

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 2663 / September 28, 2007**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 28002 / September 28, 2007**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-12852**

**In the Matter of**

**ALLIANCEBERNSTEIN, L.P.,**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS  
PURSUANT TO SECTION 203(e) OF THE  
INVESTMENT ADVISERS ACT OF 1940  
AND SECTIONS 9(b) AND 9(f) OF THE  
INVESTMENT COMPANY ACT OF 1940,  
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 Section 203(e) of the Investment Advisers Act of 1940 (“Advisers Act”) and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against AllianceBernstein L.P. (“Respondent” or “Alliance”), formerly known as Alliance Capital Management, L.P.

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 203(e) of the Investment Advisers Act of 1940 and Sections 9(b) and 9(f) of the Investment Company Act of 1940, 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 matter concerns violations of Section 19(a) of the Investment Company Act and Rule 19a-1 thereunder by two closed-end funds, The Spain Fund Inc. and Alliance All-Market Advantage Fund, Inc. (collectively, the "Funds"). Section 19(a) of the Investment Company Act and Rule 19a-1 thereunder require funds to provide shareholders with contemporaneous written statements identifying the source of distributions to shareholders if any portion of the distributions is from a source other than the fund's net income. The purpose of Section 19(a) and Rule 19a-1 is to provide shareholders adequate disclosure of the sources from which distributions are made.

During the period from January 1, 2002 through July 9, 2004 (the "relevant period"), all of The Spain Fund Inc.'s and Alliance All-Market Advantage Fund, Inc.'s distributions to shareholders were entirely from shareholder capital or capital gains. None of the distributions was accompanied by a notice that contained the information required by Rule 19a-1. The Funds therefore violated Section 19(a) and Rule 19a-1 thereunder. Pursuant to advisory and administrative agreements with the Funds, Alliance was responsible for the administration of the Funds' affairs, which included providing Section 19(a) notices to shareholders of the Funds. Alliance also represented in a 1998 exemptive application to the Commission that notices that comply with Rule 19a-1 would be sent to The Spain Fund Inc.'s shareholders. Although Alliance, which regularly calculated the sources of distributions for the Funds, knew or was reckless in not knowing that both Funds' distributions were entirely from shareholder capital or capital gains during the relevant period, it failed to provide contemporaneous notices containing the information required by Rule 19a-1 to the Funds' shareholders. Alliance thus caused and willfully<sup>2</sup> aided and abetted the Funds' violations of Section 19(a) and Rule 19a-1 thereunder.

#### Respondent

1. **Alliance**, an investment adviser registered with the Commission under Section 203(c) of the Advisers Act, provides investment management and administrative services to a number of closed-end investment companies registered under the Investment Company Act, including The Spain Fund Inc. and Alliance All-Market Advantage Fund, Inc. Alliance's principal place of business is New York, New York. Alliance is an affiliate of AllianceBernstein Corporation, a publicly traded company.

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<sup>1</sup> 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.

<sup>2</sup> "Willfully," as used in this Order means intentionally committing the act that constitutes the violation. See Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000); Tager v. SEC, 344 F.2d 5, 8 (2d Cir. 1965).

### **Other Relevant Entities**

2. The Spain Fund Inc., a closed-end, non-diversified management investment company registered under the Investment Company Act, was incorporated under the laws of Maryland on June 30, 1987. Its shares trade on the New York Stock Exchange under the symbol SNF. The Spain Fund Inc., which seeks long-term capital appreciation through investment primarily in the equity securities of Spanish companies, pays distributions quarterly. Its fiscal year ends on November 30.

3. The Alliance All-Market Advantage Fund, Inc., a closed-end, non-diversified management investment company registered under the Investment Company Act, was incorporated under the laws of Maryland on August 16, 1994. Its shares trade on the New York Stock Exchange under the symbol AMO. The Alliance All-Market Advantage Fund, Inc., which seeks long-term capital appreciation, pays distributions quarterly. Its fiscal year ends on September 30.

### **Section 19(a) Violations**

4. Section 19(a) of the Investment Company Act prohibits investment companies such as closed-end funds from paying distributions from any source other than net income unless the payments are accompanied by contemporaneous written statements to shareholders disclosing the sources of the distributions. Rule 19a-1 specifies that the written statement must be on a separate paper and clearly indicate what portion of the payment is from: 1) net income (not including capital gains); 2) capital gains; and 3) paid-in surplus or other capital source. The purpose of Section 19(a) and Rule 19a-1 is to afford shareholders adequate disclosure of the sources from which the payments are made so shareholders will not believe that a fund portfolio is generating investment income when, in fact, distributions are paid from other sources, such as shareholder capital or capital gains.<sup>3</sup>

5. During the relevant period, both The Spain Fund Inc. and Alliance All-Market Advantage Fund, Inc. had managed distribution policies that required the Funds to make fixed quarterly payments to shareholders equal to 2.5% of Net Assets Value, regardless of performance.<sup>4</sup> The Funds' managed distribution policies provided that to the extent the target distribution payment for any quarter exceeded net investment income and short-term capital gains, the shortfall would be funded with shareholder capital or long-term capital gains.

6. Alliance provides investment advisory and administrative services to the Funds. Pursuant to agreements with the Funds, Alliance is responsible for the Funds' administrative operations and must perform its duties consistent with the requirements of the Investment Company Act, including Section 19(a).

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<sup>3</sup> Rule 19a-1(g) states: “[t]he purpose of this section, in the light of which it shall be construed, is to afford security holders adequate disclosure of the sources from which dividend payments are made.” See SEC Release No. 71, 1941 WL 37715 (Feb. 21, 1941) (“An important feature of the rule is the extent to which it requires explicit and affirmative disclosure whenever a dividend is being paid from a capital source.”).

<sup>4</sup> The per share Net Asset Value (“NAV”) of a closed-end fund is the total value of securities in its portfolio, less liabilities, divided by the number of outstanding shares.

7. In 1998, Alliance and The Spain Fund Inc. applied to the Commission for, and received, an exemption from Section 19(b) of the Investment Company Act, permitting The Spain Fund Inc. to distribute long-term capital gains throughout its fiscal year, instead of annually. In the exemptive application, Alliance and The Spain Fund Inc. acknowledged that Section 19(a) and Rule 19a-1 require funds to provide contemporaneous, written notification to shareholders when distributions are from sources other than fund net income, and jointly represented to the Commission that The Spain Fund Inc. would send information statements that comply with Rule 19a-1 to its shareholders.<sup>5</sup>

8. During the relevant period, both Funds made distributions to shareholders that were entirely from shareholder capital or capital gains, as shown below on a per share basis.

The Spain Fund Inc. <sup>6</sup>	2002		2003		2004	
	%	\$	%	\$	%	\$
Net Investment Income	--	--	--	--	--	--
Capital Gains	--	--	--	--	100%	\$ .87
Shareholder Capital	100%	\$ .76	100%	\$ .63	--	--

All-Market Advantage Fund <sup>7</sup>	2002		2003		2004	
	%	\$	%	\$	%	\$
Net Investment Income	--	--	--	--	--	--
Capital Gains	--	--	--	--	100%	\$1.42
Shareholder Capital	100%	\$1.95	100%	\$1.32	--	--

9. During the relevant period, Alliance failed to provide the required written notice to The Spain Fund Inc.'s shareholders, even though the fund repeatedly made distributions from shareholder capital or capital gains. In 2002, Alliance sent written notices with The Spain Fund Inc.'s quarterly distributions, but the notices failed to inform shareholders that the distributions were completely from shareholder capital. In 2003, Alliance sent quarterly distribution notices to The Spain Fund Inc.'s shareholders that improperly stated that the distributions were from net investment income, when in fact, they were entirely from shareholder capital. In 2004, Alliance

<sup>5</sup> In 1997, Alliance All-Market Advantage Fund, Inc. applied to the Commission for, and received, an exemption from Section 19(b) of the Investment Company Act, permitting it to make up to five distributions of long-term capital gains in any one taxable year. Alliance All-Market Advantage Fund, Inc. made no representations concerning Section 19(a) in its exemptive application.

<sup>6</sup> During fiscal years 2002 and 2003, all eight of The Spain Fund Inc.'s quarterly distributions were entirely from shareholder capital. During fiscal year 2004, all four of The Spain Fund Inc.'s quarterly distributions were entirely from capital gains.

<sup>7</sup> During fiscal years 2002 and 2003, all eight of Alliance All-Market Advantage Fund, Inc.'s quarterly distributions were entirely from shareholder capital. During fiscal year 2004, all four of Alliance All-Market Advantage Fund, Inc.'s quarterly distributions were entirely from capital gains and shareholder capital.

sent notices with The Spain Fund Inc.'s first three quarterly distributions that failed to indicate that such distributions consisted entirely of capital gains.<sup>8</sup>

10. During the relevant period, Alliance also failed to provide notices containing the information required by Rule 19a-1 to Alliance All-Market Advantage Fund, Inc. shareholders, even though the Fund repeatedly made distributions from shareholder capital and capital gains. The written notices that accompanied Alliance All-Market Advantage Fund Inc.'s 2002 and 2003 quarterly distribution payments failed to inform shareholders that their distributions were entirely from shareholder capital. Similarly, the written notices that accompanied Alliance All-Market Advantage Fund Inc.'s first three quarterly distributions for 2004 failed to inform shareholders that such distributions were entirely from capital gains.<sup>9</sup>

11. By paying distributions to shareholders from sources other than net income without properly disclosing the source of those distributions in a notice that accompanied the distributions, The Spain Fund Inc. and Alliance All-Market Advantage Fund Inc. violated Section 19(a) of the Investment Company Act and Rule 19a-1 thereunder.

12. Alliance, which closely monitored the source of distributions for the Funds, knew or was reckless in not knowing that each of the Funds' quarterly distributions was entirely from shareholder capital or capital gains at the time it was paid. Yet Alliance failed to provide contemporaneous notices that complied with Section 19(a) in 2002, 2003, and the first half of 2004.<sup>10</sup>

13. As a result of the conduct described above, Alliance caused and willfully aided and abetted the Funds' violations of Section 19(a) of the Investment Company Act and Rule 19a-1 thereunder.

#### **Respondent's Cooperation and Remedial Efforts**

14. In determining to accept the Offer, the Commission considered the remedial acts undertaken by Respondent and cooperation afforded to the Commission staff.

#### **IV.**

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

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<sup>8</sup> The Spain Fund's fourth distribution for fiscal year 2004 was accompanied by a notice that contained the requisite 19(a) disclosures.

<sup>9</sup> The Alliance All-Market Advantage Fund Inc.'s fourth distribution for fiscal year 2004 was accompanied by a notice that contained the requisite 19(a) disclosures.

<sup>10</sup> During the relevant period, both funds provided shareholders with Internal Revenue Service Forms 1099-DIV that identified the source of the shareholders' distributions for the prior calendar year. Such notices did not comply with Section 19(a) and Rule 19a-1 because they were not made contemporaneously with each distribution.

Accordingly, it is hereby ORDERED pursuant to Sections 9(b) and 9(f) of the Investment Company Act and Section 203(e) of the Advisers Act that:

A. Alliance shall cease and desist from causing any violations and any future violations of Section 19(a) of the Investment Company Act and Rule 19a-1 thereunder; and

B. Alliance shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$450,000 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies AllianceBernstein L.P. as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Mark Kreitman, Esq., Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-4628.

By the Commission.

Nancy M. Morris  
Secretary