

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 89903 / September 17, 2020**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20013**

**In the Matter of**

**NAVIAN CAPITAL  
SECURITIES LLC and  
ROBERT P. JENKINS**

**Respondents.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO SECTIONS 15(b) AND 21C  
OF THE SECURITIES EXCHANGE ACT  
OF 1934, MAKING FINDINGS, AND  
IMPOSING REMEDIAL SANCTIONS AND  
A CEASE-AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Navian Capital Securities LLC (“Navian”) and that public cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Exchange Act against Robert P. Jenkins (“Jenkins”) (collectively, the “Respondents”).

**II.**

In anticipation of the institution of these proceedings, Respondents have 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, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that

#### Summary

This proceeding arises out of the failure of Navian, a registered broker-dealer, to properly calculate and report its net capital. As a consequence, from July 2018 until May 2019 (the "Relevant Period"), Navian operated with a net capital deficiency and violated net capital reporting and books and records provisions. Jenkins, the chief financial officer ("CFO") and financial and operations principal ("FINOP"), caused Navian's violations by failing to properly compute and report Navian's net capital.

#### Respondents

1. Navian is a Delaware limited liability company with its principal place of business in Cincinnati, Ohio. Navian is, and at all times during the Relevant Period was, registered with the Commission as a broker-dealer.

2. Jenkins, age 33, lives in Cincinnati, Ohio. During the Relevant Period, he served as the CFO and FINOP of Navian. As of August 6, 2020, Jenkins resigned from his role as Navian's FINOP. Jenkins holds a Series 27 license.

#### Facts

##### **A. The Net Capital Rule**

3. Section 15(c)(3) of the Exchange Act prohibits a broker or dealer from, among other things, making use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest or for the protection of investors to provide safeguards with respect to the financial responsibility and related practices of brokers or dealers. Rule 15c3-1, promulgated thereunder (the "net capital rule"), requires that a broker-dealer "at all times have and maintain net capital" no less than the greatest of the minimum requirement applicable to its business. The net capital rule requires different minimum amounts of net capital based on the nature of a firm's business (for example, whether the firm holds customer funds or securities), and the method a firm uses in computing its net capital. The rule is designed to require a broker-dealer to maintain sufficient liquid assets to meet all obligations to customers and counterparties and have

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<sup>1</sup> The findings herein are made pursuant to Respondents' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

adequate additional resources to wind down its business in an orderly manner without the need for a formal proceeding if the firm fails financially.

4. The net capital rule requires that a broker-dealer perform two calculations: (i) a computation of the minimum net capital the broker-dealer must maintain; and (ii) a computation of the amount of net capital the broker-dealer is maintaining. The minimum net capital requirement is the greater of a fixed-dollar amount specified in the net capital rule or an amount determined by applying one of two financial ratios.<sup>2</sup> The minimum fixed dollar amount for Navian during the Relevant Period was \$100,000.<sup>3</sup>

5. To compute the amount of net capital it is maintaining, a broker-dealer first calculates its net worth and then makes certain adjustments set forth in the net capital rule. One such adjustment requires a broker-dealer to subtract from its net worth any contribution of capital that is intended to be withdrawn within one year of being contributed.

## **B. Navian's Erroneous Net Capital Calculations**

6. Navian serves as an introducing broker, providing structured products, certificates of deposit and annuities to financial institutions, investment advisers and independent broker-dealers. Until July 2018, Navian also offered a software application that allowed its customers to access structured products from various issuers.

7. During the Relevant Period, Jenkins, as Navian's CFO and FINOP, was responsible for calculating Navian's monthly net capital position and ensuring it met the minimum requirements set forth in the net capital rule.

8. From July 2018 to May 2019, Navian (i) failed to comply with its minimum net capital requirement; and (ii) filed inaccurate FOCUS reports that overstated the firm's net capital.

9. In July 2018, Navian began experiencing monthly cash flow shortages as a result of changes in the structure of its business. To manage the shortage, from July 2018 through April

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<sup>2</sup> The Aggregate Indebtedness Standard, set forth in Exchange Act Rule 15c3-1(a)(1)(i), requires that a firm's aggregate indebtedness not exceed 1500% of its net capital (or 800% of its net capital for 12 months after commencing business as a broker or dealer). The Alternative Standard, set forth in Exchange Act Rule 15c3-1(a)(1)(ii), requires that a firm's net capital must not be less than the greater of \$250,000 or 2% of aggregate debit items computed in accordance with a specified formula. A broker-dealer can elect to be subject to the Alternative Standard, but must notify its Examining Authority of its election to operate under that standard, and must continue to operate under that standard unless a change is approved upon application to the Commission.

<sup>3</sup> Navian operated under the exemptive provision of Exchange Act Rule 15c3-3(k)(2)(i) and therefore was subject to a \$100,000 minimum fixed dollar net capital requirement pursuant to Exchange Act Rule 15c3-1(a)(2)(ii).

2019, Jenkins made a series of temporary transfers of cash from Navian’s parent entity, Navian Capital, LLC to Navian around the third week of each month, when Navian had a cash flow shortage. Jenkins caused Navian to return the the funds to Navian Capital, LLC early the next month, when its cash position improved.

10. Under Exchange Act Rule 15c3-1(c)(2)(i)(G)(2), a broker-dealer must subtract from its allowable capital any contribution that the broker-dealer intends to withdraw within twelve months. From July 2018 through April 2019, Jenkins improperly computed Navian’s net capital each month by failing to subtract the temporary capital contributions from Navian Capital, LLC from Navian’s allowable capital. During this period, Navian was conducting a securities business with a net capital deficiency ranging from \$11,761 to \$103,968.

11. The table below lists the dates and amounts of the contributions to and withdrawals from Navian’s capital during the Relevant Period, as well as the amount of the net capital deficiency resulting from Navian’s failure to subtract the contributions from allowable capital:

CONTRIBUTION DATE	CONTRIBUTION AMOUNT	WITHDRAWAL DATE	WITHDRAWAL AMOUNT	MONTH END	ADJUSTED NET CAPITAL DEFICIT AT MONTH END
7/23/18	\$80,000	8/10/18	(\$80,000)	7/31/18	(\$52,024)
8/22/18	\$80,000	9/11/18	(\$80,000)	8/31/18	(\$51,491)
9/24/18	\$90,000	10/10/18	(\$90,000)	9/30/18	(\$65,284)
10/23/18	\$100,000	11/9/18	(\$100,000)	10/31/18	(\$64,554)
11/21/18	\$75,000	12/12/18	(\$75,000)	11/30/18	(\$30,173)
12/21/18	\$140,000	1/11/19	(\$140,000)	12/31/18	(\$103,968)
1/24/19	\$100,000	2/8/19	(\$100,000)	1/31/19	(\$60,076)
2/22/19	\$50,000	3/8/19	(\$95,000)	2/28/19	(\$11,761)
3/22/19	\$60,000	4/10/19	(\$135,000)	3/31/19	(\$33,638)
4/24/19	\$100,000	5/10/19	(\$100,000)	4/30/19	(\$76,612)

### C. Books and Records, and Financial Reporting Requirements

12. Section 17(a)(1) of the Exchange Act and Rules 17a-3 and 17a-5 thereunder require registered broker-dealers to make and keep current certain records and make certain reports and filings with the Commission. Exchange Act Rule 17a-3(a)(11) requires that every broker-dealer, among other things, make and keep a record of the computation of aggregate indebtedness and net capital as of the trial balance date. Rule 17a-3(a)(11) requires that such computations be prepared

currently at least once a month. In addition, Exchange Act Rule 17a-5(a)(iii) requires that certain broker-dealers, such as Navian, file periodic FOCUS reports containing a net capital computation.

13. Jenkins was responsible for filing FOCUS reports on behalf of Navian as required by Exchange Act Rule 17a-5(a). The FOCUS reports detail, among other things, Navian's minimum net capital requirement, and net capital computation. Navian filed three quarterly FOCUS reports that inaccurately reported Navian's net capital position, and therefore improperly indicated the firm was in compliance with its minimum net capital requirement, as a result of the incorrect calculations described above. Jenkins prepared and caused Navian to file these inaccurate FOCUS reports. Additionally, the inaccurate net capital computation prepared by Jenkins and resulting incorrect net capital position were recorded in Navian's books and records.

### **Violations**

14. As a result of the conduct described above, Navian willfully<sup>4</sup> violated Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder, which require broker-dealers to maintain minimum net capital while conducting a securities business, and Section 17(a)(1) of the Exchange Act and Rules 17a-3 and 17a-5, thereunder, which require broker-dealers to (i) make and keep current certain books and records, including an accurate computation of net capital; and (ii) file accurate FOCUS reports that include net capital computations.

15. As a result of the conduct described above, Jenkins caused Navian's violations of Sections 15(c)(3) and 17(a)(1) of the Exchange Act and Rules 15c3-1, 17a-3 and 17a-5 thereunder.

### **Respondents' Remedial Efforts**

16. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondents and cooperation afforded the Commission staff. Among other things, on June 1, 2020, Respondent Navian entered into an agreement with a third-party consultant to (i) assume the FINOP duties; (ii) review the firm's policies and procedures with respect to computing and reporting net capital and make recommendations, where appropriate, to ensure Navian's net capital procedures comply with Commission regulations; and (iii) provide training to Navian employees concerning net capital and regulatory financial reporting. The third-party consultant began serving as Navian's FINOP on August 6, 2020.

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<sup>4</sup> "Willfully," for purposes of imposing relief under Section 15(b) of the Exchange Act, "means no more than that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965).

#### IV.

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

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

A. Respondent Navian shall cease and desist from committing or causing any violations and any future violations of Sections 15(c)(3) and 17(a) of the Exchange Act and Rules 15c3-1, 17a-3 and 17a-5 promulgated thereunder.

B. Respondent Jenkins shall cease and desist from committing or causing any violations and any future violations of Sections 15(c)(3) and 17(a) of the Exchange Act and Rules 15c3-1, 17a-3 and 17a-5 promulgated thereunder.

C. Respondent Navian is censured.

D. Respondent Navian shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$40,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

E. Respondent Jenkins shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$10,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

F. Payment of the civil penalties described in paragraphs D and E must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch

HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Navian Capital Securities, LLC and Robert P. Jenkins as Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Kathryn Pyszka, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 1450, Chicago, IL 60604.

G. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent Jenkins, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Jenkins under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Vanessa A. Countryman  
Secretary