

**NYSE AMERICAN LLC
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2023-01-17-03949**

TO: NYSE American LLC

RE: Hamershlag Sulzberger Borg Capital Markets, Inc., Respondent
CRD No. 103460

During the period from January 1, 2022 through the present (the “Relevant Period”), Hamershlag Sulzberger Borg Capital Markets, Inc. violated: (i) Section 15(c) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 15c3-1 thereunder (Net Capital Requirements) and NYSE American Rule 4110(b) (Net Capital Compliance) by failing to maintain the required minimum net capital; (ii) Exchange Act Rule 17a-11(a)(1) and (h) (Notification Provisions) by failing to timely notify the appropriate regulators of a net capital deficiency on one occasion; (iii) Exchange Act Section 17(a) and Rule 17a-4(b)(4) thereunder (Books and Records) and NYSE American Rule 324 (Books and Records) by failing to preserve certain business communications; and (iv) NYSE American Rule 3110(a) and (b) (Supervision) by failing to establish, maintain and enforce a supervisory system and written supervisory procedures (“WSPs”) reasonably designed to achieve compliance with the aforementioned federal securities laws and NYSE rules. Consent to a censure and \$10,000 fine (this matter was resolved simultaneously with the New York Stock Exchange LLC for a total fine of \$20,000).¹

* * *

Pursuant to Rule 9216 of the NYSE American LLC (the “NYSE American” or the “Exchange”) Code of Procedure, Hamershlag Sulzberger Borg Capital Markets, Inc. (“Hamershlag” or the “Firm”) submits this Letter of Acceptance, Waiver, and Consent (“AWC”) for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, NYSE American will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

I. ACCEPTANCE AND CONSENT

- A. Hamershlag hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NYSE American, or to which NYSE American is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by NYSE American:

BACKGROUND AND JURISDICTION

1. Hamershlag became a member of NYSE American on December 1, 2008 and its

¹ Hamershlag is a member of both the New York Stock Exchange LLC as well as NYSE American LLC.

registration remains in effect. The Firm has no relevant disciplinary history and has not had any customers since January 2012.

VIOLATIONS

Net Capital Violations

2. Exchange Act Section 15(c) and Rule 15c3-1 thereunder require broker-dealers to “at all times have and maintain net capital” above a specified amount. The rule is designed to ensure that broker-dealers maintain, at all times, sufficient liquid assets to promptly satisfy their liabilities in the event the firm is required to liquidate. NYSE Rule American 4110(b) provides that “a member organization shall suspend all business operations during any period in which it is not in compliance with applicable net capital requirements set forth in SEA Rule 15c3-1.”
3. Exchange Act Rule 17a-11(a)(1) requires that “[e]very broker or dealer whose net capital declines below the minimum amount required pursuant to § 240.15c3-1 . . . must give notice of such deficiency that same day in accordance with paragraph (h) of this section.” Exchange Act Rule 17a-11(h) provides that notice must be given to both the U.S. Securities and Exchange Commission and the designated examining authority of the broker-dealer.
4. During the Relevant Period, the Firm was below its net capital requirement of \$5,000 on more than one hundred days. In addition, the Firm failed to timely notify the appropriate regulators of its net capital deficiency on one occasion.
5. For these reasons, the Firm violated Exchange Act Section 15(c) and Rule 15c3-1 thereunder, NYSE American Rule 4110(b), and Exchange Act Rule 17a-11(a)(1) and (h).

Books and Records Violations

6. Exchange Act Section 17(a) and Rule 17a-4(b)(4) state that “[e]very member, broker or dealer subject to § 240.17a-3 must preserve for a period of not less than three years, the first two years in an easily accessible place . . . [o]riginals of all communications received and copies of all communications sent (and any approvals thereof) by the member, broker or dealer (including inter-office memoranda and communications) relating to its business as such, including all communications which are subject to rules of a self-regulatory organization of which the member, broker or dealer is a member regarding communications with the public.”
7. NYSE American Rule 324 requires members to “keep true and complete books of account and records adequately setting forth the transactions of such members and member organizations in accordance with the requirements of the rules of the Exchange and the Securities Exchange Act of 1934 and the rules thereunder.”
8. During the Relevant Period, the Firm failed to preserve certain business communications sent and received using a personal email address.

9. For these reasons, the Firm violated Exchange Act Section 17(a) and Rule 17a-4 thereunder, and NYSE American Rule 324.

Supervisory Violations

10. NYSE American Rule 3110(a) provides that “[e]ach member organization shall establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules” and that “[f]inal responsibility for proper supervision shall rest with the member organization.”
11. NYSE American Rule 3110(b) provides that “[e]ach member organization shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules.”
12. The Firm failed to establish, maintain and enforce a supervisory system, including WSPs, reasonably designed to achieve compliance with applicable net capital requirements and the related notification provisions. For example, the Firm did not have reasonable supervision in place to ensure that the Firm remained net capital compliant.
13. The Firm failed to establish, maintain and enforce a supervisory system, including WSPs, reasonably designed to achieve compliance with applicable books and records requirements. For example, the Firm did not have reasonable supervision in place to ensure that the Firm preserved all business communications.
14. For these reasons, the Firm violated NYSE American Rule 3110(a) and (b).

OTHER FACTORS

15. The Firm is taking steps in an effort to remedy its net capital deficiencies.

SANCTIONS

- B. The Firm also consents to the imposition of the following sanctions:

Censure and fine in the amount of \$10,000 (resolved simultaneously with the New York Stock Exchange LLC for a total fine of \$20,000 to be paid according to a payment plan agreed to by NYSE Regulation).

The Firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. The Firm has submitted a Method of Payment Confirmation form showing the method by which it will pay the fine imposed.

The Firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

The sanctions herein are imposed pursuant to NYSE American Rule 8310 and shall be effective on a date set by NYSE Regulation staff.

II. WAIVER OF PROCEDURAL RIGHTS

The Firm specifically and voluntarily waives the following rights granted under the NYSE American Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the Firm;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the Exchange's Board of Directors and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the Firm specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Regulatory Officer of NYSE American; the Exchange's Board of Directors, Disciplinary Action Committee ("DAC"), and Committee for Review ("CFR"); any Director, DAC member, or CFR member; Counsel to the Exchange Board of Directors or CFR; any other NYSE American employee; or any Regulatory Staff as defined in Rule 9120 in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

The Firm further specifically and voluntarily waives any right to claim that a person violated the ex parte communication prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III. OTHER MATTERS

The Firm understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed by NYSE Regulation, and accepted by the Chief Regulatory Officer of NYSE American pursuant to NYSE American Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the Firm; and

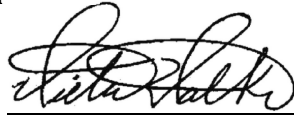
- C. If accepted:
1. The AWC shall be sent to each Director and each member of the Committee for Review via courier, express delivery or electronic means, and shall be deemed final and shall constitute the complaint, answer, and decision in the matter, 10 days after it is sent to each Director and each member of the Committee for Review, unless review by the Exchange Board of Directors is requested pursuant to NYSE American Rule 9310(a)(1)(B);
 2. This AWC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by the Exchange or any other regulator against the Firm;
 3. NYSE American shall publish a copy of the AWC on its website in accordance with NYSE American Rule 8313;
 4. NYSE American may make a public announcement concerning this agreement and the subject matter thereof in accordance with NYSE American Rule 8313; and
 5. The Firm may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. The Firm may not take any position in any proceeding brought by or on behalf of the Exchange, or to which the Exchange is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Firm's (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Exchange is not a party.
- D. A signed copy of this AWC and the accompanying Method of Payment Confirmation form delivered by email, facsimile or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy.
- E. The Firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this statement. A Corrective Action Statement does not constitute factual or legal findings by the Exchange, nor does it reflect the views of NYSE Regulation or its staff.

The Firm certifies that, in connection with each of the Exchange's requests for information in connection with this matter, the Firm made a diligent inquiry of all persons and systems that reasonably had possession of responsive documents and that all responsive documents have been produced. In agreeing to the AWC, the Exchange has relied upon, among other things, the completeness of the document productions.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on the Firm's behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that the Firm has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the Firm to submit this AWC.

3/25/24
Date

Hamerslag Sulzberger Borg Capital Markets, Inc.,
Respondent

By: 
Victor Walker
Special Counsel

Reviewed by:


Lauren Shapiro
Capital Legal Group PA
1110 Brickell Avenue, Suite 505
(305) 676-0924
Counsel for Respondent

Accepted by NYSE Regulation

3/25/2024
Date



Alexander DeLisi
Sarah Cravens
NYSE Regulation Enforcement

Signed on behalf of NYSE American LLC,
by delegated authority from its Chief
Regulatory Officer