

**In the Matter of ALLIANCE CAPITAL MANAGEMENT L.P., Respondent**

**ADMINISTRATIVE PROCEEDING File No. 3-9301**

**SECURITIES AND EXCHANGE COMMISSION**

**INVESTMENT ADVISORS ACT OF 1940 Release No. 1630**

**April 28, 1997**

**ACTION: ORDER INSTITUTING PROCEEDINGS, MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS PURSUANT TO SECTION 203(e)(5) OF THE INVESTMENT ADVISERS ACT OF 1940**

**TEXT:**

**I.**

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be instituted against Alliance Capital Management L.P. ("Alliance") pursuant to Section 203(e)(5) of the Investment Advisers Act of 1940 ("Advisers Act").

**II.**

In anticipation of the institution of these proceedings, Alliance has submitted an Offer of Settlement ("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 Commission's findings contained herein, except the Commission's finding set forth in Paragraph III A., which is admitted, Alliance consents to the entry of this Order Instituting Proceedings, Making Findings and Imposing Remedial Sanctions pursuant to Section 203(e)(5) of the Advisers Act ("Order").

Accordingly, IT IS HEREBY ORDERED that proceedings pursuant to Section 203(e)(5) of the Advisers Act be and hereby are instituted.

**III.**

On the basis of this Order and Alliance's Offer, the Commission finds that:

A. At all times between January 1, 1990 and the present, Alliance has been an investment adviser registered with the Commission pursuant to Section 203(c) of the Advisers Act;

B. From March 1990 until February 1992, Roger W. Honour ("Honour") was an associated person of Alliance, acting as the portfolio manager for two technology funds -- the Alliance Technology Fund, a registered investment company and sector fund with approximately \$ 200 million in assets under his management, and the Alliance International Technology Fund, an unregistered sector fund with \$ 20 million in assets under his management (collectively, "The Funds").

Honour, while associated with Alliance, personally traded in securities being bought and sold by The Funds and other Alliance-advised clients on 24 occasions. Honour's trading was done under circumstances constituting a conflict of interest because the clients' investments could reasonably have been foreseen to affect his personal profits. Honour consented to the entry of an Order Instituting Proceedings and Imposing Remedial Sanctions without admitting or denying the findings therein. See In the Matter Of Roger W. Honour, Advisers Act Rel. No. 1527; Company Act Rel. No. 21385, 60 SEC Docket 1053, (September 29, 1995), in which the Commission found that Honour

violated the antifraud provisions of the Investment Company Act of 1940 ("IC Act") and the Advisers Act.

When Honour was associated with Alliance, its compliance department had responsibility for monitoring personal securities trading done by all Alliance employees, including Honour. The firm distributed written policies to its employees regarding personal trading during the time of Honour's employment requiring all personnel to: (1) provide a list of all their personal securities accounts, including those in which they had a beneficial interest, to the Alliance compliance department; (2) ensure that their broker/dealer(s) provided duplicate copies of all trade confirmations and monthly statements directly to the compliance department; and (3) give their "undivided loyalty to [Alliance's] clients" and avoid acts that gave the appearance of creating a conflict of interest. Alliance personnel were also told that personal trading was prohibited when the employee had actual knowledge of client trading or consideration of client trading in a particular security. n2 Employees were permitted to engage in same day trading unless the employee received a better price than the client or there was a market impact from the client trade. If an employee personal trade occurred under prohibited circumstances, the compliance department would require that the employee transaction be cancelled. There was no codification of Alliance's policies or procedures regarding employee trading in the same security on the same day as Alliance clients.

When Honour was associated with Alliance, the compliance department limited its oversight of personal trading to transactions executed in the same security on the same day as Alliance's clients. This review was further limited to personal transactions executed in the same direction as the Alliance client trade -- purchases were compared to purchases and sales were compared to sales. The compliance department spot checked non-same-day trading by Alliance's employees.

The compliance department reviewed personal trading by comparing employee trade confirmations to a list of trades executed by Alliance for its clients' accounts on the same day. If the personal trade was in a security that was not included on the list of trades made by Alliance clients, no further review was conducted. If the personal trade occurred in a security also traded by an Alliance client on the same day and in the same direction, the compliance department compared personal and client trade prices. If the price for the client was equal or better than the price for the personal trade, the trade confirmation was filed and no further review was conducted. Only when a personal transaction was executed at a price more favorable than the client transaction was the trade subject to further scrutiny, an inquiry regarding the circumstance of the personal transaction. Alliance either authorized the trade on a post hoc basis or required it to be cancelled. While Honour was associated with Alliance, Alliance lacked adequate procedures to prevent and detect all of Honour's personal trades made on the same day as client trades. In addition, Alliance lacked adequate procedures to prevent and detect Honour's trading in breach of his fiduciary duties that did not occur on the same day as a client trade during the relevant time.

There is no evidence that Honour was ever required to cancel a personal trade. Nevertheless, on several occasions, Honour placed personal trades on the same day, in the same security and in the same direction as trades executed by Alliance clients but obtained better prices for himself than the prices obtained for the clients.

Citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180 (1963), the Commission has recognized that the "delicate fiduciary relationship" between an investment adviser and a client imposes an obligation on an adviser to review and monitor its activities and the activities of its employees. In *Re Shearson Lehman Brothers, Inc. and Stein Roe & Farnham*, Exchange Act Rel. No. 23640, Advisers Act Rel. No. 1038, (September 24, 1986); See also, *In Re Kemper Financial Services, Inc.*, Advisers Act Rel. No. 1387, Company Act Rel. No. 19804 (October 20, 1993); *In Re Van Kampen American Capital Asset Management, Inc.*, Advisers Act Rel. No. 1525 (September 29, 1995). Alliance failed reasonably to supervise Honour because it did not have either procedures in place providing for adequate oversight of personal trading or proper implementation of those procedures. While Alliance had a written code of ethics in place designed to limit and monitor personal trading by employees, it did not effectively conduct the limited review mandated for itself.

Alliance's personal trading review procedures were not designed to provide sufficient supervision of its employees' personal trading. The oversight procedures did not ensure that personal trades received the appropriate review within the compliance department. Therefore, Alliance's establishment and implementation of procedures while Honour was a portfolio manager to its clients were not reasonably designed to prevent and detect Honour's personal trading in violation of Section 206 of the Advisers Act and Section 17(j) of the IC Act; and

C. Based on the foregoing, the Commission finds that Alliance failed reasonably to supervise Honour with a view toward preventing violations of the antifraud provisions of the Advisers Act and the antifraud provisions of the IC Act.

#### **IV.**

In light of the foregoing, it is in the public interest to impose the sanctions specified in the Offer submitted by Alliance. Accordingly,

IT IS HEREBY ORDERED, that:

A. Alliance be, and hereby is, censured;

B. Alliance shall, within ten business days of the entry of this Order, pay a civil money penalty in the amount of \$ 100,000, pursuant to Section 203(i) of the Advisers Act, to the United States Treasury. Such payment shall be: (1) made by United States postal money order, certified check, bank cashier's check, or bank money order; (2) made payable to the Securities and Exchange Commission; (3) hand-delivered to the Office of the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6-9, Washington, D.C. 20549; and (4) submitted under cover letter identifying Alliance as a Respondent in these proceedings, and the Commission's administrative proceeding file number in this matter, a copy of which shall be sent to Mary E. Keefe, Regional Director, Midwest Regional Office, United States Securities and Exchange Commission, 500 West Madison Street, Suite 1400, Chicago, Illinois 60661;

C. Alliance undertakes to:

1. retain, within 30 days of the date of this Order, at Alliance's expense, an independent consultant, not unacceptable to the staff of the Midwest Regional Office, to:

- a. conduct a comprehensive review of all of Alliance's policies and oversight procedures concerning personal trading by Alliance's directors, officers and employees;

- b. review any policies and procedures that Alliance has adopted and implemented since the activities described in this Order to determine whether and to what extent there is a need for additional or amended policies and procedures designed reasonably to prevent and detect, insofar as practicable, the same or similar violations of the federal securities laws;

- c. recommend policies and procedures for implementation of those policies (or amendments to existing policies and procedures) designed reasonably to prevent and detect, insofar as practicable, the same or similar violations of the federal securities laws. Alliance may suggest an alternative procedure designed to achieve the objective or purpose of any recommendation made by the independent consultant if Alliance determines, in good faith and with just cause, that any such recommended procedure would be unduly burdensome. Alliance must submit to the independent consultant a written explanation of the alternative procedure, including a description of how such alternative procedure would achieve the same objective or purpose as the independent consultant's original recommendation, a plan for implementation of the alternative procedure and a timetable for implementation of the alternative procedure. Alliance

and the independent consultant shall then attempt in good faith to reach agreement as to any such proposal made by Alliance. The independent consultant shall make the final determination and Alliance will abide by the independent consultant's determinations with regard thereto;

d. submit a written report to Alliance's Board of Directors of his or her findings and recommendations, within ten weeks of the date of this Order. Simultaneous with the submission of the written report to Alliance's Board of Directors, a copy of the report, including a summary of Alliance's alternative procedures and the plan for their implementation, shall be submitted to the Regional Director of the Midwest Regional Office, 500 West Madison Street, Suite 1400, Chicago, Illinois 60661;

e. conduct a comprehensive audit of Alliance's implementation of all of the policies and procedures concerning personal trading by Alliance's directors, officers and employees, contained in the written report referenced above in item C.1.d to ensure compliance with those procedures and any other procedures implemented by Alliance one year after the issuance of the written report referenced above in item C.1.d. As a result of such audit, the independent consultant may recommend additional procedures or revisions to existing procedures, to achieve the objective outlined in items C.1.b. and c. above. With respect to any additional recommendations, Alliance may suggest an alternative procedure designed to achieve the objective or purpose of any recommendation made by the independent consultant if Alliance determines, in good faith and with just cause, that any such recommended procedure would be unduly burdensome. Alliance must submit to the independent consultant a written explanation of the alternative procedure, including a description of how such alternative procedure would achieve the same objective or purpose as the independent consultant's original recommendation, a plan for implementation of the alternative procedure and a timetable for implementation of the alternative procedure. Alliance and the independent consultant shall then attempt in good faith to reach agreement as to any such proposal made by Alliance. The independent consultant shall make the final determination and Alliance will abide by the independent consultant's determinations with regard thereto;

f. prepare a written report of his or her findings from the one year audit described in item C.1.e. above and submit a copy of the report to the Regional Director of the Midwest Regional Office, 500 West Madison Street, Suite 1400, Chicago, Illinois 60661 within 30 days of the completion of his or her audit. The report shall also contain a report of any material failure by Alliance to comply with the procedures and system for applying those procedures described in items C.1.b. and c. above;

2. submit a written, sworn affidavit by the General Counsel of the firm and the Chairman of the Board of Directors, within 30 days of receipt of the independent consultant's report, specifically explaining each and every modification made pursuant to the undertaking described in item C.1.d. and certifying that each and every modification is completed. Such affidavit shall be submitted to the Regional Director of the Midwest Regional Office, 500 West Madison Street, Suite 1400, Chicago, Illinois 60661. The Regional Director may, in her discretion, after a showing, by the Chairman of the Board of Alliance, of good cause and best efforts to comply with the deadline, grant a 30 day extension to the deadline for submission of the affidavit described above;

3. cooperate fully with the independent consultant, including using all reasonable efforts to obtain cooperation of Alliance's associated persons and employees or other persons under its control, and giving the independent consultant full access to all documents and premises under Alliance's control; and

4. To ensure the independence of the independent counsel, Alliance:

a. shall not have the authority to terminate the independent consultant without the prior written approval of the Regional Director of the Midwest Regional Office of the Commission; and

b. shall not be in and shall not have an attorney-client relationship with the independent consultant regarding his or her its work undertaken pursuant to this Order and shall not seek to invoke the attorney-client or other doctrine or privilege to prevent the independent consultant from transmitting any information, reports, or documents to the Commission or its staff.

By the Commission.

**Footnotes**

n1 The findings herein are made pursuant to Alliance's Offer and are not binding on any other person or entity named in this or any other proceeding.

n2 Personnel in the human resources department gave the written policies and oral instructions to Honour and all employees not working in the New York headquarters.