

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

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. :
 :

PLAN OF DISTRIBUTION

ADMINISTRATIVE PROCEEDING
File No. 3-18563

In the Matter of :
 :
BARRY T. EISENBERG, :
 :
Respondent. :
 :

I. OVERVIEW

1. The Division of Enforcement has submitted this Plan of Distribution (the “Plan”) to the United States Securities and Exchange Commission (the “Commission”) pursuant to Rule 1101 of the Commission’s Rules on Fair Fund and Disgorgement Plans (the “Commission’s Rules”), 17 C.F.R. § 201.1101. This Plan provides for the distribution of a Fair Fund (the “Fair Fund”) comprised of disgorgement, prejudgment interest, and civil money penalties paid by Alexander Capital, LP (“Alexander Capital”), Philip A. Noto II (“Noto”) and Barry T. Eisenberg

(“Eisenberg”) (collectively, the “Respondents”) in the above-captioned matters,¹ along with funds collected from William C. Gennity and Rocco Roveccio (collectively, the “Defendants”) in a related district court action,² and any additional funds collected in the future.

2. As described more specifically below, the Plan seeks to compensate investors who were harmed by the Respondents’ conduct described in the Orders, in connection with unsuitable investment recommendations and unauthorized trading in their Alexander Capital accounts. Investors suffered losses in the form of handling fees, commissions, mark-ups and mark-downs charged to them. Based on information obtained by the Commission staff during its investigation and the review and analysis of applicable records, the Commission staff has reasonably concluded that it has all records necessary to calculate each investor’s harm. As a result, the Fair Fund is not being distributed according to a claims-made process, so procedures for making and approving claims in accordance with Rule 1101(b)(4) of the Commission’s Rules, 17 C.F.R. § 201.1101(b)(4), are not applicable.

3. As calculated using the methodology detailed in the Plan of Allocation (attached as Exhibit A), investors will be compensated for their losses based on fees associated with trading in their Alexander Capital accounts from July 1, 2012 through September 30, 2014 (the “Relevant Period”).

4. In the view of the Commission staff, this methodology constitutes a fair and reasonable allocation of the Fair Fund.

5. The Commission has custody of the Fair Fund and shall retain control of the assets of the Fair Fund. The Plan has been approved by the Commission, and the Commission retains jurisdiction over its implementation.

II. BACKGROUND

6. On June 29, 2018, the Commission issued separate, but related settled Orders against 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 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

¹ See Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions, Exchange Act Rel. No. 83562 (June 29, 2018), (Admin. Proc. File No. 3-18561) (the “Alexander Capital Order”); Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions, Exchange Act Rel. No. 83563 (June 29, 2018), (Admin. Proc. File No. 3-18562); Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions, Exchange Act Rel. No. 83564 (June 29, 2018), (Admin. Proc. File No. 3-18563) (collectively, the “Orders”).

² *SEC v. Gennity, et al.*, Civil Action No. 17-cv-7424 (S.D.N.Y. 2017).

representatives made unsuitable investment recommendations to their customers, churned their customers' 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 paid, along with the disgorgement and interest paid, can be distributed to harmed investors.

7. 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. *See* Order Consolidating Fair Funds, Exchange Act Rel. No. 97258 (April 6, 2023) ("Consolidation Order"). The Consolidation Order further ordered any additional funds collected in the future be added to the Fair Fund. In the related district court action, the Court ordered all monies collected from Defendants be combined with the Fair Fund.

8. To date, the Respondents and Defendants have paid a total of \$744,988.45, and any additional funds collected from them will be added to the Fair Fund. The Fair Fund has been deposited in a Commission-designated account at the United States Treasury, and any accrued interest will be added to the Fair Fund.

III. DEFINITIONS

As used in this Plan, the following definitions will apply:

9. "**Administrative Costs**" shall mean any administrative costs and expenses, including without limitation tax obligations, the fees and expenses of the Tax Administrator, and investment and banking costs.

10. "**Certification Date**" means the date established in accordance with this Plan by which the Preliminary Claimant's Certification Form must be postmarked or submitted electronically in order to receive consideration under the Plan. The Certification Date shall be sixty (60) day from the mailing of the Plan Notice.

11. "**Certification Form**" means the form that will be mailed to each Preliminary Claimant with the Plan Notice providing his, her, or its calculated Recognized Loss, and confirming the name and mailing address of the payee to which a Distribution Payment should be issued. The Certification Form may be accompanied by tax forms, as required, relating to the tax treatment of any distribution.

12. "**Determination Notice**" means the notice sent by the Fund Administrator within forty-five (45) days of the Certification Date to all Preliminary Claimants that submitted a deficient Certification Form. The Determination Notice will provide to each Preliminary Claimant whose claim is deficient, in whole or in part, the reason(s) for the deficiency and in the event the claim is denied, the Determination Notice will state the reason(s) for such denial. The Determination Notice will also notify the Preliminary Claimant of the opportunity to cure any

deficiency, request reconsideration, or dispute the determination made by the Fund Administrator and provide instructions regarding what is required to do so.

13. **“Distribution Payment”** means a payment from the Fair Fund to a Payee in accordance with the terms of this Plan.

14. **“Eligible Claimant”** means a Preliminary Claimant, who is determined to have suffered a Recognized Loss, pursuant to the Plan of Allocation, and who is not an Excluded Party or an Unresponsive Preliminary Claimant.

15. **“Excluded Party”** shall mean: (a) the Respondents, and Respondents’ advisers, agents, nominees, assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities; (b) the Defendants, and Defendants’ advisers, agents, nominees, assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities; and (c) any purchaser or assignee of another Person’s right to obtain a recovery from the Fair Fund for value; provided, however, that this provision shall not be construed to exclude those Persons who obtained such a right by gift, inheritance or devise.

16. **“Fair Fund”** means the Alexander Capital Fair Fund created by the Commission pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, for the benefit of investors harmed by Respondents’ violations described in the Alexander Capital Order and referenced in the Consolidation Order.

17. **“Final Determination Notice”** means the written notice sent by the Fund Administrator to (a) any Preliminary Claimant who timely submitted a written dispute of his, her or its calculated Recognized Loss notifying the Preliminary Claimant of her resolution of the dispute; and (b) those Preliminary Claimants who have not responded to the Plan Notice by returning the Certification Form and/or any tax forms requested, as described in paragraph 41 notifying the Preliminary Claimant that he, she, or it has been deemed an Unresponsive Preliminary Claimant. The Final Determination Notice will constitute the Fund Administrator’s final ruling regarding the status of the claim. A Final Determination Notice will not be sent to any Preliminary Claimant those whose Plan Notice were returned as “undeliverable,”

18. **“Net Available Fair Fund”** means the Fair Fund, plus any interest or earnings, less Administrative Costs.

19. **“Payee”** means an Eligible Claimant whose distribution amount is equal to or greater than \$10.00, as calculated in accordance with the Plan of Allocation, who will receive a Distribution Payment.

20. **“Person”** means natural individuals as well as legal entities such as corporations, partnerships, or limited liability companies.

21. **“Plan Notice”** means a written notice from the Fund Administrator to each Preliminary Claimant regarding the Commission’s approval of the Plan, including, as appropriate: a statement characterizing the distribution; a link to the approved Plan posted on the

Commission’s website and instructions for requesting a copy of the Plan; the Certification Form and specification of any other information needed, such as tax forms, to prevent him, her, or it from being deemed an Unresponsive Preliminary Claimant; his, her, or its calculated Recognized Loss; a description of the tax information reporting and other related tax matters; the procedure for the distribution as set forth in the Plan; and the name and contact information for the Fund Administrator as a resource for additional information or to contact with questions regarding the distribution.

22. “**Plan of Allocation**” means the methodology used by the Fund Administrator to calculate if a Preliminary Claimant has suffered a Recognized Loss. The Plan of Allocation is attached as Exhibit A.

23. “**Preliminary Claimant**” means a Person, or their lawful successors, identified by the Fund Administrator based on its review and analysis of applicable records obtained by the Commission staff during its investigation, who may have suffered a loss due to the Respondents’ misconduct as described in the Orders in the form of fees associated with trading in their Alexander Capital Accounts during the Relevant Period.

24. “**Recognized Loss**” means the amount of loss calculated in accordance with the Plan of Allocation.

25. “**Relevant Period**” is from July 1, 2012 through September 30, 2014.

26. “**Unresponsive Preliminary Claimant**” means a Preliminary Claimant whose address the Fund Administrator has not been able to verify and/or who does not timely respond to the Fund Administrator’s attempts to obtain information, including the Certification Form or any information sought in the Plan Notice. Unresponsive Preliminary Claimants will not be eligible for a distribution under the Plan.

IV. TAX COMPLIANCE

27. On July 15, 2019, the Commission appointed Miller Kaplan Arase LLP as the tax administrator (the “Tax Administrator”) for the Fair Fund to handle the tax obligations of the Fair Fund.³ The Tax Administrator will be compensated for reasonable fees and expenses from the Fair Fund in accordance with its 2019-2021 Engagement Letter Agreement with the Commission.⁴

28. The Fair Fund constitutes a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. The Tax Administrator is the administrator of such QSF for purposes of Treas. Reg. § 1.468B-2(k)(3)(I) and shall satisfy the tax-related administrative requirements imposed by Treas. Reg. § 1.468B-2, including, but not

³ See Order Appointing Tax Administrator, Exchange Act Rel. No. 86382 (July 15, 2019).

⁴ See Omnibus Order Directing the Appointment of Tax Administrator in Administrative Proceedings that Establish Distribution Funds, Exchange Act Rel. No. 85174 (Feb. 22, 2019).

limited to:

- (a) Obtaining a taxpayer identification number;
- (b) Requesting funds necessary for the timely payment of all applicable taxes, the payment of taxes for which the Tax Administrator has received funds, and the filing of applicable returns; and
- (c) Fulfilling any information reporting or withholding requirements imposed on distributions from the Fair Fund.

29. All tax obligations will be paid from the Fair Fund, subject to the review and approval of Commission staff.

V. FUND ADMINISTRATOR

30. Jennifer Cardello is the fund administrator for the Fair Fund (“Fund Administrator”). As a Commission employee, the Fund Administrator shall receive no compensation, other than her regular salary as a Commission employee, for her services in administering the Fair Fund. In accordance with Rule 1105(c) of the Commission’s Rules,⁵ no bond is required since the Fund Administrator is a Commission employee.

31. The Fund Administrator will be responsible for administering the Fair Fund in accordance with the Plan.

32. To carry out the purposes of this Plan, the Fund Administrator is authorized to make and implement immaterial changes to the Plan upon agreement of the Commission staff. If a change is deemed to be material by the Commission staff, Commission approval is required prior to implementation by amending the Plan.

33. The Fund Administrator may extend any procedural deadline contained in the Plan for good cause shown, if agreed upon by the Commission staff.

VI. PLAN PROCEDURES

Specification of Preliminary Claimants

34. Using information obtained during its investigation, the Commission has identified the Preliminary Claimants. Preliminary Claimants are limited to only those Persons who may have suffered a loss due to the Respondents’ misconduct as described in the Orders in the form of fees associated with trading in their Alexander Capital Accounts during the Relevant Period.

⁵ 17 C.F.R. § 201.1105(c).

Procedures for Locating and Notifying Preliminary Claimants

35. Within thirty (30) days of Commission approval of the Plan, the Fund Administrator will send the Plan Notice to each Preliminary Claimant's last known email address (if known) and/or mailing address.

Undeliverable Mail

36. If any mailing is returned as undeliverable, the Fund Administrator will make the best practicable efforts to ascertain a Preliminary Claimant's correct address. If another address is obtained, the Fund Administrator will then resend it to the Preliminary Claimant's new address within twenty-one (21) days of receipt of the returned mail. If the mailing is returned again, and the Fund Administrator, despite best practicable efforts, is unable to find a Preliminary Claimant's correct address, the Fund Administrator, in its discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

37. Any Preliminary Claimant who relocates or otherwise changes contact information after receipt of the Plan Notice must promptly communicate any change in address or contact information to the Fund Administrator.

Procedures to Request Plan Notice

38. Any Person who does not receive a Plan Notice, as described in paragraph 35, but who is aware of this Plan (e.g., through other Preliminary Claimants or from www.sec.gov) and believes they should be included as a Preliminary Claimant should contact the Fund Administrator within sixty (60) days from the approval of the Plan to establish that they should be considered a Preliminary Claimant. Such Person should include with that communication, documentation sufficient to support their claim that they should be considered a Preliminary Claimant, as well as contact information (physical address, telephone number, and email address, (if available)) for responsive communications. The Fund Administrator will send the Person a Plan Notice within fifteen (15) days of receiving the Person's documentation, if the Fund Administrator determines that the Person should have received a Plan Notice.

Certification Requirement by Preliminary Claimants and Failure to Respond to Plan Notice

39. In order to maintain classification as a Preliminary Claimant, the Certification Form must be signed by the Preliminary Claimant under penalty of perjury under the laws of the United States and returned to the Fund Administrator by the deadline stated in the Plan Notice. The Certification Form must be executed by the Preliminary Claimant, unless the Fund Administrator accepts such Certification Form from a successor, heir, administrator, or other Person authorized to act on the Preliminary Claimant's behalf. Those authorized to act on behalf of Preliminary Claimants will be eligible to participate in the distribution to the same extent the original investor would have been eligible under the terms of the Plan.

40. The Fund Administrator will review all Certification Forms. Each Preliminary Claimant will have the burden of proof to establish their identity as a Preliminary Claimant. The Fund Administrator will have the right to request, and the Preliminary Claimant will have the burden of providing to the Fund Administrator, any additional information and/or documentation deemed relevant by the Fund Administrator.

41. If a Preliminary Claimant fails to return the Certification Form and any other information needed, such as tax forms, within sixty (60) days from the initial mailing of the Plan Notice, the Fund Administrator will make no fewer than two (2) attempts to contact the Preliminary Claimant by telephone or email, if known to the Fund Administrator. If a Preliminary Claimant fails to respond to the Fund Administrator's contact attempts as described in this paragraph, the Fund Administrator, in her discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

Review of Certification Forms and Deficiency Process

42. The Fund Administrator will provide a Determination Notice within forty-five (45) days of the Certification Date to each Preliminary Claimant who has filed a deficient Certification Form with the Fund Administrator. The Determination Notice will provide to each Preliminary Claimant whose claim is deficient, in whole or in part, the reason(s) for the deficiency (e.g., failure to provide required information or documentation). In the event the claim is denied, in whole or in part, the Determination Notice will state the reason(s) for such denial. The Determination Notice will also notify the Preliminary Claimant of the opportunity to cure any deficiency, request reconsideration, or dispute the determination made by the Fund Administrator and provide instructions regarding what is required to do so.

43. Any Preliminary Claimant with a deficient claim will have thirty (30) days from the date of the Determination Notice to cure any deficiencies identified in the Determination Notice.

44. Any Preliminary Claimant seeking reconsideration of a denied claim must advise the Fund Administrator in writing within thirty (30) days of the date of the Determination Notice. All requests for reconsideration must include the necessary documentation to substantiate the basis upon which the Preliminary Claimant is requesting reconsideration of his, her, or its claim.

45. The Fund Administrator will have the authority, in its sole discretion, to waive technical claim deficiencies and approve claims on a case-by-case basis, or in groups of claims. All determinations made by the Fund Administrator in accordance with the Plan in any dispute, request for reconsideration, or request to cure a deficient claim will be final and not subject to appeal.

Dispute Process

46. Disputes will be limited to Preliminary Claimant's Recognized Loss calculation. Within forty-five (45) days of the emailing and/or mailing of the Plan Notice, the Fund Administrator must receive the Certification Form and a written communication detailing any

dispute along with supporting documentation. The Fund Administrator will investigate any dispute. Such investigation will include a review of the written dispute as well as any supporting documentation.

Final Determination Notices

47. Within one hundred eighty (180) days of Commission approval of the Plan, the Fund Administrator will send a Final Determination Notice to (a) any Preliminary Claimant who timely submitted a written dispute as described in paragraph 46 above, notifying the Preliminary Claimant of her resolution of the dispute; and (b) those Preliminary Claimants who have not responded to the Plan Notice, as described in paragraph 41 above, notifying the Preliminary Claimant that he, she, or it has been deemed an Unresponsive Preliminary Claimant. Those Preliminary Claimants whose Plan Notices were returned as undeliverable will not receive a Final Determination Notice.

Distribution Methodology

48. The Fund Administrator will calculate each Preliminary Claimant's Recognized Loss in accordance with the Plan of Allocation. All Preliminary Claimants who are determined to have a Recognized Loss, and who are not deemed an Excluded Party or an Unresponsive Preliminary Claimant will be deemed an Eligible Claimant. All Eligible Claimants whose distribution amount is equal to or greater than \$10.00, as calculated in accordance with the Plan of Allocation, will be deemed a Payee and receive a Distribution Payment.

Establishment of a Reserve

49. Before determining the amount of funds available for distribution and calculating each Payee's Distribution Payment, the Fund Administrator, in conjunction with the Tax Administrator, will establish a reserve to pay Administrative Costs and to accommodate any unexpected expenditures (the "Reserve").

50. After all Distribution Payments are made and Administrative Costs paid, any remaining amounts in the Reserve will become part of the Residual described in paragraph 63 below.

Preparation of the Payment File

51. Within two hundred ten (210) days of Commission approval of the Plan, the Fund Administrator will compile and send to the Commission staff the Payee information, including the name, address, calculated Recognized Loss, and the amount of the Distribution Payment for all Payees (the "Payee List") to make disbursements through the U.S. Treasury.

Distribution of the Fair Fund

52. Pursuant to Rule 1101(b)(6) of the Commission's Rules, 17 C.F.R. § 201.1101(b)(6), the Commission staff will obtain an order from the Commission authorizing

the disbursement of funds from the Net Available Fair Fund for distribution to Payees in accordance with the Payee List. The U.S. Treasury will mail checks or electronically transfer funds to each Payee as instructed by the Fund Administrator in accordance with the Payee List.

53. All checks will bear a stale date of one (1) year from the date of issuance. Checks that are not negotiated by the stale date will be voided. A Payee's claim will be extinguished if he, she, or it fails to negotiate his, her or its check by the stale date, and the funds will remain in the Fair Fund, except as provided in paragraph 57.

54. All Distribution Payments will be preceded or accompanied by a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a statement that the tax treatment of the distribution is the responsibility of each Payee and that the Payee should consult his, her or its tax advisor for advice regarding the tax treatment of the distribution; (c) a statement that checks will be void and cannot be reissued after one (1) year from the date the original check was issued; and (d) contact information for the Fund Administrator for questions regarding the Distribution Payment. The letter or other mailings to Payees characterizing a Distribution Payment will be prepared by the Tax Administrator and submitted to the Commission staff for review and approval.

55. All Distribution Payments, either on their face or in the accompanying mailing, will clearly indicate that the money is being distributed from the Fair Fund established by the Commission to compensate investors for harm as a result of securities law violations.

Post Distribution; Handling of Returned or Uncashed Checks; and Reissues

56. The Fund Administrator shall use its best efforts to make use of commercially available resources and other reasonably appropriate means to locate all Payees whose checks are returned to the Fund Administrator as "undeliverable." If new address information becomes available, the Fund Administrator will repackage the distribution check and send it to the new address. If new address information is not available after a diligent search (and in no event no later than one (1) year after the initial mailing of the original check) or if the distribution check is returned again, the check shall be voided, and the Fund Administrator shall instruct the issuing financial institution to stop payment on such check. If the Fund Administrator is unable to find a Payee's correct address, the Fund Administrator, in her discretion, may remove such Payee from the distribution and the allocated Distribution Payment will remain in the Fair Fund for distribution, if feasible, to the remaining Payees.

57. The Fund Administrator will reissue checks or electronic payments to Payees upon the receipt of a valid, written request from the Payee if prior to the initial stale date. In cases where a Payee is unable to endorse a Distribution Payment check as written (*e.g.*, name changes, IRA custodian changes, or recipient is deceased) and the Payee or a lawful representative requests the reissuance of a Distribution Payment check in a different name, the Fund Administrator will request, and must receive, documentation to support the requested change. The Fund Administrator will review the documentation to determine the authenticity and propriety of the change request. If, in the discretion of the Fund Administrator, such change request is properly documented, the Fund Administrator will issue an appropriately redrawn

Distribution Payment to the requesting party. In no event will a check be reissue after one (1) year from the date of the original issuance without the approval of Commission staff.

58. The Fund Administrator will work with the U.S. Treasury and maintain information about uncashed checks and any returned items due to non-delivery, insufficient addresses, and/or other deficiencies. The Fund Administrator is responsible for researching and reconciling errors and reissuing payments when possible. The Fund Administrator is also responsible for accounting for all payments. The amount of all uncashed and undelivered payments will continue to be held in the Fair Fund.

59. The Fund Administrator will make and document its best efforts to contact Payees to follow-up on the status of uncashed distribution checks over \$100 (other than those returned as “undeliverable”) and take appropriate action to follow-up on the status of uncashed checks. The Fund Administrator may reissue such checks, subject to the time limits detailed herein.

60. At the discretion of the Fund Administrator, certain costs that were not factored into the Reserve, such as bank fees for the return of a payment, may reduce the Payee’s Distribution Payment. In such situations, the Fund Administrator will immediately notify the Tax Administrator of the reduction in the Distribution Payment.

Receipt of Additional Funds

61. Should any additional funds be received pursuant to Commission or Court order, agreement, or otherwise, prior to the Commission’s termination of the Fair Fund, such funds will be added to the Fair Fund and distributed, if feasible, in accordance with the Plan, pursuant to the Commission’s Rules.

Disposition of Undistributed Funds

62. If funds remain following the initial distribution and payment of all Administrative Costs, the Fund Administrator, in consultation with the Commission staff, may seek subsequent distribution(s) of any available remaining funds, pursuant to the Commission’s Rules. All subsequent distributions shall be made in a manner that is consistent with this Plan.

63. A residual within the Fair Fund will be established for any amounts remaining after the final disbursement to Payees from the Fair Fund and the payment of all Administrative Costs (the “Residual”). The Residual may include funds from, among other things, amounts remaining in the Reserve, distribution checks that have not been cashed, checks or electronic payments that were not delivered or were returned to the Commission, and tax refunds for overpayment of taxes or for waiver of IRS penalties.

64. All funds remaining in the Residual that are infeasible to distribute to investors will be transferred to the U.S. Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934 (the “Exchange Act”), after the final accounting is approved by the Commission. Returning such money to the Respondents would be inconsistent with the equitable principle that no Person should profit from his wrongdoing. Therefore, in these circumstances distributing

disgorged funds to the U.S. Treasury is the most equitable alternative.

Administrative Costs

65. All Administrative Costs will be paid from the Fair Fund in accordance with the Commission's Rules.

Accountings

66. When all funds have been disbursed, except for the Residual described in paragraph 63 of the Plan, the Fund Administrator will submit a final accounting pursuant to Rule 1105(f) of the Commission's Rules, 17 C.F.R. § 201.1105(f), for the Commission's approval prior to termination of the Fair Fund and discharge of the Fund Administrator. Since the funds are being held in a Commission-designated account at the U.S. Treasury and the Fund Administrator is a Commission employee, no interim accountings will be made.

Termination of the Fair Fund

67. The Fair Fund will be eligible for termination and the Fund Administrator will be eligible for discharge after all of the following have occurred (a) a final accounting, in a standard accounting format provided by the Commission staff, has been submitted by the Fund Administrator and approved by the Commission; and (b) all Administrative Costs have been paid. Once the Commission has approved the final accounting, the Commission staff will seek an order from the Commission authorizing: (a) the transfer of the Residual that is infeasible to return to investors, and any amounts returned to the Fair Fund in the future that is infeasible to return to investors, to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act; (b) discharge of the Fund Administrator; and (c) termination of the Fair Fund.

Exhibit A

PLAN OF ALLOCATION

This Plan of Allocation is designed to compensate investors based on their losses on fees associated with trading in their Alexander Capital accounts from July 1, 2012 through September 30, 2014 (the “Relevant Period”) due to the misconduct of the Respondents’ conduct described in the Orders. Based upon records obtained by the Commission during its investigation, the Fund Administrator has identified those investors, or their lawful successors, who were harmed by the misconduct during the Relevant Period (the “Preliminary Claimants”).

Staff at the Commission has calculated each Preliminary Claimant’s “Recognized Loss” using records obtained by the Commission during its investigation. The Recognized Loss for each Preliminary Claimant is equal to the sum of fees associated with trading (including, but not limited to, commissions, mark-ups, mark-downs, and handling fees) in the Preliminary Claimant’s account at Alexander Capital during the Relevant Period.

To avoid payment of a windfall, the Recognized Loss will be reduced by the amount of any compensation for the loss that resulted from the conduct described in the Orders that was received from Respondents or another source (e.g., class action settlement), to the extent known by the Fund Administrator.

Any Preliminary Claimant who suffered a Recognized Loss pursuant to this Plan of Allocation, and who is not an Excluded Party or an Unresponsive Preliminary Claimant, as defined in the Plan, will be deemed an Eligible Claimant.

Additional Provisions

Allocation of Funds: If the Net Available Fair Fund, as defined in the Plan, is equal to or exceeds the sum of Recognized Losses of all Eligible Claimants, each Eligible Claimant’s distribution amount will equal his, her or its Recognized Loss, plus “Reasonable Interest” if applicable. If the Net Available Fair Fund is less than the sum of the Recognized Losses of all Eligible Claimants, each Eligible Claimant’s distribution amount will equal his, her or its “*Pro Rata Share*” of the Net Available Fair Fund (and no Reasonable Interest). In either case, the distribution amount will be subject to the “Minimum Distribution Amount.”

Reasonable Interest: If the Net Available Fair Fund exceeds that necessary to pay all Eligible Claimants his, her, or its Recognized Loss in full, the Fund Administrator, in consultation with the Commission staff, may include interest in the distribution amount to compensate Eligible Claimants for the time value of his, her, or its respective Recognized Losses. Reasonable Interest will be calculated using the Short-term Applicable Federal Rate plus three percent (3%), compounded quarterly from the end of the Relevant Period through the approximate date of the disbursement of the funds. If there are insufficient funds to pay Reasonable Interest in full to all Eligible Claimants, each Eligible Claimant’s Reasonable Interest amount will be equal to his, her or its *Pro Rata Share* of the excess funds.

Pro Rata Share: A *Pro Rata* Share computation is intended to measure Eligible Claimants' Recognized Losses against one another. The Fund Administrator shall determine each Eligible Claimant's *Pro Rata* Share as the ratio of his, her, or its Recognized Loss to the sum of Recognized Losses of all Eligible Claimants.

Minimum Distribution Amount: The Minimum Distribution Amount will be \$10.00 (inclusive of Reasonable Interest, if any). If an Eligible Claimant's distribution amount is less than the Minimum Distribution Amount, that Eligible Claimant will be deemed ineligible to receive a Distribution Payment and his, her, or its distribution amount will be reallocated on a *pro-rata* basis to Eligible Claimants whose distribution amounts are greater than or equal to the Minimum Distribution Amount.

Payee: An Eligible Claimant whose distribution amount equals or exceeds the Minimum Distribution Amount will be deemed a Payee.

Distribution Payment: Each Payee will receive a Distribution Payment equal to his, her, or its calculated distribution amount. In no event will a Payee receive from the Fair Fund more than his, her, or its Recognized Loss, plus Reasonable Interest, if applicable.