

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the
Continued Membership
of
Alexander Capital, L.P.
(BD #40077)

Notice Pursuant to Rule 19h-1
Securities Exchange Act
of 1934

SD-2209

July 10, 2019

I. Introduction

On July 6, 2018, Alexander Capital, L.P. (“ACLP” or “Firm”) submitted a Membership Continuance Application (“MC-400A” or “Application”) to FINRA’s Department of Registration and Disclosure (“RAD”).¹ The Application seeks to permit the Firm to continue in membership with FINRA notwithstanding its statutory disqualification. A hearing was not held in this matter; rather, pursuant to FINRA Rule 9523(b), FINRA’s Department of Member Regulation k/n/a Member Supervision (“Member Supervision” or “Department”) approves the Firm’s Application and files this Notice pursuant to Rule 19h-1 of the Securities Exchange Act of 1934 (“Exchange Act” or “SEA”).

II. The Statutorily Disqualifying Event

ACLP is subject to a statutory disqualification, as that term is defined in Section 3(a)(39)(F), which incorporates by reference Section 15(b)(4)(E) of the Exchange Act, as a result of a June 29, 2018 order (“SEC Order”) issued by the Securities and Exchange Commission (“SEC” or “Commission”).² According to the SEC Order, ACLP failed to reasonably supervise three registered representatives, with a view to prevent and detect violations of federal securities laws. The SEC found that between 2012 through 2014, the Firm failed to reasonably implement and follow its policies and procedures, thereby permitting a “lax compliance environment.”³ More specifically and among other misconduct, the three registered representatives made unsuitable investment recommendations to customers, churned customer accounts, and engaged in unauthorized

¹ See MC-400A and related exhibits compiled by FINRA’s RAD and provided to the parties and FINRA’s Office of General Counsel pursuant to FINRA Procedural Rule 9524(a)(3), with a cover memorandum dated July 12, 2018 (attached as Exhibit 1).

² See SEC Order, *In the Matter of Alexander Capital, L.P.*, Admin. Proc. File No. 3-18561, Release No. 83562 dated June 29, 2018 (attached as Exhibit 2).

³ *Id.* at p. 2.

transactions.⁴ ACLP also failed to reasonably monitor and discipline its registered representatives and failed to act, through its supervisors, on indications of potential misconduct in the handling of customer accounts.⁵ The Commission found that these failures occurred, in part, due to deficiencies in implementation of ACLP's supervisory systems addressing supervisory requirements and detection methods pertaining to reasonable-basis and customer-specific suitability, churning and excessive trading in customer accounts, and detection of unauthorized trading.⁶ Consequently, the Firm was censured, ordered to pay a total of \$410,986.50 in disgorgement, civil penalties and prejudgment interest, and to comply with certain undertakings relating to a review and revision of the Firm's written supervisory policies and procedures ("WSPs") and supervisory systems that are designed to prevent and detect unsuitable recommendations, churning and unauthorized trading.⁷

III. Background Information

ACLP is based in New York, New York and has been a member of FINRA since June 1996.⁸ The Firm has three branch offices, one of which is an Office of Supervisory Jurisdiction ("OSJ").⁹ The Firm currently employs 24 registered principals, and 58 registered representatives. The Firm also employs two statutorily disqualified persons.¹⁰

ACLP is engaged in the following types of businesses:¹¹ broker or dealer retailing corporate equity securities over-the-counter; broker or dealer selling corporate debt securities; underwriter or selling group participant in corporate securities other than mutual funds; mutual fund retailer; U.S. government securities broker; municipal securities broker; broker or dealer selling variable life insurance or annuities; put and call broker or dealer or option writer; investment advisory services; broker or dealer selling tax shelters or limited

⁴ *Id.* at pp. 2-4.

⁵ *Id.*

⁶ *Id.* at pp. 3-4.

⁷ *Id.* at pp. 5-9. The Firm was ordered to pay \$193,774.86 in disgorgement and civil penalties, respectively and \$23,436.78 in pre-judgment interest. Further, the Firm is expected to complete the undertakings by November 2019, exclusive of extensions granted by the Commission.

⁸ *See* Exhibit 1 at pp. 48 and 50.

⁹ *Id.* at p. 50.

¹⁰ The other statutorily disqualified individuals are Barry Todd Eisenberg (CRD #2313107) and Jason John DeFelice (CRD #2748462). Eisenberg is one of the supervisors at issue in the subject SEC Order and is disqualified as a result of a separate order issued on June 29, 2018, in which he was found to have failed to supervise a registered representative of ACLP. Eisenberg was barred from acting in a supervisory capacity with a right to re-apply after five years. The Firm filed a MC-400 application to continue Eisenberg's association; that application is currently under review.

DeFelice is disqualified as a result of an offer of settlement entered by FINRA on June 8, 2009 finding, among other things, that DeFelice willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

¹¹ *See* CRD Excerpt for ACLP: Types of Business (attached as Exhibit 3).

partnerships in primary distributions; non-exchange member arranging for transactions in listed securities by exchange member; and private placement of securities. The Firm is also member of the Municipal Securities Rulemaking Board (“MSRB”).¹²

Recent Regulatory Actions

In the past two years, ACLP settled two disciplinary matters, one with FINRA and the other with the state of Montana.

In September 2017, ACLP entered into a Letter of Acceptance, Waiver and Consent (“AWC”) with FINRA¹³ that cited deficiencies in the Firm’s policies and procedures pertaining to the liquidation of microcap stocks by two of the Firm’s customers. FINRA found that ACLP’s anti-money laundering (“AML”) program was not reasonably designed to achieve and monitor the Firm’s compliance with requirements of the Bank Secrecy Act and implementation of related regulations. Additionally, the Firm failed to establish and enforce an adequate supervisory system to determine the registration status of microcap stocks it sold, as required by Section 5 of the Securities Act of 1933.¹⁴ For these violations, ACLP was censured, fined a total of \$80,000, and ordered to comply with a set of undertakings. As required by the undertakings, ACLP certified that the Firm’s revised policies and procedures were reasonably designed to detect and respond to AML red flags, as well as to ensure compliance with applicable rules and regulations for the distribution of unregistered securities.¹⁵ FINRA accepted the Firm’s certification, which it provided on October 24, 2017. The Firm has yet to complete payment of the fine but is current on the agreed-upon payment plan.

In October 2018, ACLP signed a consent agreement with Montana to settle allegations that it failed to fully comply with heightened supervision conditions imposed on a registered representative and failed to reasonably supervise its salespersons or employees,¹⁶ having allowed its agents to churn customer accounts, charge excessive fees, transact unauthorized business and make unsuitable recommendations.¹⁷ The Firm agreed to pay restitution of \$106,339.00 to three customers and a \$100,000 fine.¹⁸

¹² See Exhibit 1, p. 50, in response to question 2.

¹³ See FINRA AWC No. 2014039351101 executed by ACLP on September 13, 2017 and accepted by FINRA September 29, 2017 (attached as Exhibit 4).

¹⁴ *Id.* at pp. 2-5.

¹⁵ *Id.* at p. 6.

¹⁶ See *Consent Agreement and Final Order*, Case No. SEC-2016-106 dated October 9, 2018 (attached as Exhibit 5).

¹⁷ See Form U6 filed by the State of Montana on October 30, 2018 (attached as Exhibit 6).

¹⁸ See Exhibit 5 at pp. 2-3.

Recent FINRA Examinations

In the past two years, FINRA completed three examinations of the Firm. The most recent examination was completed in May 2019.¹⁹ The Firm was issued a Cautionary Action for seven of the eight exceptions noted and one exception resulted in a Cautionary Action being issued to a registered representative. The exceptions relate to, among other things, the Firm's failure to evidence having conducted reasonable due diligence in connection with private placements, failure to establish and maintain a supervisory system reasonably designed to achieve compliance with aspects of SEC Regulation S-P, failure to timely accrue expenses, and failure to update several registered representatives' Uniform Application For Securities Industry Registration or Transfer ("Form U4").

The examination completed in May 2018²⁰ resulted in a Cautionary Action for seven of the eight exceptions noted; one exception was referred for further investigation but subsequently resulted in a Cautionary Action issued to the Firm.²¹ The exceptions relate to the Firm's failure to: maintain adequate supervisory procedures reasonably designed to achieve compliance in connection to sales of Volatility Linked Exchange Traded Products; perform adequate due diligence on six private, non-traded real estate investment trusts ("REITs"); and provide supervision of registered representatives who exercised discretionary authority in clients' accounts without obtaining prior approval. Further, the Firm failed to properly record gifts, gratuities and business expenses; maintain accurate financial books and records; review customer complaint files; and establish WSPs relating to customer changes in investment objectives.

The examination completed in August 2017 cited 11 exceptions,²² four of which were referred to FINRA's Department of Enforcement for additional investigation; the investigation is still pending. Of the remaining exceptions, one was closed without further action and the Firm was issued a Cautionary Action for six exceptions for its failure to: accurately and timely report customer grievances; maintain customer complaint files; make an adequate assessment of four registered representatives' outside business activities; enforce procedures related to heightened supervision; adequately handle customer funds; and conduct adequate due diligence on issuers of new products before effecting transactions.²³

¹⁹ See Disposition Letter for examination no. 20180564833 dated May 31, 2019, the Examination Report dated February 29, 2019 and the Firm's Response dated April 5, 2019 (collectively attached as Exhibit 7).

²⁰ See Disposition Letter for examination no. 20170524568 dated May 25, 2018, the Examination Report dated March 29, 2018 and the Firm's Response dated April 20, 2018 (collectively attached as Exhibit 8).

²¹ See Disposition Letter for examination no. 20180586273 dated April 15, 2019 (attached as Exhibit 9).

²² See Disposition Letter for examination no. 20160476164 dated August 30, 2017, the Examination Report dated March 31, 2017 and the Firm's Response dated April 28, 2017 (collectively attached as Exhibit 10).

²³ *Id.* at pp. 12-19.

Prior SEA Rule 19h-1 Notices

No prior Exchange Act Rule 19h-1 Notices have been filed on behalf of the Firm.

IV. The Firm's Proposed Continued Membership with FINRA and Plan of Supervision

Pursuant to Exchange Act Rule 19h-1 and FINRA Rule 9523(b), ACLP has agreed to the following plan of supervision (the "Supervision Plan") as a condition of its continued membership with FINRA:²⁴

1. Comply with the undertakings specified in the SEC Order;
2. Retain documentation evidencing compliance with the undertakings outlined in the SEC Order in the time period established in said Order or by the time period granted by Commission staff in any extension;
3. Provide FINRA with copies of correspondence between the Firm and Commission staff regarding requests to extend the procedural dates relating to the undertakings; and
4. Provide FINRA with a copy of the certification and all supporting documentation that will be provided to the Commission upon completion of the undertakings as specified in the SEC Order. These documents must be sent directly to:

FINRA
1735 K Street NW
Washington, DC 20006
SDCertifications@finra.org.

V. Discussion

After carefully reviewing the record in this matter, FINRA approves ACLP's Application to continue its membership, subject to the terms and conditions set forth below.

In evaluating the Application, FINRA assessed whether the Firm has demonstrated that its continued membership is consistent with the public interest and does not create an unreasonable risk of harm to the market or investors.²⁵ Factors FINRA considered include the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since

²⁴ See Executed copy of the Plan of Supervision dated July 8, 2019 (attached as Exhibit 11).

²⁵ See FINRA By-Laws, Art. III, Sec. (3)(d); *In the Matter of the Continued Membership of J.P. Morgan Securities, Inc.*, (SD-1904, SD-1905, SD-1984) (FINRA NAC 2014), quoting *Frank Kufrovich*, 55 SEC. 616, 624 (2002) (FINRA "may deny an application by a firm for association with a statutorily-disqualified individual if it determines that employment under the proposed plan would not be consistent with the public interest and the protection of investors."), available at http://www.finra.org/sites/default/files/NAC%20Statutory%20Disqualification%20Decision%20SD1904_0_0_0_0_0_0_0.pdf.

its occurrence, the restrictions imposed, whether there has been any intervening misconduct and the Firm's regulatory history.

As of the date of this Notice, FINRA finds that ACLP has demonstrated that its continued membership is consistent with the public interest and does not create an unreasonable risk of harm. Although the underlying misconduct involved serious violations of the federal securities laws, rules and regulations, FINRA also takes into account that the Commission did not expel, suspend or otherwise limit the Firm's securities activities. Instead, the Commission imposed remedial sanctions consistent with the purpose of disciplinary actions under the Exchange Act.²⁶

In addition, ACLP has demonstrated continued compliance with the undertakings set forth in the SEC Order and fully complied with the ordered disgorgement, prejudgment interest and civil monetary penalties. Moreover, the Firm stated that it employed remedial actions prior to the SEC Order by purchasing an "expanded package of exception reports from its clearing firm, which the Firm has used to improve its monitoring for churning and excessive trading."²⁷ The Firm also represents that it has implemented a policy to send correspondence to customers to inform and confirm the nature of and risks associated with the trading activity in their accounts.²⁸ Further, the Firm has closed the branch office from which the misconduct primarily took place.²⁹ In addition, ACLP has agreed, pursuant to its Supervisory Plan, to continue to comply with the undertakings ordered by the Commission. FINRA accepts the Commission ordered undertakings as sufficient to deter similar misconduct by the Firm in the future. Following the approval of the Firm's continued membership in FINRA, FINRA intends to utilize its examination and surveillance processes to monitor the Firm's continued compliance with the standards prescribed by Exchange Act Rule 19h-1 and FINRA Rule 9523.

Finally, FINRA has conducted a review of the Firm's regulatory history, including recent examinations, and finds that, at this time, none of these matters would prevent the Firm from continuing as a FINRA member. Based on information known to FINRA as of the date of this Notice, and the Firm's representations, FINRA is satisfied that the Firm's continued membership does not present an unreasonable risk of harm to the market or investors. Accordingly, FINRA approves ACLP's Application to continue its FINRA membership. In conformity with the provisions of SEA Rule 19h-1, the continued

²⁶ See Exchange Act § 15(b) *et seq*; *Paul Edward Van Dusen*, 47 SEC 668, 670-671 (1981), quoting *Commonwealth Securities Corporation*, 44 SEC 100, 101-102 (1969) ("The sanctions ... serve[] to deter both the particular respondents as well as others in the securities industry from committing violations of the securities laws. We have been cognizant of the importance of exercising the discretionary power reposed to us in this area in a manner that will afford investors protection without visiting upon the wrongdoers adverse consequences not required in achieving the statutory objectives").

²⁷ See Exhibit 1 at pp. FINRA00049-50, response to question 5.

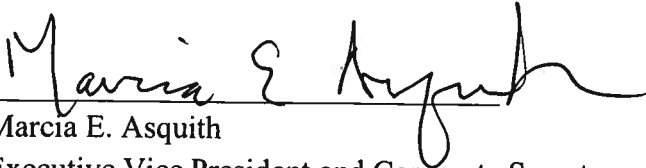
²⁸ *Id.* at p. 4.

²⁹ *Id.* at p. 3.

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membership of the Firm will become effective within 30 days of the receipt of this Notice by the Commission, unless otherwise notified by the Commission.

On Behalf of FINRA,

A handwritten signature in black ink, appearing to read "Marcia E. Asquith", is written over a horizontal line.

Marcia E. Asquith
Executive Vice President and Corporate Secretary

Exhibit List

1. MC-400A Application and related exhibits compiled by FINRA's RAD and provided to the parties and FINRA's Office of General Counsel pursuant to FINRA Procedural Rule 9524(a)(3), with a cover memorandum dated July 12, 2018.
2. SEC Order, *In the Matter of Alexander Capital, L.P.*, Admin. Proc. File No. 3-18561, Release No. 83562 dated June 29, 2018.
3. CRD Excerpt for ACLP: Types of Business.
4. FINRA AWC No. 2014039351101 executed by ACLP on September 13, 2017 and accepted by FINRA September 29, 2017.
5. *Consent Agreement and Final Order*, Case No. SEC-2016-106 dated October 9, 2018.
6. Form U6 filed by the State of Montana on October 30, 2018.
7. Disposition Letter for examination no. 20180564833 dated May 31, 2019, the Examination Report dated February 29, 2019 and the Firm's Response dated April 5, 2019.
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9. Disposition Letter for examination no. 20180586273 dated April 15, 2019.
10. Disposition Letter for examination no. 20160476164 dated August 30, 2017, the Examination Report dated March 31, 2017 and the Firm's Response dated April 28, 2017.
11. Executed copy of the Plan of Supervision dated July 8, 2019.