UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 83564 / June 29, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18563

In the Matter of

BARRY T. EISENBERG

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 Barry T. Eisenberg ("Eisenberg" 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, and except as provided herein in Section V, 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 finds[1] that:

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[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.

Summary

Respondent failed reasonably to supervise a registered representative ("RR") with a view to preventing and detecting the RR's violations of the federal securities laws from approximately May 2013 through August 2014 while Respondent and the RR were both associated with Alexander Capital, L.P. ("Alexander Capital"), a registered broker-dealer. During this time period, the RR violated Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by, among other things, making unsuitable investment recommendations to his customers and churning a customer's account.

Respondent

1. **Eisenberg**, 47, is a resident of Allentown, Pennsylvania, and has been associated with Alexander Capital as a branch manager and registered representative since May 2013. From May 2013 through September 2014, Eisenberg was the direct supervisor of the RR at Alexander Capital. Eisenberg holds Series 7, 24 and 63 licenses.

Other Relevant Entity

2. **Alexander Capital**, is a Delaware limited partnership with its main office in New York, New York (the "Manhattan Office") 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

3. Eisenberg joined Alexander Capital in May 2013 as the branch manager of its Manhattan Office. The RR was also located in the Manhattan Office.

4. Under Alexander Capital's written supervisory procedures ("WSPs"), supervisors were directed to discuss trades that appeared to be unsuitable with the registered representative, and if the registered representative was unable to show why the trade was suitable, the supervisor was expected to consider whether disciplinary action was warranted. If the supervisor determined that there were suspicious transactions in the account, the supervising principal was to contact the customer directly.

5. Under the WSPs, supervisors were responsible to ensure that "all transactions undertaken by individuals under their direct supervision [were] 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." Supervisors were required to carefully review exception reports for accounts with "an excessive amount of client activity" and accounts that seemed "to generate a disproportionately high amount of commissions relative to the size of the investment." If there was a basis for supervisors to suspect churning, the WSPs directed supervisors to interview the registered representative. If the registered representative could not justify the activity, the

supervisor was expected to contact the customer and impose sanctions on the registered representative, "ranging from loss of commissions to temporary suspension of conducting any activities that require registration."

6. From May 2013 through August 2014, while under Eisenberg's supervision, the RR made unsuitable investment recommendations and churned a customer's account.

7. The RR had no reasonable basis to believe that the pattern of high-cost in-and-out trading he recommended to at least two customers (Customer A and Customer B) would be suitable for anyone.

8. Since the customers incurred costs with every transaction, making a profit depended upon the price of the security increasing during the brief period the security was held in the customer accounts. The increase in price had to exceed the combined costs for even a minimal profit to be realized. The impact of the costs that arose from the excessive trading, however, doomed any possibility of even a minimal profit.

9. 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.

10. The annualized turnover rate and cost-to-equity ratios for the two customers were extremely high and are indicative of excessive trading. The turnover rates for two of the RR's customers, Customer A and Customer B, were 51.02 and 57.75, respectively, and the cost-to-equity ratios for these two customers were 200.40% and 112.26%, respectively.

11. The RR held each position in the two customers' accounts for an average of 14.6 and 13.1 days, respectively.

12. The total loss for these two customers was $21,859 and $250,885, respectively.

13. The RR also made recommendations to Customer A that were not suitable for that customer since the recommendations were incompatible with the customer's financial needs, investment objectives, risk tolerance and circumstances while at the same time churning that customer's account.

14. The account opening documents sent to Customer A, which Customer A signed, were pre-populated with "speculation" as the investment objective and "maximum risk" as the risk tolerance. These selections did not reflect Customer A's more conservative investment objective and risk tolerance.

15. The RR made all of the investment recommendations in the account and was responsible for the volume and frequency of trading. Customer A did not question or independently evaluate the RR's recommendations.

16. Eisenberg, the branch manager of Alexander Capital's Manhattan Office and the RR's direct supervisor, ignored red flags indicating excessive trading and in doing so, failed reasonably to supervise the RR with a view to preventing and detecting the RR's violations of the federal securities laws related to his (1) lack of a reasonable basis for recommendations made to Customers A and B; (2) unsuitable recommendations made to Customer A; and (3) churning in Customer A's account.

17. An online surveillance tool was furnished to Alexander Capital by its clearing firm. The online surveillance tool allowed supervisors to record their approval of trades and issued "alerts" when turnover and commissions reached certain pre-set levels.

18. The turnover and commission alerts generated by the online surveillance tool constituted indicia of suspicious trading or "red flags." Eisenberg had access to the online surveillance tool and used it in his trade review. The online surveillance tool generated multiple alerts for the accounts of Customers A and B, but some of these alerts went unreviewed by Eisenberg, who did not take reasonable action in response to the alerts he did review.

19. For Customer A's account, in July 2013 and September 2013 four turnover and commission alerts were issued. Eisenberg did not review any of these alerts, some of which remained open for as long as 51 days before being closed automatically by the online surveillance tool.

20. In Customer B's account, Eisenberg noted concerns with the trading as early as June 2013. Soon after Eisenberg began reviewing the individual trades in Customer B's account, commission restrictions were imposed on the RR for this account.

21. Between May 2013 and August 2014, there were 28 turnover or commission alerts in the online surveillance tool for Customer B's account. Eisenberg reviewed 20 of these alerts, but other than commission restrictions and some trade corrections, took no action reasonably to supervise the RR.

22. Between May 2013 and December 2013, Eisenberg reviewed at least six of the 12 turnover and commission alerts issued for Customer B's account. The review comments in the system indicated that the account was "being handled within established parameters" and that commissions had been "capped at 1% max."

23. Beginning in January 2014, Eisenberg attempted to limit the commissions in Customer B's account to $100 per trade, but the limit was not consistently applied. Eisenberg failed to monitor whether the RR's commissions were limited to $100 or whether the RR continued to engage in excessive trading despite the commission restrictions Eisenberg attempted

to impose. In fact, the RR continued to engage in excessive trading in Customer B's account, which prompted the generation of new alerts.

24. From January 2014 through August 2014, 16 turnover and commission alerts were issued in the online surveillance tool for Customer B's account. Although Eisenberg reviewed 14 of these alerts, he failed to take reasonable action in response. As late as May 27, 2014, the review comments associated with Eisenberg's closure of alerts issued on May 10, 2014 indicated that Customer B's account was "being handled within established parameters." If Eisenberg had followed up reasonably on the turnover and commission alerts generated with respect to the RR's handling of the accounts of Customer A and Customer B, it is likely that he would have prevented and detected the violations of the federal securities laws by the RR.

25. As a result of the conduct described above, Eisenberg failed reasonably to supervise the RR within the meaning of Section 15(b)(4)(E) of the Exchange Act, as incorporated by reference in Section 15(b)(6) of the Exchange Act, with a view to preventing and detecting the RR's violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 15(b)(6) of the Exchange Act, Eisenberg shall be, and hereby is, subject to the following limitations on his activities:

1. Respondent Eisenberg shall not act in a supervisory capacity with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

2. Respondent Eisenberg may apply to act in such a supervisory capacity after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

B. Any application to act in such a supervisory capacity will be subject to the applicable laws and regulations governing the reentry process, and permission to act in such a supervisory capacity may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; any (d) any restitution order by a self-regulatory

organization, whether or not related to the conduct that served as the basis for the Commission order.

C. Respondent shall pay civil penalties of $15,000.00 to the Securities and Exchange Commission. Payment shall be made in the following installments:

1. $3,750 within 10 days of the entry of this Order;
2. $2,250 within 60 days of the entry of this Order;
3. $2,250 within 120 days of the entry of this Order;
4. $2,250 within 180 days of the entry of this Order;
5. $2,250 within 240 days of the entry of this Order;
6. $2,250 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 31 U.S.C. 3717. Prior to making the final payment set forth herein, Eisenberg 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 civil penalties, plus any additional interest accrued 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 Barry T. Eisenberg 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.

D. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties referenced in paragraph C 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, he shall not argue that he is entitled to, nor shall he 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 he 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.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary