UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 83563 / June 29, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18562

In the Matter of

PHILIP A. NOTO II

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 Philip A. Noto II ("Noto" 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 two registered representatives, (“RR1” and “RR2”) with a view to preventing and detecting their violations of the federal securities laws from approximately December 2012 through July 2014 while Respondent, RR1 and RR2 were each associated with Alexander Capital, L.P. (“Alexander Capital”), a registered broker-dealer. During this time period, RR1 and RR2 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 their customers and churning their customers' accounts.

Respondent

1. **Noto**, 37, is a resident of Red Bank, New Jersey, and from June 2012 to July 2014 was associated with Alexander Capital as a registered representative. From December 2012 to July 2014, Noto was the direct supervisor of RR1 and RR2 at Alexander Capital. Noto holds Series 4, 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 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. Noto joined Alexander Capital in June 2012 as a registered representative and was assigned supervisory responsibilities in Alexander Capital's Staten Island office beginning in December 2012.

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 for ensuring 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 January 2013 through July 2014, while under Noto's supervision, RR1 and RR2 made unsuitable investment recommendations and churned their customers' accounts.

7. RR1 and RR2 had no reasonable basis to believe that the pattern of high-cost in-and-out trading they recommended to at least eleven customers (five customers for RR1 and six customers for RR2) 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 customers were extremely high and are indicative of excessive trading. The turnover rates for five of RR1's customers were between 15.30 and 42.34 and the cost-to-equity ratios were between 38.85% and 128.62%. The turnover rates for RR2's six customers were between 12.01 and 36.76 and the cost-to-equity ratios were between 40.27% and 111.82%.

11. RR1 held each position in the customers' accounts for an average of between 14.8 and 29.5 days. RR2 held each position in the customers' accounts for an average of between 9.3 and 27.7 days.

12. The losses in the accounts of RR1's five customers were between $17,473 and $108,357. The losses in the accounts of RR2's six customers were between $3,203 and $199,530.

13. RR1 and RR2 also made recommendations to two customers – Customer A (for RR1) and Customer B (for RR2) – that were not suitable for these customers since the recommendations were incompatible with the customers' financial needs, investment objectives, risk tolerance and circumstances.

14. The account opening documents sent to Customers A and B were pre-populated with "speculation" as the investment objective and "maximum risk" as the risk tolerance. These

selections did not reflect their more conservative investment objectives and risk tolerance. Customer B even manually changed the selections to "balanced growth" and "low risk."

15. RR1 and RR2 also churned the accounts of four of their customers (two for RR1, including Customer A, and two for RR2, including Customer B). The trading in the accounts was excessive in light of the customers' investment objectives, as indicated by the high annualized turnover rates (between 18.13 and 42.34) and cost-to-equity ratios (between 63.38% and 128.62%) for each of these accounts. The accounts were non-discretionary, meaning that the customer was supposed to make all trading decisions. Instead, RR1 and RR2 exercised *de facto* control over these non-discretionary accounts because the customers rarely, if ever, suggested an investment idea, nor did they reject any of RR1's or RR2's recommendations. RR1 and RR2 acted with willful and reckless disregard for these customers' interests.

16. Noto, the direct supervisor of both RR1 and RR2, ignored red flags indicating excessive trading and in doing so, failed reasonably to supervise RR1 and RR2 with a view to preventing and detecting their violations of the federal securities laws related to their (1) lack of a reasonable basis for recommendations made to eleven customers (five customers for RR1 and six customers for RR2); (2) unsuitable recommendations made to Customers A and B; and (3) churning in four customers' accounts (two for RR1, including Customer A and two for RR2, including Customer B).

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." Noto had access to the online surveillance tool and used it in his trade review. The online surveillance tool generated multiple alerts for the five RR1 and six RR2 customers, including for the accounts of Customers A and B, but Noto either failed to review these alerts or, for those alerts that he did review, he did not take reasonable action in response to them.

19. During the period from January 2013 to July 2014, there were approximately 123 alerts (62 turnover and 61 commission alerts) related to the five RR1 and six RR2 customers. Approximately 79 of these alerts (including twelve for Customer A and seven for Customer B), were not reviewed by Noto and were instead closed automatically by the online surveillance tool, in some cases after the alerts had been open for as long as 222 days.

20. Noto reviewed only the approximately 41 alerts (21 turnover and 20 commission alerts) related to three of the five RR1 and two of the six RR2 customers that were generated in February 2014 and March 2014 by the online surveillance tool. Eight of these alerts were for Customer A and none were for Customer B. None of the review comments associated with the alerts and entered into the online surveillance tool indicated any discussion with or discipline of RR1 or RR2 or outreach to the customers involved. All 41 of the turnover and commission alerts were closed by Noto in March 2014.

21. Noto did not discuss trades with RR1 or RR2 or contact customers in response to the alerts described in paragraphs 19 and 20 above. If Noto had followed up reasonably on the turnover and commission alerts generated with respect to RR1's and RR2's handling of their customer accounts, it is likely that he would have prevented and detected the violations of the federal securities laws by these two registered representatives.

22. As a result of the conduct described above, Noto failed reasonably to supervise RR1 and RR2 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 their 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 Noto's Offer.

Accordingly, it is hereby ORDERED that:

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

> Respondent Noto 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.

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 $20,000.00 to the Securities and Exchange Commission. Payment shall be made in the following installments:

1. $10,000 within 10 days of the entry of this Order;
2. $2,000 within 60 days of the entry of this Order;
3. $2,000 within 120 days of the entry of this Order;
4. $2,000 within 180 days of the entry of this Order;

5. $2,000 within 240 days of the entry of this Order; and
6. $2,000 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, Noto 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 Philip A. Noto II 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