegis' WSPs, included, among others:

a. A customer opens a new account and delivers physical certificates representing a large block of thinly traded or low-priced securities;
b. A customer has a pattern of depositing physical share certificates, immediately selling the shares and then wiring out the proceeds of the resale;
c. A customer deposits share certificates that are recently issued or represent a large percentage of the float for the security;
d. The lack of a restrictive legend on deposited shares seems inconsistent with the date the customer acquired the securities or the nature of the transaction in which the securities were acquired;
e. There is a sudden spike in investor demand for, coupled with a rising price in, a thinly traded or low-priced security;
f. The company was a shell company when it issued the shares;

g. A customer with limited or no other assets under management at the firm receives an electronic transfer or journal transactions of large amounts of low-priced, unlisted securities; and

h. The issuer has been through several recent name changes, business combinations or recapitalizations, or the company's officers are also officers of numerous similar companies.

177. In RN 09-05, FINRA provided guidance on conducting a searching inquiry and establishing supervisory procedures and controls for unregistered resales of securities. FINRA advised that as part of the "reasonable steps" a firm must take to ensure a resale of unregistered securities is not an illegal distribution, firms should ask, at a minimum: how long a customer held the security; how did the customer acquire the security; does the customer intend to sell additional shares of the same class of securities through other means; and how many shares or other units of the class are outstanding, and what is the relevant trade volume.

178. RN 09-05 reiterated that "firms that accept delivery of large quantities of low-priced OTC securities, in either certificate form or by electronic transfer, and effect sales in these securities, should have written procedures and controls in place to prevent participation in an illegal, unregistered distribution of securities." RN 09-05 further advised that proper supervisory procedures should include a "mandatory standardized process" that clearly communicates each step in the review, approval, and post-approval process, clearly assigns ownership of each step in the process, and is easily accessible to the people involved in the process.

**Aegis' Deficient Supervisory System**

179. During the relevant period, Aegis, as well as Smulevitz, and McKenna during their respective tenures as the firm's CCO, failed to establish, maintain, and enforce a

supervisory system, including WSPs, reasonably designed to achieve compliance with Section 5 for sales of unregistered, microcap stocks.

180. Aegis' supervisory system was inadequate to reasonably ensure that its customers' sales of microcap stocks were sold pursuant to an effective registration statement or were validly exempt from registration, and not sold as part of a scheme to evade the registration requirements of Section 5.

181. Aegis' supervisory system for sales of unregistered, microcap stocks was deficient because its WSPs did not set forth a mandatory standardized process to conduct an adequate and independent searching inquiry to determine whether the sales complied with the registration requirements of Section 5 or the exemptions therefrom. Specifically, the WSPs did not clearly communicate: (a) the background inquiry to be performed on: the issuer, its affiliates, officers and directors; other key persons and entities associated with the issuer, including its accountants and attorneys; persons controlling activity in the account seeking to liquidate securities; and attorneys who issued opinion letters regarding the registration and exemption status of securities; and (b) the documents to be gathered in connection with sales of control and restricted securities.

182. Aegis' supervisory system for sales of unregistered, microcap stocks also was deficient because the procedures for conducting a searching inquiry relied too heavily on information obtained from interested parties to the sales (*i.e.*, the customer, issuer, and persons associated with the issuer or customer) and did not require appropriate, independent due diligence and analyses into the registration requirements and the exemptions therefrom. Specifically, the WSPs failed to require that due diligence be conducted through the utilization of Internet searches, the SEC's website, www.otcmarkets.com, and other independent sources

regarding: the issuer, its affiliates, officers, and directors; other key persons and entities associated with the issuer, including its accountants and attorneys; and persons controlling activity in the account seeking to liquidate the securities. The WSPs also failed to require consideration of patterns of deposits and liquidations of shares of the same microcap stocks, including patterns of such conduct by accounts that were controlled by, or associated with, the same person or entity.

**Respondents' Failure to Supervise**

183. Because of Aegis' inadequate supervisory system, the firm, Smulevitz, and McKenna failed to conduct adequate, independent inquiries on certain customer deposits and liquidations of billions of shares of the aforementioned ten microcap stocks, despite the presence of "red flags" indicating that the sales could be unregistered distributions and necessitating that reasonable and meaningful inquiries be conducted.

184. While Respondents collected some documents and information about the proposed deposits and sales of unregistered, microcap stocks, they failed to adequately analyze and independently verify the collected documents and information. In sum, their collection and verification efforts were merely cursory and allowed Aegis' microcap stock liquidation business to continue.

185. Respondents did not consider the pattern of deposits and liquidations of microcap stocks by their customers to be a "red flag" that required a meaningful inquiry. To the contrary, they exercised less scrutiny over transactions in accounts that regularly deposited and liquidated shares of microcap stocks under the flawed premise that they knew the customers and anticipated this exact activity.

186. Respondents did not require complete documentation in support of the proposed deposit of unregistered securities to fully trace the shares directly back to the issuer as long as the documents made reference to the origin of the shares. Respondents simply took customers' representations about the origin of their shares of unregistered, microcap stocks at face value, with little or no independent verification.

187. Respondents unreasonably relied upon representations from customers or their counsel that shares of stock were freely tradable, without fully evaluating the circumstances behind the deposits and liquidations and without conducting meaningful, independent inquiries on the transactions.

188. Both McKenna and Smulevitz mistakenly believed that securities received through a DWAC (Deposit and Withdrawal at Custodian) could not be restricted and therefore did not require due diligence to determine whether such securities were subject to any trading restrictions or were not freely tradable.

189. Respondents did not independently verify or corroborate all of the information provided by customers in the DSRQ Form; instead, they relied on representations made by customers or their agents—some of whom, like ML, had been the subject of regulatory disciplinary actions—to provide accurate information.

190. Respondents allowed Aegis personnel to complete DSRQ Forms after a customer signed a blank or incomplete DSRQ Form, even though this practice was prohibited by the firm.

191. Respondents failed to research whether the issuer was the subject of promotional activity when reviewing proposed deposits and liquidations of shares of unregistered microcap stocks.

192. Respondents often failed to determine whether the issuer was a shell company.

193. Respondents also failed to systematically review publicly available information on customers, issuers, affiliates, control persons, and others associated therewith.

194. Aegis' deficient supervisory system and Respondents' failures to reasonably supervise the firm's customers' sales of the aforementioned ten microcap stocks resulted in numerous "red flags" going undetected and unheeded. Respondents failed to make the necessary searching inquiry required to detect and/or prevent illegal distributions of unregistered securities.

**The "Red Flags" in the Seven Referenced Accounts**

195. As set forth above in greater detail, the following "red flags," which are indicative of unregistered distributions and potentially suspicious activity, were present in the seven referenced accounts:

a. The significant and relevant regulatory disciplinary history of ML;

b. The regulatory disciplinary history of SS;

c. The number of accounts that ML controlled and/or with which he was associated—five of which belonged to different but affiliated entities incorporated and located in Turks and Caicos;

d. ML being allowed by Aegis to continue to exercise control in accounts after Aegis advised its clearing firm to revoke his trading authority and to exercise control in accounts for which ML did not have written trading authority;

e. The regular and large deposits of shares of thinly-traded, low-priced, microcap stocks into the accounts;

f. The similar and distinct manner in which the seven accounts acquired the shares (*i.e.*, the acquisition of a debt instrument and the prompt conversion thereof to stock);

g. The similar pattern of activity in the accounts—large deposits of shares of thinly-traded, microcap stocks, liquidations of the shares shortly after the deposits, and withdrawals of the resulting proceeds shortly after the sales;

h. Some of the accounts engaged in the same activity in the same thinly-traded, microcap stocks, at times on the same days;

i. The recurring pattern of the customers providing Aegis with documents reflecting that they acquired the shares for investment purposes only, and not with a view for resale or distribution, and then selling the shares shortly after acquiring them, despite representations to the contrary;

j. The substantial volume of the stocks' outstanding shares for which the liquidations accounted;

k. The substantial profits that they made on some of their debt acquisitions;

l. The common directors and officers of NWMT and CCTR; the headquarters of the two issuers being located in the same office suite; and the business dealings among some of the issuers;

m. The name changes of four of the five issuers—all of which were incorporated in Nevada;

n. The generic descriptions of the issuers' businesses and the nature of their businesses—mining and technology—two hotbeds for microcap stock fraud, especially technology ventures in China; and

o. The lackluster balance sheets and revenues of some of the issuers.

**The "Red Flags" in the Other Accounts**

196. The "red flags" indicative of potential unregistered distributions and potentially suspicious activity extended beyond the referenced accounts at Aegis. As set forth above in greater detail, the following "red flags" were present in the deposits and sales of unregistered shares of LEXG stock:

a. The circumstances under which the two Hong Kong residents opened their accounts;

b. Their collective deposits of a substantial amount of a thinly traded, low-priced, microcap stock (over four million shares) in physical certificate form, two months after opening their accounts;

c. Their deposits of recently issued share certificates;

d. The deposits, liquidations, and wiring of most of the proceeds of their accounts shortly after the sales;

e. The *de minimus* amount of money for which they acquired their shares ($150) relative to the substantial proceeds that they generated from the sales (over $8 million) within a short period of time;

f. Their liquidation of the shares amidst an ongoing publicity or promotional campaign and increases in both the price and trading volume of the stock;

g. The recent name change and lack of revenue of the issuer; and

h. The lack of other activity in the accounts during the period when they deposited and liquidated their shares.

197. As set forth above in greater detail, the following "red flags," which are indicative of potential unregistered distributions and potentially suspicious activity, were present during the deposits and sales of unregistered shares of EIGH stock:

a. JB's deposit of a substantial amount of shares of a thinly traded, low-priced, microcap stock (29.5 million shares);

b. JB's acquisition of the shares from the issuer's former CEO shortly before he deposited them into his account;

c. The substantial proceeds that JB generated from the sales (approximately $1.4 million) within a short period of time;

d. The SEC's November 2010 suspension of trading in the stock; and

e. JB's purchases and sales of the stock during and after the trading suspension.

198. As set forth in greater detail above, the following "red flags," which are indicative of potential unregistered distributions and potentially suspicious activity, were present during the deposits and sales of unregistered shares of SCLZ stock:

a. JB's deposit of a substantial amount of shares of a thinly traded, low-priced, microcap stock (over 36 million shares);

b. JB's representation that he had been a controlling shareholder of the issuer;

c. JB's journals of ten million shares in total to two third-party accounts, which were opened shortly before the journals and controlled by the same person;

d. The substantial proceeds generated from the sales (approximately $323,000), most of which JB wired out of his account shortly after the sales; and

e. The recent name changes and lack of revenue of the issuer.

199. As set forth above in greater detail, the following "red flags," which are indicative of potential unregistered distributions and potentially suspicious activity, were present during the deposits and sales of unregistered shares of KSQR stock:

a. OFGI's deposit of a substantial amount of shares of a thinly traded, low-priced, microcap stock (five million shares) in physical certificate form shortly after opening its account;

b. The trade renege by AA, who controlled OFGI;

c. The fact that the attorney who wrote the Rule 144 opinion letter for OFGI's shares was listed on the OTC Market's website as a prohibited attorney—a fact of which Aegis was unaware;

d. The amount of proceeds that OFGI generated from the sales (approximately $47,000);

e. The deposit of the shares, liquidation of the shares shortly after being deposited, and wiring of the proceeds shortly after the sales;

f. The volume of trading in the stock for which the liquidations accounted; and

g. The recent name change of the issuer.

200. As set forth above in greater detail, the following "red flags," which are indicative of potential unregistered distributions and potentially suspicious activity, were present during the deposits and sales of unregistered shares of PDGO stock:

a. MIL's deposit of a substantial amount of shares of a thinly traded, low-priced, microcap stock (2.3 million shares) in physical certificate form;

b. MIL's deposit of recently issued share certificates;

c. The amount of money for which MIL acquired the shares ($23,000) in February 2010 relative to the substantial proceeds that it generated from the sales (over $3.3 million) in May 2010—a few months later;

d. The deposit of the shares, liquidation of the shares shortly after being deposited, and wiring of most of the proceeds shortly after the sales;

e. The liquidation of the shares amidst an ongoing publicity or promotional campaign;

f. The volume of trading in the stock for which the liquidations accounted; and

g. The name changes, reverse acquisition, one for 300 reverse stock split, business model (oil and gas exploration), and lack of revenue of the issuer.

201. In sum, Respondents failed to make reasonable and meaningful inquiries into the foregoing sales of the ten microcap stocks by Aegis customers.

**Summary of Supervisory Violations**

202. NASD Rule 3010(a) requires members to "establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules."

203. NASD Rule 3010(b) requires members to "establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives, registered principals, and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of NASD." The procedures must be tailored to the business lines in

which the firm engages, and they also must set out mechanisms for ensuring compliance and detecting violations, not merely set out what conduct is prohibited.

204. During the relevant period, Aegis, and Smulevitz and McKenna during their respective tenures as the firm's CCO, failed to establish, maintain, and enforce a supervisory system, including WSPs, reasonably designed to achieve compliance with Section 5 for sales of microcap stocks and also failed to conduct reasonable and meaningful inquiries of the circumstances surrounding the aforementioned sales of the ten identified unregistered, microcap stocks by Aegis customers.

205. As a result of the foregoing, Respondents violated NASD Rule 3010(a) and (b) and FINRA Rule 2010.

**THIRD CAUSE OF ACTION**
**AML VIOLATIONS**
**(VIOLATIONS OF NASD RULE 3011 AND FINRA RULES 3310 AND 2010 BY ALL RESPONDENTS)**

**Aegis' AML Obligations**

206. The Department realleges and incorporates by reference paragraphs 1 through 205 above.

207. FINRA Rule 3310(a), which superseded NASD Rule 3011(a) on January 1, 2010, requires members to "[e]stablish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under [the Bank Secrecy Act] and the implementing regulations thereunder."

208. The implementing regulation issued by the U.S. Department of the Treasury, 31 C.F.R. § 1023.320 (recodified from 31 C.F.R. § 103.19 on March 1, 2011), requires broker-dealers to file with FinCEN "a report of any suspicious transaction relevant to a possible violation of law or regulation." The regulation further provides that:

> A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through a broker-dealer, it involves or aggregates funds or other assets of at least $ 5,000, and the broker-dealer knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):
>
> (i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;
>
> (ii) Is designed, whether through structuring or other means, to evade any requirements of this chapter or of any other regulations promulgated under the Bank Secrecy Act;
>
> (iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or
>
> (iv) Involves use of the broker-dealer to facilitate criminal activity.

209. In NASD Notice to Members 02-21 ("NTM 02-21"), the NASD provided guidance for AML compliance programs. NTM 02-21 set forth a non-exhaustive list of examples of "red flags" indicative of potential money laundering and suspicious activity and advised that if firms detect "red flags," they should perform additional due diligence before proceeding with a transaction.

**Aegis' AML Deficiencies**

210. During the relevant period, Aegis had written AML policies and procedures.

211. Smulevitz, during the period from June 2009 through June 2010, and McKenna, during the period from June 2010 through May 2011, served as the firm's AMLCO.

212. Aegis' AML policies and procedures provided that its AMLCO was responsible for overseeing and implementing the firm's AML program, investigating suspected money laundering activities, and taking corrective action when necessary.

213. During the relevant period, consonant with the "red flags" set forth in NTM 02-21, Aegis' written AML procedures contained examples of risk indicators suggestive of potential money laundering and suspicious activity. Aegis' AML procedures set forth the following "red flags," among others, that if present, required additional due diligence:

a. The customer engages in numerous transactions where large blocks of low-priced securities of companies with higher risk operating and financial histories are transferred into the account, sold, and the proceeds wired;

b. The customer (or a person publicly associated with the customer) has a questionable background or is the subject of news reports indicating possible criminal, civil, or regulatory violations.

c. The customer, for no apparent reason, or in conjunction with other "red flags," engages in transactions involving certain types of securities, such as penny stocks, Regulation "S" (Reg S) stocks, and bearer bonds, which although legitimate, have been used in connection with fraudulent schemes and money laundering activity. (Such transactions may warrant further due diligence to ensure the legitimacy of the customer's activity.)

d. The customer maintains multiple accounts, or maintains accounts in the names of family members or corporate entities, for no apparent business purpose or other purpose.

214. Aegis' AML procedures also required the AMLCO to review surveillance reports and other available information to detect questionable patterns of activity, including patterns of unusual size, volume, or types.

215. Aegis' AML procedures provided that the firm would file SARs for transactions that may be indicative of money laundering. The AML procedures identified suspicious activities to include: "trading that constitutes a substantial portion of all trading for the day in a particular security;" "trading or journal between/among accounts, particularly between related owners;" "heavy trading in low-priced securities;" and "unusually large deposits of funds or securities."

216. During a portion of the relevant period, Aegis's AML procedures also provided that: "Trading penny stocks (which may involve unregistered distributions) . . . will, in particular, be monitored when they occur."

217. During the relevant period, Aegis did not have any specific exception reports that addressed anomalous transactions in microcap or low-priced securities, nor did it have any exception reports or manual systems that adequately monitored for patterns of deposits and liquidations of unregistered securities necessary to adequately detect, investigate, and report, if applicable, suspicious activity.

218. Moreover, the firm failed to maintain adequate evidence that account activity was actually being detected and investigated for potentially suspicious activity. While Smulevitz served as the firm's AMLCO, he maintained a monthly log generally to note potentially suspicious activity, but he failed to share or make the log known to anyone else at Aegis, including McKenna, his successor as the firm's AMLCO. The monthly log did not contain his rationale for closing alerts and corroborating evidence to support the closure. The log also was not available to others to address ongoing potential concerns at the firm.

219. As detailed above, the foregoing activity in the ten microcap stocks by the firm's customers should have raised "red flags" indicative of potential suspicious activity related to unregistered distributions and market manipulation.

220. Respondents, however, did not consider any of the aforementioned activity involving the deposits of shares of microcap stocks, the sales of the unregistered shares, related wires, and the surrounding circumstances to be potentially suspicious transactions.

221. Therefore, Respondents failed to detect the potentially suspicious nature of the aforementioned activity and surrounding circumstances for AML suspicious activity monitoring purposes, failed to adequately investigate the activity for AML suspicious activity monitoring purposes, and also failed to consider whether or not to report the activity by filing SARs, as appropriate.

222. Respondents should have detected the potentially suspicious nature of the aforementioned activity and surrounding circumstances for AML purposes, adequately investigated the activity for AML purposes, and considered whether or not to report the activity by filing a SAR, as appropriate.

223. In sum, during the relevant period, Aegis, through Smulevitz and McKenna during their respective tenures as the firm's AMLCO, failed to adequately implement the firm's AML program and AML policies and procedures reasonably expected to detect and cause the reporting of suspicious transactions under the Bank Secrecy Act and its implementing regulations.

224. As a result of the foregoing, Aegis and Smulevitz violated NASD Rule 3011(a) and FINRA Rules 3310(a) and 2010, and McKenna violated FINRA Rules 3310(a) and 2010.

Based on the foregoing:

Respondent Aegis Capital Corp. violated FINRA Rule 2010; violated NASD Rule 3010(a) and (b) and FINRA Rule 2010; and violated NASD Rule 3011(a) and FINRA Rules 3310(a) and 2010.

Respondent Charles D. Smulevitz violated NASD Rule 3010(a) and (b) and FINRA Rule 2010; and violated NASD Rule 3011(a) and FINRA Rules 3310(a) and 2010.

Respondent Kevin C. McKenna violated NASD Rule 3010(a) and (b) and FINRA Rule 2010; and violated FINRA Rules 3310(a) and 2010.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondents from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

**SANCTIONS**

It is ordered that:

Respondent Aegis Capital Corp. be censured, fined $950,000.00 (Nine Hundred and Fifty Thousand Dollars and No Cents), and retain an independent consultant in accordance with the terms of the Offer of Settlement.

Respondent Charles D. Smulevitz be suspended from associating with any FINRA member in a principal capacity for thirty (30) calendar days, and be fined $5,000.00 (Five Thousand Dollars and No Cents).

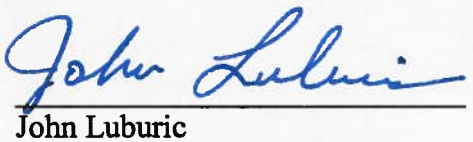
Respondent Kevin C. McKenna be suspended from associating with any FINRA member in a principal capacity for sixty (60) calendar days, and be fined $10,000.00 (Ten Thousand Dollars and No Cents).

The sanctions imposed herein shall be effective on a date set by FINRA staff.

SO ORDERED.

FINRA

Signed on behalf of the
Director of ODA, by delegated authority



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