

**NYSE ARCA, INC.**  
**LETTER OF ACCEPTANCE, WAIVER, AND CONSENT**  
**NOS. 2020-02-00082 & 2020-09-00076**

TO: NYSE Arca, Inc.

RE: Sea Otter Securities Group LLC, Respondent  
CRD No. 171630

**From August 1, 2017 through March 8, 2018 (“First Relevant Period”) and from August 1, 2019 through August 31, 2019 (“Second Relevant Period”), Sea Otter Securities Group LLC incorrectly calculated its net capital causing the Firm to not continuously maintain its required level of net capital as required under Section 15(c) of the Securities Exchange Act of 1934 (the “Exchange Act”), Rule 15c3-1 thereunder, and NYSE Arca Rule 4.1-E. As a consequence, the Firm’s FOCUS reports contained inaccurate net capital calculations and the Firm failed to provide the required notice of net capital deficiencies as required under Section 17(a) of the Exchange Act, and Rules 17a-5 and 17a-11 thereunder. The Firm violated NYSE Arca Rule 11.18 by failing to establish and maintain supervisory systems and written procedures reasonably designed to ensure compliance with its net capital and reporting requirements. Consent to a censure and \$150,000 fine.**

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Pursuant to Rule 10.9216 of the NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) Code of Procedure, Sea Otter Securities Group LLC (“Sea Otter” 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 Arca will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

**I. ACCEPTANCE AND CONSENT**

- A. Sea Otter 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 Arca, or to which NYSE Arca 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 Arca:

**BACKGROUND AND JURISDICTION**

1. Sea Otter has been registered as an Equities Trading Permit (“ETP”) Holder with NYSE Arca since July 27, 2015, and that registration remains in effect. The Firm is a proprietary trading firm and a registered equities market maker, and has no customers.



## PROCEDURAL HISTORY

2. These matters arise from two separate referrals to NYSE Regulation by the Market Regulation Department of the Financial Industry Regulatory Authority, Inc. ("FINRA"), concerning violations identified during the 2018 and 2019 examinations of the Firm conducted by FINRA's Trading and Financial Compliance Examinations group ("TFCE") on behalf of NYSE Arca for, respectively, the August 1, 2017 through March 8, 2018 review period and as of the August 31, 2019 review date.

## VIOLATIONS

### *Net Capital Violations*

3. Section 15(c) of the Exchange Act, and Rule 15c3-1 thereunder, known as the net capital rule, require broker-dealers to "at all times have and maintain net capital" above a specified minimum 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 Arca Rule 4.1-E requires ETP Holders that are subject to Rule 15c3-1 of the Exchange Act to maintain a minimum net capital in accordance with the provisions of that rule.
4. Rule 15c3-1(c)(2)(vi) requires broker-dealers to take certain specified haircut and undue concentration deductions on the market value of their securities positions for purposes of calculating net capital under the rule.<sup>1</sup> However, pursuant to Rule 15c3-1(a)(6), a market maker who meets certain specified conditions may include its market maker securities positions in its net capital computations at market value without taking any haircut or undue concentration deductions on those positions (*i.e.*, haircut relief).
5. Under the net capital rule, a "market maker" is defined as a dealer who: "(i) regularly publishes bona fide, competitive bid and offer quotations in a recognized interdealer quotation system; or (ii) furnishes bona fide competitive bid and offer quotations on request; and (iii) is ready, willing and able to effect transactions in reasonable quantities at his quoted prices with other brokers or dealers."
6. While the net capital rule does not provide further detail, in the Regulation SHO context the Securities and Exchange Commission's staff have stated that "[r]eliance on and compliance with an exchange's market making designation and quoting requirements does not per se qualify a market maker for the bona-fide market making exception . . . ." SEC Division of Market Regulation, Responses to Frequently Asked Questions Concerning Regulation SHO, FAQ 4.8 (Oct. 2015 update).

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<sup>1</sup> A haircut constitutes a prescribed percentage reduction of the market value of securities based on the risk characteristics of a particular security. The haircuts are designed to discount a firm's own positions to account for adverse market movements and other risks faced by the firm, with the size of the haircuts based upon the liquidity and risk characteristics of the particular security.



7. Rather, according to the SEC, determining whether a firm is engaged in bona fide market making (for Reg SHO purposes) depends on the facts and circumstances, but factors may include whether a firm is: dealing on a regular basis with other broker-dealers, actively buying and selling the subject security, providing liquidity to a security's market, taking the other side of trades when there are short-term buy-and-sell imbalances in customer orders, attempting to prevent excess volatility, or engaging in a pattern of trading that includes both purchases and sales in roughly comparable amounts to provide liquidity to customers or other broker-dealers. *See SEC Final Rule: Amendments to Regulation SHO, Release No. 34-58775 (Oct. 17, 2008).*
8. During the First Relevant Period, the Firm applied incorrect haircut and undue concentration deductions on certain positions held at its clearing firm, causing the Firm to overstate its net capital. Among other things, although the Firm's quotations in one of its registered market maker securities were within the "Designated Percentage" set forth in NYSE Arca Rule 7.23-E, the Firm did not qualify as a market maker under the net capital rule because its bid and offer quotations were not competitive enough to effect transactions in reasonable quantities at its quoted prices. Additionally, the Firm erroneously availed itself of market making haircut relief for positions in which it was not registered as a market maker in the relevant security. Accordingly, the Firm was required to take haircut and undue concentration deductions on those positions in calculating its net capital under the rule.
9. This resulted in the Firm conducting a securities business while failing to maintain its minimum net capital requirement of \$100,000 on 156 trading dates during the First Relevant Period. The Firm's net capital deficiencies on each of those trading dates ranged from between approximately \$150,000 to \$28 million.
10. During the Second Relevant Period, the Firm inaccurately applied haircut deductions with respect to certain positions held in its market maker account, resulting in net capital deficiencies. First, the Firm incorrectly availed itself of market making haircut relief for certain positions in four of its registered market maker securities where, although the Firm's quotations were within the "Designated Percentage" set forth in NYSE Arca Rule 7.23-E, the Firm did not qualify as a market maker under the net capital rule because its bid and offer quotations were not competitive enough to effect transactions in reasonable quantities at its quoted prices. Additionally, the Firm erroneously availed itself of market making haircut relief for several securities in which it was no longer a registered market maker. As a result, the Firm was not entitled to haircut relief on such positions. By not taking the required haircut deductions on these positions, the Firm's net capital deficiency was approximately \$15.8 million as of August 31, 2019.
11. Based on the foregoing, the Firm violated Section 15(c) of the Exchange Act, Rule 15c3-1 thereunder, and NYSE Arca Rule 4.1-E during the First and Second Relevant Periods.



### ***Filing and Reporting Violations***

12. Section 17(a) of the Exchange Act, and Rule 17a-5 thereunder, require, among other things, broker-dealers to timely file Financial and Operational Combined Uniform Single ("FOCUS") Reports containing certain accounting and financial information, including net capital computations. Implicit in these provisions is the requirement that the records be accurate.
13. Section 17(a) of the Exchange Act, and Rule 17a-11 thereunder, require a firm "whose net capital declines below the minimum amount required" pursuant to Rule 15c3-1 to "give notice of such deficiency that same day" to both the SEC and to its designated examining authority. NYSE Arca is Sea Otter's designated examining authority.
14. As discussed above, during the First and Second Relevant Periods, the Firm inaccurately applied haircut and undue concentration deductions on certain securities positions in calculating its net capital. As a result, the Firm filed FOCUS Reports containing inaccurate net capital computations. The Firm also failed to provide the required notice of its net capital deficiencies to the SEC and to NYSE Arca, its designated examining authority. Accordingly, the Firm violated Section 17(a) of the Exchange Act, and Rules 17a-5 and 17a-11 thereunder.

### ***Supervisory Violations***

15. NYSE Arca Rule 11.18(b) requires each ETP Holder to "establish and maintain a system to supervise the activities of its associated persons and the operations of its business" that is reasonably designed to ensure compliance with applicable federal securities laws and regulations and NYSE Arca Rules. NYSE Arca Rule 11.18(c) requires each ETP Holder to "establish, maintain, and enforce written procedures to supervise the business in which it engages and to supervise the activities of its associated persons that are reasonably designed to ensure compliance with applicable federal securities laws and regulations, and with the NYSE Arca Rules."
16. During the First Relevant Period, Sea Otter failed to establish or maintain a reasonably designed supervisory system or procedures concerning the preparation and review of its financial books and records by its outside financial and operational principal ("FinOp"). The Firm's WSPs failed to reasonably address the Firm's oversight and supervision of the FinOp, as well as the process for preparing, reviewing and approving financial books and records, including net capital computations and FOCUS reports. Additionally, the Firm was unable to evidence its supervision of the outside FinOp.
17. Although the Firm did revise its WSPs in response to the first FINRA examination, it was unable to adequately evidence the implementation of those WSPs to supervise the outside FinOp and the preparation and review of its financial books and records by the FinOp during the Second Relevant Period. For example, although the WSPs required that the Firm's CEO speak with the FinOp on a weekly basis and review and



approve net capital computations and other financial reports produced by the FinOp, and the Firm was unable to provide evidence that those procedures were followed.

18. During the First and Second Relevant Periods, Sea Otter also failed to establish or maintain a reasonably designed supervisory system or procedures to monitor for and ensure intraday moment-to-moment net capital, as required under the net capital rule.<sup>2</sup> The Firm's WSPs did not reasonably address the Firm's responsibility to compute moment-to-moment or intraday net capital, nor did the Firm have processes in place to calculate intraday moment-to-moment net capital.
19. During the First and Second Relevant Periods, the Firm also failed to reasonably supervise for compliance with the net capital rule, as evidenced by its failure to identify the net capital deficiencies discussed above.
20. Accordingly, Sea Otter violated NYSE Arca Rule 11.18(b) and (c) during the First and Second Relevant Periods by failing to establish and maintain a supervisory system and written procedures reasonably designed to ensure compliance with its net capital and reporting obligations.

#### **RELEVANT PRIOR DISCIPLINARY HISTORY**

21. In September 2020, Sea Otter was censured and fined \$70,000 for, among other things, violating NYSE Arca Rule 7.23-E by failing to maintain continuous, two-sided trading interest in approximately 1,428 instances from October 2019 through March 2020, as well as NYSE Arca Rule 11.18 for related supervisory violations.
22. In May 2018, Sea Otter was censured and fined \$115,000 for, among other things, violating of NYSE Arca Rule 7.23-E for failing to maintain continuous, two-sided trading interest in approximately 1,138 instances, as well as NYSE Arca Rule 11.18 for related supervisory violations.
23. In November 2017, Sea Otter received a Cautionary Action Letter for violations of NYSE Arca Rules 7.23 (market maker obligations) and 6.18 (supervision) in connection with its NYSE Arca market maker quoting obligations during the second quarter of 2017.

#### **OTHER FACTORS**

24. In determining to resolve this matter on the basis set forth herein, Enforcement took into consideration remedial efforts undertaken by the Firm to enhance its systems and

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<sup>2</sup> Broker-dealers are required to maintain required net capital at all times (including intraday) and are expected to be able to demonstrate moment-to-moment compliance with the rule.



supervisory procedures in response to the first examination and this investigation.

### **SANCTIONS**

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

1. **Censure and fine in the amount of \$150,000**

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 Firm agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any fine amounts that the Firm pays pursuant to this AWC, regardless of the use of the fine amounts. The Firm further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any fine amounts that the Firm pays pursuant to this AWC, regardless of the use of the fine amounts.

The sanctions imposed herein 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 Arca 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 Arca; 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 Arca employee; or any Regulatory Staff as defined in Rule 10.9120 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 10.9143 or the separation of functions prohibitions of Rule 10.9144, 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 Arca pursuant to NYSE Arca Rule 10.9216;
- 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 Arca Rule 10.9310(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 Arca shall publish a copy of the AWC on its website in accordance with NYSE Arca Rule 10.8313;
  - 4. NYSE Arca may make a public announcement concerning this agreement and the subject matter thereof in accordance with NYSE Arca Rule 10.8313; 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. Any such statement does not constitute factual or legal findings by the Exchange, nor does it reflect the views of NYSE Regulation or its staff.

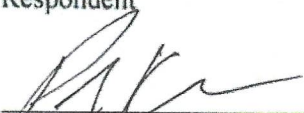
The Firm certifies that, in connection with each of the Exchange's requests for information in connection with this matter, the Firm made a diligent inquiry of all persons and systems that reasonably had possession of responsive documents and that all responsive documents have been produced. In agreeing 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 its 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 it 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 it.

4/13/21  
Date

Sea Otter Securities Group LLC  
Respondent

By:   
Patrick Kane  
Chief Compliance Officer

Reviewed by:

  
Marlon Paz, Esq.  
Mayer Brown  
1221 Avenue of the Americas  
New York, NY 10020  
T. 212.506.2307  
Counsel for Respondent

Accepted by NYSE Regulation

April 13, 2021  
Date



Catherine Lifeso  
Director, Enforcement  
NYSE Regulation

Signed on behalf of NYSE Arca, Inc., by  
delegated authority from its Chief  
Regulatory Officer