

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 63374 / November 24, 2010

ADMINISTRATIVE PROCEEDING  
File No. 3-14139

In the Matter of

**HECTOR GALLARDO,  
MICHAEL ZURITA, and  
ORION TRADING, LLC,**

**Respondents.**

**ORDER INSTITUTING  
ADMINISTRATIVE AND CEASE-  
AND-DESIST PROCEEDINGS  
PURSUANT TO SECTIONS 15(b) 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 against Hector Gallardo (“Gallardo”), Michael Zurita (“Zurita”), and Orion Trading, LLC (“Orion”) pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”).

**II.**

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. **Orion** is a California limited liability company with its principal place of business in Orlando, Florida. Orion has been registered as a broker-dealer with the Commission since June 1998. Orion conducts business under the name Brokerlatino, among others. From 2005 to 2007, Orion maintained a branch office in New York City.

2. **Zurita**, age 58, is a resident of Orlando, Florida. Zurita, the president of Orion, is a registered representative of Orion and holds Series 7 and 24 licenses. He also held a Series 63 license that expired in October 2004. Zurita was Orion’s Chief

Compliance Officer during the relevant period. Orion also employed an outside compliance consultant.

3. **Gallardo**, age 39, is believed to be a resident of Venezuela. He is not currently employed with any U.S.-registered entity. Gallardo has held Series 7 and 63 licenses. From January to September 2007, Gallardo was a registered representative in Orion's New York branch office.

B. RELATED ENTITY AND INDIVIDUAL

4. **Ventel Enterprises Corporation** ("Ventel") is a New York corporation licensed to do business in the state of New York. Sofia Gallardo, Gallardo's wife, serves as the registered agent of Ventel. Ventel is a sham corporation that Gallardo used in 2007 to defraud investors. Ventel does not appear to be a going concern, and is not registered with the Commission in any capacity.

5. **Armando Jaramillo** ("**Jaramillo**"), age 41, is believed to reside in Lima, Peru. He is not currently employed with any U.S.-registered entity. Jaramillo's Series 7 license expired in May 2004. In 2006 and 2007, Jaramillo worked in Orion's New York branch office, nominally as a foreign associate.

C. GALLARDO DEFRAUDS BOLIVIAN CUSTOMERS OF ORION

6. In 2006, a foreign finder that Orion employed in Bolivia solicited two Bolivian citizens, Jose Moscoso ("Moscoso") and Williams Baina ("Baina") (collectively, the "Bolivian investors"), to invest in U.S. equity markets through Orion. The Bolivian investors formed an entity called Orion Bolivia and solicited and bundled funds from other Bolivian retail investors for the purpose of investing those funds in the U.S. equity markets through Orion. Over time, the Bolivian investors collected and pooled approximately \$1.5 million from at least 375 individual Bolivians, who each invested sums ranging from approximately \$100 to \$32,000. Gallardo was not the registered representative for the Bolivian investors' account at Orion at this time, but in early 2007, Gallardo convinced the Bolivian investors to name him as their registered representative, telling them that he could provide better investment returns.

7. Lured by Gallardo's promises, the Bolivian investors provided Gallardo with a total of approximately \$1.154 million for Gallardo to invest on their behalf. Gallardo promised that he would invest in unspecified initial public offerings and/or in investment vehicles offered or managed by Ventel. Gallardo falsely told the Bolivian investors that Ventel was a group of "professional traders" who bought and sold stock for investors, and that Ventel could guarantee a nine to fifteen percent monthly return regardless of market volatility. Gallardo also promised the Bolivian investors that he would return a portion of their principal in six months if he did not obtain the promised returns. Gallardo even returned approximately \$275,000 of the Bolivian investors' investments in Ventel to them as illusory "distributions" to maintain the ruse that their investments were performing well.

8. Gallardo initially declined to provide the Bolivian investors with any documentation of their investments, but after several months Gallardo relented and gave them a phony investment contract which described Ventel as a “private complex offering professionally managed investment portfolios,” including a fund called the “Capital Partners Fund.” Gallardo falsely described the Capital Partners Fund as employing a “proprietary quantitative style” which could take “directional positions” in investments in equities, fixed income, commodities, real estate, currencies, and covered and long options.

9. In fact, Ventel, its “professional traders,” its trading strategy, and its purported investments were a complete sham fabricated by Gallardo. Ventel never was an investment “complex.” Gallardo did not have any “professional traders” who could invest the Bolivian investors’ money or guarantee any returns at all, let alone nine percent monthly returns. Gallardo never invested any of the Bolivian investors’ money in any initial public offerings. Instead, Gallardo invested approximately \$190,000 of the Bolivian investors’ funds in stocks and options through nominee accounts at three brokerages and lost virtually the entire amount — a fact that he did not disclose to the Bolivian investors. Gallardo misappropriated the remainder of the Bolivian investors’ money, approximately \$685,000. After transferring hundreds of thousands of dollars to a personal checking account, Gallardo used money in that account to pay his and his family’s personal expenses, including airline tickets and multiple trips to Atlantic City, where Gallardo liked to gamble.

10. Gallardo repeatedly took steps to conceal his scheme from the Bolivian investors. Initially, when they requested a contract from Ventel setting forth the nine percent guarantee, Gallardo demurred and offered a nonsensical explanation, stating that no contract existed because Ventel was not a bank but rather was comprised of “professional traders.” Thereafter, Gallardo orchestrated a meeting with the Bolivian investors in New York in August 2007 with two of Gallardo’s associates, Feliciano Carrasco (“Carrasco”) and Jaramillo, during which, according to the Bolivian investors, Gallardo and his associates represented that they were affiliated with Ventel and reassured the Bolivian investors that Ventel was a legitimate enterprise. At the time, Carrasco was an employee of JPMorgan Chase Bank, N.A. (“Chase”), and he facilitated the meeting at a Chase bank branch. Shortly after the meeting, Gallardo provided the Bolivian investors with the phony investment contract described in paragraph 8 above. A few weeks later, Gallardo fabricated an email to one of the Bolivian investors from Ventel’s “back office” to give the impression that Ventel was a legitimate investment business and to stymie the investor’s demands for the returns Gallardo had promised.

11. Gallardo’s scheme fell apart by September 2007, when the Bolivian investors demanded to see returns on the initial public offerings of stock in which Gallardo told them he had invested. Because Gallardo could not produce the returns, the Bolivian investors refused to invest further and subsequently lost all contact with Gallardo. Moscoso and Baina lost \$876,193 of their and the other 375 investors’ money through the investment with Gallardo and Ventel.

D. ZURITA IGNORED RED FLAGS

12. Although stationed in Florida, Zurita was the supervisor responsible for Orion's New York branch office during the relevant period because Orion did not have any qualified supervisory personnel on-site. Zurita recruited Gallardo to be the person in charge of Orion's New York branch office in approximately December 2006. Zurita did not meet with Gallardo in person before retaining him, and performed only cursory due diligence on Gallardo's background. Zurita did learn, however, that Gallardo had little-to-no previous supervisory experience and had never run a branch office. Despite Gallardo's lack of experience, Zurita hired Gallardo in January 2007. Zurita did not travel back to Orion's New York branch office until September 2007. While Zurita hired Gallardo with the understanding that Gallardo would obtain a Series 24 license, thereby becoming qualified to be a branch manager, Zurita knew that Gallardo never took the examination. Zurita therefore remained the person with ultimate responsibility for Orion's New York branch office throughout 2007.

13. In 2007, during the period in which Gallardo carried out his fraud against the Bolivian investors, Zurita ignored a series of red flags that should have put Zurita on notice as to suspicious activity between Gallardo and the Bolivian investors. In particular, in March 2007, following a review of Gallardo's emails, Zurita identified the following email that Gallardo received from Moscoso:

*I mentioned to you that we are representatives of a company that recruit people that want to invest in the stock market but the condition is that we should pay the client at least 12% (minimum), ideally it would be to pay 15% so that the company also makes money. If you get to make more than 15% on a monthly basis we give you the benefit of 30% of the excess, in this there is a lot of acceptance in that we could send, on average, \$100,000 per month. I would like your opinion in this respect, you can call me on my cell phone . . . . I would request you call me urgently because we currently have \$100,000 to deposit. If you do not reach us by telephone, send us an email.*

After seeing this email (the "March 2007 email"), Zurita knew, or was reckless in not knowing, that an Orion customer (Moscoso) was communicating with Gallardo about stock market investments that would pay returns in excess of twelve percent *per month* (144% annualized) and was proposing to enter into a profit sharing arrangement with the registered representative, Gallardo. The email also put Zurita on notice that Moscoso was fronting for an unspecified group of other investors. Yet, Zurita waited three weeks to bring the March 2007 email to the attention of Orion's compliance consultant.

14. Zurita claims that he spoke with Gallardo at the time regarding the March 2007 email, and Gallardo orally assured him that Gallardo would follow-up with Moscoso and let him know that Gallardo could not do what Moscoso was asking him to do in the email. No written evidence exists to support Zurita's claim. Zurita's concerns were

sufficiently serious that on multiple occasions from March to May, Zurita sent Gallardo emails demanding a copy of Gallardo's written response to Moscoso. However, Gallardo never responded to Zurita, and Zurita took no steps to determine whether Gallardo had handled the request consistent with Orion's policies and procedures, which required Gallardo to provide Zurita with a copy of Gallardo's written response on the day that Gallardo sent it, or whether disciplinary steps were necessary. Nor did Zurita attempt to contact Moscoso himself. Throughout this period, Zurita still intended for Gallardo to take his Series 24 examination so he could become Orion's New York branch manager.

15. Three months after the March 2007 email, Zurita received further notice that Gallardo was dealing with Moscoso concerning accounts at Orion that involved possible payments to unnamed "clients" of Moscoso. Zurita again failed to respond to this red flag and appears to have condoned the very arrangement with Gallardo that he earlier frowned upon. Specifically, in June 2007, Moscoso complained in an email to Zurita that Zurita had failed to respond to Moscoso's request to wire funds from the Moscoso/Baina accounts at Orion. Moscoso further wrote that he was "very concerned because we need to pay our clients." Zurita responded to Moscoso that Gallardo would liquidate certain positions in the "portfolio" to raise cash to facilitate the requested transfer.

16. Zurita missed other red flags that should have put him on notice about the risks that Gallardo posed to Orion's customers and Gallardo's failure to comply with Orion's policies and procedures. In March 2007, Zurita became aware of a customer complaint alleging that Gallardo had failed to follow a customer's instructions and executed an unauthorized trade at Gallardo's previous brokerage firm. After receiving notice of this complaint, Zurita did not reasonably follow-up on this or other red flags, for example, by placing Gallardo on heightened supervision. Zurita also communicated to Orion's compliance consultant in March his concerns about Gallardo's "aggressive attitude." In April, another registered representative in Orion's New York branch office raised concerns about the conduct of employees in the office, including Gallardo. The representative asserted that Gallardo had placed trades before Gallardo was registered, and that unregistered employees of the branch were cold calling and attempting to sell stock to potential investors. At no time did Zurita visit Orion's New York branch office to assess the veracity of the employee's claims. Nor did Zurita otherwise investigate the operations of the New York branch office or Gallardo's conduct.

E. ORION AND ZURITA FAILED TO DEVELOP REASONABLE SYSTEMS TO IMPLEMENT ORION'S POLICIES AND PROCEDURES

17. Throughout the period when Gallardo was defrauding the Bolivian investors, Zurita was Orion's president. Zurita was therefore ultimately responsible for establishing reasonable policies and procedures and reasonable systems to implement those policies and procedures to detect violative activity by Orion's registered representatives. For example, Orion's Written Supervisory Procedures ("WSP") had a lengthy list of "prohibited transactions/actions." The WSP identified Zurita as the Orion personnel responsible for implementing this section and specified that actions required if Zurita detected prohibited transactions included "[c]onferring with employee," "[i]ssuing a written admonition," and

“[r]estricting the activities of or the transaction handled by the employee.” Orion’s list of prohibited transactions included “[r]aising money . . . as an agent for any business enterprise whatsoever without the advance written consent of [Zurita];” “[w]arranting or guaranteeing the present/future value or price of any security or warranting that any company, partnership, or issuer of securities will meet its obligations, promises, or comply with its representations to investors;” and “[r]eceiving compensation for securities transactions from anyone (clients or other securities dealers or representatives) for services rendered [including] . . . commissions of any sort.”

18. Orion and Zurita failed to develop reasonable systems to implement the WSPs with respect to the prohibited transactions. The March 2007 email from Moscoso to Gallardo that Zurita reviewed involved several transactions on Orion’s prohibited list. When Zurita saw the March 2007 email, however, he took no steps other than to ask for Gallardo’s written response to Moscoso. Gallardo ignored this request, and other subsequent requests from Zurita. Despite Gallardo’s obduracy, Zurita took no other steps to reprimand or otherwise restrict Gallardo’s activities.

19. In addition, Orion’s WSP referenced a “branch office inspection program.” Orion and Zurita failed reasonably to implement the firm’s branch office inspection program. In particular, there is no evidence that Zurita ever developed any specific protocol for inspecting the New York branch office, and in fact neither Zurita nor any other supervisor inspected the branch office at any time in 2007, despite the numerous red flags involving that office that he learned of in 2007.

#### F. ORION EMPLOYED AN UNLICENSED FOREIGN ASSOCIATE

20. Zurita permitted an unlicensed foreign associate to perform the functions of a registered representative at the New York branch office for several months in 2006 and 2007.<sup>1</sup> Jaramillo, a foreign associate affiliated with Orion, began working in Orion’s New York branch office by early 2006. Zurita knew that Jaramillo reported to the New York branch office virtually every day. Jaramillo’s activities included trading in and otherwise servicing existing customer accounts as well as opening new accounts. Jaramillo worked in Orion’s New York branch office until the summer of 2007, when Orion terminated him. At no time did Jaramillo register or take any qualification examination with FINRA.

#### G. VIOLATIONS

21. As a result of the conduct described above, Zurita and Orion failed reasonably to supervise Gallardo within the meaning of Section 15(b)(4)(E) of the

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<sup>1</sup> FINRA defines a “foreign associate” as a person associated with a FINRA member who is not a citizen, national, or resident of the United States and who conducts all of his securities activities outside the jurisdiction of the United States with persons who are not citizens, nationals, or residents of the United States. *See* FINRA Manual, NASD Rule 1100(a).

Exchange Act, which requires broker-dealers reasonably to supervise persons subject to their supervision, with a view toward preventing violations of the federal securities laws.

22. As a result of the conduct described above, Orion willfully violated Section 15(b)(7) of the Exchange Act and Rule 15b7-1 thereunder, which require registration of individuals effecting securities transactions in accordance with standards set forth by a national securities association of which the broker-dealer is a member. Zurita willfully aided and abetted and caused Orion's violations of Section 15(b)(7) of the Exchange Act and Rule 15b7-1 thereunder.

23. As a result of the conduct described above, Gallardo willfully violated Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities.

### **III.**

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act;

C. Whether, pursuant to Section 21C of the Exchange Act, Gallardo should be ordered to cease and desist from committing or causing any violations of and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder; and

D. Whether, pursuant to Section 21C of the Exchange Act, Zurita and Orion should be ordered to cease and desist from committing or causing any violations of and any future violations of Section 15(b)(7) of the Exchange Act and Rule 15b7-1 thereunder.

### **IV.**

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If any Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him/it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice, 17 C.F.R. § 201.360(a)(2).

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy  
Secretary



Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Order"), on the Respondents and their legal agent.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray  
Chief Administrative Law Judge  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-2557

Ken Joseph, Esq.  
New York Regional Office  
Securities and Exchange Commission  
3 World Financial Center, Suite 400  
New York, NY 10279

Hector Gallardo  
5037 63<sup>rd</sup> Street  
Woodside, NY 11377

Michael Zurita, President  
Orion Trading, LLC  
8615 Commodity Circle, Suite 3  
Orlando, FL 32819

Orion Trading, LLC  
c/o Michael Zurita, President  
8615 Commodity Circle, Suite 3  
Orlando, FL 32819

Mark David Hunter, Esq.  
Leser Hunter Taubman & Taubman, PLLC  
255 University Drive  
Coral Gables, FL 33134  
*Counsel to Michael Zurita and Orion Trading, LLC*

