

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 101031 / September 16, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-18561

In the Matter of :

ALEXANDER CAPITAL, L.P., :

Respondent. :

ADMINISTRATIVE PROCEEDING
File No. 3-18562

In the Matter of :

PHILIP A. NOTO II, :

Respondent. :

**NOTICE OF PROPOSED PLAN OF
DISTRIBUTION AND
OPPORTUNITY FOR COMMENT**

ADMINISTRATIVE PROCEEDING
File No. 3-18563

In the Matter of :

BARRY T. EISENBERG, :

Respondent. :

Notice is hereby given, pursuant to Rule 1103 of the United States Securities and Exchange Commission's (the "Commission") Rules on Fair Fund and Disgorgement Plans (the "Commission's Rules"), 17 C.F.R. § 201.1103, that the Division of Enforcement has submitted to the Commission a proposed plan of distribution (the "Proposed Plan") for the distribution of monies paid in the above-captioned matter.

On June 29, 2018, the Commission issued separate, but related settled Orders Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions (the “Orders”)¹ against Alexander Capital, L.P., Philip A. Noto II, and Barry T. Eisenberg (collectively, the “Respondents”). In the Orders, the Commission found that from July 2012 to September 2014, the Respondents failed to reasonably supervise three registered representatives, formerly associated with Alexander Capital, within the meaning of Section 15(b)(4)(E) of the Securities Exchange Act of 1934 (“Exchange Act”) with a view to preventing and detecting those registered representatives’ violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Alexander Capital also failed to reasonably implement certain policies and procedures and permitted a lax compliance environment whereby the registered representatives made unsuitable investment recommendations to their customers, churned their customer’s accounts and engaged in unauthorized trading.

The Commission ordered the Respondents to pay \$193,774.86 in disgorgement, \$23,436.78 in prejudgment interest, and \$228,774.86 in civil money penalties, for a total of \$445,986.50, to the Commission. In each of the Orders, the Commission also created a fair fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the penalties collected, along with the disgorgement and prejudgment interest collected, can be distributed to harmed investors.

On April 6, 2023, the Commission ordered the consolidation of the assets of the fair funds created pursuant to the Orders into a single fair fund, the Alexander Capital Fair Fund (the “Fair Fund”), for purposes of distribution to harmed investors.² The Consolidation Order further ordered any additional funds collected in the future be added to the Fair Fund. In a related district court action, the Court ordered the defendants to pay \$274,801.39 in disgorgement, \$32,296.07 in prejudgment interest, and \$320,000.00 in civil money penalties, for a total of \$627,097.45. The Court ordered all monies collected from Defendants be combined with the Fair Fund.³

The Fair Fund includes the \$436,497.40 collected from the Respondents and \$627,097.45 from the defendants in the District Court Action, for a total of \$744,988.45. Any additional funds collected, pursuant to the Orders or the District Court Action judgments, will be added to the Fair Fund. The assets of the Fair Fund are subject to the continuing jurisdiction and control of the Commission. The Fair Fund and has been deposited in a Commission-designed account at the U.S. Treasury, and any interest accrued will be added to the Fair Fund.

OPPORTUNITY FOR COMMENT

Pursuant to this Notice, all interested persons are advised that they may obtain a copy of the Plan from the Commission’s public website at <https://www.sec.gov/litigation/fairfundlist.htm>. Interested persons may also obtain a written

¹ Exchange Act Rel. No. 83562 (June 29, 2018), (Admin. Proc. File No. 3-18561) (the “Alexander Capital Order”); Exchange Act Rel. No. 83563 (June 29, 2018), (Admin. Proc. File No. 3-18562); and Exchange Act Rel. No. 83564 (June 29, 2018), (Admin. Proc. File No. 3-18563).

² Order Consolidating Fair Funds, Exchange Act Rel. No. 97258 (Apr. 6, 2023) (the “Consolidation Order”).

³ *SEC v. Gennity, et al.*, Civil Action No. 17-cv-7424 (S.D.N.Y. 2017) (the “District Court Action”).

copy of the Proposed Plan by submitting a written request to Jennifer Cardello, United States Securities and Exchange Commission, via email at cardelloj@sec.gov. All persons who desire to comment on the Proposed Plan may submit their comments, in writing, no later than thirty (30) days from the date of this Notice:

1. to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090;
2. by using the Commission's Internet comment form (<https://www.sec.gov/litigation/admin.shtml>); or
3. by sending an e-mail to rule-comments@sec.gov.

Comments submitted by email or via the Commission's website should include "Administrative Proceeding File Nos. 3-18561, 3-18562 and 3-18563" in the subject line. Comments received will be publicly available. Persons should submit only information they wish to make publicly available.

THE PROPOSED PLAN

The Net Available Fair Fund⁴ is comprised of the \$744,988.45 in disgorgement, prejudgment interest, and civil money penalties collected from the Respondents and Defendants, and any additional funds collected in the future, plus any interest and income earned thereon, less taxes, fees, and expenses. The Proposed Plan provides for the distribution of the Net Available Fair Fund to investors based on fees paid during the relevant period as calculated by the methodology used in the plan of allocation in the Plan.

For the Commission, by the Division of Enforcement, pursuant to delegated authority.⁵

Vanessa A. Countryman
Secretary

⁴ All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Proposed Plan.

⁵ 17 C.F.R. § 200.30-4(a)(21)(iii).