

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3590 / April 19, 2013**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15293**

**In the Matter of**

**FOXHALL CAPITAL  
MANAGEMENT, INC. AND  
PAUL G. DIETRICH,**

**Respondents.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO SECTIONS 203(e), 203(f)  
AND 203(k) OF THE INVESTMENT  
ADVISERS ACT OF 1940, MAKING  
FINDINGS, AND IMPOSING REMEDIAL  
SANCTIONS AND A CEASE-AND-DESIST  
ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), against Foxhall Capital Management, Inc. (“Foxhall”) and Paul G. Dietrich (“Dietrich”) (collectively referred to as “Respondents”).

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) 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 them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and Respondents' Offers, the Commission finds that:

1. Between January 1, 2007 and September 3, 2009, the relevant time period at issue, Foxhall Capital Management, Inc. ("Foxhall"), a registered investment adviser, failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules, as required by Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. Foxhall also failed to keep complete and accurate records as required by Section 204 of the Advisers Act. The Commission's examination staff conducted an examination of Foxhall in 2009 and alerted it to deficiencies regarding its compliance program, including: Foxhall's failure to follow its stated policies and procedures in its compliance manual; Foxhall's failure to maintain adequate records of its trading; and Foxhall's failure to timely conduct the required 2007 annual compliance review. The Commission's examination staff referred the matter to enforcement staff for further investigation. Enforcement staff determined that Foxhall's deficiencies continued after the examination period. Specifically, Foxhall's trade management system did not interface properly with its primary broker-dealer and custodian's ("custodian's") trading platform which caused Foxhall to not always have the most up-to-date information about its client account balances. As a result, when trades were placed, certain clients did not have sufficient funds in their accounts to purchase their allocated shares within the larger block trade. When certain clients could not purchase their shares due to insufficient funds, Foxhall's practice was to reallocate these shares to other clients who were within the same investment model portfolio. However, it did so without regard as to whether the share price increased or decreased from the date of the original trade.

2. During the relevant time period, Foxhall did not maintain complete and accurate records concerning the process it followed when clients had insufficient funds to receive allocated shares and its decision to reallocate shares to other clients. In addition, Paul G. Dietrich ("Dietrich"), Foxhall's Chief Executive Officer ("CEO"), Co-Chief Investment Officer ("Co-CIO") as well as its then Chief Compliance Officer ("CCO"), and Foxhall failed to conduct a timely annual review of Foxhall's 2007 compliance policies and procedures.

### Respondents

3. **Foxhall**, headquartered in Middleburg, Virginia, was founded in 1986 and has been registered with the Commission as an investment adviser since 1987. When Paul G. Dietrich purchased Nye, Parnell and Emerson Capital Management, Inc. ("NPE") in 1999, he renamed the firm Foxhall. In its Form ADV, filed on July 20, 2012, Foxhall reported that it had approximately \$100 million in assets under management, approximately 1,600 client accounts and 10 employees. In 2009, the end of the time period at issue, Foxhall had approximately \$742 million in assets under management, over 7,000 client accounts and 15 employees.

4. **Paul G. Dietrich**, 63, a resident of Upperville, Virginia, is the majority stock owner of Eton Court Asset Management, Ltd., the former majority owner of Foxhall, and is the current CEO of Foxhall. During the time period at issue, Dietrich was the CEO and Co-CIO of Foxhall.

Dietrich also was the Chief Compliance Officer (“CCO”) of Foxhall from January 2007 through March 2007 and then again from May 2007 through October 2008.

### **Background**

5. Effective October 5, 2004, Rule 206(4)-7, promulgated under Section 206(4) of the Advisers Act, requires that a registered investment adviser: (1) adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and its rules; (2) review the adequacy of the written policies and procedures and the effectiveness of their implementation on at least an annual basis; and (3) designate a CCO.

6. Foxhall offered its clients active investment portfolio management using several model portfolios designed to meet particular investment goals. Foxhall’s clients chose particular model portfolios based on their needs and risk tolerance and delegated to Foxhall the discretionary authority to manage their accounts. Foxhall reserved the discretion to aggregate client orders into block trades. Foxhall exercised this discretion by buying and selling securities for all clients assigned to a particular investment strategy by placing large block trades. Foxhall would allocate shares in the block trade among clients based upon the clients’ chosen model portfolios and their account balances. Foxhall then ordered the custodian to execute the block trades on behalf of Foxhall’s clients and then allocated the trades to specific client accounts pursuant to Foxhall’s investment discretion and orders. Foxhall’s stated investment strategy was focused on keeping clients in their selected investment portfolio model over the long term.

7. During the relevant time period, the number of Foxhall’s client accounts grew from approximately 1,000 accounts to over 7,000 accounts. Foxhall’s assets under management also increased from approximately \$300 million in assets under management to over \$742 million in assets under management.

8. The majority of Foxhall’s client accounts were held at a custodian that executed most of Foxhall’s block trades on behalf of its clients. Foxhall’s existing trade management system was not compatible with the custodian’s trading platform, however, and this began creating real-time trade reconciliation issues. In approximately July 2007, Dietrich, at the time, Foxhall’s CEO, CCO and Co-CIO, was advised of this trade reconciliation issue. Foxhall switched to a new custodian in August 2008. In June 2009, Foxhall replaced its trading platform. By September 2009, Foxhall’s trade reconciliation issues were effectively eliminated.

9. Because of these trade reconciliation issues, at times, Foxhall traders did not possess accurate real-time information from the custodian regarding clients’ actual current account balances when Foxhall was making initial allocations to clients for block trades. Therefore, on occasion, Foxhall reallocated shares to its clients based on inaccurate client account balance information. During the relevant time period, due to this inaccurate information, some clients who were allocated to receive certain shares did not have sufficient funds in their accounts to purchase the allocated shares. Therefore, the block trades could not be allocated.

10. Foxhall typically learned of the existence of unallocated shares between three and five days after the original block trade was placed. When the custodian encountered insufficient funds in any client account that was part of the block trade, it would alert Foxhall and ask it for guidance as to how to allocate the remaining part of the block trade.

11. At the time, Foxhall followed an unwritten practice to reallocate shares to only those clients who fell within the same investment model portfolio and who possessed sufficient extra cash above a previously designated cash threshold. If these qualifications were met, Foxhall reallocated the unallocated shares to these client accounts. Foxhall also followed a policy where shares could be reallocated to new clients to bring them within their investment model portfolio. If, at the end of this process, shares were unable to be reallocated under these criteria, the unallocated shares were sold through Foxhall's account. During the relevant time period, as CEO, Co-CIO and CCO, Dietrich was generally aware of the trade reconciliation issues and was aware that traders were taking steps to address these issues, but was not aware of the details of the practice followed by the traders to handle the issues.

12. In most cases, Foxhall, with Dietrich as its CEO, Co-CIO and CCO, directed the custodian to place the unallocated shares from the block trade into other client accounts within the same investment model which had sufficient extra cash to purchase the shares being reallocated. Foxhall reallocated these unallocated shares to clients with cash at the execution price, without consideration of whether the price had gone up or down since the shares were purchased. Depending on the movement of the stock price, this practice resulted in some clients paying more (and some clients paying less) for the stock than they would have paid had Foxhall bought the shares on the open market at the time of the reallocation. Shares that Foxhall could not reallocate to clients were sold through its error account. Foxhall incurred a benefit when the shares had increased in value from the purchase price.

13. Foxhall's practice for reallocating shares was followed consistently and was memorialized into a formal, written policy on May 1, 2009. Foxhall, with Dietrich as its CEO, Co-CIO and CCO, did not categorize the reallocated shares as trade errors, but treated them as administrative errors. If the reallocated shares had been labeled as trade errors, Foxhall's compliance procedures required Foxhall to document the trade error and perform a profit and loss analysis for the trade. Foxhall's written policy also required it to make any client whole if any trade error resulted in a loss to the client. Foxhall's policy stated, in pertinent part: "In the event that any error occurs in the handling of any client transactions, due to Foxhall's actions, or inaction, or the actions of others, Foxhall's policy is to seek to identify and correct any errors without disadvantaging the client or benefiting Foxhall in any way . . . If the error is the responsibility of Foxhall, any client transaction will be corrected and Foxhall will be responsible for any client loss resulting from an inaccurate or erroneous number."

14. In over 400 instances during the relevant time period, Foxhall reallocated unallocated shares to clients other than those originally intended to receive the shares. These clients suffered approximately \$20,183 in losses as a direct result of those reallocations.

15. In addition, Foxhall and Dietrich failed to conduct a timely annual review of Foxhall's 2007 compliance policies and procedures.

16. During the relevant time period, Foxhall did not maintain complete and accurate records concerning its trading practices or the reallocations of unallocated shares from client accounts with insufficient funds. Neither Foxhall's trade allocation spreadsheet, nor its trading records contained complete records of these trade reallocations. No formal records of these trade reallocations were kept or maintained.

17. As a result of the conduct described above, Foxhall willfully<sup>1</sup> violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which requires, among other things, that a registered investment adviser: implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules and review at least annually its written policies and procedures and the effectiveness of their implementation.

18. As a result of the conduct described above, Foxhall willfully violated Section 204 of the Advisers Act and Rule 204-2(a)(3) thereunder which requires, among other things, that a registered investment adviser make and keep true, accurate and current records relating to its business including . a memorandum of each order given by the investment adviser for the purchase or sale of any security; of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of any particular security, and of any modification or cancellation of any such order or instruction.

19. As a result of the conduct described above, Dietrich, in his roles as CEO, CCO and Co-CIO, willfully<sup>2</sup> aided and abetted and caused Foxhall's violations of Sections 204 and 206(4) of the Advisers Act and Rules 204-2(a)(3) and 206(4)-7 thereunder.

### **Foxhall's Remedial Efforts**

20. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Foxhall and cooperation afforded the Commission staff. Specifically, Foxhall changed its primary custodian in 2008 and upgraded its trading platform in 2009. Additionally, Foxhall and Dietrich hired a compliance consultant to perform the 2007 and 2008 annual compliance reviews and to evaluate and give guidance regarding Foxhall's compliance practices and procedures. Foxhall currently has a third party compliance consultant serving as its Chief Compliance Officer. Foxhall also hired an independent accountant to analyze the impact of Foxhall's reallocation process on its clients.

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<sup>1</sup> A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)).

<sup>2</sup> *Id.*

#### IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents Foxhall and Dietrich's Offers.

Accordingly, pursuant to Sections 203(e), 203(f) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondents Foxhall and Dietrich cease and desist from committing or causing any violations and any future violations of Sections 204 and 206(4) of the Advisers Act and Rules 204-2(a)(3) and 206(4)-7 thereunder.

B. Respondents Foxhall and Dietrich are censured.

C. Respondent Foxhall shall, within thirty (30) days of the entry of this Order, pay disgorgement of \$20,183, plus prejudgment interest of \$2,247.87 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. 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 Foxhall 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 Elaine C. Greenberg, Associate Regional Director, Securities and Exchange Commission, 701 Market Street, Suite 2000, Philadelphia, PA 19072.

D. Respondent Foxhall shall, within thirty (30) days of the entry of this Order, pay a civil penalty in the amount of \$100,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. 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:

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Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Foxhall 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 Elaine C. Greenberg, Associate Regional Director, Securities and Exchange Commission, 701 Market Street, Suite 2000, Philadelphia, PA 19072.

E. Respondent Dietrich shall pay a civil penalty of \$25,000 to the United States Treasury. Payment shall be made in the following installments: \$5,000 shall be paid within thirty (30) days of the entry of this Order; and the remaining \$20,000 shall be paid in installments over the following 10 months, in payments of \$2,000 per month, due by the 15<sup>th</sup> day of each consecutive month until paid in full. If any payment is not made by the date payment is required by this Order, the entire outstanding balance of the civil penalty, plus any additional interest accrued pursuant to 31 U.S.C. 3717, shall be due and payable immediately. 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 Dietrich 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 Elaine C. Greenberg, Associate Regional Director, Securities and Exchange Commission, Philadelphia Regional Office, Suite 2000, Philadelphia, PA 19106.

By the Commission.

Elizabeth M. Murphy  
Secretary