



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

June 29, 2018

Elizabeth A. Marino, Esq.
Sidley Austin LLP
60 State Street
36th Floor
Boston, MA 02109

**Re: In the Matter of Alexander Capital, L.P.
Waiver of Disqualification pursuant to Rule 506(d)(2)(ii) of Regulation D and Rule
262(b)(2) of Regulation A
Exchange Act Release No. 83562, June 29, 2018
Administrative Proceeding File No. 3-18561**

Dear Ms. Marino:

This letter responds to your letter dated June 28, 2018 (“Waiver Letter”), written on behalf of Alexander Capital, L.P. (“Alexander”), and constituting an application for a waiver of disqualification under Rule 262(b)(2) of Regulation A and Rule 506(d)(2)(ii) of Regulation D under the Securities Act of 1933. In the Waiver Letter, you requested relief from the disqualification that arises by virtue of the Commission’s order entered June 29, 2018, in the Matter of Alexander Capital, L.P., pursuant to Section 15(b) of the Securities Exchange Act of 1934, Release No. 83562 (the “Order”).

Based on the facts and representations in the Waiver Letter and assuming Alexander complies with the Order, we have determined that Alexander has made a showing of good cause under Rule 506(d)(2)(ii) of Regulation D and Rule 262(b)(2) of Regulation A that it is not necessary under the circumstances to deny reliance on Regulation A and Regulation D by reason of the entry of the Order. Accordingly, the relief requested in the Waiver Letter regarding the disqualifications that would arise as to Alexander by reason of the entry of the Order is granted on the condition that Alexander fully complies with the terms of the Order. Any different facts from those represented or failure to comply with the terms of the Order would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Sincerely,

/s/ Elizabeth M. Murphy

Elizabeth M. Murphy
Associate Director
Division of Corporation Finance

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AMERICA • ASIA PACIFIC • EUROPE

June 28, 2018

By E-Mail and Overnight Courier

Timothy Henseler, Esq.
Chief, Office of Enforcement Liaison
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: In the Matter of Alexander Capital, L.P.

Dear Mr. Henseler:

We are writing on behalf of our client Alexander Capital, L.P. (“Alexander” or the “Firm”) in connection with the anticipated settlement of the above-captioned administrative proceeding (“Proceeding”) with the U.S. Securities and Exchange Commission (“SEC” or “Commission”). The settlement would result in an Order Instituting Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) against Alexander.

On behalf of Alexander, we hereby respectfully request a waiver of any disqualification that will arise pursuant to Regulation A and Rule 506 of Regulation D under the Securities Act of 1933, as amended, (the “Securities Act”) with respect to Alexander or any of its affiliates as a result of the Commission order arising from the Proceeding (the “Order”).

BACKGROUND

Alexander and the staff of the Division of Enforcement have agreed to a settlement that includes an offer of settlement in which, solely for the purpose of proceedings brought by or on behalf of the Commission or to which the Commission is a party, Alexander has consented to the entry of an Order.

Alexander is a registered broker-dealer with the Commission. It is a Delaware limited partnership with its main office in New York, New York.

The Order will find that Alexander failed reasonably to supervise three of its registered representatives in violation of Section 15(b)(4)(E) of the Exchange Act with a

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view to preventing and detecting the representatives' violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder. Specifically, the Order will find that Alexander failed reasonably to implement certain policies and procedures and permitted a lax compliance environment in which the three registered representatives 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 registered representatives. The Order will find that three registered representatives made unsuitable recommendations to customers, churned their customers' accounts and engaged in unauthorized trading.

Alexander's written supervisory procedures ("WSPs") contained sections covering both reasonable basis and customer-specific suitability, churning and unauthorized trading; however, the Order will find that Alexander failed to develop and implement reasonable supervisory policies and procedures for both reasonable basis and customer-specific suitability and that Alexander 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. The Order will also find that Alexander failed to develop reasonable systems to implement its supervisory policies and procedures related to churning and unauthorized trading.

Under the terms of the Order, the Commission will require Alexander to:

- (i) be censured;
- (ii) pay disgorgement of \$193,774.86 and pre-judgment interest of \$23,436.78, and a civil penalty of \$193,774.86; and
- (iii) comply with certain undertakings, including the retention of an independent consultant to, among other things, review Alexander'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.

DISCUSSION

Alexander understands that the entry of the Order will disqualify it, affiliated entities, and certain other issuers from relying on Regulation A pursuant to Rule 262(b)(3) and from relying on Regulation D pursuant to Rule 506 under the Securities Act. Alexander is concerned that if it or its affiliates are deemed to be an issuer, predecessor of an issuer, predecessor of an issuer, affiliated issuer, general partner or managing member of an issuer, or promoter of securities, or if it is deemed to be acting in any other capacity described in Rule 262 for purposes of Rule 262(b)(3) or Rule 506 for purposes of Rule 506(d)(1), then Alexander, its affiliates, and third parties that engage Alexander, its

affiliates, and third parties that engage Alexander and its affiliates to act in (or otherwise involve Alexander in) one of the listed capacities in connection with their securities offerings would be prohibited from relying on Regulation A and Rule 506 of Regulation D, absent a waiver.

The Commission, or the Division of Corporation Finance ("Division"), acting pursuant to its delegated authority, has the authority to waive this disqualification upon a showing of good cause that such disqualification is not necessary under the circumstances.¹ Alexander requests that the Commission waive any disqualifying effects that the Order will have under Regulation A and Rule 506 of Regulation D as a result of its entry as to Alexander, on the following grounds:

1. *Nature of Violations in the Order and Whether they Involve the Sale of Securities*

The conduct described in the Order relates to Alexander's failure reasonably to supervise the sale of securities by the three representatives within the meaning of Section 15(b)(4)(E) of the Exchange Act with a view to preventing and detecting the three representatives' violations of the federal securities laws. As discussed herein, the Order finds that Alexander failed reasonably to implement certain policies and procedures and permitted a lax compliance environment in which the three representatives were not reasonably monitored or disciplined, procedures were not followed, and indications of potential misconduct were not acted upon by Supervisor A and Supervisor B of the three representatives. This resulted in three registered representatives making unsuitable recommendations to customers, churning their customers' accounts and engaging in unauthorized trading. Therefore, notwithstanding the fact that the Commission charged Alexander with a failure reasonably to supervise the sale of securities by the three representatives within the meaning of Section 15(b)(4)(E) of the Exchange Act, the violations of Alexander's registered representatives involved the sale of securities. The Commission did not allege, and Alexander was not found to have engaged in, any wrongdoing involving the sale of securities.

2. *The Order is Not Criminal in Nature and Does not Involve Scierter-Based Fraud*

In its policy statement on *Waivers of Disqualification under Regulation A and Rules 505 and 506 of Regulation D* (the "Rule 506 Policy Statement")², the Division states

¹ See Rule 506(d)(2)(ii).

² See Division of Corporation Finance, *Waivers of Disqualification under Regulation A and Rules 505 and 506 of Regulation D*, available at: <https://www.sec.gov/divisions/corpfin/guidance/disqualification-waivers.shtml> (last accessed Jan. 20, 2018).

that it will consider:

whether the conduct involved a criminal conviction or scienter based violation, as opposed to a civil or administrative non-scienter based violation. Where there is a criminal conviction or a scienter based violation involving the offer and sale of securities, the burden on the party seeking the waiver to show good cause that a waiver is justified would be significantly greater.

The Order does not involve a criminal conviction and does not find that Alexander violated any antifraud statutes – scienter or non-scienter-based.

3. *Certain Individuals Responsible for the Conduct in the Order are No Longer Associated with Alexander*

The Order concerns Alexander’s failure to supervise and failure to implement supervisory policies and procedures. At the time of the adoption of the Rule 506 disqualification, the Commission noted that “a proper showing that there has been a change in control and that the persons responsible for the activities resulting in a disqualification are no longer employed by the entity or exercise influence over such entity” would carry substantial weight in a request for a waiver from Rule 506 of Regulation D.³ Alexander came under new ownership in December 2013 and, upon learning of the conduct that is the subject of the Order, made substantial personnel changes intended to prevent such conduct from recurring. Since the change in ownership, Alexander has changed its management team, including its Chief Executive Officer (“CEO”) and Chief Compliance Officer (“CCO”), hired additional compliance personnel, and demoted certain personnel so they no longer have managerial duties. Furthermore, the three registered representatives the Order finds responsible for the conduct alleged in the Order, as well as certain of their managers, are no longer associated with Alexander.⁴ The Order does not find that any of the current management personnel at Alexander ignored warning signs or condoned the sanctioned behavior. Furthermore, the failures in Alexander’s supervisory policies and procedures and supervisory systems cited in the Order were all implemented prior to Alexander’s change in control. Since Alexander came under new ownership, the new owners have taken its compliance responsibilities seriously and undertaken substantial remedial efforts to prevent the recurrence of the conduct at issue in the Order, as described below.

³ Securities Act Release No. 9414 (July 10, 2013); 78 FR 44730, 44737 (July 24, 2013).

⁴ One of the registered representatives agreed to the entry of a Commission Order regarding the alleged misconduct and the Commission has filed a complaint in the Southern District of New York against the other registered representatives.

4. Duration of the Misconduct

The conduct underlying the Order occurred from 2012 to 2014. The majority of the conduct detailed in the Order occurred before current ownership purchased Alexander in December 2013, and the conduct detailed in the Order ended shortly thereafter. As noted above, in 2014, after the current ownership purchased Alexander, the Firm changed its management team, including its CEO, in June 2014, and CCO in January 2014, and hired additional compliance personnel. As discussed above, upon the change in ownership and upon learning of the conduct that is the subject of the Order, the Firm's new management took immediate steps to institute policy, procedure and personnel changes intended to prevent a recurrence of the conduct that is the subject of the Order. Specifically, one of the supervisors referenced in the Order left the Firm in July 2014, prior to the discovery of the conduct at issue in the Order and the other supervisor referenced in the Order was demoted from branch manager to registered representative in mid-2017 and no longer holds any managerial duties at the Firm.

5. Alexander Has Taken and Will Take Remedial Steps

Alexander has taken substantial remedial steps to address unauthorized trading in the Order and prevent recurrence of the conduct described in the Order. Alexander's remedial steps include the following:

- After Alexander's change in ownership (discussed above), Alexander began working to improve its supervisory structure, including hiring and promoting new supervisory personnel and improving the firm's monitoring systems. Specifically:
 - The Firm hired new supervisory personnel, including a new CCO, with 25 years of industry experience in large institutional bond houses as well as small retail broker-dealers. The Firm's new CCO was named CCO in January 2018, but joined the Firm over three years ago and was employed in other capacities during that time. Based on previous positions held at the Firm, the new CCO has a well-rounded knowledge of all of the Firm's departments. In mid-2017, the Firm also hired a new Branch Manager who has a wide range of industry experience and particular focus on trade surveillance. The Firm believes that the depth of knowledge that the new CCO and new Branch Manager bring to their positions will help to prevent the recurrence of the conduct at issue in the Order;
 - The Firm implemented a procedure in which it tests for unauthorized trading, based on random samples from the trade blotter, and has formally implemented the procedure into its WSPs. In particular, the new WSP will provide that the Firm's Supervisory Review Procedures and Documentation related to Unauthorized Transactions will include (i) activity letter

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correspondence seeking confirmation from customers that all trades were authorized; and (ii) on a monthly basis, a random sampling of monthly trades (representing at least 10% of such transactions) that will be cross referenced against the Firm's phone records. Evidence of the review will be retained in a separate file and the Firm will notate and document any red flag findings and related corrective measures, as applicable.

- The Firm revised and enhanced its written supervisory procedures including its procedures related to its internal do-not-call list, changes in customer investment objectives, outside business activities, heightened supervision, grievances/Financial Industry Regulatory Authority ("FINRA") Rule 4530 filings and trade surveillance and supervision of client trading activity;
 - The Firm has entered into an arrangement with a third-party vendor to offer unlimited training courses to the Firm's registered representatives, which will allow the Firm to assign training courses to its registered representatives; and
 - The Firm updated its compliance system, which provides the Firm with access to additional reports and allows the Firm to better supervise its representatives' trading activities. In particular, in connection with the trades cleared through the Firm's primary clearing firm, the Firm's compliance system now provides the Firm with the ability to (a) customize reports using various criteria; (b) capture the supervisor's review and resolution of summary reports and trade detail; (c) view, on a consolidated basis, all accounts that have been evaluated on a periodic basis, including turnover and commission velocity; (d) run reports that list the number of trades, the performance of the account and the turnover and commission velocity ratios, within specific time periods; and (e) see the amount of commissions charged within specific time periods.
- Once Alexander became aware of issues raised by the Commission, and prior to the conclusion of the Commission's investigation, it took further steps to remediate the Commission's concerns, including terminating its relationship with (a) the branch office at which two of the registered representatives referenced in the Order worked, and (b) all three of the registered representatives referenced in the Order. Furthermore, as discussed above, Supervisor A is no longer associated with the Firm, having left the Firm prior to the identification of the conduct at issue in the Order, and Supervisor B was demoted and no longer holds any managerial responsibilities.
 - All of the remedial actions detailed above are intended to prevent a recurrence of

the conduct at issue in the Order by (1) terminating the Firm's relationship with the registered representatives who engaged in misconduct, and (2) enhancing and strengthening the firms WSPs and supervisory systems.

In connection with the Order, Alexander has also agreed to the following undertakings:

- 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'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's systems to implement its written supervisory policies and procedures designed to prevent and detect unsuitable recommendations, churning and unauthorized trading.
- 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 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 and a procedure for implementing the recommended changes or improvements to such policies, procedures and practices.
- 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 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 and the Independent Consultant are unable to agree on an alternative proposal, Alexander will abide by the determinations of the Independent Consultant and adopt those recommendations deemed appropriate by the Independent Consultant.
- 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's employees and agents to supply such information and documents as the Independent Consultant may reasonably request.

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- that, in order to ensure the independence of the Independent Consultant, Alexander (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.
- 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, 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.
- that no later than 15 months after the date of entry of the Order, Alexander shall direct the Independent Consultant to conduct a follow-up review of Alexander's efforts to implement each of the recommendations made by the Independent Consultant and Alexander 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 shall direct the Independent Consultant to include in the follow-up report the details of Alexander's efforts to implement each of the Independent Consultant's recommendations and shall separately state whether Alexander has fully complied with each of the Independent Consultant's recommendations.
- 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 agrees to provide such evidence. The certification and reporting material shall be submitted to the Division of Enforcement, no later than sixty (60) days from the date of the completion of the undertakings.

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- for good cause shown and upon timely application by the Independent Consultant or Alexander, the Commission's staff may extend any of the deadlines set forth above.

If this requested waiver is granted, until Alexander provides to the Commission the certifications described above and as detailed in the Order, Alexander agrees to furnish written disclosure to investors describing the nature of the Order in any offering relying on an exemption under Regulation A or Rule 506 of Regulation D.

6. Impact on Alexander and Its Clients if Waiver is Denied

By impairing Alexander's ability to participate in the issuance of securities pursuant to Regulation A and Rule 506 of Regulation D, the disqualification of Alexander and any related entities would have an adverse impact on third parties that have retained or may retain Alexander and its affiliates in connection with transactions that rely on the exemptions available under Regulation A and/or Rule 506 of Regulation D.

Alexander currently acts, and in the future desires to continue to act, as a placement agent and/or solicitor for private placements of securities offered by third-party issuers ("Private Placements"). Alexander's Private Placement business currently employs approximately 21 dedicated professionals, approximately 13 of which who devote substantially all of their time to Private Placements. If Alexander was disqualified from acting as a placement agent and/or solicitor for offerings relying Regulation A or Rule 506 of Regulation D, many, if not all, such professionals would lose their jobs and Alexander may be forced to exit its Private Placement business.

For the period January 2015 to December 2017, Alexander has acted as placement agent and/or solicitor for 35 deals issued in reliance on Rule 506 of Regulation D and such deals raised approximately \$91.7 million. As of February 2018, Alexander is working on approximately five Private Placement deals for which it expects to act as a placement agent and/or solicitor within the next six months. Fees to Alexander from Private Placements from January 2015 through December 2017, including placement agent fees, were approximately \$7.3 million.

Although Alexander's clients have not historically utilized Regulation A, it is reasonably likely that Alexander's clients may want to consider relying on it to raise capital with the recent increase in the amount of capital that can be raised under Regulation A to \$50 million.⁵ Since January 2015, all of the deals in which Alexander acted as placement agent and/or solicitor pursuant to Rule 506 of Regulation D raised less than \$50 million.

⁵ The amendments to Regulation A were effective June 19, 2015.

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Each of these offerings could have been conducted pursuant to Regulation A, assuming the amendments were in effect at that time.

Alexander has paid or will pay almost \$411,000 in civil penalties, disgorgement and pre-judgment interest, as required by the Order. In light of the nature of the violations in the Order, the enforcement remedies already obtained by the entry of the Order, the remedial measures Alexander has taken and will take, and the material impact of a Regulation A and/or Rule 506 disqualification on Alexander and its clients, we respectfully submit that Alexander's disqualification from relying on Regulation A and Rule 506 of Regulation D is not necessary. Under the circumstances, Alexander respectfully submits that it has shown good cause that relief should be granted.

Accordingly, we respectfully urge the Division, on behalf of the Commission, or the Commission, pursuant to Rule 262(b)(2) of Regulation A and 506(d)(2)(ii) of Regulation D, to waive the disqualification provisions in Regulation A and Rule 506 of Regulation D under the Securities Act to the extent they may be applicable to Alexander and its affiliates as a result of the entry of the Order.⁶

We appreciate your consideration of this request. Please do not hesitate to contact me at (617) 223-0362 with any questions.

Very truly yours,



Elizabeth A. Marino

⁶ The Commission has granted relief under Regulation A and/or Rule 506 of Regulation D for similar reasons or in similar circumstances: *See In the Matter of Citigroup Global Markets Inc.* (Jan. 26, 2017); *In the Matter of Morgan Stanley Smith Barney LLC* (Jan. 13, 2017); *In the Matter of Pacific Investment Management Company LLC* (Dec. 1, 2016); *In the Matter of Moloney Securities Co., Inc., et al.* (Sept. 30, 2016); *In the Matter of Felit & Company, Inc.* (June 21, 2016); *In the Matter of Royal Alliance Associates, Inc., et al.* (Mar. 14, 2016); *In the Matter of Barclays Capital Inc.*, Rel. No. 10011 (Jan. 31, 2016); *In the Matter of National Asset Management, Inc.* (Oct. 26, 2015); *In the Matter of Citigroup Global Markets, Inc.*, Rel. No. 9895 (Aug. 19, 2015); *Guggenheim Partners Investment Management, LLC* (Aug. 5, 2015); *Merrill Lynch, Pierce, Fenner & Smith and Merrill Lynch Professional Clearing Corp.* (June 1, 2015); *BlackRock Advisors, LLC* (Apr. 20, 2015); *H.D. Vest Investment Securities, Inc.* (Mar. 4, 2015); *Barclays Capital Inc.*, Rel. No. 33-9651 (Sept. 23, 2014); *Wells Fargo Advisers, LLC*, Rel. No. 33-9649 (Sept. 22, 2014); *Dominick & Dominick LLC*, Release No. 33-9619 (July 28, 2014); *Jefferies LLC*, (Mar. 12, 2014); *Credit Suisse Group AG* (Feb. 21, 2014); *Instinet, LLC* (Dec. 26, 2013).