UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SECURITIES ACT OF 1933
Release No. 8978/October 15, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13123

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| In the Matter of | : | |
| | : | ORDER MAKING FINDINGS AND |
| ALEXANDER & WADE, INC., and | : | IMPOSING SANCTIONS BY DEFAULT |
| JAMES Y. LEE | : | AGAINST ALEXANDER & WADE, INC. |
| | : | |

## SUMMARY

This Order orders Alexander & Wade, Inc. (AWI), to cease and desist from committing or causing violations of and any future violations of Sections 5(a) and 5(c) of the Securities Act of 1933 (Securities Act) and to disgorge ill-gotten gains of $2,866,375 plus prejudgment interest.

## I. BACKGROUND

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) in this matter on August 7, 2008, pursuant to Section 8A of the Securities Act. The proceeding against Respondent James Y. Lee (Lee) has ended. Alexander & Wade, Inc., Securities Act Release No. 8954 (A.L.J. Aug. 28, 2008).

The OIP alleges that, from mid-2002 through mid-2005, AWI, a corporation Lee controlled, advised and guided several microcap issuers in raising millions of dollars by selling their common stock to the public in violation of the registration requirements of the federal securities laws and thereby caused violations of Sections 5(a) and 5(c) of the Securities Act. The OIP further alleges that AWI and Lee received ill-gotten gains totaling $2,866,375. The Division of Enforcement (Division) is seeking a cease-and-desist order and disgorgement against AWI.

AWI was served with the OIP on September 18, 2008, by personal service on its Nevada Resident Agent, in accordance with 17 C.F.R. § 201.141(a)(2)(ii) and Nev. Rev. Stat. § 78.090. To date, it has not filed an Answer to the OIP, due twenty days after service. See OIP at 6; 17 C.F.R. § 201.220(b). Accordingly, AWI is in default, and the undersigned finds that the allegations in the OIP are true as to it. See OIP at 6; 17 C.F.R. §§ 201.155(a), .220(f).

## II. FINDINGS OF FACT

From mid-2002 through mid-2005, AWI introduced at least fourteen clients (the Issuers) to so-called employee stock option programs, under which the Issuers sold billions of shares of common stock in unregistered offerings. Under the programs, the Issuers improperly registered the shares underlying the stock options on Form S-8 registration statements and then received the bulk of the sales proceeds as payment for the options' exercise price. The programs functioned as public offerings in which the Issuers' employees were used as conduits to the market so that the Issuers could raise capital without complying with the registration requirements of the Securities Act. AWI introduced the programs to the Issuers, helped implement the programs, and provided advice on how to administer the programs, even though it knew, or should have known, that its conduct was contributing to the Issuers' registration violations.

Beginning in mid-2002, the Issuers implemented virtually identical employee stock option programs set forth in documents titled Employee Stock Incentive Plans (ESIPs). All of the ESIPs used stock options and shares registered on Form S-8. The Issuers were reporting companies under Section 13 of the Securities Act. Prior to implementing the ESIP programs,[1] the Issuers had limited operational histories and generated little revenue. During the course of the programs, the Issuers' stocks were quoted on the OTC Bulletin Board at less than a penny per share and their stock prices generally trended downward.

The Issuers each filed Form S-8 registration statements during the relevant time period, resulting in millions and, in some cases, billions of shares being registered by individual Issuers. The following table details the Form S-8 filings and post-effective amendments registering options and shares under the ESIP programs for six of the Issuers:

| Issuer | # of S-8 Filings | # of Shares Registered |
|---|---|---|
| Cybertel Capital Corp. | 11 | 6,185,000,000 |
| Marshall Holdings International, Inc. | 7 | 16,793,496,800 |
| Global Materials & Services, Inc. | 15 | 13,316,000,000 |
| Palomar Enterprises, Inc. | 8 | 2,479,000,000 |
| Winsted Holdings, Inc. | 10 | 2,260,000,000 |
| Zann Corp. | 10 | 1,456,860,000 |

The ESIP documents were attached as exhibits to the Issuers' Form S-8 registration statements and were substantially similar in all material respects.

As implemented by the Issuers, the ESIP programs had several distinctive features that, taken together, virtually guaranteed that options would be exercised and the underlying shares simultaneously sold to the public at or near the time the options were granted:

[1] As used herein, the term "ESIP programs" refers to the Issuers' employee stock options programs where each Issuer issued Form S-8 shares under a series of ESIPs.

a. The option exercise price floated with the market value of an Issuer's stock at the time of exercise. The exercise price was typically set at eighty-five percent of the proceeds from the sale of the shares underlying the options. This ensured that the options were immediately "in the money" – that is, the exercise price would always be less than the market price whenever the options were exercised – and that the Issuer, not the employee, would receive most of the benefit from an increase in stock price after the time of grant.

b. The options vested immediately, meaning that there was no waiting period after the options were granted or any other condition that needed to be met before the options could be exercised.

c. A cashless method was used to exercise the options, meaning that the exercise price was remitted to the Issuer from the sales proceeds of the shares underlying the options.

The ESIP programs were set up so that the Issuers and all of their employees had brokerage accounts at the same broker-dealer firm. When the broker-dealer opened the accounts for the employees, it typically obtained standing orders or other instructions from the employees that the options should be exercised immediately after grant. Also, it required the employees to fill out and have notarized multiple blank authorizations in advance of the Issuers' granting any options. The Issuers collected and forwarded these authorizations to the broker-dealer as part of setting up the Issuers' ESIP programs. The authorizations gave the broker-dealer authority to (1) sell the shares underlying any options granted by the Issuers and (2) exercise the options using the sales proceeds from the underlying shares to pay the exercise price.

When the Issuers granted the options, they sent the broker-dealer share certificates representing the number of shares underlying the options granted. Upon receipt of the certificates, the broker-dealer sold the shares underlying the options to the public. It then calculated the options' exercise price at eighty-five percent of the sales price, and routed the exercise price proceeds to the Issuers' accounts and the remainder, minus fees, to the employees' accounts.

The unique design of the ESIP programs (i.e., the high-percentage exercise price that was based on the market value at the time of exercise, the immediate vesting, and the use of cashless exercise) and the generally declining price of the Issuers' stock all but guaranteed that the employees exercised their options and simultaneously sold their shares within days of grant. Moreover, other than the initial decision to sign up for the program, the employees did not make any decisions concerning the options' exercise or the sale of the underlying shares during the course of the ESIP programs. The combination of the standing order, blank authorizations, and the cashless exercise meant that the stock was sold to the public nearly immediately upon the options' grant. In some cases, the employees were not notified of an option grant until after they received their portion of the sale proceeds of the underlying shares. By virtue of the programs' structure and administration, the Issuers controlled the timing of sales to the public through the timing of their option grants and received the vast majority of the sale proceeds. The employees simply served as conduits.

These near-immediate sales of shares underlying the options resulted in millions and, in many cases, billions of shares of each Issuer's stock being sold to the public, which severely diluted the ownership interests of existing shareholders and further decreased the Issuers' stock price.

The Issuers issued options to employees frequently, in some cases as many as five times in a given month. As a result, the Issuers were able to generate cash flows from the payments for the exercised options that greatly exceeded their revenues and allowed them to fund their otherwise failing operations. By comparison, the employees received relatively modest amounts (approximately seven to eight percent of the sales proceeds).

The Issuers hired AWI to provide general business consulting services. Lee controlled AWI, and AWI performed most of the consulting services through him.

AWI introduced the ESIP programs to the Issuers and described the programs' structure in detail. It presented the programs to the Issuers as a means to compensate employees and generate funds to pay company expenses. AWI, through Lee, represented to at least one Issuer that AWI had refined and perfected the program, that many companies used the ESIP program, and that the best attorneys – as well as the Commission – had reviewed the programs' legality.

AWI helped the Issuers implement the ESIP programs, in part, by referring them to the broker-dealer that provided the brokerage services necessary to administer the programs and the attorney who provided the legal services necessary to implement the programs. After the Issuers implemented the ESIP programs, AWI continued to advise some Issuers on their ESIP programs' administration. This included monitoring the programs and advising the Issuers on how to determine the number of options to issue and when to file new Form S-8 statements.

The Issuers compensated AWI for the consulting services through cash payments of $2,131,981 and Form S-8 stock liquidated for $734,394, for a total of $2,866,375.

## III. CONCLUSIONS OF LAW

Pursuant to the Securities Act, registrants may use Form S-8 registration statements to register securities issued to compensate employees and consultants for bona fide services not connected with the offer or sale of securities. Because of the compensatory purpose and the presumed familiarity of employees and consultants with the registrant's business, Form S-8's disclosure requirements are abbreviated as compared to statements registering shares used to raise capital.

Form S-8 statements cannot be used to raise capital. However, the ESIP programs implemented by the Issuers functioned as public offerings to raise capital. The Issuers used their employees as conduits to offer shares to the public without providing the disclosures and rights afforded by registration. Because no registration statements were in effect or filed as to the shares issued under the ESIP programs, the Issuers violated Section 5 of the Securities Act by issuing shares in unregistered offerings.

AWI caused the Issuers' registration violations under Section 5 of the Securities Act. AWI introduced the Issuers to the ESIP programs, explained the programs' structure, referred them to the broker-dealer and attorney that were providing the programs' brokerage and legal services, and continued to advise some Issuers once they had launched their ESIP programs. Without AWI's involvement, the Issuers would not have violated Section 5.

Furthermore, AWI knew or should have known that its conduct contributed to the Issuers' violations.[2] AWI pitched the program to the Issuers as a means to generate cash to fund operations. It knew that the Issuers were struggling financially and, in some cases, was hired specifically to help the Issuers locate funding. Additionally, because it continued to advise some Issuers after the programs' implementations, it was aware that those Issuers were issuing huge numbers of Form S-8 shares to the public.

Thus, AWI knew or should have known that, by virtue of its advice and instruction to the Issuers, the ESIP programs would be used – and in fact were used – by the Issuers to raise capital to fund operations through the unregistered sale of shares to the public.

As a result of the conduct described above, AWI caused violations of Sections 5(a) and 5(c) of the Securities Act, which prohibit the direct or indirect offer and sale of securities through the mails or in interstate commerce unless a registration statement is in effect or has been filed with the Commission or a registration exemption applies.

## IV. SANCTIONS

The Division seeks a cease-and-desist order and disgorgement against AWI. Accordingly, AWI will be ordered to cease and desist from committing or causing violations of and any future violations of Sections 5(a) and 5(c) of the Securities Act and to disgorge ill-gotten gains of $2,866,375 plus prejudgment interest. These sanctions are authorized by Section 8A of the Securities Act and will serve the public interest and the protection of investors. They accord with Commission precedent and the sanction considerations set forth in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979).

## V. ORDER

IT IS ORDERED that ALEXANDER & WADE, INC., CEASE AND DESIST from committing or causing violations of and any future violations of Sections 5(a) and 5(c) of the Securities Act of 1933.

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[2] AWI is accountable for the actions of its responsible officers, including Lee. See C.E. Carlson, Inc. v. SEC, 859 F.2d 1429, 1435 (10th Cir. 1988) (citing A.J. White & Co. v. SEC, 556 F.2d 619, 624 (1st Cir. 1977)). A company's state of mind is imputed from that of the individuals controlling it. See SEC v. Blinder, Robinson & Co., 542 F. Supp. 468, 476 n.3 (D. Colo. 1982) (citing SEC v. Manor Nursing Ctrs., Inc., 458 F.2d 1082, 1096-97 nn.16-18 (2d Cir. 1972)).

IT IS FURTHER ORDERED that ALEXANDER & WADE, INC., DISGORGE $2,866,375 plus prejudgment interest at the rate established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), compounded quarterly, pursuant to 17 C.F.R. § 201.600. Pursuant to 17 C.F.R. § 201.600(a), prejudgment interest is due from April 1, 2005, through the last day of the month preceding the month in which payment is made.

Payment of disgorgement shall be made no later than twenty-one days after the date of this Order. Payment shall be made by wire transfer, certified check, United States postal money order, bank cashier's check, or bank money order payable to the Securities and Exchange Commission. The payment and a cover letter identifying the Respondent and Administrative Proceeding No. 3-13123, shall be directed to the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, Virginia 22312. A copy of the cover letter and the instrument of payment shall be sent to Division counsel.

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Carol Fox Foelak
Administrative Law Judge