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BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR

In the Matter of)
) CSI Case Number: SEC-2016-106
)
ALEXANDER CAPITAL, L.P., a) **NOTICE OF PROPOSED AGENCY**
Montana licensed broker-dealer;) **ACTION AND OPPORTUNITY FOR**
WILLIAM GENNITY;) **HEARING**
JOSEPH CONNOLLY;)
FRANCINE LANAIA;)
BARRY EISENBERG; and)
ROBERT FEINMAN,)
)
Respondents.

TO: Alexander Capital, L.P.
17 State Street
5th Floor
New York, NY 10004

William Gennity
80 Bay Street Landing Apt. 6L
Staten Island, NY 10301

Joseph Connolly
51 Wolcott Avenue
Staten Island, NY 10312

Francine Lanaia
4 Williamsburg Drive
Fort Salanga, NY 11768

Barry Eisenberg
818 North Berks Street
Allentown, PA 18104

Robert Feinman
101 Flagg Place
Staten Island, NY 10304

PLEASE TAKE NOTICE:

The Office of the Montana State Auditor, Commissioner of Securities and Insurance (CSI), pursuant to the authority of the Securities Act of Montana (Mont. Code Ann. § 30-10-101 et seq.), is proposing that the Commissioner of Securities and Insurance, Office of the Montana State Auditor (Commissioner) take action against Alexander Capital, L.P. (Respondent AC), William Gennity (Respondent Gennity), Joseph Connolly (Respondent Connolly), Francine Lanaia (Respondent Lanaia), Barry Eisenberg (Respondent Eisenberg), and Robert Feinman (Respondent Feinman). The CSI is proposing that the Commissioner take action including, but not limited to, appropriate fines, restitution, and license revocation.

JURISDICTION

The Commissioner has authority to take such action under the provisions of Mont. Code Ann. §§ 30-10-102, -107, -201, -301, -305 and 30-10-309.

RELEVANT FACTS

Investigation has revealed the following relevant facts:

1. Respondent Alexander Capital, L.P. (CRD # 40077) (Respondent AC), became registered in Montana as a broker-dealer of securities in January 2010, and is currently registered in that capacity.

2. Respondent Gennity (CRD # 4913490) was registered in Montana as a securities salesperson from April 2012 until October 2014. He was acting as a salesperson when dealing with Charles Graveley (Graveley) and Tri-G Corporation during the relevant dates and times of this action. A complaint by an investor against Respondent Gennity was reported to the Financial Industry Regulatory Authority's (FINRA) Central Registration Depository (CRD) in August 2014. The complaint included allegations of churning (see explanation below) and unsuitable investment practices by Respondent Gennity while he was working at Respondent AC. It was resolved by agreement, including that Respondent Gennity pay the complainant. Two more complaints against Respondent Gennity have been reported to CRD, including one by Graveley.

3. Respondent Connolly (CRD # 5896793) was registered in Montana as a securities salesperson from April 2013 until May 2014. He was acting as a salesperson when dealing with Graveley and Tri-G Corporation from April 2013 until he terminated employment in May 2014. In August 2014, the previously referenced complaint against Respondent Gennity was also reported to CRD as against Respondent Connolly. Graveley's complaint has also been reported.

4. Respondent Lanaia (CRD # 1415689) is not registered in Montana in a securities-related capacity and was not during the relevant time periods. She was the

supervisor for Respondents Gennity and Connolly from prior to the time they began dealing with Charles Graveley through December 31, 2013. She left the firm at the end of December 2013. Since May 2004, two complaints have been reported to CRD against Respondent Lanaia involving failure to supervise by her at two different investment firms. Additionally, she was the subject of a regulatory action by FINRA in July 2009 for her failure to supervise. A complaint regarding her practices while at Respondent AC includes allegations of unsuitable investment practices, failure to supervise, and churning.

5. Respondent Eisenberg (CRD # 2313107) was registered in Montana as a securities salesperson in May 2013 and is currently registered in that capacity. He is identified on Respondent AC's Form BD on CRD (which maintains registration filings for all broker-dealer firms and individuals associated with the firms) as its Branch Manager Supervisor. Respondent Eisenberg was the supervisor for Respondents Gennity and Connolly from January through August 2014.

6. Respondent Feinman (CRD # 205708) is not registered in Montana in a securities-related capacity and was not during the relevant time periods. He was employed with Respondent AC from June 2014 until March 2016. Respondent AC's Form BD listed Respondent Feinman as the Chief Executive Officer during that time period.

7. In April 2013, Charles Graveley, a Montana resident, transferred \$318,697 to Respondent AC; and from April 8, 2013, through August 6, 2014, 213 securities trades were made by Respondent AC and its salespersons Respondents Gennity and Connolly. Forty (40) different securities were purchased and sold and a loss of over \$200,000 was

realized in Graveley's account. Respondents charged Graveley approximately \$289,944.75 in commissions on the 213 trades during this time period.

8. Graveley closed the account in August 2014. Investigation by the CSI revealed that the Looper turnover rate in Graveley's account was 57.9 based on purchases, and 57.1 based on sales.¹ Such high turnover rates are evidence of Respondents engaging in "churning."

9. In February 2014, Graveley opened an account with AC in the name of Tri-G Corporation. Graveley invested \$46,000 and transferred in a stock position of \$4,925 from his personal AC account, for a total investment in the Tri-G Corporation account of \$50,925. From April 2014 through August 2014, 12 securities trades were made by Respondent AC and its salespersons Respondents Gennity and Connolly. Three securities were purchased and sold, and a loss of over \$45,000 was realized in Tri-G Corporation's account. Respondents charged Tri-G Corporation approximately \$4,265.94 in commissions on 12 trades during this time period.

10. Graveley closed the Tri-G Corporation account in August 2014. Investigation by the CSI revealed that the Looper turnover rate in Tri G's account was 3.5 based on purchases and 2.16 based on sales. Such high turnover rates are evidence of Respondents engaging in "churning."

¹ The Looper turnover rate generally calculates the total dollar amount of purchases during a time period divided by the average account equity and then annualized. *See generally* 38 S.E.C 294 (1958) The rule of thumb concerning turnover is often referred to as the "2-4-6 Rule " The guidelines view annual turnover rates as follows:

- Twice a year turnover is "suggestive" of excessive trading;
- Four times a year turnover is "indicative" of excessive trading, and
- Six times a year turnover is "conclusive" of excessive trading

11. By letter dated February 3, 2016, Graveley notified the CSI of his experiences with the Respondents. The complaint included allegations of churning to produce excessive commissions and unauthorized trading. In February 2016, the CSI requested relevant information, documents, communications, and recordings regarding Graveley's and Tri G Corporation's account, and the relationship between Graveley and all respondents. In response, some documentation was produced, but Respondents claimed financial hurdles to producing telephone records.

12. With regard to recordings, Respondents first stated that none existed, then produced a recording of a telephone call on September 3, 2014, from Respondent Feinman to Graveley. During the telephone call, Graveley stated that there were many problems with what the Respondents had done with his money, and that his directions were ignored. He stated that his authorization was not sought or received for the transactions accomplished by the salespersons (including transactions on margin) and complained generally about the firm's practices, as well as the outcomes requiring large sums of money from him. In response to Graveley's complaint about unauthorized trading, Feinman implied it was Graveley's obligation to remedy the salespersons' unauthorized trading, rather than the salespersons' obligation to consistently obtain authorization: "[Y]ou could have told [the AC salespersons], 'No, I didn't want that trade, cancel the trade, I don't want it.'"

13. On February 8, 2016, the CSI sent to Respondent AC's Chief Compliance Officer, Luis Restrepo, a letter notifying Respondent AC that the CSI had received a written complaint against the firm, Respondent Gennity, and Respondent Connolly; and

that the complaint alleged “unsuitable and excessive trading, as well as excessive commissions.” The CSI provided the firm a copy of the complaint within the following week. Respondents AC, Feinman, Eisenberg, Gennity, and Connolly did not amend Gennity’s and Connolly’s U4s to report the complaint until April 15, 2016.

14. Respondent AC disclosed three margin-related documents to the CSI on Graveley’s personal account. One RBC Credit Account Agreement was signed by Graveley on April 10, 2013, the same day he completed his initial new account form. On both documents Graveley wrote, “This is not a margin account,” and initialed the statement. A second RBC Credit Account Agreement was signed June 6, 2013. In a handwritten note on the form, Graveley stated the agreement was limited to a single purchase of SPWR stock that had occurred on May 28, 2013. A third RBC Credit Account Agreement was signed June 17, 2013. In a cover letter, Graveley noted the agreement was to be used specifically to purchase additional SPWR shares.

15. Respondent AC and its salespersons Respondents Gennity and Connolly actively traded on margin without authorization to do so. Graveley’s personal account had a margin balance nearly the entire time it was open. Nearly every security in Graveley’s personal account was purchased on margin, when Graveley had authorized two margin trades. Respondent AC charged Graveley a total of \$16,976.69 in margin loan interest on his personal account.

16. The trade confirmations sent for both the Graveley and Tri-G Corporation accounts did not accurately reflect the true extent of compensation Respondents received on those trades. Nearly every confirmation showed a \$49.00 commission/handling cost.

However, Respondents received the bulk of compensation through share price markups or markdowns on the same transactions. For the 213 transactions on Graveley's personal account, \$10,437 in commissions was reported on the confirmations; through markdowns or markup, Respondents charged an additional \$279,507.75, for total commissions of \$289,944.75. The confirmations did not disclose the dollar value of associated markdowns or markups.

17. The CSI reviewed AC's written policies and procedures. This review revealed that, with respect to the conduct identified herein, AC and its staff failed to follow AC's procedures on the following topics: supervisory review of registered representatives, maintenance of complete and accurate client documentation (including new account forms and margin agreements), suitability of transactions, churning, margin account practices, and appropriateness of commissions charged.

18. Based upon its investigation, the CSI could not identify significant efforts on the parts of Respondents AC, Lanaia, or Eisenberg to ensure Respondents Gennity and Connolly followed the firm's written policies and procedures, or to otherwise ensure those parties' compliance with Montana securities laws.

APPLICABLE LAW

1. Montana law provides that the Commissioner is to administer the Securities Act of Montana (Mont. Code Ann. §§ 30-10-101 et seq.) to protect investors, persons engaged in securities transactions, and the public interest. Mont. Code Ann. §§ 30-10-102, -107.

2. Montana law provides:

Registration and notice filing requirements of broker-dealers, salespersons, investment advisers, and investment adviser representatives. (1) It is unlawful for a person to transact business in this state as a broker-dealer or salesperson, except as provided in 30-10-105, unless the person is registered under parts 1 through 3 of this chapter.

(2) It is unlawful for a broker-dealer or issuer to employ a salesperson to represent the broker-dealer or issuer in this state, except in transactions exempt under 30-10-105, unless the salesperson is registered under parts 1 through 3 of this chapter.

...

(7) The application must contain whatever information the commissioner requires. A registration application of a broker-dealer, salesperson, investment adviser, or investment adviser representative may not be withdrawn before the commissioner approves or denies the registration, without the express written consent of the commissioner.

...

(13) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesperson, investment adviser, or investment adviser representative if the commissioner finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, director, person occupying a similar status or performing similar functions, or person directly or indirectly controlling the broker-dealer or investment adviser:

...

(b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor law;

...

(f) is the subject of an adjudication or determination, within the past 5 years, by a securities or commodities agency or administrator of another state or a court of competent jurisdiction, that the person has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisors Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act or the securities or commodities law of any other state;

(g) has engaged in dishonest or unethical practices in the securities business;

...; or

(k) has failed to reasonably supervise the person's salespersons or employees or investment adviser representatives or employees to ensure their compliance with this act.

...

(18) The commissioner may, after suspending or revoking registration of any broker-dealer, salesperson, investment adviser, or investment adviser representative, impose a fine not to exceed \$5,000 upon the broker-dealer, salesperson, investment adviser, or investment adviser representative. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of any fine under this subsection is an order from which an appeal may be taken pursuant to 30-10-308. If any broker-dealer, salesperson, investment adviser, or investment adviser representative fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of the broker-dealer, salesperson, investment adviser, or investment adviser representative in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of a broker-dealer, salesperson, investment adviser, or investment adviser representative to pay a fine also constitutes a forfeiture of the right to do business in this state under parts 1 through 3 of this chapter. . . .

Mont. Code Ann. § 30-10-201.

3. Montana law provides:

Fraudulent and other prohibited practices. (1) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, in, into, or from this state, to:

- (a) employ any device, scheme, or artifice to defraud;
- (b) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
- (c) engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.

...

Mont. Code Ann. § 30-10-301.

4. Montana law provides:

FRAUDULENT AND UNETHICAL PRACTICES PROHIBITED BY
BROKER-DEALERS AND SALESMEN

(1) For purposes of 30-10-201 and 30-10-301, MCA, fraudulent and unethical practices means, but is not limited to:

(b) inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

(c) recommending to a customer the purchase, sale, or exchange of a security without grounds to believe that the transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer;

(d) executing a transaction on behalf of a customer without authorization to do so;

(e) exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders or to both time and price for the execution of orders;

(f) executing a transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;

. . .

(k) charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends, or interest; exchange or transfer of securities; appraisals, safekeeping, or custody of securities; and other services related to its securities business; . . . or

(u) engaging in other conduct such as forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices.

Admin. R. Mont. 6.10.401

5. Montana law provides:

REGISTRATION AND EXAMINATION - SECURITIES
SALESPERSON, INVESTMENT ADVISER REPRESENTATIVES,
BROKER-DEALERS, AND INVESTMENT ADVISERS

. . .

(2) Each application for registration in this state must be made on the most current revised uniform application form as adopted by the North American Securities Administrators Association (NASAA), unless the commissioner, by order, designates another form. Broker-dealers shall use FINRA form BD, investment adviser representatives shall use FINRA form ADV, and securities salespersons and investment adviser representatives shall use FINRA form U-4.

(5) Each change in the information included in an application for registration or termination must be set forth in an amendment to the application and filed with the commissioner within 30 days after the change occurs.

Admin. R. Mont. 6.10.501

ALLEGATIONS AND RELIEF REQUESTED BY CSI

Respondents Lanaia, Eisenberg, Feinman, and AC

Based on the foregoing, the CSI alleges that Respondents Lanaia, Eisenberg, Feinman, and AC failed to reasonably supervise Respondents Gennity, Connolly, and other employees who assisted the securities transactions described above to ensure their compliance with the Securities Act of Montana (Mont. Code Ann. §§ 30-10-101 et seq.).
Mont. Code Ann. § 30-10-201.

The CSI seeks the following:

1. That the Commissioner fine Respondents in an amount not to exceed \$5,000 for each identifiable violation, pursuant to Mont. Code Ann. § 30-10-305(3);
2. That the Commissioner order Respondents to pay restitution pursuant to Mont. Code Ann. § 30-10-309(1);
3. That the Commissioner revoke the registration of Respondent AC in Montana pursuant to Mont. Code Ann. § 30-10-201(13);

4 That the Commissioner revoke the registration of Respondent Eisenberg in Montana pursuant to Mont. Code Ann. § 30-10-201(13); and

5. That the Commissioner order other such relief as the Commissioner deems appropriate.

Respondents Gennity, Connolly, and AC

Based on the foregoing, the CSI alleges that the practices of buying, trading, and selling securities of Respondent AC using Graveley's and Tri-G Corporation's money from April 2013 through August 2014 involved the fraudulent and unethical practices of:

1. Inducing trading Graveley's and/or Tri-G Corporation's account(s) which was excessive in size or frequency in view of the financial resources and character of the account (churning);
2. Engaging in the purchase, sale, or exchange of a security without grounds to believe that the transaction was suitable for Graveley and/or Tri-G Corporation based upon relevant information known by the broker-dealer;
3. Executing a transaction on behalf of Graveley or Tri-G Corporation without authorization to do so;
4. Exercising discretionary authority on the accounts of Graveley and/or Tri-G Corporation without first obtaining in writing such discretionary authority;
5. Executing a transaction in a margin account without securing from Graveley or Tri-G Corporation a properly-executed written margin agreement promptly after the initial transaction in the account;

6. Charging unreasonable and inequitable fees for services performed related to its securities business; and

7. Engaging in other conduct such as forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices.

These practices and acts are disallowed by Montana Code Annotated Section 30-10-301 and Admin. R. Mont. 6.10.401(1).

Additionally, the CSI alleges that Respondents Gennity, Connolly, and AC failed to timely amend Gennity's and Connolly's U4 as required under Montana law and by FINRA when they received notice of Gennity's written complaint to the CSI in February 2016. Admin. R. Mont. 501.

The CSI seeks the following:

1. That the Commissioner fine Respondents in an amount not to exceed \$5,000 for each identifiable violation, pursuant to Mont. Code Ann. § 30-10-305(3);

2. That the Commissioner order Respondents to pay restitution pursuant to Mont. Code Ann. § 30-10-309(1);

3. That the Commissioner revoke the registration of Respondent AC in Montana pursuant to Mont. Code Ann. § 30-10-201(13); and

4. That the Commissioner order other such relief as the Commissioner deems appropriate.

STATEMENT OF RIGHTS OF AND NOTICE TO RESPONDENTS

1. You are entitled to a hearing to respond to this Notice, present evidence, and present arguments on all issues involved in this case. You may have a formal hearing before a hearing examiner appointed by the Commissioner as provided in the Montana Administrative Procedure Act, § 2-4-601 et seq., **if you notify Nick Mazanec**, attorney for the CSI, as set out below.

2. **You must provide a written demand for a formal hearing to:** Nick Mazanac, Attorney, Office of the Montana State Auditor, Commissioner of Securities and Insurance, 840 Helena Avenue, Helena, MT 59601. As stated in Montana Code Annotated Section 33-1-701, "A written demand must specify the grounds relied upon as a basis for the relief sought at the hearing."

3. **Your written demand for a formal hearing must be received by Nick Mazanec on or before August 20, 2016. Failure to make written demand for a formal hearing will result in the entry of a default order by the Commissioner ordering the actions requested above. THIS WILL HAPPEN WITHOUT ANY ADDITIONAL NOTICE TO YOU IF YOU DO NOT MAKE WRITTEN DEMAND AS SET OUT ABOVE.** Administrative Rule of Montana 1.3.214.

4. You have the right to be represented by an attorney at any and all stages of this proceeding. Any such attorney must be admitted to practice law in Montana pursuant to the applicable rules of the State Bar of Montana and the Montana Supreme Court.

DATED this 2nd day of August, 2016.



NICK MAZANEC
BARBARA C. HARRIS
Attorneys for CSI

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 2nd day of August, 2016, a true and correct copy of the foregoing Notice of Proposed Agency Action and Opportunity for Hearing was served upon the following by certified mail, postage prepaid, return receipt requested:

