

Release No. 31998 (S.E.C. Release No.), Release No. 77176,
Release No. 34-77176, Release No. IC - 31998, 2016 WL 683608

S.E.C. Release No.
Securities Exchange Act of 1934
Investment Company Act of 1940

SECURITIES AND EXCHANGE COMMISSION (S.E.C.)

IN THE MATTER OF CRUCIBLE CAPITAL GROUP, INC. AND CHARLES MOORE, RESPONDENTS.

Administrative Proceeding File No. 3-16008

February 18, 2016

**ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST
ORDER PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934
AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940 AS TO CHARLES MOORE**

I.

*1 On August 8, 2014, the Securities and Exchange Commission (“Commission”) initiated proceedings pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Charles Moore (“Respondent”).

II.

Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent admits the Commission's jurisdiction over him and the subject matter of these proceedings, and consents to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Section 9(b) of the Investment Company Act of 1940 as to Charles Moore (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

These proceedings arise out of extensive failures by Crucible Capital Group, Inc. (“Crucible”), a formerly registered broker-dealer, to maintain minimum net capital and to accurately make and preserve certain required records. Respondent willfully caused and aided and abetted Crucible's violations, which occurred between December 2012 and September 2013 (the “relevant period”).

Respondents

1. Crucible, located in New York, New York, was formed in 2003 and was registered with the Commission as a broker-dealer from September 2005 until August 2015. Crucible's business consisted of assisting microcap issuers in raising capital. Crucible was wholly owned by Moore, its founder, president, and sole shareholder. The firm was the subject of several

disciplinary actions, all of which involved books-and-records violations. In August 2008, the Financial Industry Regulatory Authority ("FINRA") approved a Letter of Acceptance, Waiver, and Consent, under which Crucible was censured, fined \$10,000, and consented to, without admitting or denying, findings that it maintained inaccurate financial books and records and filed inaccurate Financial and Operational Combined Uniform Single Reports ("FOCUS Reports") in each of six months in 2006. In January 2011, Crucible and Moore were censured and fined \$10,000 and \$7,500, respectively; and both consented to, without admitting or denying, findings that Crucible, acting through Moore, maintained inaccurate financial books and records and filed inaccurate FOCUS Reports in each of three months in 2008. Finally, in April 2013, FINRA approved a settlement, under which Crucible and Moore were censured and fined \$12,500 and \$10,000, respectively; and both consented to, without admitting or denying, findings that, among other things, Crucible had maintained inaccurate financials and books and records and filed inaccurate FOCUS Reports.

*2 2. Moore, age 63, resides in East Brunswick, New Jersey. He was the founder, president, and sole shareholder of Crucible and Angelic Holdings LLC ("Angelic"). He holds Series 7, 24, 28, 62, and 63 licenses and at all relevant times was a registered representative of Crucible. As noted above, Moore has been censured by FINRA and has settled charges with FINRA relating to Crucible's maintenance of inaccurate books and records.

Other Relevant Entity

3. Angelic, located in New York, New York, was an unregistered entity wholly owned by Moore. Angelic was party to an expense-sharing agreement with Crucible.

Background

Crucible's Business and Its Relationship to Angelic

4. From 2009 until August 2015, Crucible's business consisted of assisting clients, which were primarily if not exclusively microcap issuers, with their long-term capital-structure plans and capital-raising activities. Crucible's claimed capital-raising services included arranging private equity financing and debt facilities; private debt and bank debt via unsecured loans and/or credit facilities; and bank debt, including but not limited to revolving lines of credit, asset-based loans, and other types of credit facilities.

5. Angelic was an entity wholly owned by Moore. Angelic purported to perform due-diligence reviews of the entities that hired Crucible to assist them in raising capital. But Angelic performed those services in name only: the services were performed by Crucible employees (Angelic had no employees independent of Crucible's), and Angelic had no operations or sources of revenue independent of the fees that Crucible's clients paid Angelic for the due-diligence services.

6. During the relevant period, Angelic was thinly capitalized. It purported to have net income of \$178 in January 2013; negative \$13,067 in February 2013; \$78 in March 2013; negative \$6,517 in April 2013; \$27 in May 2013; \$2,795 in June 2013; negative \$9,732 in July 2013; and negative \$9,507 in August 2013. The balance in Angelic's bank accounts as of August 31, 2013 was \$3,252, and Angelic had no other known assets.

7. Throughout the relevant period, Moore caused Crucible and Angelic to enter into an Expense Sharing Agreement (the "Agreement") by signing the Agreement on both parties' behalf. Moore had the parties enter into the Agreement so that Crucible's vendors would issue their invoices to Angelic for the services they performed for Crucible. Crucible's primary vendors were the firm that supplied its Financial and Operations Principal ("FINOP"), its outside law firm, and its e-mail archivist. Moore separately caused Crucible to tell these vendors that they should not send their invoices to Crucible through the firm's e-mail system.

Crucible Consistently Operated While Out of Net Capital During the Relevant Period

8. Rule 15c3-1 under the Exchange Act [17 CFR 240.15c3-1] requires broker-dealers generally effecting transactions in securities to “at all times have and maintain net capital” no less than the greatest of the highest minimum requirement applicable to its business. Under Rule 15c31(c)(2) [17 CFR 240.15c3-1(c)(2)], a broker-dealer's “net capital” is defined to mean its “net worth,” subject to certain adjustments. A broker-dealer's net worth, in turn, is calculated by subtracting its liabilities from its assets.

*3 9. The net capital rule requires broker-dealers to maintain different minimum amounts of net capital based on the nature of a firm's business. The minimum net capital requirement is the greater of a fixed-dollar amount specified in the rule or an amount determined by applying one of two financial ratios. The minimum fixed dollar amount for Crucible during the relevant period was \$5,000. Based on the application of this rule, Crucible's required net capital amount from December 2012 through September 2013 ranged from \$5,000 to \$5,396 as set forth in paragraph 13 below.

10. The net capital rule requires a broker-dealer to perform two calculations: (i) a computation of the minimum amount of net capital the broker-dealer must maintain; and (ii) a computation of the amount of net capital the broker-dealer is maintaining.

11. Generally, a broker-dealer computing net capital first calculates its net worth, computed in accordance with generally accepted accounting principles; deducts the value of certain illiquid assets; and also takes haircuts from the market value of certain securities it holds. The resulting figure must be above the firm's required minimum net capital to comply with the net capital rule. This figure is then reported to FINRA on a FOCUS Report, which discloses the broker-dealer's financials generally. FOCUS Reports include, among other things, the brokerdealer's balance sheet, income statement, and a statement of any changes in ownership equity.

12. From December 2012 through September 2013, Crucible operated with significant net capital deficiencies.

13. In its FOCUS Reports, Crucible reported that its actual net capital substantially exceeded its required net capital at month end, as shown below.

Month	Required Net Capital	Crucible's Reported Net Capital
Dec. 2012	\$5,199	\$81,084
Jan. 2013	\$5,000	\$53,961
Feb. 2013	\$5,000	\$26,670
Mar. 2013	\$5,000	\$21,504
Apr. 2013	\$5,000	\$21,707
May 2013	\$5,000	\$41,358
June 2013	\$5,016	\$15,117
July 2013	\$5,282	\$10,882
Aug. 2013	\$5,396	\$8,039
Sept. 2013	\$5,089	\$8,911

*4 Crucible substantially overstated its net capital, however, and in fact had a net capital deficiency on each of those reporting dates. Crucible overstated its net capital as a result of several improper practices.

14. First, Crucible improperly failed to include as its own liability the outstanding amount that its FINOP provider had invoiced to Angelic for services performed for Crucible. Between December 31, 2012 and September 31, 2013, that outstanding liability was between approximately \$50,783 and \$60,875. Crucible's failure to treat that liability as its own caused it to operate without adequate net capital from January 2013 through September 2013.

15. Crucible's failure to include the outstanding balance invoiced to Angelic as its own liability was improper because the FINOP provider furnished a FINOP to Crucible and not Angelic. In addition, and as described at Paragraph 5 above, Angelic did not have adequate resources independent of Crucible to pay its obligations to the FINOP provider or the other vendors. As Angelic's sole officer and shareholder, Moore knew or recklessly disregarded the fact that Angelic did not have adequate resources independent of Crucible to pay its obligations to those vendors.

16. As a registered broker-dealer, Crucible was on notice that the Commission staff and FINRA have provided guidance that for a broker-dealer to be relieved, for net capital purposes, of liabilities as a result of an expense sharing agreement with a third party, the third party must have adequate resources. In a July 11, 2003 letter, the Commission's then-Division of Market Regulation offered guidance on the application of the financial responsibility rules (that is, the net capital rule, Rule 15c3-1, and the reporting and recordkeeping requirements under Rules 17a-3 through 17a-5) when a broker-dealer has a third party, which may be a parent, holding company, or affiliate, assume responsibility for paying the broker-dealer's expenses. In October 2003, the National Association of Securities Dealers ("NASD") issued Notice to Members 03-63 (the "NASD Notice"), which commented on the Division of Market Regulation's letter. Both the Division of Market Regulation's letter and the NASD Notice stated that for a broker-dealer to be relieved, for net capital purposes, of liabilities as a result of an expense sharing agreement with a third party, certain conditions must be met, including that the broker-dealer can demonstrate that the third party has adequate resources independent of the broker-dealer to pay the liability or expense. The debt to the FINOP provider was for services performed for Crucible, and Moore knew that Angelic did not have adequate resources independent of Crucible to pay its obligations to the FINOP provider.

17. The improper practice described above in paragraphs 14, 15, and 16 caused Crucible to operate without sufficient net capital from January through September 2013.

*5 18. In addition, Crucible employed a second improper practice that separately caused it to operate without sufficient net capital throughout December 2012 and until at least January 21, 2013. For example, at the end of December 2012, Crucible included as an allowable asset 3 million shares of common stock of a microcap issuer that Crucible valued at \$110,000. It was not until January 21, 2013 at the earliest, however, that Crucible obtained a letter required by the transfer agent, opining that the transfer agent could remove the restrictive legend from the certificate representing these shares. Accordingly, the shares were subject to a restriction and thus non-marketable and should not have been included as an allowable asset until at least January 21, 2013.

Books-and-Records and Financial Reporting Failures

19. As a result of the above-described errors in calculating its net capital, Crucible failed to make and keep accurate records of its net capital calculation and filed ten FOCUS Reports during the relevant period that contained its inaccurate asset, liability, and net capital computations.

20. In addition, during an examination conducted by the Commission's Broker-Dealer Examination staff ("exam staff"), Crucible, acting at Moore's direction, provided the exam staff with altered documents that substantially understated Angelic's, and therefore Crucible's, liabilities to vendors.

21. In addition, in 2013, Crucible, acting at Moore's direction, arranged to have some of its vendors send their invoices to Crucible staff at their personal email addresses. Accordingly, Crucible failed to keep certain records relating to its business as a broker-dealer and FINRA member.

22. As a result of the conduct described above, Moore willfully aided and abetted and caused Crucible's violations of Section 15(c)(3) of the Exchange Act and Rule 15c3-1, which require broker-dealers to maintain minimum net capital, and Section 17(a)(1) of the Exchange Act and Rules 17a-3(a)(2), 17a-4(b)(3), 17a-4(j), 17a-5(a), and 17a-11(b)(1), which require brokerdealers to make and keep current and preserve books and records, and to make certain reports and filings with the Commission.

IV.

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

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Moore cease and desist from committing or causing any violations and any future violations of Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder, and Section 17(a)(1) of the Exchange Act and Rules 17a-3(a)(2), 17a-4(b)(3), 17a-4(j), 17a-5(a), and 17a-11(b)(1) thereunder.

B. Respondent Moore shall be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

*6 prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

C. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Brent J. Fields
Secretary

Footnotes

1 The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

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