

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 71274 / January 9, 2014

ADMINISTRATIVE PROCEEDING

File No. 3-11359

In the Matter of

Alliance Capital Management, LP

Respondent.

**ORDER AMENDING THE PLAN OF
DISTRIBUTION**

On March 13, 2008, the Commission published a Notice of Proposed Plan of Distribution (“Plan”) proposed by the Division of Enforcement in connection with this proceeding (Securities Exchange Act Rel. No. 57489). The Commission received no comments and on May 15, 2008, the Plan was approved (Exchange Act Rel. No. 57825).

The Plan provides that a Fair Fund be distributed by the Fund Administrator¹ to injured investors according to the methodology set forth in the Plan.² To date, of the approximately \$346.4 million disbursed, a residual amount of approximately \$61.9 million remains undistributed.³ This amount is currently in the Plan’s Final Settlement Account.

¹ Capitalized terms in this order, unless otherwise noted, refer to defined terms in the approved Plan.

² In addition to approximately \$27.3 million in interest earned to date, the Fair Fund is comprised of \$321,230,003 in disgorgements and civil penalties, \$250 million of which comes from the Alliance settlement, \$70.38 million from the Daniel Calugar settlement, and a total of \$850,003 paid by Alliance officers Malone, Carifa and Laughlin, as described in the order approving the Plan. *See* Exchange Act Rel. No. 57825.

³ By Order Directing Disbursement of Fair Fund dated January 22, 2009, the Commission ordered the first disbursement, composed of \$46,166,264.96. *See* Exchange Act Rel. No. 59280. By Order Directing Disbursement of Fair Fund dated February 11, 2009, the Commission ordered the second disbursement, composed of \$79,178,672.81. *See* Exchange Act Rel. No. 59389. By Order Directing Disbursement of Fair Fund dated March 31, 2009, the Commission ordered the third disbursement, composed of \$63,141,852.24. *See* Exchange Act Rel. No. 59657. By Order Directing Disbursement of Fair Fund dated

Section 3.7.5 of the Plan provides that any residual amount in the Final Settlement Account, after all Fair Fund assets have been distributed to injured investors, be remitted to the Alliance Funds, based on the proportion of Adjusted Losses incurred in each Alliance Fund, after provisions for any taxes have been made and prior to the termination of the Fair Fund. The current residual amount is \$61,884,846.69, which includes \$4,745,346.31 in checks that were refused or returned, \$20,424,661.03 in checks that were deemed undeliverable and \$33,305,305.77 in checks that were delivered but uncashed. Upon further consultation with the Commission staff, the Independent Distribution Consultant (“IDC”) and the Fund Administrator have determined that certain enhanced measures described below (“Enhanced Measures”), beyond those in the Plan and already implemented, could result in more checks being cashed by eligible harmed investors with uncashed payments (“Unpaid Distributees”). Therefore, consistent with the Plan’s primary object to distribute funds to affected investors at the time of the misconduct and with the concurrence of the IDC and Alliance, the Plan is amended as follows:

- A. Checks Previously Refused or Returned: Working with the IDC, the Fund Administrator shall reissue and mail previously refused or returned checks of \$5,000 or more for which new custodian or beneficiary information has become available since the last distribution tranche. Additional commercially reasonable best efforts, if necessary, may be made by the Fund Administrator in consultation with the IDC and, as appropriate, the Commission staff, if the IDC or Fund Administrator becomes aware of new custodian or beneficiary information for the distribution of any previously refused or returned check prior to the completion of the Enhanced Measures.
- B. Checks Previously Deemed Undeliverable: (1) For all checks of \$5,000 or more previously deemed undeliverable, the Fund Administrator shall conduct manual tracing activities, including, but not limited to, manual LexisNexis searches, research on the internet, research in proprietary databases, and research on FINRA’s website. The Fund Administrator shall mail all checks of \$5,000 or more previously deemed undeliverable using either the new information from the manual searches or existing information in the Fair Fund’s database for those checks for which new information cannot be obtained. In addition, two days after the checks are mailed (“Check Mailing Date”), the Fund Administrator shall mail a courtesy letter in a form reviewed and approved by the Commission staff (“Courtesy Letter”), via first class mail, to Unpaid Distributees reminding them about the 90-day stale date of the recently mailed checks and encouraging them to cash their checks before the deadline.

April 28, 2009, the Commission ordered the fourth disbursement, composed of \$49,910,496.49. *See* Exchange Act Rel. No. 59832. By Order Directing Disbursement of Fair Fund dated May 14, 2009, the Commission ordered the fifth disbursement, composed of \$56,642,634.13. *See* Exchange Act Rel. No. 59926. By Order Directing Disbursement of Fair Fund dated August 5, 2009, the Commission ordered the sixth disbursement, composed of \$46,942,173.23. *See* Exchange Act Rel. No. 60446. By Order Directing Disbursement of Fair Fund dated May 31, 2011, the Commission ordered the seventh disbursement, composed of \$9,738,605.02. *See* Exchange Act Rel. No. 64568.

The Fund Administrator shall mail additional Courtesy Letters two weeks and then six weeks after the Check Mailing Date to Unpaid Distributees with delivered but outstanding checks. Furthermore, the Fund Administrator shall engage in a live calling campaign to encourage Unpaid Distributees with checks outstanding after six weeks to cash their checks. In support of the live calling campaign, and working with the Fund Administrator, the IDC shall engage in commercially reasonable best efforts to research telephone numbers for Unpaid Distributees and attempt up to two live calls each to Unpaid Distributees with outstanding checks.

(2) For all previously deemed undeliverable checks of \$1,000 or more, but less than \$5,000, the Fund Administrator shall reissue and mail these checks, via first class mail, using existing information in the Fair Fund's database or any new forwarding address that becomes known to the IDC or Fund Administrator prior to the completion of the Enhanced Measures.

C. Checks Previously Delivered but Uncashed: (1) The Fund Administrator shall reissue and mail, via first class mail, all previously delivered but uncashed checks of \$100 or more (but less than \$1,000). Two days after the Check Mailing Date, the Fund Administrator shall send Courtesy Letters to the Unpaid Distributees, via first class mail, reminding them about the 90-day stale date of the checks and encouraging them to cash the checks before the deadline.

(2) The Fund Administrator also shall reissue and mail, via first class mail, all previously delivered but uncashed checks of \$1,000 or more. The Fund Administrator shall send Courtesy Letters to Unpaid Distributees, via first class mail, reminding them about the recently mailed checks two days after the Check Mailing Date, with additional Courtesy Letters to be mailed two weeks and then six weeks after the Check Mailing Date to Unpaid Distributees with delivered but outstanding checks.

(3) For delivered checks of \$1,000 or more that remain outstanding after six weeks from the Check Mailing Date, the Fund Administrator shall research and locate phone numbers and attempt up to two live calls each to Unpaid Distributees reminding them about the deadline and encouraging them to cash their checks before the deadline.

(4) If any of the previously delivered but uncashed checks are returned as undeliverable, the standard search process outlined in Section 4.5 of the Plan shall be implemented. If any of these checks of \$5,000 or more are returned as undeliverable and the standard search process fails to lead to a delivered check, the manual search process for undeliverable checks described in Paragraph B(1) above shall be implemented.

D. Issuance of Checks: The Fund Administrator, in coordination with the IDC, shall issue and mail checks to Unpaid Distributees that are identified as a result of the Enhanced Steps as soon as practicable. The IDC shall have discretion, subject to

Commission staff's approval, to request that the Fund Administrator reissue and mail any other checks consistent with the Plan, as amended.

- E. Stale Dates for Issued Checks: Checks issued as a result of the Enhanced Measures shall have a stale date of 90 days after issuance. The IDC may, in his discretion, request that the Fund Administrator reissue a check which was issued pursuant to this Amended Order authorizing the Enhanced Measures, but only if the request for reissuance is post-marked before the stale date of the original check (i.e., within 90 days after the original issuance). Any check so reissued will have a stale date no later than 60 days after the stale date of the originally issued check.
- F. Costs of Enhanced Measures: Alliance will pay, but shall be reimbursed from the Fair Fund, for the fees and expenses of the IDC and the Fund Administrator that are attributable to the Enhanced Measures, subject to review and approval by the Commission staff. Such reimbursable costs, however, are not to exceed \$600,000 ("Total Reimbursable Amount"). Fees and expenses of the IDC and the Fund Administrator which are not attributable to the Enhanced Measures, as determined by the Commission staff, shall be borne by Alliance in accordance with the Commission's Amended Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) 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, against Alliance Capital Management, L.P., dated January 15, 2004, and shall not be reimbursed from the Fair Fund. Accordingly, fees and expenses attributable to the Enhanced Measures, but which exceed the Total Reimbursable Amount shall not be reimbursed.
- G. Amount to be Reserved from the Residual: The amount of \$605,000 will be reserved from the Fair Fund's Final Settlement Account ("Reserved Amount") to pay: (1) the Total Reimbursable Amount of the Enhanced Measures as described above; (2) estimated tax liabilities of the Fair Fund; and (3) any other obligations of the Fair Fund. The remainder of the Final Settlement Account shall be available to cover check issuances that result from the Enhanced Measures and for the resolution of inquiries and disputes in accordance with Section 4.9 of the Plan prior to the Residual Distribution.
- H. The Residual Distribution: Any amount remaining in the Final Settlement Account, less the Reserve Amount, after the completion of the Enhanced Measures shall be considered the Residual and shall be distributed to the affected Alliance Funds in accordance with the Plan.
- I. Remaining Amount to be Disbursed to Treasury: Any amount remaining in the Fair Fund after the Residual Distribution and payment of Fair Fund's obligations shall be disbursed to Treasury in accordance with Section 10.2 of the Plan.

- J. Certification of Completion of Enhanced Measures: The Fund Administrator and the IDC shall each submit a certification to the Commission staff attesting to the completion of all steps required by the Enhanced Measures prior to, or contemporaneously with, the submission of a validated payment file for the Residual Distribution.

Accordingly, it is ORDERED that:

1. Pursuant to Rule 1105(g) of the Fair Fund Rules, 17 C.F.R. § 201.1105(g), that the Plan is amended as described above;
2. The Secretary is authorized to issue, but shall delay the issuance of an Order Directing Disbursement of up to \$33.1 million to injured investors upon the Secretary's receipt of a certification by the Commission staff that a validated payment file has been received and accepted by the Commission staff in accordance with the Plan.
3. The Secretary is authorized to issue, but shall delay the issuance of an Order Directing Disbursement of the Fair Fund's Residual of at least \$28.2 million but not more than \$61.9 million to the eligible Alliance Funds, upon the Secretary's receipt of a certification by the Commission staff that the validated payment file has been received and accepted by the Commission staff in accordance with the Plan.

By the Commission.

Elizabeth M. Murphy
Secretary