

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 80528 / April 25, 2017**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-11359**

**In the Matter of**

**Alliance Capital Management, L.P.**

**Respondent.**

**ORDER DIRECTING TRANSFER  
OF REMAINING FUNDS AND ANY  
FUTURE FUNDS RECEIVED BY  
THE FAIR FUND TO THE U.S.  
TREASURY, DISCHARGING THE  
FUND ADMINISTRATOR, AND  
TERMINATING THE FAIR FUND**

On January 15, 2004, the Commission simultaneously instituted and settled administrative proceedings against Alliance Capital Management, L.P. (“Alliance”) in connection with a mutual fund market timing case. *In the Matter of Alliance Capital Management, L.P.*, Admin. Proc. File No. 3-11359 (“2004 Order”). Pursuant to the 2004 Order, Alliance paid \$250 million in settlement into the Alliance Fair Fund (“Fair Fund”), consisting of \$150 million in disgorgement and \$100 million in civil penalty. The 2004 Order provided for the establishment of a Fair Fund and stated that the civil money penalty of \$100 million may be distributed pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002. The 2004 Order required Alliance to comply with one of its undertakings to retain an Independent Distribution Consultant (“IDC”) to develop a plan for the distribution of all of the \$250 million in the Fair Fund to the mutual funds and their shareholders who were harmed by the market timing activities. The 2004 Order also required Alliance to comply with its undertaking to bear the IDC’s compensation and expenses. Subsequently, the Fair Fund received additional assets of \$850,003 from the Alliance officers’ settlements.<sup>1</sup> The Fair Fund also received \$70.38 million from the \$153 million settlement payment in the related Daniel Calugar case for distribution.<sup>2</sup>

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<sup>1</sup> *In the Matter of Gerald T. Malone*, File No. 3-11914 (Apr. 28, 2005); *In the Matter of John D. Carifa*, File No. 3-11915 (Apr. 28, 2005); *In the Matter of Michael J. Laughlin*, File No. 3-11916 (Apr. 28, 2005). Pursuant to these orders, between April 28, 2005 and May 4, 2005, Malone, Carifa and Laughlin paid \$150,001, \$375,001, and \$325,001, respectively, in disgorgement and civil penalties.

<sup>2</sup> *SEC v. Daniel Calugar and Security Brokerage, Inc.*, No. 03-1600-RCJ (RJJ) (D. Nev., Dec. 23, 2003).

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 Commission approved the Plan to distribute assets of the Fair Fund.<sup>3</sup> The Plan provides for the allocation and distribution of the Fair Fund to eligible investors as compensation for losses suffered by investors due to market timing in the Alliance mutual funds and a partial return of fees. Pursuant to the Plan, the Commission issued seven orders of disbursement between January 2009 and May 2011 to distribute money to eligible investors.<sup>4</sup> These disbursement orders resulted in the disbursement of approximately \$346.4 million to numerous eligible investors as defined under the Plan. However, approximately \$61.9 million consisting of mostly undelivered and uncashed payments remained unclaimed.

On January 9, 2014, the Commission issued an Order Amending the Plan of Distribution (“Amended Plan”) which required the IDC and Fund Administrator to undertake enhanced measures to identify and locate harmed investors with certain unclaimed payments and to distribute those payments prior to making a residual distribution to the Alliance Funds.<sup>5</sup> Pursuant to the Amended Plan, the Commission issued an order of disbursement in February 2014 to distribute up to \$33.1 million to the eligible investors.<sup>6</sup> At a cost to the Fair Fund of \$568,618, the Amended Plan distributed approximately \$12.8 million. After the completion of the enhanced measures, approximately \$48.9 million in residual funds remained in the Fair Fund, including \$605,000 reserved to pay the Fair Fund’s tax obligations and reimburse Alliance for the costs of the enhanced measures pursuant to the Amended Plan. In June 2016, the Commission issued an order directing the distribution of approximately \$48.3 million in residual funds to the Alliance Funds in accordance with Section 3.7.5 of the Amended Plan.<sup>7</sup>

Section 10.2 of the Amended Plan provides that the Fair Fund shall be eligible for termination upon the completion of distribution of funds to investors, and after the payment of taxes and Tax Administrator fees, the transfer of remaining funds to the U.S. Treasury, the discharge of the Fund Administrator, and the final accounting by the Fund Administrator has been submitted to and approved by the Commission. A final accounting, which has been submitted to the Commission for approval as required by Rule 1105(f) of the Commission’s Rules of Fair Fund and Disgorgement Plans, is now approved, and the Commission staff has verified that all taxes, fees and expenses have been paid. The Commission is in possession of the remaining funds in the Fair Fund.

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<sup>3</sup> See Exchange Act Rel. No. 57825. A copy of the Plan is located at <http://www.sec.gov/litigation/admin/2008/34-57825-dp.pdf>.

<sup>4</sup> See Exchange Act Rel. Nos. 59280 (Jan. 22, 2009); 59389 (Feb. 11, 2009); 59657 (Mar. 31, 2009); 59832 (Apr. 28, 2009); 59926 (May 14, 2009); 60446 (Aug. 5, 2009); and 64568 (May 31, 2011).

<sup>5</sup> See Exchange Act Rel. No. 71274 (Jan. 9, 2014).

<sup>6</sup> See Exchange Act Rel. No. 71591 (Feb. 20, 2014).

<sup>7</sup> See Exchange Act Rel. No. 78033 (Jun. 10, 2016).

Accordingly, it is ORDERED that:

- A. The remaining funds in the Fair Fund in the amount of \$48,486.02 and any future funds received by the Fair Fund shall be transferred to the U.S. Treasury;
- B. The Fund Administrator is discharged; and
- C. The Fair Fund is terminated.

By the Commission.

Brent J. Fields  
Secretary