



**Patricia Delk-Mercer**  
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Statutory Disqualification  
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February 28, 2020

**Via Electronic Mail**

Ms. Vanessa Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549-1090

**Re: In the Matter of the Continued Association of Kevin McKenna (CRD No. 1343870) with Aegis Capital Corp. (CRD No. 15007)**

Dear Ms. Countryman:

Effective February 28, 2020, and pursuant to the Securities Exchange Act of 1934 (“SEA” or “Exchange Act”) Rule 19h-1(a)(3)(iv)(A)&(B) (“Rule 19h-1”), the Financial Industry Regulatory Authority (“FINRA”) hereby provides notification, by letter pursuant to SEA Rule 19h-1(a)(4), to the United States Securities and Exchange Commission (“SEC” or the “Commission”) of the continued association of Kevin McKenna (“McKenna”) with Aegis Capital Corp. (“Aegis” or “Firm”) as a General Securities Representative and General Securities Sales Supervisor.<sup>1</sup> The Firm filed a Membership Continuance Application (“MC-400” or “the Application”) with FINRA’s Department of Registration and Disclosure seeking to permit McKenna’s association with the Firm in May 2018.<sup>2</sup>

**I. McKenna’s Disqualifying Event**

McKenna is subject to a statutory disqualification, as that term is defined by Exchange Act Section 3(a)(39), which incorporates by reference SEA Section 15(b)(4)(E), as a result of a March 28, 2018 SEC Order (“2018 Order”)<sup>3</sup> finding that McKenna willfully aided and abetted

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<sup>1</sup> McKenna holds Series 7, 8, 23 and 63 licenses. See Correspondence from Michael H. Ference, Counsel for Aegis, dated November 30, 2018 (attached as Exhibit 1). The Series 8 license was the predecessor to the Series 9/10 General Securities Sales Supervisor license. See NASD “Regulatory and Compliance Alert,” 13.3 (Fall Issue 1999) at p. 30, available at <https://www.finra.org/sites/default/files/RCA/p002380.pdf>.

<sup>2</sup> See the MC-400 Application and related documents filed by Aegis on behalf of Kevin McKenna, dated May 8, 2018 (attached as Exhibit 2).

<sup>3</sup> See SEC Order, *In the Matter of Kevin McKenna and Robert Eide*, SEC Administrative Proc. File No. 3-18413, Exchange Act Release No. 82957 (March 28, 2018) (attached as Exhibit 3). Eide, the Firm’s founder and CEO, was cited for causing the Firm’s violations but his actions were not deemed to be willful. Therefore, he is not subject to a statutory disqualification.

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and caused Aegis' violations of Exchange Act Section 17(a) and Rule 17a-8 thereunder.<sup>4</sup> Specifically, from at least late 2012 through early 2014, Aegis failed to file Suspicious Activity Reports ("SARs") for hundreds of transactions that it knew, suspected, or had reason to suspect involved the use of the Firm to facilitate fraudulent activity or had no business or apparent lawful purpose. Aegis' written supervisory procedures ("WSP") expressly identified certain types of trading in low-priced securities and specific anti-money laundering ("AML") red flags that indicated suspicious activity that could warrant a SAR filing.<sup>5</sup> As the AML Compliance Officer ("AMLCO") for Aegis, McKenna was responsible for filing SARs on the Firm's behalf from mid-June 2012 to mid-June 2013.<sup>6</sup> Although McKenna became aware of numerous AML red flags by virtue of alerts from Aegis' clearing firm, which were also listed in the Firm's WSP as examples of suspicious activities, he failed to file SARs on the Firm's behalf and did not create written analyses or compile records demonstrating that any such filings were contemplated.<sup>7</sup>

As a result of these findings, McKenna was ordered to cease and desist from committing or causing any further violations of Exchange Act Section 17(a) and Rule 17a-8 thereunder and pay a \$20,000 civil penalty.<sup>8</sup> The 2018 Order also barred McKenna from serving or acting as a chief compliance officer ("CCO") or designated AMLCO, or serving in any compliance capacity that reports directly or indirectly to the CCO or AMLCO, with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent or nationally recognized statistical rating organization, with the right to apply to act in any such capacity after 18 months.<sup>9</sup>

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<sup>4</sup> Aegis is also subject to disqualification for willfully violating SEA Section 17(a) and Rule 17a-8 thereunder. See SEC Administrative Proc. File No. 3-18412, Release No. 82956, *In the Matter of Aegis Capital Corporation* (March 28, 2018). On August 22, 2019, SEC staff informed FINRA staff that Aegis has paid the civil monetary penalty in full and certified its compliance with all ordered undertakings and provided evidence to demonstrate its compliance.

<sup>5</sup> A SAR filing could be warranted when the Firm's customers were trading low-priced securities and: their transactions comprised a significant percentage of the issuers' daily trading volume; their sales of thinly-traded securities occurred when there were spikes in volume and price; the issuer had been through several recent name changes or business combinations; the issuer's SEC filing were dated, incomplete or nonexistent; or there were wire transfers with no apparent business purpose to or from a county identified as a money laundering risk or bank secrecy haven. See Exhibit 3 at pp. 378-379.

<sup>6</sup> *Id.* at p. 377-378.

<sup>7</sup> *Id.* at pp. 379-386.

<sup>8</sup> *Id.* at pp. 388-389. McKenna paid the penalty on April 3, 2018; see Commission staff's email to Member Regulation staff, dated November 1, 2018 (attached as Exhibit 4).

<sup>9</sup> See Exhibit 3 at p. 388.

## **II. Background Information of McKenna**

### **Prior SEA Rule 19h-1 Notices and Notifications**

There have been no prior Rule 19h-1 or 19d-1 Notices or Notifications filed on McKenna's behalf.

### **McKenna's Proposed Association, Responsibilities and Compensation**

Aegis proposes that McKenna will continue to work from its home office location at 810 Seventh Avenue, 18<sup>th</sup> Floor, New York, New York, 10019.<sup>10</sup> The Firm states that McKenna will continue his current job duties as a Liaison Manager for Aegis, a role in which he will facilitate communication between the registered representatives and support staff and the various departments at the firm, including operations, human resources, and IT, to ensure these persons have the support and resources they need to service the Firm's customers.<sup>11</sup>

The Firm represents that McKenna will not perform compliance or AML functions in this role, nor any supervision of brokers, compliance or AML personnel.<sup>12</sup> McKenna's day-to-day activities include, among other things, assisting registered representatives and sales staff with respect to personnel, customer service and quality control issues; coordinating with operational staff to ensure that new products are properly listed on account statements; serving as the Firm's corporate representative at arbitrations and mediations; and facilitating onboarding of new hires.<sup>13</sup> The Firm also represents that McKenna will not have any role in the transfer of client funds, and that any forms or transactions requiring processing by McKenna will be reviewed and approved by his supervisor.<sup>14</sup>

### **Employment and Registration History**

McKenna first registered in the securities industry as a General Securities Representative (Series 7) in October 1988. He also qualified as a NYSE Branch Office Manager (Series 8) in November 1994. He passed the General Securities Principal Examination – Sales Supervisor (Series 23) in January 2006, and the Uniform Securities Agent State Law Examination (Series

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<sup>10</sup> See Exhibit 2 at p. 396, in response to item 6.

<sup>11</sup> See Exhibit 1 at p. 1.

<sup>12</sup> *Id.* at p. 2.

<sup>13</sup> *Id.* at pp. 1-2.

<sup>14</sup> *Id.* at pp. 2-3.

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63) in May 1996.<sup>15</sup> He was also approved as an Operations Professional (Series 99) in November 2011.<sup>16</sup>

McKenna has been associated with the following firms, during the following periods:<sup>17</sup>

<u>Firm</u>	<u>Period of Employment</u>
Aegis	June 2010 – Present
Morgan Stanley Smith Barney	June 2009 – February 2010
Morgan Stanley & Co., Inc.	April 2007 – June 2009
Morgan Stanley DW Inc.	December 2006 – April 2007
Vanderbilt Securities, LLC	January 2006 – December 2006
Metropolitan Life Insurance Company	August 2005 – January 2006
Metlife Securities, Inc.	August 2005 – January 2006
Merrill Lynch, Pierce, Fenner & Smith, Inc.	January 1981 – May 2004

### Regulatory History

#### *FINRA Disciplinary Action*

On August 3, 2015, FINRA issued an Order accepting McKenna's and his co-respondents' Offer of Settlement.<sup>18</sup> FINRA found that between April 2009 and June 2011, in his capacity as Aegis' CCO and AMLCO, McKenna violated NASD Rule 3010(a) and (b) and FINRA Rules 3310(a) and 2010, by failing to establish, maintain and enforce a supervisory system, including WSP, reasonably designed to achieve compliance with Section 5 of the Securities Act of 1933 for sales of unregistered shares of microcap stocks. Moreover, McKenna failed to conduct reasonable and meaningful inquiries of the circumstances surrounding the sales of these unregistered microcap stocks, despite the presence of red flags indicating that the sales were or could be illicit distributions of unregistered stocks. For this conduct, McKenna was suspended from associating with any FINRA member in a principal capacity for 60 days and fined \$10,000.<sup>19</sup>

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<sup>15</sup> See Central Registration Depository ("CRD") Snapshot for Kevin McKenna (attached as Exhibit 5) at pp. 4, 12-13. McKenna also received credit for the Securities Industry Essentials Examination on October 1, 2018.

<sup>16</sup> *Id.* at p. 4.

<sup>17</sup> *Id.* at pp. 9-11.

<sup>18</sup> See Order Accepting Offer of Settlement, *Dep't of Enforcement v. Aegis Capital Corp, Charles D. Smulevitz and Kevin C. McKenna*, FINRA Disciplinary Proceeding No. 2011026386001 (August 3, 2015) at pp. 5-6, 36-38 (attached as Exhibit 6).

<sup>19</sup> McKenna paid the fine in full on October 16, 2015. See Exhibit 5 at p. 22.

*Terminations*

In February 2010, McKenna was discharged by Morgan Stanley Smith Barney for conduct pertaining to his personal checking account, which the firm reported did not affect any clients.<sup>20</sup> In May 2004, Merrill Lynch discharged McKenna for violating the firm's policy regarding approval of check declines in his personal account, as well as conduct designed to avoid supervisory review of his personal account.<sup>21</sup>

**III. Background Information of Aegis (CRD No. 15007)**

Aegis is headquartered in New York, New York.<sup>22</sup> The Firm has been a FINRA Member since July 1984.<sup>23</sup> In addition to FINRA, the Firm is a member of NYSE Arca, Inc.; the Nasdaq Stock Market; and the Municipal Securities Rulemaking Board ("MSRB").<sup>24</sup>

The Firm has 19 Offices of Supervisory Jurisdiction ("OSJ") and 7 branch offices.<sup>25</sup> The Firm employs 343 registered representatives, 117 registered principals and 43 non-registered associated persons as employees.<sup>26</sup> The Firm employs four other statutorily disqualified individuals in addition to McKenna.<sup>27</sup>

**IV. Proposed Supervisors**

McKenna's Primary Supervisor – Eric Newman (CRD No. 2509259)

McKenna will be supervised by Eric Newman ("Newman"), a General Securities Principal and the Chief Supervisory Officer of Aegis.<sup>28</sup> Newman works from the Firm's office location at

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<sup>20</sup> *Id.* at p. 4.

<sup>21</sup> *Id.* at pp. 6-7.

<sup>22</sup> *See* CRD Snapshot for Aegis Capital Corp. (attached as Exhibit 7) at p. 3.

<sup>23</sup> *Id.* *See also* Exhibit 2 at p. 398.

<sup>24</sup> *Id.*

<sup>25</sup> FINRA confirmed this through an analysis of the Firm's information contained in CRD, last performed on February 27, 2020.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *See* Exhibit 2 at p. 397.

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810 Seventh Avenue, 18<sup>th</sup> Floor, New York, New York, 10019.<sup>29</sup> He currently supervises all of the Firm's branch managers.<sup>30</sup>

#### *Registration and Employment History*

In October 1995, Newman entered the securities industry as a General Securities Representative (Series 7) and passed the Uniform Securities Agent State Law Examination (Series 63).<sup>31</sup> He qualified as a General Securities Principal (Series 24) in August 2001, a Registered Options Principal (Series 4) in October 2002, passed the Uniform Investment Adviser Law Examination (Series 65) in June 1999, and passed the National Commodities Futures Examination (Series 3) in December 2013.<sup>32</sup>

Newman has been associated with the following firms, during the following periods:<sup>33</sup>

<u>Firm</u>	<u>Period of Employment</u>
Eagle Wealth Advisors	January 2020 – Present
Aegis	September 2017 – Present
National Securities Corporation	January 2007 – August 2017
First Montauk Securities Corporation	December 2003 – January 2007
The Concord Equity Group, LLC	July 2001 – December 2003
Josephthal & Co., Inc.	February 1998 – July 2001
Donald & Co. Securities, Inc.	June 1996 – February 1998
Prime Charter Ltd.	July 1994 – June 1996

#### *Regulatory Actions and Arbitration Claims*

In 2009, customers filed an arbitration claim against Newman, alleging failure to supervise, which was withdrawn a month later.<sup>34</sup> Member Regulation is unaware of any other regulatory actions, arbitrations or customer complaints filed against him.

#### *Terminations*

On August 31, 2017, Newman's then-employer, National Securities Corporation, initiated an internal review regarding supervision of sales of alternative investments and mutual fund

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<sup>29</sup> *Id.* at p. 423. *See also* CRD Snapshot for Eric Newman, p. 3 (attached as Exhibit 8).

<sup>30</sup> *See* Exhibit 2 at pp. 397-398.

<sup>31</sup> *See* Exhibit 8 at p. 15.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at pp. 10-11.

<sup>34</sup> *Id.* at pp. 21-22.

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transactions.<sup>35</sup> Newman resigned the same day.<sup>36</sup> The firm concluded the internal review in April 2019 with no findings of wrongdoing by Newman.<sup>37</sup>

#### *Outside Business Activities*

Newman represents that he is the co-owner of Keen Distribution LLC, a non-investment related business that distributes household products. He states that he devotes four hours per week to this entity by overseeing operations, negotiations, and customer service. Newman also represents that he is the owner of ECC New Capital LLC, a non-investment related business involved in bill paying and real estate holdings to which he devotes one hour per month outside of trading hours.<sup>38</sup>

#### McKenna's Proposed Alternative Supervisor – Jacob Rosenberg (CRD No. 2908851)

In the event that Newman is out of the office, the Firm has proposed that Jacob Rosenberg (“Rosenberg”), a Branch Office Manager, will act as McKenna’s supervisor.<sup>39</sup> He works in the same office as McKenna, located at 810 7<sup>th</sup> Avenue, 18<sup>th</sup> Floor, New York, NY 10019.<sup>40</sup>

#### *Registration and Employment History*

Rosenberg has been registered as a General Securities Representative (Series 7) since August 1997 and passed the Uniform Securities Agent State Law Examination (Series 63) that same month.<sup>41</sup> He qualified as a General Securities Principal (Series 24) in April 2001 and as an Operations Professional (Series 99) in August 2016.<sup>42</sup>

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<sup>35</sup> *Id.* at p. 5.

<sup>36</sup> *Id.*

<sup>37</sup> *See* Amended Form U5 Filing of Newman, dated April 8, 2019 (attached as Exhibit 9) at p. 6.

<sup>38</sup> *See* Exhibit 8 at p. 15.

<sup>39</sup> *See* Exhibit 1 at p. 3. *See also* CRD Snapshot for Jacob Rosenberg, p. 10 (attached as Exhibit 10).

<sup>40</sup> *See* Exhibit 10 at p. 3.

<sup>41</sup> *Id.* at p. 17. Rosenberg also received credit for the Securities Industry Essentials Examination on October 1, 2018.

<sup>42</sup> *Id.* at p. 4.

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Rosenberg has been associated with the following firms, during the following periods:<sup>43</sup>

<u>Firm</u>	<u>Period of Employment</u>
Aegis	August 2016 – Present
MidAmerica Financial Services, Inc.	January 2015 – October 2015
Global Arena Capital Corp.	June 2014 – September 2014
Brookville Capital Partners	October 2011 – May 2014
Ameritas Investment Corp.	August 2011 – October 2011
Metlife Securities Inc.	September 2008 – August 2009
Chase Investment Services Corp.	August 2007 – September 2008
Westrock Advisors, Inc.	January 2006 – May 2007
Gunnallen Financial, Inc.	August 2003 – December 2005
Benchmark Securities Group, Inc.	June 2002 – September 2003
Marquis Financial Services, Inc.	June 2001 – June 2002
Benson York Group, Inc.	July 1999 – May 2001
Joseph Dillon & Company Inc.	August 1997 – July 1999

#### *Regulatory Actions*

Rosenberg's CRD record shows no regulatory actions or arbitrations filed against him except a single customer complaint in 2006, alleging a failure to supervise, which was denied by his then-employing firm.<sup>44</sup>

#### *Terminations*

In September 2014, Rosenberg was discharged from Global Arena Capital Corp. due to corporate restructuring.<sup>45</sup> In May 2014, Rosenberg was discharged from Brookville Capital Partners due to poor performance.<sup>46</sup> In August 2009, he was terminated from Metlife Securities Inc. for poor production.<sup>47</sup> In September 2008, he was discharged by Chase Investment Services Corp., which stated he was terminated by affiliate bank for non-securities related job performance.<sup>48</sup>

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<sup>43</sup> *Id.* at pp. 13-17.

<sup>44</sup> *Id.* at p. 22.

<sup>45</sup> *Id.* at p. 4.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at p. 5.

<sup>48</sup> *Id.*



**V. Basis for FINRA's Filing of the 19h-1 Notification**

SEA Rule 19h-1(a)(3)(iv)(A)&(B) reads, in part:

A notice need not be filed with the Commission pursuant to this rule if . . .

- A. The disqualification previously – (A) was a basis for the institution of an administrative proceeding pursuant to a provision of the federal securities laws, and (B) was considered by the Commission in determining a sanction against such person in the proceeding; and the Commission concluded in such proceeding that it would not restrict or limit the future securities activities of such person in the capacity now proposed or, if it imposed any such restrictions or limitations for a specified time period, such time period has elapsed[.]

It is appropriate for FINRA to file this notification pursuant to SEA Rule 19h-1(a)(3)(iv)(A)&(B), because this Application meets all applicable conditions of this rule. McKenna's disqualification was previously the basis for the institution of an administrative proceeding pursuant to the federal securities laws, and he was not restricted from associating in the capacity now being proposed by Aegis. Aegis represents that McKenna will not be working in the prohibited capacity (i.e., he will not work in any anti-money laundering or other compliance based capacity).<sup>49</sup> Further, the Firm has agreed that McKenna will have weekly in-person meetings with Newman, his primary supervisor, to review McKenna's activities.<sup>50</sup>

FINRA knows of no other conduct or other circumstances that would cause McKenna's association with the Firm to be inconsistent with the public interest or the protection of investors. FINRA therefore believes that this form of notification, by letter pursuant to SEA Rule 19h-1(a)(4), to the Commission, is appropriate.

Aegis is a member of NYSE Arca, Inc., and Nasdaq Stock Market. FINRA has sought and obtained concurrences from these organizations, as required by SEA Rule 19h-1(a)(4)(vi).

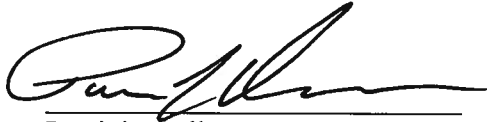
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<sup>49</sup> See Exhibit 2 at p. 423 and Exhibit 1 at p. 2.

<sup>50</sup> See Exhibit 2 at p. 423.

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U.S. Securities and Exchange Commission  
February 28, 2020

Sincerely,



Patricia Delk-Mercer  
Senior Director and Counsel  
Statutory Disqualification  
9509 Key West Avenue  
Rockville, MD 20850

Enclosures

cc: Michael H. Ference, Esq. (Via Electronic and First Class Mail)  
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Sichenzia Ross Ference LLP

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Office of Chief Counsel  
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Chris Dragos  
Associate Director  
Registration and Disclosure  
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(Via Electronic Mail)

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**Exhibits**

1. Correspondence from Michael H. Ference, Counsel for Aegis, dated November 30, 2018.
2. The MC-400 Application and related exhibits, filed by Aegis on behalf of Kevin McKenna, dated May 8, 2018, with a cover memo dated May 21, 2018.
3. SEC Order, *In the Matter of Kevin McKenna and Robert Eide*, SEC Administrative Proc. File No. 3-18413, Exchange Act Release No. 82957 (March 28, 2018).
4. Commission staff's email to Member Regulation staff, dated November 1, 2018.
5. Central Registration Depository ("CRD") Snapshot for Kevin McKenna.
6. Order Accepting Offer of Settlement in FINRA Disciplinary Proceeding No. 2011026386001, dated August 3, 2015.
7. CRD Snapshot for Aegis Capital Corp.
8. CRD Snapshot for Eric Newman.
9. Amended Form U5 Filing of Newman, dated April 8, 2019.
10. CRD Snapshot for Jacob Rosenberg.