

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 57755 / May 1, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13032

In the Matter of

A. CARLOS MARTINEZ

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-
DESIST ORDER AND A PENALTY
PURSUANT TO SECTIONS 15(b), 21B and
21C OF THE SECURITIES EXCHANGE
ACT OF 1934**

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 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against A. Carlos Martinez (“Martinez” or “Respondent”).

II.

In anticipation of these proceedings, Respondent has submitted an Offer of Settlement to the Commission (herein “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 findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order and a Penalty Pursuant to Sections 15(b), 21B and 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.

III.

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

A. Respondent

A. Carlos Martinez, 41, has served as Chanin Capital Partners LLC's Chief Financial Officer since, approximately, late 1997. Starting on or about the time he was hired, and at all times relevant hereto, Martinez also functioned as the compliance officer for Chanin, and was solely responsible for implementing and enforcing compliance and insider trading policies for both Chanin and Chanin & Co.

B. Related Party

Chanin Capital LLC ("Chanin") was a broker-dealer registered with the Commission during the relevant period that serviced clients of Chanin & Co LLC ("Chanin & Co."), an investment bank headquartered in Los Angeles, California, with offices in New York and London. Chanin Capital Partners LLC was the holding company for Chanin and Chanin & Co. Throughout the relevant period, Chanin & Co. employed, approximately, thirty-five to sixty employees, some of whom also were registered representatives licensed to conduct securities transactions through Chanin. On November 1, 2006, Chanin Capital Partners LLC announced that it had been acquired by Duff & Phelps, a financial advisory firm, which indicated that Chanin Capital Partners LLC would continue to operate as a business unit of Duff & Phelps. In connection with the acquisition, Chanin ceased functioning as a broker-dealer on or about October 31, 2006. Also in connection with the acquisition, Chanin deregistered as a broker-dealer effective April 1, 2007.

C. Summary

This matter concerns the failure to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information at Chanin in violation of Section 15(f) of the Exchange Act. Between January 1999 and September 15, 2003, Chanin had certain written policies and procedures designed to prevent the misuse of material nonpublic information, including a written insider trading policy requiring employee acknowledgement, an employee handbook with a section that proscribed insider trading that also required employee acknowledgement, and a requirement that employees disclose in writing, and receive prior approval for stock purchases and sales. Despite the legal requirement to do so, between 1999 and September 15, 2003, Chanin, through Martinez, did not enforce these written policies. In addition, Chanin failed to maintain a watch list or a restricted list of companies about which Chanin was in possession of material nonpublic information.¹

In September 2003, Chanin revised its written policies and procedures. In addition to retaining the policies described above, Chanin added a training program for its employees and

¹ Generally, a "watch list" is a list of securities in which employees or associated persons of company may trade in only with approval; a "restricted list" is a list of securities in which employees or associated persons may not trade.

associated persons, added a watch list, and added a requirement that its employees and associated persons provide copies of their securities trading account statements to be reviewed by Martinez, in his capacity as Chanin's compliance officer. In 2004, Chanin added a progressive disciplinary system for employees who did not abide by the firm's policies. While Chanin's compliance with this expanded set of policies and procedures improved, Chanin failed to reasonably review whether the firm maintained and enforced its new policies. For example, even after October 2004, Chanin, through Martinez, was unable to determine whether it had obtained signed acknowledgements of its policies from each of the employees and associated persons subject to the policies.

Chanin's failure to establish, maintain and enforce its policies and procedures to prevent the misuse of material nonpublic information was discovered following the commencement of an investigation by the Commission staff. As a result of Chanin's failures, the firm may have failed to detect illegal insider trading by employees and by associated persons.

D. Background

Throughout the relevant period, Chanin & Co. employed approximately thirty-five to sixty individuals, some of whom also were registered representatives licensed to conduct securities transactions through Chanin. Chanin & Co. employees, including those who were licensed as registered representatives, had access to material nonpublic information concerning clients of the investment bank. In view of the nature of its business, Chanin developed written policies and procedures to prevent the misuse of material nonpublic information by employees and associated persons effective from, at least, January 1999 through September 15, 2003. Chanin later revised those policies and procedures as of September 15, 2003. The revised policies and procedures incorporated and expanded upon the earlier ones. Chanin further revised its policies and procedures in October 2004. At all relevant times, Martinez functioned as Chanin's compliance officer with sole responsibility for maintaining and enforcing Chanin's written policies and procedures with respect to Chanin's employees and associated persons.

1. Chanin's Insider Trading Policies between 1999 and September 15, 2003

Between 1999 and September 2003, Chanin had the following written policies concerning insider trading:

- A section of its employee handbook describing and prohibiting insider trading, and a form requiring employees to acknowledge receipt of the handbook;
- A freestanding insider trading policy describing and prohibiting insider trading, and a form requiring employees to acknowledge receipt of the policy;
- A stock purchase/sale form requiring employees to disclose purchases or sales of securities in writing;
- A form requiring employees to identify private securities transactions and "selling away;"² and

² Generally, "selling away" refers to a broker's solicitation of a party to purchase securities not held or offered by the brokerage firm, often in private securities transactions.

- A form requiring employees to identify outside business activities.

Chanin did not maintain a watch list or a restricted list during this time period. In addition to the policies denoted above, on October 18, 2001, Martinez wrote and circulated a memorandum to all Chanin and Chanin & Co. employees stating that the firm was required to track and monitor employee trading. Martinez attached to that memorandum the firm's stock purchase/sale form, the private securities selling away form and the outside business activities form. In the memo, Martinez noted that, while employees could get oral approval for trades, they were required to submit the written form designating any securities trading. Despite Chanin and Chanin & Co. employees engaging in securities trading during the 1999 through 2003 time frame, there is no written record of any securities trade pre-cleared by Chanin, or for which clearance was sought by an employee.

During the same time frame, Martinez had no consistent practice with respect to obtaining signed acknowledgments of the firm's insider trading policy or receipt of the employee handbook. For example, during a period in which Chanin & Co. had in excess of 35 employees, Chanin had only two signed insider trading policy acknowledgments for 1999, three in 2000 and four in 2001. In connection with an update to its insider trading policy in November 2002, Chanin collected 36 acknowledgment forms, fewer than its approximately 50 employees at the time. Moreover, Chanin had no system by which it tracked whether and when any of its employees signed any of its insider trading policies, and no procedures reasonably designed to address employee compliance with those policies.

2. **Chanin's Insider Trading Policies after September 15, 2003**

Starting September 15, 2003, Chanin issued revised written policies and procedures to prevent the misuse of material nonpublic information. In addition to re-issuing the itemized policies and forms indicated above, Chanin added the following policies and procedures:

- A restricted list³ maintained by Martinez and the corporate principals to which employees must refer prior to trading securities; and
- A requirement that employees identify all securities trading accounts and release duplicate copies of their account statements to Chanin for review.

In September and October 2003, Chanin held mandatory trainings for its employees and associated persons concerning its insider trading policies, although the firm did not maintain a list of which individuals attended those meetings. Starting on or about September 2003, Chanin began and maintained a restricted list, obtained and reviewed employee brokerage account statements, required and reviewed written requests by employees and associated persons to purchase or sell securities, and had more of its personnel sign forms acknowledging receipt of its insider trading policy. In October 2004, Chanin introduced and implemented a progressive discipline system for employees and associated persons who failed to comply with the firm's trading policies.

³ Chanin's restricted list served the function of both a watch list and a restricted list.

Notwithstanding its much improved adherence to its own policies and procedures after September 15, 2003, Chanin continued to lack policies and procedures reasonably designed to address the continued maintenance and enforcement of its new compliance program. For example, neither of Chanin's two principals signed an acknowledgment of the firm's insider trading policy when it was revised in 2003, although both were subject to the firm's policies. Ultimately, one of Chanin's principals signed the policy nearly a year after its enactment, in August 2004, and the other nearly two years later, in July 2005. Chanin had no policy or procedure in place for continued training of its personnel on its insider trading policies or procedures. Moreover, while the firm's policy required employees and associated persons to identify securities trading accounts and provide copies of account statements to the firm, there was no policy or procedure addressing securities trading accounts opened after employees and associated persons made their initial certification.

E. Legal Discussion

Section 15(f) of the Exchange Act requires brokers and dealers registered with the Commission to establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of such broker's or dealer's business, to prevent the misuse, in violation of the Exchange Act and the rules and regulations thereunder, of material nonpublic information by such broker or dealer or any person associated with such broker or dealer. Under Section 3(a)(18) of the Exchange Act, a "person associated with a broker or dealer" includes any person "directly or indirectly . . . controlled by, or under common control with such broker or dealer" other than persons whose functions are solely ministerial or clerical.

Section 15(f) was enacted as part of the Insider Trading and Securities Fraud Enforcement Act of 1988 ("ITSFEA"). Since 1988, the Commission has made clear in a series of enforcement actions that compliance with Section 15(f) is important, and that broker-dealers must take seriously their responsibilities not only to establish, but to maintain and enforce, sufficiently robust policies and procedures to prevent the misuse of material nonpublic information.⁴ The requirement that a broker or dealer implement and maintain policies and procedures consistent with the nature of its business "is critical to effectively preventing the misuse of material, nonpublic information." *In re Gabelli & Co., Inc.*, Exch. Act Rel. No. 35057, 1994 SEC LEXIS 3744 at *11 (Dec. 8, 1994). Where brokers and dealers have failed to establish policies and procedures pursuant to the requirements of Section 15(f), the Commission has repeatedly issued sanctions. *See, e.g., In re Morgan Stanley & Co.*, Exch. Act Rel. No. 54047, SEC LEXIS 1465 (Jun. 27, 2006); *In re*

⁴ Following the enactment of ITSFEA, the Division of Market Regulation issued a report in 1990 detailing, among other things, what it viewed as "minimum standards" for compliance with Section 15(f) that included "maintenance of watch lists and restricted lists . . . and the concomitant review of employee and proprietary trading." *Broker-Dealer Policies and Procedures Designed to Segment the Flow and Prevent the Misuse of Material Nonpublic Information* (Div. of Market Regulation, March 1990) ("Market Regulation Report") at 20. Following the issuance of the Market Regulation Report, the National Association of Securities Dealers, the New York Stock Exchange, and a committee of the Securities Industry Association issued a joint memorandum explaining their view of the "minimum elements" of adequate "Chinese Wall" policies and procedures. *NASD/NYSE Joint Memo*, 1991 WL 1124794 (July 1991). The memo states, among other things, that a "firm must reasonably inquire into or investigate for possible misuse of material, non-public information transactions by any employee or the firm's proprietary accounts, particularly those transactions in restricted list or watch list securities." *Id.* at *3.

Goldman Sachs & Co., Exch. Act Rel. No. 48436, SEC LEXIS 2100 (Sept. 4, 2003); *In re Gintel Asset Management, Inc.*, Inv. Adv. Act of 1940 Rel. No. 2079, SEC LEXIS 2868 (Nov. 8, 2002); *In re Guy P. Wyser-Pratte*, Exch. Act Rel. No. 44283, SEC LEXIS 885 (May 9, 2001); *In re Certain Market Making Activities on NASDAQ*, Exch. Act Rel. No. 40910, SEC LEXIS 59 (Jan. 11, 1999), *In re Fox-Pitt Kelton, Inc.*, Exch. Act Rel. No. 37940, SEC LEXIS 3219 (Nov. 12, 1996).

As described above, Chanin failed to establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of Chanin's business, to prevent misuse, in violation of the federal securities laws, of material nonpublic information by Chanin or by persons associated with Chanin. For example, although Chanin had written policies in place from 1999 through September 15, 2003, requiring that its employees and associated persons read and acknowledge receipt of the firm's policies, and requiring its employees and associated persons to pre-clear and create a written record of their trading activities, Chanin failed to maintain and enforce those policies with respect to its personnel and associated persons. Chanin's failure to adhere to its own policies occurred for over four years notwithstanding Martinez's explicit recognition of Chanin's compliance obligations. Moreover during that time period, Chanin maintained no watch list or restricted list. While Chanin subsequently improved its enforcement of its written policies and added new policies, including what it called a restricted list after September 15, 2003, Chanin's efforts continued to be inadequate to address whether its policies and procedures were maintained and enforced. As discussed above, Chanin did not address whether all employees received its mandatory training and it did not address whether all persons subject to the requirement to acknowledge its insider trading policies did so. Chanin also did not have in place any method to obtain updated information regarding the existence of securities trading accounts of employees or associated persons following an individual's initial identification of trading accounts for monitoring. Taking into consideration Chanin's failure to implement, maintain or enforce its own written policies and procedures designed to prevent the misuse of material nonpublic information prior to September 15, 2003, including its failure to have a watch list or restricted list, and Chanin's failure to adequately implement, maintain or enforce such policies after September 15, 2003, Chanin violated Section 15(f) of the Exchange Act.

As a result of the conduct described above, Martinez willfully aided and abetted and caused Chanin's violation of Section 15(f) of the Exchange Act.⁵ Martinez was charged with the responsibility to enforce and maintain Chanin's policies and procedures to prevent the misuse of material nonpublic information. By failing to do so, Martinez willfully aided and abetted and caused Chanin's failure to implement, maintain or enforce its own written policies and procedures prior to September 15, 2003, and its failure to adequately implement, maintain or enforce its policies and procedures after September 15, 2003. Accordingly, Martinez willfully aided and abetted and caused Chanin's violation of Section 15(f) of the Exchange Act.

⁵ "Willfully" as used in this Order means intentionally committing the act which constitutes the violation. See *Wonsover v. SEC*, 20 F.3d 408, 414 (D.C. Cir. 2000); *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965).

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to accept the Offer submitted by Respondent and to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Sections 15(b), 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Pursuant to Section 15(b)(6) of the Exchange Act, Respondent Martinez be, and hereby is, censured;

B. Pursuant to Section 21B of the Exchange Act, within 10 days of the entry of this Order, Respondent Martinez shall pay a civil money penalty of \$25,000 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Martinez as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Christopher Conte, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Washington, D.C. 20549-4631; and

C. Pursuant to Section 21C of the Exchange Act, Respondent Martinez shall cease and desist from causing any violations and any future violations of Section 15(f) of the Exchange Act.

By the Commission.

Nancy M. Morris
Secretary