

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20140393511 01**

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: Alexander Capital, L.P., Respondent
BD No. 40077

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Alexander Capital, L.P. ("ACLP" or the "Firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. ACLP hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

ACLP has been a FINRA member firm since January 1996. It currently employs approximately 55 registered persons in 3 branch offices. Its principal place of business is in New York, New York. ACLP engages in a general securities business.

RELEVANT DISCIPLINARY HISTORY

ACLP does not have any relevant disciplinary history.

OVERVIEW

From February 2013 through March 2014 (the "Relevant Period"), ACLP failed to develop and implement an anti-money laundering ("AML") program that was reasonably designed to achieve and monitor the Firm's compliance with requirements of the Bank Secrecy Act and the implementing regulations thereunder. In particular, the Firm failed to establish and implement policies and procedures that could be reasonably expected to detect and cause the reporting of potentially suspicious activity relating to transactions involving the liquidation of

hundreds of millions of shares of microcap stocks.¹ Based on this misconduct, ACLP violated FINRA Rules 3310(a) and 2010.

During the Relevant Period, ACLP also failed to establish a supervisory system, including written supervisory procedures (“WSPs”), that was reasonably designed to achieve compliance with Section 5 of the Securities Act of 1933 (the “Securities Act”). Based on this misconduct, ACLP violated NASD Conduct Rules 3010(a) and 3010(b) and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

1. ACLP Failed to Establish and Implement a Reasonable AML Program

FINRA Rule 3310(a) requires that each member’s AML program must, among other things, establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions required under 31 U.S.C. § 5318(g) and the implementing regulations thereunder. The implementing regulation issued by the U.S. Department of the Treasury, 31 C.F.R. § 1023.320 (recodified from 31 C.F.R. § 103.9 on March 1, 2011), requires broker-dealers to file with the Financial Crimes Enforcement Network “a report of any suspicious transaction relevant to a possible violation of law or regulation.”

NASD Notice to Members 02-21 (“NTM 02-21”), issued in April 2002, provided detailed guidance to the industry regarding the obligation of a broker-dealer to monitor for and report suspicious transactions. In NTM 02-21, the NASD advised each broker-dealer that when developing an AML program, it should tailor the program to fit its business, taking into consideration, among other factors, “the types of transactions in which its customers engage.” NTM 02-21 further reminded broker-dealers of their duty to look for “red flags,” *i.e.*, signs of suspicious activity that suggest money laundering or other violative activity, and provided broker-dealers with a non-exhaustive list of such red flags. That list of red flags includes when a “customer, for no apparent reason or in conjunction with other ‘red flags,’ engages in transactions involving certain types of securities, such as penny stocks . . . which although legitimate, have been used in connection with fraudulent schemes and money laundering activity. (Such transactions may warrant further due diligence to ensure the legitimacy of the customer’s activity.)” Where such red flags are detected, the NASD cautioned broker-dealers to “perform additional due diligence before proceeding with the transaction.” The notice advised broker-dealers to “develop administrative procedures concerning [suspicious activity reports (SARs)],” which “should address the process for filing SARs and reviewing SAR filings.”

¹ “The term ‘microcap stock’ applies to companies with low or ‘micro’ capitalizations, meaning the total value of the company’s stock. A typical definition would be companies with a market capitalization of less than \$250 or \$300 million.” Microcap Stock: A Guide for Investors, Securities and Exchange Commission Investor Publication, dated Sept. 18, 2013.

a. Red Flags in the Accounts of Customer A

During the Relevant Period, ACLP opened two delivery versus payment and receipt versus payment ("DVP/RVP") accounts for Customer A, a foreign broker-dealer. Customer A told the ACLP registered representative and trader that opened the account that Customer A traded in small capitalization stocks.

Between December 2013 and March 2014, Customer A sold more than 300 million shares of more than 100 microcap securities. Those transactions generated more than \$36 million in proceeds for Customer A and more than \$375,000 in commissions for the Firm.

The activity of Customer A included the following red flags of potentially suspicious activity:

- Customer A sold more than 44 million shares of microcap stock A between December 4, 2013 and March 12, 2014 for net proceeds of more than \$12 million with no corresponding buy transactions. During that same period, the stock's share price increased seven-fold from a low of .10¢/share to a high of .76¢/share and Customer A's trading volume ranged from between 4% and 75% of the total market activity. Nevertheless, the trading activity did not trigger any scrutiny by the Firm nor any inquiry into whether the securities being sold were registered or how or when they had been acquired.
- Customer A sold more than five million shares of a microcap stock B between December 6, 2013 and January 9, 2014 for net proceeds of more than \$1.8 million. During that same period, the stock's share price quintupled to a high of \$1.41/share on December 24, 2013 and was the subject of a paid promotion. At times during the liquidation period at ACLP, Customer A's trading activity accounted for more than 50% of the total market activity in microcap stock B. In December 2013, the Firm received a regulatory inquiry concerning transactions in microcap stock B. Notwithstanding this inquiry, the Firm continued to execute more than a dozen additional transactions in the stock for Customer A.
- Customer A sold nearly one million shares of microcap stock C between December 9, 2013 and February 11, 2014 for net proceeds of more than \$2.1 million. On January 29, 2014, the ACLP registered representative that opened this account participated in an instant message exchange with an individual at another firm regarding microcap stock C. The individual told the ACLP registered representative that the share price of microcap stock C was being manipulated. The ACLP registered representative conducted no inquiry into this red flag and the Firm executed 11 transactions for Customer A (10 sales totaling more than 400,000 shares

and one buy of 10,000 shares) between January 29, 2014 and the time that the SEC suspended trading in microcap stock C on February 11, 2014.

In addition, Customer A refused to provide ACLP with information concerning the origin of the microcap stocks it sought to liquidate through the Firm or the identity of its customers, red flags of potentially suspicious activity that should have, but failed to cause the Firm to conduct any additional due diligence concerning the transactions.

b. Red Flags in the Account of Customer B

Customer B opened its account with ACLP during the Relevant Period and subsequently attempted to transfer microcap securities into its account from another broker-dealer. ACLP's clearing firm rejected six deposits, but accepted deposits of four microcap securities with a market value of approximately \$1.65 million, which Customer B began liquidating. Between October 2013 and December 2013, Customer B liquidated more than one million shares of three microcap securities and promptly withdrew the approximately \$270,000 of proceeds of those liquidations, which was approximately 16% of the market value of the securities that were deposited by Customer B. The ACLP branch manager responsible for reviewing Customer B's trading failed to recognize the activity as potentially suspicious and escalate it to the Firm's AML Compliance Officer ("AMLCO").

* * *

The Firm's AML procedures were not sufficiently tailored to a microcap stock liquidation business and the associated regulatory risks including the use of such securities by issuers, stock promoters and others affiliated with the issuers for money laundering or to commit securities fraud or market manipulation. In particular, ACLP's system for reviewing for potentially suspicious trading activity consisted primarily of its manual review of daily trade blotters. Given the volume and nature of the microcap stock transactions being conducted by Customers A and B, this manual review was not reasonably designed to detect patterns of potentially suspicious activity that might occur over the course of days, weeks or months.

In addition, ACLP's system for detecting and investigating red flags relating to the microcap stock activities of its customers also was unreasonable. ACLP failed to detect any of Customer A's and B's activities as potentially suspicious notwithstanding the existence of red flags such as the liquidation of hundreds of millions of shares of microcap stocks, regulatory inquiries concerning the trading in certain microcap securities, SEC suspension of trading orders in the microcap stocks being traded and promotional activity.

By virtue of the foregoing, ACLP violated FINRA Rules 3310(a) and 2010.

2. ACLP Failed to Establish and Enforce a Supervisory System, Including WSPs, Reasonably Designed to Achieve Compliance with Section 5

NASD Conduct Rule 3010(a) requires members to “establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD” and FINRA Rules. NASD Conduct Rule 3010(b) requires members to “establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives, registered principals, and other associated persons that are reasonably designed to achieve compliance with the applicable securities laws and regulations, and with the applicable Rules of the NASD” and of FINRA. A firm’s supervisory system, including its WSPs, must be tailored to the nature of the business in which the firm engages.

Section 5 of the Securities Act prohibits the offer or sale of any security unless there is a registration statement in effect as to that security or there is an exemption available for that securities transaction. FINRA Regulatory Notice 09-05 reiterated members’ obligations to comply with securities laws as they relate to unregistered securities distributions. The Notice states that “[a]ll firms must have procedures reasonably designed to avoid becoming participants in the potential unregistered distribution of securities” and that “firms may not rely solely on others, such as clearing firms, transfer agents, or issuers’ counsel, to fulfill these obligations.”

During the Relevant Period, ACLP engaged in a microcap stock liquidation business on behalf of its customers. The Firm, however, failed to establish, maintain, and enforce a supervisory system, including WSPs, that were reasonably designed to achieve compliance with Section 5 of the Securities Act. ACLP’s WSPs failed to set forth guidance as to the diligence or investigation required to be performed before executing sales of microcap securities to verify the securities were registered or subject to a transactional exemption. In practice, the Firm failed to conduct any inquiry into whether the microcap securities being liquidated were freely tradeable. Accordingly, the Firm made no determination as to whether the microcap stocks sold during the Relevant Period were registered and free from restriction.

By virtue of the foregoing, ACLP violated NASD Conduct Rules 3010(a) and 3010(b) and FINRA Rule 2010.

B. ACLP also consents to the imposition of the following sanctions:

1. A censure;
2. A fine of \$80,000; and
3. The following undertaking:
 - i. Within no later than 90 days from the Notice of Acceptance of this AWC, or such additional period as agreed to by a FINRA staff member in writing, a registered principal and executive officer of the Firm, on behalf of the Firm, shall submit a certification that the Firm's policies, systems and procedures (written and otherwise) and training are reasonably designed with respect to the Firm's: (1) compliance with FINRA Rule 3310 and the requirements of the Bank Secrecy Act, 31 U.S.C. § 5311, *et. seq.*, and the regulations promulgated thereunder, including, but not limited to those related to monitoring for, identifying, investigating, and responding to red flags of suspicious transactions in general and specifically with respect to microcap securities; and (2) compliance with Section 5 of the Securities Act of 1933 and the applicable rules and regulations with respect to the distribution of unregistered securities.
 - ii. The certification that the Firm has complied with the undertaking set forth above shall be provided to Matthew Minerva, FINRA – Department of Enforcement, Brookfield Place, 200 Liberty Street, New York, NY 10281, either by letter that identifies ACLP and Matter No. 20140393511 or by email from a work-related account of a registered principal of the Firm to EnforcementNotice@FINRA.org.

ACLP agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. ACLP has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

ACLP specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

ACLP specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against it;
- B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, ACLP specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

ACLP further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

ACLP understands that:

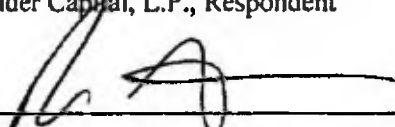
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against ACLP; and
- C. If accepted:

1. this AWC will become part of ACLP's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the Firm;
 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 4. ACLP may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. ACLP may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects ACLP's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. ACLP may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. ACLP understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that ACLP has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the Firm to submit it.

9/13/17
Date (mm/dd/yyyy)

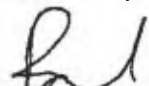
Alexander Capital, L.P., Respondent

By: 

Name: Rocco GuadiciPietro

Title: COO

Reviewed by:


Bryan M. Ward, Esq.
Counsel for Respondent
Holcomb & Ward LLP
3399 Peachtree Road NE, Suite 400
Atlanta, Georgia 30326
(404) 601-2803

Accepted by FINRA:

September 29, 2017
Date

Signed on behalf of the
Director of ODA, by delegated authority


Matthew Minerva
Principal Regional Counsel
FINRA Department of Enforcement
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Corrective Action Statement of Alexander Capital

In association with the Acceptance, Waiver, and Consent ("AWC") in matter 20140393511, Alexander Capital, L.P. ("Alexander" or "the Firm") submits the following Corrective Action Statement.

The AWC covers February 2013 to March 2014. Alexander was sold to new ownership in late December 2013, near the end of that period. As part of that change, two existing firm principals were elevated to firm management positions and took prompt action to review and improve the Firm's policies and procedures and to improve supervision and control of registered representatives. These changes included hiring new supervisory personnel and improved training of existing personnel, updating the firm's Written Supervisory Procedures, and expanding the monitoring software used to supplement the human supervision of accounts. The firm brought on additional supervisory personnel and hired an experienced CEO. The firm has also improved its continuing education, hiring QUEST to provide continuing education on compliance and adding modules during the year, as needed, to address important developments in the industry in a timely manner rather than solely at the end of the year. The firm reviewed and replaced their WSPs once new management took over, replacing the WSPs in effect during the time period covered by this AWC in late 2014. The firm continued and continues to review its WSPs on an ongoing basis, ensuring that they are up-to-date and reflect best practices. The firm, as part of this initial rewrite of its WSPs, expanded the requirements of its AML system. The firm upgraded the electronic-trade-monitoring software in use to utilize the full range of its capabilities. This upgrade included purchasing the AML module designed to provide further protections against money laundering and suspicious activities.

Following these changes, new management also contracted an outside advisor to conduct the required annual anti-money laundering ("AML") independent test of the firm for 2014 and 2015 to ensure compliance with all relevant AML rules, regulations, and laws.

Further, the AWC concerns trading in microcap stocks. Alexander Capital substantially and voluntarily limited the ability of registered representatives to trade in microcap stocks prior to the AWC.

The above changes, along with other steps taken by the firm, and the corrective actions agreed to in the AWC, is intended to prevent a reoccurrence of these issues.

This Corrective Action Statement is submitted by the Respondent. It does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA, or its staff.