

**STATE OF ALABAMA
ALABAMA SECURITIES COMMISSION**

IN THE MATTER OF:)	
)	
AVALON INVESTMENT AND)	
SECURITIES GROUP, INC.)	
)	
DAS ARNOLD BORDEN)	ADMINISTRATIVE ORDER
)	NO. SC-2019-0027
)	
<u>RESPONDENTS</u>)	

SHOW CAUSE ORDER

The Alabama Securities Commission ("Commission"), having the authority to administer and provide for the enforcement of all provisions of Title 8, Chapter 6, Code of Alabama 1975, the Alabama Securities Act ("Act"), upon due consideration of the subject matter hereof, has determined as follows:

RESPONDENTS

1. **AVALON INVESTMENT AND SECURITIES GROUP, INC. ("AISG"** – CRD # 6281) was registered in the state of Alabama, as a broker/dealer from October 22, 1981 to January 3, 1989 and from January 31, 1989 to current (with the period from January 3, 1989 to January 31, 1989 being non-registered based on suspension). **AISG** has a business address of 2013 East Avalon Avenue, Muscle Shoals, Alabama, 35661.

2. **DAS ARNOLD BORDEN ("BORDEN"** – CRD # 26096), has been the Chief Executive Officer for **AISG** since inception of the firm and served as Chief Compliance Officer for **AISG** from January 14, 2005 through June 3, 2009; from January 6, 2011 through April 3, 2011; and again from November 30, 2012 through September 20, 2016. **BORDEN's** principal business address is 2013 East Avalon Avenue, Muscle Shoals, Alabama, 35661.

STATEMENT OF FACTS

3. On October 25, 2018, the Financial Industry Regulatory Authority (FINRA) issued

an Acceptance, Waiver and Consent (AWC) against **AISG** based on findings from their most recent audit. The AWC included a \$12,000 fine, an order for **AISG** to pay \$1,515 plus interest in restitution to customers that did not receive appropriate breakpoints, and an order to retain an independent consultant to review the policies, systems, procedures and training related to the findings contained in the AWC. The specific securities rules violations reflected in the AWC were:

- failure to establish, maintain and enforce a supervisory system and written supervisory procedures (WSPs) reasonably designed to ensure that representatives' recommendations of variable annuities complied with applicable securities laws and regulations, and FINRA rules;
- failure to implement any surveillance system to determine if its registered representatives had rates of variable annuity exchanges which were inappropriate;
- failure to establish, maintain, and enforce a supervisory system, including WSP reasonably designed to ensure suitability of its registered representatives' recommendations of mutual fund share classes and the proper application of mutual fund sales breakpoint levels; and
- the firm failed to properly register a location as an Office of Supervisory Jurisdiction (OSJ) and locations as branch offices.

4. Commission staff audited **AISG** on five separate occasions: October 4 – 6, 2006; November 4 – 6, 2009; October 3 – 4, 2013; November 7 – 8, 2013; and April 11 – 12, 2016. Each of these audits revealed, inter alia, findings that mirrored those cited by FINRA. A partial list of such findings by Commission staff include:

- October 4 – 6, 2006, internal audit inspection sheets were inadequate with resolution comments and other pertinent information missing; and
- missing or outdated suitability data;
- November 4 – 6, 2009, October 3 – 4, 2013 and November 7 – 8, 2013, **AISG's** supervisory structure and implementation lacked documentation, exception

reporting and/or supervisory follow up;

- data regarding client suitability was missing from some client applications;
 - portions of client holdings failed to correspond to suitability data and new account applications failed to define investment objectives; and
 - multiple securities transactions were conducted in jurisdictions where **AISG** representatives were neither registered nor exempt from registration
-
- April 11 – 12, 2016, a former **AISG** representative's commission sheet included one line which was labeled "client not identified." Since the client was unknown, there is no way to determine if the product sold to said client would fit their suitability profile; and
 - Reviews were conducted of all nine 1035 exchanges executed during the relevant period (November 9, 2013 through April 11, 2016) and all exchanges were deemed deficient.

CONCLUSIONS OF LAW

5. Pursuant to Section 8-6-3(j)(2), Code of Alabama 1975, the Commission may suspend, revoke, censor or bar any registrant or any officer, director, partner or person occupying a similar status or performing similar functions for a registrant, from employment with a dealer or investment advisor, or restrict or limit a registrant as to any function or activity of the business for which registration is required in this state if the Commission finds that the order is in the public interest and that the registrant or, in the case of a dealer or investment advisor, any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the dealer or investment advisor has violated or failed to comply with any provision of the Alabama Securities Act, or any rule issued by the Commission.

6. Pursuant to Section 8-6-3(j)(10), Code of Alabama 1975, the Commission may suspend, revoke, censor or bar any registrant or any officer, director, partner or person occupying a similar status or performing similar functions for a registrant, from employment with a dealer or investment advisor, or restrict or limit a registrant as to any function or activity of the business for which registration is required in this state if the Commission finds that the order is in the public

interest and that the registrant or, in the case of a dealer or investment advisor, any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the dealer or investment advisor has failed reasonably to supervise his agents or employees if he is a dealer. **AISC** was cited by FINRA and repetitively by the Commission staff for failing to reasonably supervise **AISC** representatives variable annuity sales and exchanges. **AISC** was cited by FINRA and repetitively by the Commission staff for failing to establish, maintain and enforce a supervisory system and written supervisory procedures to ensure compliance with applicable securities laws and regulations.

This Order is appropriate in the public interest for the protection of investors and consistent with the purposes of the Act.

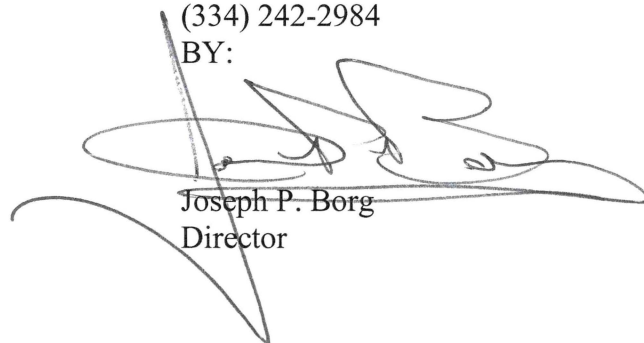
This Order does not prevent the Commission from seeking such other civil or criminal remedies that may be available to it under the Act.

ACCORDINGLY, IT IS HEREBY ORDERED that **RESPONDENTS SHOW CAUSE** to the Commission within 28 days of the date of this **ORDER**, why **RESPONDENTS** should not be suspended, revoked, censored or barred from the securities industry in the state of Alabama.

Entered at Montgomery, AL, this 12th day of SEPTEMBER,
2019.



ALABAMA SECURITIES COMMISSION
P.O. Box 304700
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(334) 242-2984
BY:

A handwritten signature in black ink, appearing to read "Joseph P. Borg", is written over a horizontal line. Below the signature, the name "Joseph P. Borg" and the title "Director" are printed in a standard font.

Joseph P. Borg
Director