

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re AUSTIN CAPITAL MANAGEMENT, LTD., : No. 1:09-md-02075-TPG  
SECURITIES & EMPLOYEE RETIREMENT :  
INCOME SECURITY ACT (ERISA) LITIGATION :  
: X

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**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION TO PARTICIPANT AND BENEFICIARY CLASS**

***If you are a participant or beneficiary of any employee benefit plan covered by the Employee Retirement Income Security Act (“ERISA”) that held an interest in the Austin Capital All Seasons Offshore Fund, the Austin Capital Safe Harbor ERISA Dedicated Fund, the Austin Capital Safe Harbor Offshore Fund, the Austin Capital Safe Harbor QP Fund, or the Austin Capital Safe Harbor Portable Alpha 1 Fund (collectively referred to as “the Austin Capital Funds”) as of December 11, 2008, and are not otherwise excluded from the Class (see Question 7 below), you are a “Participant and Beneficiary Class Member.”<sup>1</sup>***

A federal court authorized this Notice. This is not a solicitation from a lawyer.

**Securities and Time Period:** Interests in the Austin Capital All Seasons Offshore Fund, the Austin Capital Safe Harbor ERISA Dedicated Fund, the Austin Capital Safe Harbor Offshore Fund, the Austin Capital Safe Harbor QP Fund, or the Austin Capital Safe Harbor Portable Alpha 1 Fund as of December 11, 2008.

**Settlement Fund:** \$6,850,000 in cash plus any interest earned will be paid to the investors, including, but not limited to, any employee benefit plans covered by ERISA (e.g., Taft-Hartley pension plans), who invested in the Austin Capital Funds as of December 11, 2008. All participants and beneficiaries in the employee benefit plans covered by ERISA, who invested in the Austin Capital Funds as of December 11, 2008 will benefit from the payment from the Settlement Fund without any further action by you. Your plan’s recovery will depend on its ownership interest in the Austin Capital Funds, the net principal of the Austin Capital Fund in which your plan invested that was exposed to the Rye Select Broad Market Prime Fund (a fund managed by Bernard L. Madoff), and the number of Investor Class Members who submit claims. Based on the information currently available to the Class Representatives, the estimated distribution to employee benefit plans covered by ERISA will be approximately \$0.034 per dollar of net principal exposed to the Rye Select Broad Market Prime Fund by ERISA investors in the Austin Capital Funds listed above, before deduction of Court-approved fees and expenses, including the cost of notifying members of the Classes and administering the settlement, and any attorneys’ fees and expenses awarded by the Court to Co-Lead Counsel. This amount is in addition to the payments your plan already received from a related settlement between certain Defendants and the Department of Labor. If all members of the Investor Class do not submit claims, the estimated distributions will be higher.

Your plan’s actual recovery will be its pro-rata share of the Net Settlement Fund that is allocated to employee benefit plans covered by ERISA. The pro-rata share of all employee benefit plans covered by ERISA is limited to 20% of the Net Settlement Fund. The balance of the Net Settlement Fund will be allocated to those investors that are not employee benefit plans covered by ERISA.

**Reasons for Settlement:** The settlement avoids the costs, delays, and risks associated with continued litigation, including the danger of no recovery.

**If the Case Had Not Settled:** Continuing with the case could have resulted in a loss for the Plaintiffs and the Participant and Beneficiary Class, in whole or in part, at the motion-to-dismiss stage, class certification, summary judgment, trial, or on appeal. The two sides vigorously disagree about both liability and the amount of money, if any, that could have been won if the Participant and Beneficiary Class Representatives prevailed at trial. The parties disagree about both liability and damages, including: (1) whether there was any wrongdoing on the part of Defendants; (2) whether Defendants knew or should have known of the true nature of Madoff’s scheme and whether Defendants made intentionally false or misleading statements about their investment or due diligence practices; (3)

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<sup>1</sup> This Notice incorporates by reference the definitions in the Settlement Agreement dated April 10, 2014 (“Stipulation”), and all capitalized terms used, but not defined herein, shall have the same meanings as in the Stipulation. To obtain a copy of the Stipulation and all of its Exhibits, see Questions 21 and 22 below.

whether the Participant and Beneficiary Class Members suffered damages or otherwise were harmed by the matters alleged by the Participant and Beneficiary Class Representatives; and (4) whether the facts alleged give rise to actionable claims under federal and state securities laws, ERISA, and common-law theories.

**Attorneys' Fees and Expenses:** Court-appointed Co-Lead Counsel intend to submit an application or applications for distributions to Plaintiffs' Counsel from the Settlement Fund for attorneys' fees of 33-1/3%, or \$2,283,333.33, of the Settlement Fund and expenses of no more than \$100,000 incurred in connection with prosecuting the MDL, plus interest. Co-Lead Counsel seek those fees and expenses for their work investigating the facts, prosecuting the MDL, and negotiating this settlement on behalf of the Class Representatives and the Classes. If the above amounts are requested and the Court approves them, the estimated cost of attorneys' fees and expenses per dollar of net principal invested in the Rye Select Broad Market Prime Fund will be \$0.01 for employee benefit plans covered by ERISA.

**Deadlines:**

File Objection:	August 29, 2014
Court Hearing on Fairness of Settlement:	September 12, 2014 at 11:00 a.m.

**For More Information:**

Austin Capital MDL  
 Claims Administrator  
 c/o Gilardi & Co. LLC  
 P.O. Box 990  
 Corte Madera, CA 94976-0990  
 www.AustinCapitalManagementSettlement.com  
 Tel: 1-877-407-0847

David A. Rosenfeld, Esq.  
 ROBBINS GELLER RUDMAN & DOWD LLP  
 58 South Service Road, Suite 200  
 Melville, NY 11747  
 Tel: 1-800-449-4900

Your legal rights are affected whether or not you act. Read this Notice carefully.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>DO NOTHING</b>	If the settlement is approved by the Court and your plan is a member of the Investor Class, you do not need to do anything to participate in the settlement. Your plan will be notified regarding how it may obtain a payment from the Settlement Fund. If you do nothing, in addition to your plan possibly receiving a payment, you will be bound by the settlement and you will not be able to sue the Defendants for the legal claims in this case.
<b>OBTAIN MORE INFORMATION</b>	You can visit the following website at <a href="http://www.AustinCapitalManagementSettlement.com">www.AustinCapitalManagementSettlement.com</a> to obtain additional information about the proposed settlement.
<b>OBJECT</b>	You may write to the Court if you do not like this settlement, the request for attorneys' fees and expenses, or the Plan of Allocation. If you want to object, the deadline for doing so is August 29, 2014.
<b>GO TO THE FAIRNESS HEARING</b>	You may ask to speak in Court about the fairness of the settlement, the request for attorneys' fees and expenses, or the Plan of Allocation. If you want to speak at the hearing, the deadline to give notice of your intention to do so is August 29, 2014.

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court in charge of this case must decide whether to approve the settlement. Payments will be made if the Court approves the settlement and, if there are any appeals, after appeals are resolved. Please be patient.

## BASIC INFORMATION

### 1. Why am I receiving notice of the settlement?

You may be a participant or beneficiary in an employee benefit plan covered by ERISA that held an interest in the Austin Capital All Seasons Offshore Fund, the Austin Capital Safe Harbor ERISA Dedicated Fund, the Austin Capital Safe Harbor Offshore Fund, the Austin Capital Safe Harbor QP Fund, or the Austin Capital Safe Harbor Portable Alpha 1 Fund as of December 11, 2008.

The Court directed that this Notice be issued to inform the Participant and Beneficiary Class about a proposed settlement of a class action lawsuit, and about the options available to the Participant and Beneficiary Class, before the Court decides whether to approve the settlement. If the Court approves it and after objections or appeals (if there are any) are resolved, the Claims Administrator appointed by the Court will make the payments that the settlement allows.

This Notice explains the lawsuit, the settlement, and your legal rights, and options as a Participant and Beneficiary Class Member.

The Court in charge of this multidistrict class-action litigation, and all of the lawsuits constituting it (the “MDL”), is the United States District Court for the Southern District of New York, and the MDL is known as *In re Austin Capital Management, Ltd., Securities & Employee Retirement Income Security Act (ERISA) Litigation*, No. 1:09-md-02075-TPG (S.D.N.Y.). The entities and persons that are asserting claims in the MDL, the Pension Trust for Operating Engineers, Operating Engineers Pension Plan, Operating Engineers Health and Welfare Trust Fund, Russell E. Burns, International Brotherhood of Teamsters Local 705 Pension Fund, John Witt, Sheet Metal Workers’ National Pension Fund, Michael J. Sullivan, Ronald Palmerick, Laborers Local 17 Pension Plan, Daniel Jackson, New Mexico Educational Retirement Board, and Texas Treasury Safekeeping Trust Company, are called the Class Representatives and the companies and the individuals they sued are called Defendants.<sup>2</sup>

### 2. What is this lawsuit about?

The lawsuits in the MDL, which arise from the Bernard L. Madoff scandal, allege that the Defendants violated the federal and state securities laws, ERISA, and the common law. The Class Representatives invested in certain Austin Capital Funds that in turn made investments in the Rye Select Broad Market Prime Fund, a fund whose investments were managed by Madoff. As a result of Madoff’s theft of the assets of the Rye Select Broad Market Prime Fund, the Austin Capital Funds lost value and the Class Representatives’ investments in those Austin Capital Funds also lost value. The Class Representatives allege that the Defendants acted imprudently by allowing some of the Austin Capital Funds’ assets to be invested in the Rye Select Broad Market Prime Fund, that Defendants knew or should have known of the true nature of Madoff’s scheme, and that Defendants made false or misleading statements about their investment and due diligence practices.

Defendants deny all of those allegations and further deny that they did anything wrong. Defendants also deny that the Class Representatives or the Classes suffered damages or otherwise were harmed by the matters alleged in the MDL. Defendants continue to believe the claims asserted against them are without merit, and they have agreed to enter into the settlement solely to avoid the expense, distraction, time, and uncertainty associated with continuing the MDL.

### 3. Why is this a class action?

In a class action, one or more people and/or entities called class representatives (in this case, the Pension Trust for Operating Engineers, Operating Engineers Pension Plan, Operating Engineers Health and Welfare Trust Fund, Russell E. Burns, International Brotherhood of Teamsters Local 705 Pension Fund, John Witt, Sheet Metal Workers’ National Pension Fund, Michael J. Sullivan, Ronald Palmerick, Laborers Local 17 Pension Plan, Daniel Jackson, New Mexico Educational Retirement Board, and Texas Treasury Safekeeping Trust Company) sue on behalf of people who have similar claims. All of these people and/or entities are called a class or class members. The representative of the Participant and Beneficiary Class is Russell E. Burns. One judge – in this case, United States District Judge Thomas P. Griesa – resolves the issues for all Participant and Beneficiary Class Members.

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<sup>2</sup> The Defendants are KeyCorp, Victory Capital Management, Inc., Austin Capital Management, Ltd., Austin Capital Management GP Corp., Charles W. Riley, Brent A. Martin, James P. Owen, Robert Wagner, David C. Brown, David E. Friedman, Ronald J. Dugas, Kyle McDaniel, Montgomery Green, and Jay W. Van Ert.

**4. What has happened in the lawsuit?**

The Class Representatives have asserted claims arising under the federal securities laws, state laws, and ERISA. The Defendants filed a motion to dismiss the Class Representatives' claims, and the Court granted that motion in substantial part, dismissing all of the claims except for two claims arising under ERISA. The Court did, however, give the Class Representatives the opportunity to replead the dismissed claims. Before the Class Representatives filed a further complaint to attempt to replead the dismissed claims, the parties participated in a mediation before a neutral, third-party mediator, which resulted in their agreement to settle the MDL on the terms set forth in the Stipulation and summarized in this Notice.

**5. Why is there a settlement?**

The Court did not make a final decision in favor of the Class Representatives or the Defendants. Instead, the lawyers for both sides in the lawsuit have negotiated a settlement, with the assistance of a mediator, that they believe is in the best interests of their respective clients. The settlement allows both sides to avoid the risks, delay, and cost of lengthy and uncertain litigation and the uncertainty of a trial and appeals, and permits eligible Class Members to be compensated without further delay. The Class Representatives and their attorneys think the settlement is best for all Class Members.

**WHO GETS MONEY FROM THE SETTLEMENT**

**6. Will I get money from the settlement?**

The net proceeds from the Settlement Fund will be paid to the investors, including, but not limited to, any employee benefit plans covered by ERISA (e.g., Taft-Hartley pension plans), who invested in the Austin Capital Funds as of December 11, 2008. The Participant and Beneficiary Class, which is all participants and beneficiaries of the employee benefit plans covered by ERISA who invested in the Austin Capital Funds as of December 11, 2008, will not receive a direct payment from the Settlement Fund. Instead, the employee benefit plan of which you are a participant or beneficiary will receive the payment. Accordingly, you do not need to take any action to benefit from the settlement.

Under a separate settlement between certain Defendants and the United States Department of Labor, the employee benefit funds covered by ERISA that invested in funds managed by Austin Capital Management, Ltd. and that lost money as a result of Bernard Madoff's criminal activities shared in a settlement fund of \$43,454,545, which already has been distributed to those employee benefit funds by an independent fiduciary appointed by the Department of Labor. Payments under the proposed settlement in this case will be in addition to the payments that were made under the Department of Labor settlement.

**7. How do I know if I am part of the Participant and Beneficiary Class?**

The Participant and Beneficiary Class includes all Persons (excluding Defendants) who are or were participants or beneficiaries of the employee benefit plans covered by ERISA who invested in the Austin Capital Funds as of December 11, 2008. If you have any questions regarding whether you are a participant or beneficiary of a particular employee benefit plan (such as a pension fund), you should contact your plan or fund office directly.

**8. I'm still not sure if I am included.**

If you still are not sure whether you are included, you can ask for free help. You can visit [www.AustinCapitalManagementSettlement.com](http://www.AustinCapitalManagementSettlement.com) or you can call David A. Rosenfeld, Esq., Robbins Geller Rudman & Dowd LLP, at 1-800-449-4900 for more information.

**THE SETTLEMENT BENEFITS – WHAT YOUR PLAN GETS**

**9. What is my interest in the settlement?**

As noted, if your plan participates in the settlement and the settlement is approved, your plan will receive a payment from the Settlement Fund. Your plan's share of the Net Settlement Fund will go directly to your plan, not directly to you or other participants or beneficiaries. Your entitlement to benefits from your plan will depend on the terms of the plan. Your benefits from your plan might not change as a result of the settlement if, for example, your plan is a defined benefit plan or health and welfare plan. You can contact your plan to find out specifics about how the settlement will affect your individual benefits, if at all.

**10. How much will my employee benefit plan receive?**

The share of the Net Settlement Fund that each investor will receive (including the employee benefit plan investors) depends on the number of valid claim forms that Investor Class Members submit, the amount of your plan's ownership interest in the Austin Capital Funds as of December 11, 2008, and the amount of net principal of the Austin Capital Fund in which your plan invested that was exposed to the Rye Select Broad Market Prime Fund.

**The calculation of claims described below is not an estimate of the amount that the plan that you are a participant or beneficiary of will receive. It is a formula (“Plan of Allocation”) for allocating the Net Settlement Fund among all Authorized Claimants.**

If your ERISA plan: (i) held shares of the Austin Capital All Seasons Offshore Fund, the Austin Capital Safe Harbor ERISA Dedicated Fund, the Austin Capital Safe Harbor Offshore Fund, the Austin Capital Safe Harbor QP Fund, or the Austin Capital Safe Harbor Portable Alpha 1 Fund as of December 11, 2008; and (ii) suffered a loss as a result of the alleged misconduct, your plan’s allowed claim will be calculated using (a) the plan’s ownership interest in the Austin Capital Funds listed above (calculated as the total amount of principal invested less any dividends received and/or withdrawals) as of approximately December 11, 2008 and (b) the amount of net principal of the Austin Capital Fund in which the plan invested that was exposed to the Rye Select Broad Market Prime Fund. That information has been provided to your plan. Each plan will not receive 100% of its allowed claim; rather, each employee benefit plan covered by ERISA that timely and accurately submits a claim form will receive its pro rata share of the Net Settlement Fund to be allocated to investors that are employee benefit plans covered by ERISA.

Note: The total pro-rata recovery for all employee benefit plans covered by ERISA is limited to 20% of the Net Settlement Fund. The balance of the Net Settlement Fund will be allocated to those investors that are not employee benefit plans covered by ERISA.

Payment pursuant to the Plan of Allocation set forth above shall be conclusive against all Class Members. No Person shall have any claim against any Class Representative, any Plaintiffs’ Counsel, or any claims administrator based on distributions made substantially in accordance with the Stipulation and the settlement contained therein, the Plan of Allocation, or further orders of the Court. Defendants, their Related Parties, the Released Persons, and their counsel have no involvement in or responsibility for and no liability of any kind with respect to the Plan of Allocation, the calculation of claims, or the handling of, disbursement from, or distribution of the Settlement Fund or the Net Settlement Fund.

**11. When would my employee benefit plan receive the Settlement Fund payment?**

The Court will hold a hearing on September 12, 2014 at 11:00 a.m. to decide whether to approve the settlement. If Judge Griesa approves the settlement, there may be appeals. It is always uncertain whether these appeals can be resolved favorably, and resolving them can take time, perhaps more than a year.

If your plan files a claim form, and the Court approves the settlement, and after any objections and appeals are resolved, your plan’s share of the Net Settlement Fund will be distributed to your plan. Administering and calculating claims is a complex process that can take a substantial amount of time. Please be patient.

**12. What claims are being released under the settlement?**

As a member of the Participant and Beneficiary Class, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants about the same issues in this case or about issues that could have been asserted in this case. All of the Court’s orders will apply to you and legally bind you and you will release your Released Claims in this case against the Released Persons. “Released Claims” means all claims (including “Unknown Claims” as defined below), debts, disputes, demands, rights, actions or causes of action, liabilities, damages, losses, obligations, sums of money due, judgments, suits, amounts, matters, issues and charges of any kind whatsoever (including, but not limited to, any claims for interest, attorneys’ fees, expert or consulting fees and any other costs, expenses, amounts, or liabilities whatsoever), whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, foreseen or unforeseen, whether individual or class in nature concerning, based on, arising out of, in connection with or relating in any way to both: (1) holding an interest in the Austin Capital All Seasons Offshore Fund, the Austin Capital Safe Harbor ERISA Dedicated Fund, the Austin Capital Safe Harbor Offshore Fund, the Austin Capital Safe Harbor QP Fund, or the Austin Capital Safe Harbor Portable Alpha 1 Fund; and (2) the acts, facts, statements, or omissions that were alleged or that could have been alleged by Class Representatives or any Class Member in the MDL or that otherwise would have been barred by *res judicata* had the MDL been fully litigated to a final judgment. Released Claims do not include claims to enforce the settlement.

“Unknown Claims” means all claims, demands, rights, liabilities and causes of action of every nature and description that any Class Representative or Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Persons which, if known by him, her, or it, might have affected his, her or its decision to enter into this settlement and release of the Released Persons, or might have affected his, her or its decision not to object to this settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, the Class Representatives shall expressly waive, and each Class Member shall be deemed to have waived, and by operation of the Judgment shall have waived, the provisions, rights and benefits of California Civil Code §1542, which provides:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

The Class Representatives shall expressly waive and each Class Member shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code §1542, or which otherwise governs or limits a person's release of unknown claims. The Class Representatives and Class Members may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims, but the Class Representatives shall expressly fully, finally, and forever settle and release, and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released, any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, accrued or unaccrued, liquidated or unliquidated, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Class Representatives acknowledge, and the Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the settlement of which this release is a part.

"Released Persons" means each and all of the Defendants, and each and all of their Related Parties.

**13. Can I exclude myself from the settlement?**

No, you do not have the option to exclude yourself from the settlement. The Participant and Beneficiary Class described above will be certified under Federal Rule of Civil Procedure 23(b)(1) as a "non-opt-out" class because of the way ERISA operates. Claims on behalf of ERISA-covered plans must be brought on behalf of the plan as an entity, and any judgment or resolution of a plan's claims necessarily applies to all of the plan's participants and beneficiaries alike. Thus, individual lawsuits cannot be pursued. It therefore is not possible for participants or beneficiaries to exclude themselves from the benefits of the settlement. As a Participant and Beneficiary Class Member, you will be bound by the Court's decisions about the settlement, and any judgments or orders that are entered in the MDL for all claims that were asserted in the MDL or otherwise included in the release under the settlement. Although you cannot opt-out of the settlement, you can object to the settlement or any aspect of it, and/or ask the Court not to approve it. See Answer to Question 16, below.

**THE LAWYERS REPRESENTING YOU**

**14. Do I have a lawyer in this case?**

The Court appointed the law firms of Robbins Geller Rudman & Dowd LLP and Hagens Berman Sobol Shapiro LLP to represent you and other Class Members. These lawyers are called Co-Lead Counsel. These lawyers will apply to the Court for payment from the Settlement Fund; you will not otherwise be charged for their work. If you want to be represented by your own lawyer, you may hire one at your own expense.

**15. How will the lawyers be paid?**

At the fairness hearing, Co-Lead Counsel will apply for distributions to Plaintiffs' Counsel from the Settlement Fund for an award of attorneys' fees in connection with prosecuting the MDL and payment of expenses incurred in connection with prosecuting the MDL, plus any interest on such attorneys' fees and expenses at the same rate and for the same periods as earned by the Settlement Fund (until paid). Any award of fees and expenses will be paid from the Settlement Fund. Class Members are not personally liable for any such fees or expenses. The fee requested will compensate Class Representatives' counsel for their work in achieving the Settlement Fund. The Court may award less than the requested amount.

A separate settlement between the Class Representatives, Plaintiffs' Counsel, and KeyCorp resolved all claims for attorneys' fees and expenses in connection with the settlement between certain Defendants and the Department of Labor described in Question 6 above. Plaintiffs' Counsel contended that their work on the MDL and their communications with the Department of Labor contributed to the settlement between the Department of Labor and certain Defendants, and further contended that they were entitled to an award of attorneys' fees and expenses under ERISA as a result. The Defendants disagreed with Plaintiffs' Counsel. Under the separate settlement between the Class Representatives, Plaintiffs' Counsel and KeyCorp, KeyCorp agreed to pay \$2.85 million to resolve Plaintiffs' Counsel's claim for attorneys' fees and expenses relating to the Department of Labor settlement. Any attorneys' fees and expenses awarded by the Court in connection with the settlement in this case will be paid from the Settlement

Fund and will be in addition to the payment of fees and expenses under the separate settlement between the Class Representatives, Plaintiffs' Counsel, and KeyCorp.

### **OBJECTING TO THE SETTLEMENT**

You can tell the Court that you do not agree with the settlement, the Plan of Allocation, or Co-Lead Counsel's request for an award of attorneys' fees and expenses.

#### **16. How do I tell the Court that I do not like the settlement?**

If you are a member of the Participant and Beneficiary Class, you can object to the settlement, the request for attorneys' fees and expenses, or the Plan of Allocation if you do not like any part of it. You can give reasons why you think the Court should not approve the settlement, the request for attorneys' fees and expenses, or the Plan of Allocation. The Court will consider your views. To object, you must send a signed letter saying that you object to the proposed settlement in *In re Austin Capital Management, Ltd., Securities & Employee Retirement Income Security Act (ERISA) Litigation*, No. 1:09-md-02075-TPG (S.D.N.Y.). Be sure to include your (or your counsel's) name, address, telephone number, and signature; proof that you are a member of the Participant and Beneficiary Class; state the name of the employee benefit plan of which you are a participant or beneficiary; state the amount of your plan's interest (if you know) in the Austin Capital All Seasons Offshore Fund, the Austin Capital Safe Harbor ERISA Dedicated Fund, the Austin Capital Safe Harbor Offshore Fund, the Austin Capital Safe Harbor QP Fund, or the Austin Capital Safe Harbor Portable Alpha 1 Fund as of December 11, 2008; state all of the reasons you object to the settlement, the requested attorneys' fees and expenses, or the Plan of Allocation and provide all documents you would like the Court to consider. Any such objection must be mailed or delivered such that it is received by each of the following no later than August 29, 2014:

*Court:*

CLERK OF THE COURT  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
DANIEL PATRICK MOYNIHAN  
UNITED STATES COURTHOUSE  
500 Pearl Street  
New York, NY 10007-1312

*Co-Lead Counsel:*

ROBBINS GELLER RUDMAN  
& DOWD LLP  
SAMUEL H. RUDMAN  
DAVID A. ROSENFELD  
58 South Service Road, Suite 200  
Melville, NY 11747

HAGENS BERMAN SOBOL  
SHAPIRO LLP  
REED R. KATHREIN  
715 Hearst Avenue, Suite 202  
Berkeley, CA 94710

*Defendants' counsel:*

JONES DAY  
RICHARD J. BEDELL, JR.  
GEOFFREY J. RITTS  
North Point  
901 Lakeside Avenue  
Cleveland, OH 44114

### **THE COURT'S FAIRNESS HEARING**

The Court will hold a hearing to decide whether to approve the proposed settlement. You may attend, but you do not have to.

#### **17. When and where will the Court decide whether to approve the settlement?**

The Court will hold a hearing on September 12, 2014 at 11:00 a.m., at the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007-1312. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. The Court also will decide whether to approve the payment of fees and expenses to Co-Lead Counsel and the Plan of Allocation. We do not know how long the hearing will take or whether the Court will make its decision on the day of the hearing or sometime later.

#### **18. Do I have to come to the hearing?**

No. Co-Lead Counsel will answer questions Judge Griesa may have. But, you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You also may pay your own lawyer to attend, but you are not required to do so.

**19. May I speak at the hearing?**

You may ask the Court for permission to speak at the hearing. To do so, you must send a letter saying that it is your intention to appear at the hearing in *In re Austin Capital Management, Ltd., Securities & Employee Retirement Income Security Act (ERISA) Litigation*, No. 1:09-md-02075-TPG (S.D.N.Y.). Be sure to include your (or your counsel's) name, address, telephone number, and signature; proof that you are a member of the Participant and Beneficiary Class; state the name of the employee benefit plan of which you are a participant or beneficiary; state the amount of your plan's interest (if you know) in the Austin Capital All Seasons Offshore Fund, the Austin Capital Safe Harbor ERISA Dedicated Fund, the Austin Capital Safe Harbor Offshore Fund, the Austin Capital Safe Harbor QP Fund, or the Austin Capital Safe Harbor Portable Alpha 1 Fund as of December 11, 2008; state all of the reasons you object to the settlement, the requested attorneys' fees and expenses, or the plan of allocation; and provide all documents you would like the Court to consider. Your notice of intention to appear must be received no later than August 29, 2014 by the Clerk of the Court, Co-Lead Counsel, and Defendants' counsel, at the addresses listed in the answer to Question 16.

**IF YOU DO NOTHING**

**20. What happens if I do nothing at all?**

If you do nothing and you are a member of the Participant and Beneficiary Class, you will participate in the settlement through your plan, if your plan files a valid claim form and that claim is approved. If the settlement is approved, you will be bound by its terms. You will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Defendants or the Released Persons about the Released Claims. You will be deemed to have released all Released Claims against the Defendants and any of the Released Persons.

**GETTING MORE INFORMATION**

**21. Are there more details about the settlement?**

This Notice summarizes the proposed settlement. More details are in the Stipulation dated April 10, 2014, which has been filed with the Court. You can print a copy of the Stipulation at the Clerk's office at the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007-1312, if you appear during regular business hours and pay 10 cents per page. The Stipulation is 32 pages (including the cover page and signatures). The Stipulation also is available at [www.AustinCapitalManagementSettlement.com](http://www.AustinCapitalManagementSettlement.com), or you can contact Co-Lead Counsel at the number and address below in the answer to Question 22.

**22. How do I get more information?**

You can call 1-800-449-4900 or write to Co-Lead Counsel: David A. Rosenfeld, Esq., Robbins Geller Rudman & Dowd LLP, 58 South Service Road, Suite 200, Melville, NY 11747, or visit the Claims Administrator's website at [www.AustinCapitalManagementSettlement.com](http://www.AustinCapitalManagementSettlement.com). ***Please do not call the Court or the Clerk of the Court for additional information about the settlement.***

DATED: MAY 19, 2014

BY ORDER OF THE COURT  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK