

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 83562 / June 29, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18561

In the Matter of

ALEXANDER CAPITAL, L.P.

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
PROCEEDINGS PURSUANT TO SECTION
15(b) OF THE SECURITIES EXCHANGE
ACT OF 1934, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) against Alexander Capital, L.P. (“Alexander Capital” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has 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 him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Respondent

1. **Alexander Capital** is a Delaware limited partnership with its main office in New York, New York and, from 2012 until 2014, had a branch office on Staten Island, New York. It has been registered with the Commission as a broker-dealer since 1996.

Background

2. Broker-dealers have a responsibility to supervise their employees through procedures and systems to implement the procedures that are reasonably designed to prevent and detect violations of the federal securities laws. This is a key component of investor protection. In particular, broker-dealers must have reasonable procedures and systems in place to guide supervisors on how to identify and address potential misconduct by its registered representatives ("RRs") who sell securities to the public. In addition, individual supervisors must follow firm supervisory procedures and reasonably respond to indications of potential violations by RRs. Alexander Capital failed reasonably to supervise three registered representatives – referred to herein as RR1, RR2 and RR3 – with a view to prevent and detect their violations of the federal securities laws.

3. From 2012 through 2014, Alexander Capital failed reasonably to implement certain policies and procedures and permitted a lax compliance environment in which these RRs were not reasonably monitored or disciplined, procedures were not followed, and indications of potential misconduct were not acted upon by the supervisors of the three RRs, Supervisor A and Supervisor B. As a result, RR1, RR2 and RR3 violated the antifraud provisions of the federal securities laws in their handling of customer accounts without anyone at Alexander Capital preventing or detecting their violations.

4. Among other misconduct, RR1, RR2 and RR3 made unsuitable investment recommendations to their customers, churned their customers' accounts and engaged in unauthorized transactions.

5. Turnover rates and cost-to-equity ratios are used to evaluate activity in customer accounts. Turnover rate is the number of times per year a customer's securities are replaced by new securities. The cost-to-equity ratio measures the amount an account has to appreciate annually just to cover commissions and other expenses. A turnover rate of six or greater or a cost-to-equity ratio in excess of 20% can indicate excessive trading.

¹ 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.

6. The annualized turnover rate and cost-to-equity ratios for the customers of the three RRs were extremely high and are indicative of excessive trading. The turnover rates and cost-to-equity ratios for the affected customers were as high as 57.75 and 200.40%, respectively.

7. Alexander Capital's Written Supervisory Procedures ("WSPs") contained sections covering both reasonable basis and customer-specific suitability, churning and unauthorized trading.

8. The WSPs related to suitability reminded RRs and supervisors that Financial Industry Regulatory Authority ("FINRA") Rule 2111 on suitability requires that "[a] member or an associated person must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer[.]" The WSPs also stated: "A suitable recommendation must have a reasonable basis. This requires that the registered representative: perform reasonable diligence to understand the potential risks and rewards associated with a recommended security or investment strategy; and determine whether the recommendation is suitable for at least some investors based on that understanding."

9. Supervisors were also required to "oversee the suitability requirements and documentation related to recommended (i.e., solicited) transactions by those individuals under their immediate supervision." Alexander Capital's WSPs further stated: "We will review all transactions for appropriateness and suitability during our regular and random reviews of client accounts. If a trade appears unsuitable, we will call the representative in to discuss the trade and defend why it seemed appropriate and/or suitable. If the individual is unable to show why the trade was suitable, disciplinary action may be warranted. We will maintain documentation of all such findings and follow-up actions in the files."

10. Churning, defined in the WSPs as "executing transactions solely for the purpose of generating commissions," was "STRICTLY PROHIBITED." Also, any "churning activities" would "result in, at the very least, suspension of the representative's trading activities for a specified period of time and, in severe or repeat instances, termination." In addition, the WSPs state that "churning is generally characterized by short-term holding periods and high turnover ratios."

11. The WSPs also required supervisors with the responsibility for ensuring that "all transactions undertaken by individuals under their direct supervision are reviewed in such a manner to reasonably detect and deter any instances of illegal churning in customer accounts." Supervisors were specifically directed in the WSPs to look at "turnover rate," "[c]ost-equity ratio" and "[i]n-and-out trading." Reports, to be generated on at least a quarterly basis, were required to be reviewed by the designated principal, and accounts with "an excessive amount of client activity" were to be "carefully reviewed." Accounts that seemed "to generate a disproportionately high amount of commissions relative to the size of the investment" were to be "singled out for further review and possible investigation." All reviews were to be documented, as well as any sanctions put into place.

12. The WSPs also stated that “unauthorized trading in a customer account is NEVER a permissible activity” and without discretionary authority, transactions could not be undertaken “in a client’s account without the customer’s PRIOR knowledge and approval.” Also, the WSPs noted that unauthorized trading “often falls under the churning prohibition.” As with churning, the WSPs tasked supervisors with ensuring that those they were supervising did not engage in unauthorized transactions. The WSPs also required reliance on “specific exception report red flag items,” and required supervisors to make “notations to the exception reports,” indicating the “individual who reviewed the report and undertook the investigation.”

13. Alexander Capital failed to develop and implement reasonable supervisory policies and procedures for both reasonable basis and customer-specific suitability. As conveyed during a training session for Alexander Capital staff, Alexander Capital management knew that FINRA Rule 2111 required RRs to have a reasonable basis to believe that a recommended transaction or investment strategy was suitable. The training materials further conveyed that the RRs must be able to explain how a customer would make money and that a recommendation could only be made after a representative conducted reasonable diligence. The same training advised the RRs of the need to document their reasonable basis determinations. Alexander Capital failed to put in place reasonable mechanisms for supervisors to use to monitor registered representatives for compliance with their reasonable basis and customer-specific suitability obligations.

14. For both reasonable basis and customer-specific suitability, Alexander Capital’s supervisory systems and implementation provided insufficient guidance to supervisors. In addition, Alexander Capital failed to implement reasonable mechanisms to address whether supervisors were reasonably monitoring the customer accounts for reasonable basis and customer-specific suitability and having discussions with the three RRs about why the RRs concluded their recommendations were suitable when the recommendations were questionable.

15. Alexander Capital failed to develop reasonable systems to implement its supervisory policies and procedures related to churning. For example, Alexander Capital failed to adequately train Supervisors A and B or to implement any procedures reasonably designed to identify whether they were reviewing customer accounts for churning. Although there were certain exception reports and alerts when turnover and commissions reached certain pre-set levels, Supervisors A and B failed to use this information to monitor reasonably RR1, RR2 and RR3 to determine whether they were churning customer accounts, and in some cases, these supervisors were not familiar with the metrics or the available reports.

16. Alexander Capital failed to develop reasonable systems to implement its supervisory policies and procedures with respect to unauthorized trading. For example, the WSPs referred to “specific exception report red flag items that would result in immediate, in-depth scrutiny of the account and the registered representative” for use in detecting unauthorized trading; however, the firm provided no guidance concerning which particular exception reports the supervisors were supposed to use.

17. If Alexander Capital had reasonably developed systems to implement the firm’s policies and procedures regarding reasonable basis and customer-specific suitability, churning and

unauthorized trading, it is likely that the firm would have prevented and detected the violations of the federal securities laws by RR1, RR2 and RR3.

18. As a result of the conduct described above, Alexander Capital failed reasonably to supervise RR1, RR2 and RR3 within the meaning of Section 15(b)(4)(E) of the Exchange Act with a view to preventing and detecting their violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Alexander Capital's Cooperation

19. In determining to accept the Offer, the Commission considered remedial acts undertaken by Alexander Capital and cooperation afforded the Commission staff.

Undertakings

20. Respondent Alexander Capital undertakes:

- a. to retain, within 30 days of the date of entry of the Order, at its own expense, the services of an Independent Consultant not unacceptable to the Division of Enforcement of the Commission ("Division of Enforcement"), to (i) review Alexander Capital's written supervisory policies and procedures, including but not limited to review of policies and procedures designed to prevent and detect unsuitable recommendations, churning and unauthorized trading; and (ii) review Alexander Capital's systems to implement its written supervisory policies and procedures designed to prevent and detect unsuitable recommendations, churning and unauthorized trading.
- b. to require the Independent Consultant, at the conclusion of the review, which in no event shall be more than 120 days after the entry of the Order, to submit a report of the Independent Consultant to Alexander Capital and the Division of Enforcement. The report shall address the supervisory issues described above and shall include a description of the review performed, the conclusions reached, the Independent Consultant's recommendations for changes or improvements to the policies, procedures and practices of Alexander Capital and a procedure for implementing the recommended changes or improvements to such policies, procedures and practices.
- c. to adopt, implement, and maintain all policies, procedures and practices recommended in the report of the Independent Consultant. As to any of the Independent Consultant's recommendations about which Alexander Capital and the Independent Consultant do not agree, such parties shall attempt in good faith to reach agreement within 180 days of the date of the entry of the Order. In the event that Alexander Capital and the Independent Consultant are unable to agree on an alternative proposal, Alexander Capital will abide by the

determinations of the Independent Consultant and adopt those recommendations deemed appropriate by the Independent Consultant.

- d. to cooperate fully with the Independent Consultant in its review, including making such information and documents available as the Independent Consultant may reasonably request, and by permitting and requiring Alexander Capital's employees and agents to supply such information and documents as the Independent Consultant may reasonably request.
- e. that, in order to ensure the independence of the Independent Consultant, Alexander Capital (i) shall not have the authority to terminate the Independent Consultant without prior written approval of the Division of Enforcement; and (ii) shall compensate the Independent Consultant, and persons engaged to assist the Independent Consultant, for services rendered pursuant to the Order at their reasonable and customary rates.
- f. to require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Alexander Capital, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division of Enforcement in New York, New York, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Alexander Capital, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.
- g. that no later than 15 months after the date of entry of the Order, Alexander Capital shall direct the Independent Consultant to conduct a follow-up review of Alexander Capital's efforts to implement each of the recommendations made by the Independent Consultant and Alexander Capital shall direct the Independent Consultant to submit a follow-up report to the Commission staff no later than 17 months after the date of the entry of the Order. Alexander Capital shall direct the Independent Consultant to include in the follow-up report the details of Alexander Capital's efforts to implement each of the Independent Consultant's recommendations and shall separately state whether Alexander Capital has fully complied with each of the Independent Consultant's recommendations.

- h. to certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent Alexander Capital agrees to provide such evidence. The certification and reporting material shall be submitted to Steven G. Rawlings, Assistant Regional Director, with a copy to the Office of the Chief Counsel of the Division of Enforcement, no later than sixty (60) days from the date of the completion of the undertakings.
- i. For good cause shown and upon timely application by the Independent Consultant or Alexander Capital, the Commission's staff may extend any of the deadlines set forth above.

IV.

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

Accordingly, pursuant to Section 15(b)(4) of the Exchange Act, it is hereby ORDERED that:

- A. Respondent Alexander Capital is censured.
- B. Respondent Alexander Capital shall pay disgorgement of \$193,774.86 and prejudgment interest of \$23,436.78, and civil penalties of \$193,774.86, to the Securities and Exchange Commission. Payment shall be made in the following installments:

- 1. \$102,746.65 within 10 days of the entry of this Order;
- 2. \$61,647.97 within 60 days of the entry of this Order;
- 3. \$61,647.97 within 120 days of the entry of this Order;
- 4. \$61,647.97 within 180 days of the entry of this Order;
- 5. \$61,647.97 within 240 days of the entry of this Order;
- 6. \$61,647.97 within 300 days of the entry of this Order.

Payments shall be deemed made on the date they are received by the Commission and shall be applied first to post-Order interest, which accrues pursuant to SEC Rule of Practice 600 and/or pursuant to 31 U.S.C. 3717. Prior to making the final payment set forth herein, Alexander Capital shall contact the staff of the Commission for the amount due for the final payment, which shall include accrued interest. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 and/or pursuant to 31 U.S.C. 3717, minus any payments made, shall be due and payable immediately, without further application.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent 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) Respondent 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 Alexander Capital, L.P. as a Respondent 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 Sanjay Wadhwa, Senior Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, Brookfield Place, 200 Vesey Street, Suite 400, New York, New York 10281-1022.

C. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the disgorgement, prejudgment interest and/or penalties referenced in paragraph B above. Regardless of whether any such Fair Fund distribution is made, 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, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it 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 it 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 United States Treasury or to a Fair Fund, as the Commission directs. 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 Respondent 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.

D. Respondent shall comply with the undertakings enumerated in Section III above.

By the Commission.

Brent J. Fields
Secretary