

## Another Example of Apparent Marking-the-Close by Craig McCann and Mike Yan

### Introduction

We recently posted research into stock issuances solely underwritten by Aegis Capital. We concluded that investors, including many Aegis' retail customers, suffered \$3.0 billion to \$5 billion in losses in recent years as a result of Aegis' conduct. You can view that post [here](#).

We also concluded that in at least three instances either Aegis marked the close or looked the other way while others marked the close to facilitate an underwriting. We described one of these examples, Meten. In this note, we describe facts leading us to conclude that someone marked the close in SeaChange International. We also illustrate how an issuer and underwriter might game the dilution disclosure when the issuer is burning through resources at a rapid pace, as was true of virtually all the Aegis underwritten issuers we reviewed.

### SeaChange International

SeaChange issued 10,323,484 shares at \$1.85 for total gross proceeds of \$19,098,445 on March 30, 2021. You can see the 424(b)(5) [here](#). Aegis received \$1,241,399 plus reimbursed expenses. As of February 28, 2024, the value of these shares has dropped 95.5%.

The first page of the 424(b)(5) reads in part:

The aggregate market value of our outstanding common stock held by non-affiliates is \$65,889,645 based on 37,817,400 shares of outstanding common stock, of which 31,677,714 shares are held by non-affiliates, and a per share price of **\$2.08** which was the closing sale price of our common stock as quoted on the Nasdaq Global Select Market on **March 29, 2021**. During the 12 calendar month period that ends on and includes the date hereof (but excluding this offering), we have not offered and sold any of our securities pursuant to General Instruction I.B.6 of Form S-3. [emphasis added]

SeaChange's closing stock price declined 72.3% from \$3.72 on March 31, 2020 to \$1.03 on March 26, 2021, before spiking to close at \$2.08 on March 29, 2021 and then continuing its decline to \$0.08 on a split-adjusted basis on February 28, 2024.<sup>1</sup> See Figure 1.

The fleeting spike in SeaChange's closing price to \$2.08 the day before the offering occurred with no material news but on extraordinary volume.<sup>2</sup> Trading in SeaChange on March 29, 2021 drove the price up throughout the day to close at \$2.08. The issuer and the underwriter benefited from this activity as it allowed the issue size to be larger. If SeaChange had closed above \$2.40, the issue size would not have been limited at all but the effort to push the closing price higher appears to have run out of juice.

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<sup>1</sup> Last week, SeaChange's stock price increased to \$0.24 on a split-adjusted basis after it announced an asset sale which, if it closes in the first quarter of 2025, would leave SeaChange with some cash and tax loss carryforwards. <https://ir.seachange.com/news-events/press-releases/detail/497/seachange-to-be-acquired-by-partner-one>

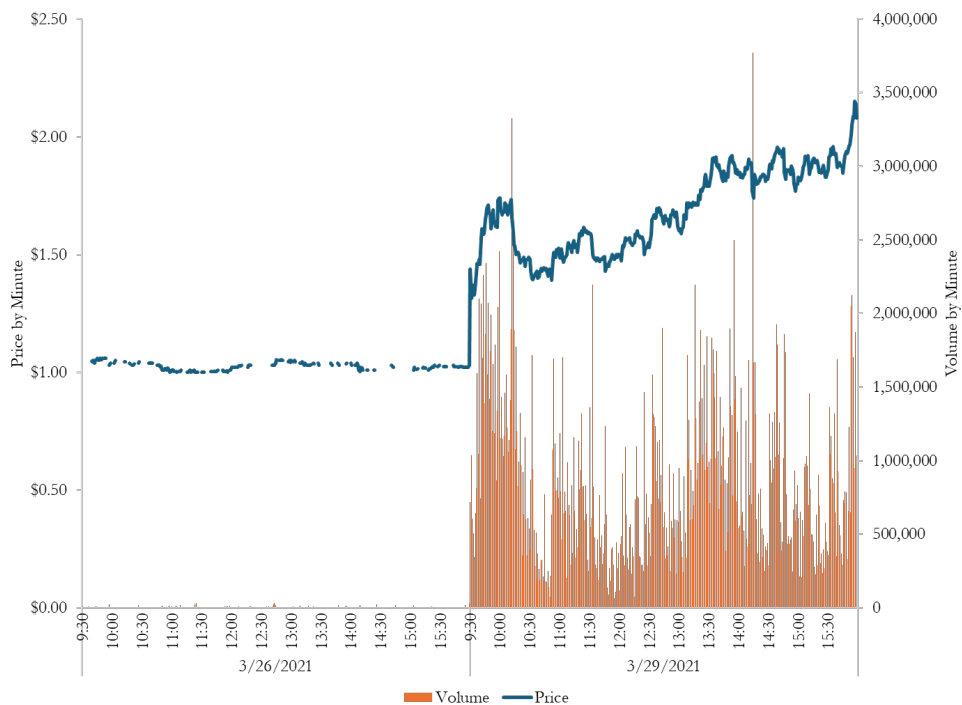
<sup>2</sup> SeaChange issued a press release touting a contract renewal with an existing customer before the open on March 29, 2021. [www.sec.gov/ix?doc=/Archives/edgar/data/1019671/000119312521098454/d21063d8k.htm](http://www.sec.gov/ix?doc=/Archives/edgar/data/1019671/000119312521098454/d21063d8k.htm)

**Figure 1** SeaChange Daily Closing Stock Price, March 31, 2020 to March 18, 2024



The trading volume on March 29, 2021 was 440 times the trading volume on March 26, 2021 and 12 times the float. In fact, the average trading volume per minute on March 29, 2021 was roughly equal to the trading volume for the entire day on March 26, 2021. See Figure 2.

**Figure 2** SeaChange Intraday Price and Volume, March 26, 2021 and March 29, 2021



## Dilution Games

As with the other Aegis Capital underwritings we reviewed, investors who were paying \$1.85 per share were being substantially diluted. SeaChange used its reported net tangible book value per share as of October 30, 2020 in the March 30, 2021 424(b), which reads in part:

### DILUTION

If you invest in our common stock, your interest will be diluted immediately to the extent of the difference between the offering price per share and the adjusted net tangible book value per share of our common stock after this offering.

Our net tangible book value as of October 31, 2020 was approximately \$23.3 million, or \$0.62 per share. “Net tangible book value” is total assets minus the sum of liabilities and intangible assets. “Net tangible book value per share” is net tangible book value divided by the total number of shares outstanding.

After giving effect to the sale of the common stock in this offering at the offering price set forth on the cover page of this prospectus supplement and after deducting estimated underwriting discounts and expenses payable by us, our as adjusted net tangible book value as of October 31, 2020 would have been approximately \$50.0 million or \$0.86 per share of common stock. This represents an immediate increase in net tangible book value of \$0.23 per share to our existing stockholders and an immediate dilution in net tangible book value of \$0.99 per share to investors participating in this offering. The following table illustrates this dilution per share to investors participating in this offering:

Public offering price per share	\$ 1.85
Net tangible book value per share as of October 31, 2020	\$ 0.62
Increase per share attributable to this offering	\$ 0.23
As adjusted net tangible book value per share as of October 31, 2020 after this offering	\$ 0.86
Dilution per share to new investors participating in this offering	\$ 0.99

We recreate the dilution calculation using information from SeaChange’s October 31, 2020 10-Q in Table 1.<sup>3</sup> Tangible Net Assets Per Share would increase from \$0.62 to \$0.86 as a result of the March 30, 2020 issuance occurring on October 30, 2020. By this calculation, investors paying Aegis \$1.85 were suffering immediate dilution of \$0.99. This calculation is troublingly misleading because the issuance did not occur on October 30, 2020 and more current information reflecting further deterioration at SeaChange and therefore greater dilution of new investors.

<sup>3</sup> [www.sec.gov/Archives/edgar/data/1019671/000156459020056748/seac-10q\\_20201031.htm](http://www.sec.gov/Archives/edgar/data/1019671/000156459020056748/seac-10q_20201031.htm)

**Table 1** Recalculation of Investor Dilution in the March 30, 2021 SeaChange /Aegis Issuance

	<u>October 31, 2020</u>	<u>January 31, 2021</u>	<u>April 30, 2021</u>
Total Assets	\$53,613,000	\$50,408,000	\$62,018,000
Total Liabilities	<u>\$18,502,000</u>	<u>\$18,867,000</u>	<u>\$13,089,000</u>
Net Assets	\$35,111,000	\$31,541,000	\$48,929,000
Goodwill and Other Intangibles	<u>\$11,777,000</u>	<u>\$11,849,000</u>	<u>\$11,519,000</u>
Net Tangible Assets	\$23,334,000	\$19,692,000	\$37,410,000
Shares Outstanding	37,556,067	37,639,304	48,236,422
Net Tangible Assets Per Share	<b>\$0.62</b>	<b>\$0.52</b>	<b>\$0.78</b>
Additional Shares	10,323,484	10,323,484	
Pro Forma Shares	47,879,551	47,962,788	
Issuance Proceeds	\$17,857,046	\$17,857,046	
Pro Forma Net Tangible Assets	\$41,191,046	\$37,549,046	
Pro Forma Net Tangible Assets Per Share	<b>\$0.86</b>	<b>\$0.78</b>	

SeaChange’s 10-K for the period ended January 31, 2021 was not filed by March 30, 2021.<sup>4</sup> If January 31, 2021 had marked a fiscal quarter-end rather than year-end, this information would have been published by March 15, 2021. The high-level information on total assets, total liabilities, goodwill and intangible assets and shares outstanding as of January 31, 2021 should have been knowable to SeaChange and Aegis Capital on March 30, 2021.

We recalculate the dilution suffered by Aegis’s clients in this offering using balance sheet information for January 31, 2021 – two months, not five months before the offering. Net Tangible Assets Per Share had declined from \$0.62 on October 31, 2021 to \$0.52 on January 31, 2021. Therefore, Tangible Net Assets Per Share would increase from \$0.52 to \$0.78 as a result of the March 30, 2020 issuance occurring on January 31, 2021. By this much-closer-in-time calculation, investors paying Aegis \$1.85 for these shares were suffering immediate dilution of \$1.07, not \$0.99. As a check, we calculate the Net Tangible Assets Per Share on April 30, 2021 – one month after the issuance was in fact \$0.78 and so the dilution was \$1.07.

## Conclusion

Whoever marked the close in SeaChange on March 29, 2021, SeaChange and Aegis benefited as the stock price jumped more than 100% in a day on 440 times the previous day’s trading volume and no material news.

The reported dilution we find in many offerings substantially understate the actual dilution investors suffer in these issuances because the issuer and underwriter use stale financial information on a business that is burning through resources.

<sup>4</sup> [www.sec.gov/Archives/edgar/data/1019671/000156459021018886/seac-10k\\_20210131.htm](http://www.sec.gov/Archives/edgar/data/1019671/000156459021018886/seac-10k_20210131.htm)