

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

SECURITIES EXCHANGE ACT OF 1934  
Release No. 68866/February 7, 2013

INVESTMENT ADVISERS ACT OF 1940  
Release No. 3552/February 7, 2013

ADMINISTRATIVE PROCEEDING  
File No. 3-15162

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In the Matter of

GARY J. MARTEL : ORDER MAKING FINDINGS AND  
: IMPOSING SANCTIONS BY DEFAULT

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### SUMMARY

This Order bars Gary J. Martel (Martel) from the securities industry.

### I. BACKGROUND

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Proceedings (OIP) on January 4, 2013, pursuant to Sections 15(b) of the Securities Exchange Act of 1934 (Exchange Act) and 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The OIP alleges that Martel was enjoined against violations of the antifraud provisions of the federal securities laws and pleaded guilty to wire and mail fraud. Martel was served with the OIP in accordance with 17 C.F.R. § 201.141(a)(2)(i) on January 11, 2013, and his Answer to the OIP was due within twenty days of service of the OIP on him. See OIP at 3; 17 C.F.R. § 201.220(b). He has not filed an Answer to date. Accordingly, he has failed to answer or otherwise to defend the proceeding within the meaning of 17 C.F.R. § 201.155(a)(2). Therefore, Martel is in default, and the undersigned finds that the allegations in the OIP are true as to him.<sup>1</sup> See OIP at 3; 17 C.F.R. §§ 201.155(a), .220(f).

### II. FINDINGS OF FACT

Martel is permanently enjoined from violating the antifraud provisions: Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act. SEC v. Martel, No. 1:12-cv-11095-FDS (D. Mass. Jan. 7, 2013). Additionally, he was order to pay disgorgement of \$3,261,438 plus prejudgment interest of

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<sup>1</sup> Martel was advised that if he failed to file an Answer within the time provided, he would be deemed to be in default, and the undersigned would enter an order barring him from the securities industry. See Gary J. Martel, Admin. Proc. No. 3-15162 (A.L.J. Jan. 25, 2013) (unpublished).

\$695,806 and a civil penalty of \$3,261,438. *Id.* Martel has also pleaded guilty to mail and wire fraud and awaits sentencing in United States v. Martel, No. 1:12-cr-10345-FDS (D. Mass.). In the wrongdoing underlying his injunction and criminal case, which occurred from 2004 to 2012, Martel fraudulently obtained more than \$1.6 million from advisory clients by misrepresenting to them that he would invest their funds in bonds, mortgage-related securities, a cash reserve account, and stock offered by Facebook in an initial public offering. Instead, he made no investments on behalf of the clients, the securities he sold were fictitious, and he used funds received from investors to make payments to earlier investors or for his own personal use. Martel was an unregistered investment adviser from August 2004 through May 2012, and was a registered representative associated with registered broker-dealers from 2004 through 2009.

### III. CONCLUSIONS OF LAW

Martel has been permanently enjoined “from engaging in or continuing any conduct or practice in connection with any such activity” as a broker, dealer, or investment adviser within the meaning of Sections 15(b)(4)(C) and 15(b)(6)(A)(iii) of the Exchange Act and Sections 203(e)(4) and 203(f) of the Advisers Act. Additionally, the wrongdoing for which he was convicted<sup>2</sup> “ar[ose] out of the conduct of the business of a[n] . . . investment adviser” within the meaning of Sections 203(e)(2)(B) and 203(f) of the Advisers Act.

### IV. SANCTIONS

Martel will be barred from the securities industry. This sanction will serve the public interest and the protection of investors, pursuant to Section 203(f) of the Advisers Act, and accord with Commission precedent and the sanction considerations set forth in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979). Martel’s unlawful conduct was recurring and egregious. Extending over a period of several years, it involved millions of dollars.

### V. ORDER

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(b), and Section 203(f) of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-3(f), GARY J. MARTEL IS BARRED from associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock.<sup>3</sup>

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Carol Fox Foelak  
Administrative Law Judge

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<sup>2</sup> Section 202(a) of the Advisers Act provides, “(6) ‘Convicted’ includes a . . . plea of guilty . . . whether or not sentence has been imposed.”

<sup>3</sup> Thus, he will be barred from acting as a promoter, finder, consultant, or agent; or otherwise engaging 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, pursuant to Exchange Act Section 15(b)(6)(A), (C).