

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 92156 / June 11, 2021**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 34297 / June 11, 2021**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20363**

**In the Matter of**

**DAVID G. MARTIN**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO SECTIONS 15(b) AND 21C  
OF THE SECURITIES EXCHANGE ACT OF  
1934 AND SECTION 9(b) OF THE  
INVESTMENT COMPANY 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 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against David G. Martin (“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, 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, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Administrative And Cease-And-Desist Proceedings, Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Section 9(b) of the

Investment Company 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 Respondent’s Offer, the Commission finds<sup>1</sup> that:

#### Summary

1. This matter involves insider trading in the securities of The KeyW Holding Corporation (“KeyW”) by David G. Martin in advance of the April 22, 2019 public announcement that Jacobs Engineering Group Inc. (“Jacobs”) had agreed to acquire KeyW in an \$11.25 per share all-cash tender offer transaction. In advance of the announcement, Martin, who had been employed at the investment bank that was advising Jacobs, misappropriated material, nonpublic information concerning the prospective acquisition and purchased 1,861 shares of KeyW in the brokerage account of his girlfriend. Following the public announcement, KeyW’s stock price increased by approximately 42%, and Martin’s trading yielded a profit of \$5,708.51.

#### Respondent

2. **David G. Martin** (CRD No. 5938501), age 38, is a resident of Chicago, Illinois. From April 20, 2015 through April 5, 2019, Martin was employed as Assistant Vice-President and then Vice-President in the Investment Banking Division of a large international investment bank (the “Investment Bank”) and lived in Hoboken, New Jersey. He previously held Series 63 and 79 licenses.

#### Other Relevant Entities

3. **The KeyW Holding Corporation**, is a cybersecurity and cloud data analysis company with its headquarters in Hanover, Maryland. Prior to its acquisition by Jacobs, the company’s common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and traded under the ticker “KEYW” on the NASDAQ.

4. **Jacobs Engineering Group Inc.**, is a Delaware corporation headquartered in Dallas, Texas. Jacobs’ common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and trades on the New York Stock Exchange under the ticker symbol “J.”

5. **Investment Bank** is a registered broker-dealer with its principal place of business in New York, NY.

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<sup>1</sup> The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

## **Background**

### **A. Background of the Merger**

6. On February 14, 2019, Jacobs and the Investment Bank executed a nondisclosure / confidentiality agreement in connection with Jacobs' retainer of the Investment Bank to serve as its adviser in the contemplated tender offer acquisition of KeyW.

7. After several meetings involving senior management officials from both companies, some of which included representatives from the Investment Bank, Jacobs made its first offer to KeyW on March 15, 2019.

8. After further negotiations, the parties formally agreed to the merger on April 21, 2019.

9. The deal was announced April 22, 2019, prior to the market opening. On the day of the announcement, KeyW's stock price increased by \$3.31, or 42%, from \$7.86 to \$11.17 per share.

### **B. Martin Learns of Material, Nonpublic Information Related to Potential Acquisition of KeyW.**

10. Martin worked at the Investment Bank and was subject to the firm's Personal Investments Group-Wide Standard and Market Conduct Group-Wide Standard for Information Barriers, which forbid insider trading and the unauthorized and/or inappropriate disclosure of material, nonpublic information. Martin received annual training regarding, and certified that he understood, the Investment Bank's insider trading policies.

11. In connection with its work on the Jacobs-KeyW merger, the Investment Bank created a deal team and gave the project the code names "Project Kelly" and "Atom", thus demonstrating the confidential nature with which the Investment Bank treated the negotiations. Martin was not officially assigned to work on the deal team; however, he was (a) assigned to the loan committee team that worked in parallel with the deal team to increase Jacobs' credit facility needs for general working capital and future acquisitions, (b) consulted by colleagues who were on the deal team to help provide financial projections in connection with Jacobs' upcoming acquisition plans, and (c) the primary person on the Investment Bank's loan committee team responsible for "industry coverage" as it pertained to Jacobs' industry.

12. Through his employment at the Investment Bank, Martin obtained material, nonpublic information concerning the proposed merger that was sufficient for him to identify KeyW as the target company.

13. For example, on March 6, 2019, Martin's colleague on the deal team sent him an email with the subject "Jacobs M&A Estimate" asking for "input on the potential M&A fees. ..." Martin responded by asking "what general acquisition size have you been looking at for Jacobs?" His colleague replied that the acquisition size was "850." Thus, upon receipt of this email, Martin learned Jacobs was considering an acquisition of approximately \$850 million. The final deal for KeyW was valued at \$815 million.

14. On March 13, 2019, Martin and the Investment Bank loan committee team circulated an internal proposal asking the Investment Bank to increase its commitment to Jacobs' syndicate-backed revolving credit facility so that Jacobs would have a larger credit facility for general working capital and future acquisitions. The proposal was placed on "fast-track approval" and the Investment Bank approved the loan that same day. This was a necessary step for the acquisition, and Jacobs submitted its initial offer two days later on March 15, 2019.

15. Also on March 13, 2019, Martin was aware that the negotiations involving an imminent Jacobs-related acquisition were serious because he received a late night message from a senior-level colleague asking him to assign a new analyst to the deal team because the current analyst "has gotten crushed on this Jacobs M&A project."

16. Throughout March and April, Martin was coordinating with the same senior-level colleague to schedule a convenient date for an upcoming presentation the colleague had been asked to make to another group within the Investment Bank. On April 1, 2019, the colleague told Martin to finalize a date for the presentation but cautioned that he was "working on a deal that may blow up" the week of April 15<sup>th</sup>.

17. In addition to the above facts that Martin learned directly from his colleagues, he was responsible for providing "industry coverage" for Jacobs, which meant he had sector-specific knowledge about Jacobs' industry. Thus, Martin was well positioned to identify KeyW as Jacobs' target based on the material, nonpublic information he learned from his colleagues and his role monitoring Jacobs' industry.

18. Martin resigned from the Investment Bank on April 3, 2019 and his last day was April 5, 2019. Martin's duties to his employer did not terminate upon his resignation. He remained under obligation to keep all information confidential and not trade on any inside information learned during his tenure at the Investment Bank.

**C. Martin Buys KeyW Stock in His Girlfriend's Account.**

19. Martin and his girlfriend lived together in Hoboken, New Jersey, at all relevant times.

20. Throughout their relationship, Martin managed the couple's finances and investments and controlled the trading in his girlfriend's brokerage account.

21. On April 16, 2019, Martin purchased 1,861 shares of KeyW stock in his girlfriend's brokerage account.

22. Martin placed the order to buy KeyW shares from a temporary office where he was working during his transition to a new job and placed the order without his girlfriend's knowledge.

23. Consistent with the timeframe Martin learned from the senior-level colleague, Jacobs finalized its offer to acquire KeyW during the week of April 15, 2019 and the companies executed their merger agreement on Sunday, April 21, 2019.

24. The next day, Monday, April 22, 2019, Jacobs announced that it had entered into a merger agreement with KeyW that had "an enterprise value, net of tax assets, of approximately \$815 million," causing KeyW's stock price to close 42% higher than the previous trading day's closing price, and Martin's trading yielded an unrealized profit of \$5,708.51.

### **Violations**

25. As a result of the conduct described above, Martin willfully violated Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities and fraudulent acts or practices in connection with a tender offer.

### **IV.**

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

Accordingly, pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Section 9(b) of the Investment Company Act of 1940, it is hereby ORDERED that:

A. Respondent Martin cease and desist from committing or causing any violations and any future violations Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder.

B. Respondent Martin 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;

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock;

with the right to apply for reentry after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission;

C. 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, compliance with the Commission's order and payment of any or all of the following: (a) any disgorgement or civil penalties ordered by a Court against the Respondent in any action brought by the Commission; (b) any disgorgement amounts ordered against the Respondent for which the Commission waived payment; (c) any arbitration award related to the conduct that served as the basis for the Commission order; (d) 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 (e) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Martin shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$11,417.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). 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:

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 David G. Martin 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 Joseph G. Sansone, Chief, Market Abuse Unit, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, NY 10281.

E. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

#### V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Vanessa A. Countryman  
Secretary