

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3589 / April 18, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15285

In the Matter of

DOUGLAS F. WHITMAN,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Douglas F. Whitman (“Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “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, Respondent consents to the Commission’s jurisdiction over him and the subject matter of these proceedings and to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

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

1. Whitman was the sole shareholder, director and officer of the general partner of Whitman Capital, LLC (“Whitman Capital”), an unregistered investment adviser. Whitman was also president of Whitman Capital. Whitman, 55 years old, is a resident of Atherton, California.

2. On March 20, 2013, a final judgment was entered by consent against Whitman, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Douglas F. Whitman, et al., Civil Action Number 12-CV-1055, in the United States District Court for the Southern District of New York.

3. The Commission’s complaint alleged that Whitman and Whitman Capital illegally traded based on material nonpublic information obtained from Whitman’s friend and neighbor, Roomy Khan. Khan tipped Whitman with confidential details about Polycom Inc.’s fourth quarter 2005 earnings and Google Inc.’s second quarter 2007 earnings prior to the public announcements of those financial results by the companies. Khan had received the material non-public information that she conveyed to Whitman from a high-ranking executive at Polycom, Inc., and from an employee of an investor relations firm retained by Google, Inc, respectively. Whitman Capital, according to the complaint, garnered nearly \$1 million in ill-gotten gains by trading on Khan’s illegal tips.

4. On August 21, 2012, Whitman was convicted of two counts of conspiracy to commit securities fraud in violation of Section 371 of Title 18 of the United States Code, and two counts of securities fraud in violation of Sections 78j(b) and 78ff of Title 15 of the United States Code, Section 2 of Title 18 of the United States Code, and Sections 240.10b-5 and 240.10b-5 of Title 17 of the Code of Federal Regulations before the United States District Court for the Southern District of New York, in United States v. Doug Whitman, 12-CR-125 (JSR). On January 29, 2012, a judgment in the criminal case was entered against Whitman. Whitman was sentenced to a prison term of 24 months, followed by one year of supervised release, ordered to pay forfeiture in the amount of \$935,306, and to a pay a \$250,000 fine.

5. The criminal indictment pursuant to which Whitman was convicted alleged, inter alia, that Whitman participated in a scheme to defraud by executing securities trades based on material, nonpublic information regarding certain inside information pertaining to Polycom, Inc., and Google, Inc., as well as another technology company, that had been misappropriated in violation of duties of trust and confidence, and that he unlawfully, willfully and knowingly did so, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails, and of the facilities of national securities exchanges, in connection with the purchase and sale of securities.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 203(f) of the Advisers Act that Respondent Whitman be, and hereby is:

Barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Elizabeth M. Murphy
Secretary