

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72886 / August 20, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16025

In the Matter of

**MONNESS, CRESPI, HARDT
& CO., INC.,**

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934, 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”) against Monness, Crespi, Hardt & Co., Inc. (“MCH” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“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 it 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 Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, 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 that:

Summary

1. Beginning in at least 2006 until early 2012, MCH, a registered broker-dealer and equity research firm, failed to establish, maintain and enforce written policies and procedures reasonably designed, taking into account the nature of its business, to prevent the misuse of material, nonpublic information, in violation of the Exchange Act or the rules and regulations thereunder. Specifically, MCH failed to enforce two of its written compliance procedures, which required MCH to maintain a restricted list and required employees to submit a report of their securities transactions. Second, MCH did not adopt written policies and procedures to address the potential risk created by the firm's Idea Dinner and Corporate Access programs, which the firm had established and provided as services to its existing and prospective customers. As a result, MCH violated Section 15(g) of the Exchange Act.

2. The Commission's Office of Compliance Inspections and Examinations conducted an examination of MCH in 2011 which initially identified these issues, and MCH promptly undertook remedial measures in response. Among other measures, the firm adopted revised insider trading supervisory procedures which included expanding and formalizing its restricted list procedures, prohibiting trading by its employees in MCH covered securities, and adopting written supervisory procedures for its Corporate Access and Idea Dinner programs.

Respondent

3. Monness, Crespi, Hardt & Co., Inc. is a New York corporation with its principal place of business in New York City. MCH has been registered with the Commission as a broker-dealer since February 11, 1977. MCH's primary business is executing trades for hedge funds and other institutional customers and providing equity research to its customers.

Facts

4. Throughout the relevant period, MCH employed approximately 35-50 associated persons, including about 7 to 8 research analysts. MCH's analyst research covered approximately 60-80 public companies in sectors such as aerospace, chemicals and agriculture, energy, healthcare, housing, construction and real estate, industrials and transportation, retail and consumer products, and technology, telecom and the internet.

5. As part of their duties, certain MCH employees, including the research analysts, had access to material, nonpublic information concerning, among other things, the upcoming publication by MCH of research reports. MCH analysts or other employees also could potentially acquire material, nonpublic information regarding issuers during the course of preparing research reports. In view of the nature of its business, MCH had developed written policies and procedures in a "Compliance Manual" to prevent and detect the misuse of material, nonpublic information. MCH revised and updated its Compliance Manual on a yearly basis.

A. MCH Failed to Enforce its Restricted List and Employee Securities Reporting and Review Procedures

6. The firm's Compliance Manual contained policies and procedures regarding the prohibition on insider trading and the protection of confidential information. The firm failed, however, to enforce two of its insider trading procedures.

(a) Restricted List

7. The "Restricted Securities" provision of MCH's Compliance Manual set forth policies and procedures regarding the confidentiality of information related to MCH analyst research. Prior to the public dissemination of a research report on an issuer, associated persons who learned of or anticipated receiving material, nonpublic information concerning that issuer in the course of compiling a research report were prohibited from trading in that issuer's securities or recommending the purchase or sale of that issuer's securities to any customer. MCH likewise was prevented from purchasing or selling such securities in its accounts.¹ To avoid the risk of trading ahead of a research report (research front running), the research analyst and anyone else aware of an upcoming research report were prohibited from trading in the issuer's securities prior to publication of the research report.

8. To effectuate these policies, the Compliance Manual provided that issuers that were the subject of an upcoming research report would be placed on a restricted list when the research commenced and removed after the report was published. The Compliance Manual mandated that, during this restricted period, MCH would only permit bona fide unsolicited customer orders for trading in the issuer's securities. In addition, MCH had to approve any request to trade in the issuer's securities.

9. MCH did not follow this procedure. It did not place issuers subject to upcoming MCH research reports on a restricted list, or require trading approval of such restricted securities. The only securities that MCH employees were prohibited from trading were securities of two issuers for which the firm's vice president served on the board of directors. Without maintaining a restricted list in accordance with its stated procedures, MCH did not adequately monitor trading activity to prevent or detect potential market violations, including insider trading and trading in advance of material research changes.

(b) Personal Securities Trading

10. MCH's Compliance Manual required all of its employees and their family members to conduct personal securities transactions through accounts held at the firm. Certain MCH employees and analysts traded equities through accounts maintained at the firm, including in securities of issuers covered by MCH analyst research.

¹ The firm did not engage in proprietary trading except for riskless principal transactions in the execution of customer orders.

11. However, MCH failed to enforce its compliance procedure that required all MCH officers, directors, and employees to submit a report of every securities transaction in which they, their families, or their trusts participated.² The firm required this personal securities trading report as part of its insider trading procedures. The Compliance Manual required MCH to review these trading reports, and to coordinate the review of such reports with appropriate MCH personnel. The firm's failure to enforce these procedures, coupled with the firm's failure to maintain a comprehensive restricted list, limited MCH's ability to review adequately employee trading for the misuse of material, nonpublic information. In addition, the firm did not sufficiently document the trading reviews it may have conducted or the outcome of any inquiry or investigation it may have conducted as a result of such reviews.

B. MCH Lacked Written Compliance Policies and Procedures Concerning its Corporate Access and Idea Dinner Programs

12. During the relevant period, MCH did not have written policies and procedures that specifically addressed the risks posed by its "Corporate Access" or "Idea Dinner" programs, two programs that the firm had established and provided as services to its existing and prospective customers. These programs posed the risk that MCH analysts or employees might disclose material, nonpublic information about upcoming research reports or about an issuer learned in the course of an analyst compiling a research report. The Corporate Access program also posed the risk that associated persons of MCH or its customers might have access to material, nonpublic information from issuers' management.

13. MCH's "Corporate Access" program, which began in approximately 2009, provided issuer management with access to investors through non-investment banking road shows and other investor access events. The firm's marketing materials state that, through the program, "MCH provides its clients the opportunity for direct dialogue with corporate management teams and thought leaders across industries." Corporate Access events, which generally took place several times a month, consisted of group meetings and/or one-on-one meetings between management of the issuer, certain MCH employees (including research analysts and sales representatives), and MCH's institutional customers. If MCH covered the issuer in question, an MCH analyst usually attended the events.

14. MCH's "Idea Dinner" program consisted of dinners at which MCH personnel and current and prospective investor clients presented ideas. In its marketing materials, MCH states that it "consistently hosts idea dinners focused on creating a unique forum for experienced investors to share ideas and information on market, sector, and company specific topics."

² During the relevant period, the firm's "Personal Securities Trading" policy and procedure stated:

"[All] officers, directors, and employees of the Firm shall submit to the Firm's President a report of every securities transaction in which they, their families (including the spouse, minor children, and adults living in the same household as the officer, director or employee), and trusts of which they are trustees of in which they have a beneficial interest have participated after such transaction. We do not allow personal accounts outside the Firm you must conduct your equities trading business through the Firm."

Sometimes MCH analysts would attend Idea Dinners and present trading recommendations on stocks that they covered. The Idea Dinners were recorded and after each dinner the firm sent the tape recording to a transcription service to type up the notes regarding each idea presented. Typically a “teaser” summary identifying the ideas presented at the dinner was distributed to certain of the firm’s customers, after which detailed notes of the discussions held at the dinner were sent to customers upon request. The firm tracked the performance of the ideas presented and would periodically publish that information to its clients.

15. MCH did not have written policies and procedures that specifically addressed the risks that its Idea Dinner and Corporate Access programs posed for the possible misuse of material, nonpublic information. For example, MCH did not have a policy that specifically prevented an analyst or other associated person from proposing a trading recommendation on a security at an Idea Dinner or Corporate Access event when that security was the subject of an upcoming research report. Although associated persons of MCH were subject to the firm’s general prohibition against disclosing material, nonpublic information about an issuer learned while compiling a research report, the only procedure identifying an upcoming research report itself as material, nonpublic information was the restricted list procedure, which the firm failed to follow.

16. Similarly, MCH had no written procedures or controls to specifically address the risk that its analysts or other associated persons were not divulging material, nonpublic information during, or learned as a result of, Corporate Access or Idea Dinner events. For instance, MCH’s compliance officer did not attend these events. Nor did MCH monitor the analysts’ presentations, conduct trading reviews around these events, or conduct reviews to determine, for example, if ratings or target price changes, or material disclosures by the issuer, took place shortly after an MCH analyst took part in these events.

Legal Analysis

17. Section 15(g) of the Exchange Act requires broker-dealers to establish, maintain and enforce written policies and procedures, reasonably designed, taking into consideration the nature of the broker’s or dealer’s business, to prevent the misuse, in violation of the Exchange Act or the rules and regulations thereunder, of material, nonpublic information by such broker or dealer or any person associated with such broker or dealer.³ “The internal controls requirements imposed by Section 15(g) are essential to protect against the risk of misuse of material, nonpublic information, which can undermine investor confidence in the integrity of the markets. Section 15(g) is intended to guard against a broad range of potential market violations, including insider trading and trading in advance of material research changes.” In re Goldman, Sachs & Co., Exch. Act Rel. No. 66791 (Apr. 12, 2012).

³ There is no requirement under Section 15(g) that there be an underlying insider trading violation or any other violation of the Exchange Act or the rules thereunder. In the Matter of New York Stock Exchange LLC, et al., Exchange Act Release No. 72065, 2014 WL 1712113, at *5 n. 13 (May 1, 2014); In the Matter of Certain Market Making Activities on NASDAQ, Exchange Act Release No. 40910, 1999 WL 6716, at *6 n.3 (Jan. 11, 1999). Section 15(g) of the Exchange Act was formerly Section 15(f). The provision was renumbered in 2010 by the Dodd-Frank Wall Street Reform and Consumer Protection Act.

18. Broker-dealers must be cognizant of their duties under Section 15(g) and the need to tailor their policies to the specific activities of the individual firm, particularly as their businesses evolve. The Commission has long held that the requirement that broker-dealers implement and maintain policies and procedures consistent with the nature of their business “is critical to effectively preventing the misuse of material, nonpublic information.” In re Gabelli & Co., Inc., Exchange Act Rel. No. 35057 (Dec. 8, 1994). The Commission also has consistently made clear that broker-dealers must take seriously their responsibilities to design and enforce sufficiently robust policies and procedures to prevent the misuse of material, nonpublic information. See, e.g., In re Goldman Sachs & Co., Exchange Act Rel. No. 48436 (Sept. 4, 2003) (finding Section 15(f) violation where Goldman Sachs failed to prevent the misuse of material, nonpublic information potentially obtained by its paid outside consultants); In re Merrill Lynch, Pierce, Fenner & Smith Inc., Exchange Act Rel. No. 63760 (Jan. 25, 2011) (finding Section 15(g) violation where Merrill Lynch failed to prevent the misuse of customer order information).

19. The mere establishment of policies and procedures alone is not sufficient to prevent the misuse of material, nonpublic information. It also is necessary to implement measures to monitor compliance with and enforcement of those policies and procedures. See, e.g., In re Morgan Stanley & Co. Inc., et al., Exchange Act Release No. 54047 (June 27, 2006) (finding Section 15(f) violation where Morgan Stanley failed to enforce existing policies and procedures concerning surveillance over a four-year period).

20. MCH failed to adequately enforce its policies and procedures designed to prevent or detect the misuse of material, nonpublic information concerning its analysts’ research and information its associated persons may have learned in the course of preparing a research report. Specifically, MCH failed to adequately enforce its own policies and procedures with regard to a restricted list and requiring employees to submit personal securities trading reports. Because of these failures, the firm was unable to review adequately employee or customer trading to prevent or detect potential market violations, including insider trading and trading in advance of material research changes.

21. The firm also had no written compliance policies and procedures that specifically addressed the risks posed by its Corporate Access and Idea Dinner programs. Having established these programs, the firm did not directly address the risk of misuse of material, nonpublic information that they posed.

22. Accordingly, beginning in at least 2006 until early 2012, as a result of the above failure to adequately establish, enforce, and maintain written policies and procedures reasonably designed, given the nature of its business, to prevent the misuse of material, nonpublic information, in violation of the Exchange Act or the rules and regulations thereunder, MCH willfully violated Section 15(g) of the Exchange Act.⁴

⁴ A willful violation of the securities laws means merely “that the person charged with the duty knows what he is doing.” Wonover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” Id. (quoting Gearhart & Otis, Inc. v. SEC, 348 F.2d 798, 803 (D.C. Cir. 1965)).

MCH's Remedial Efforts

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent MCH.

IV.

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

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

A. Respondent MCH cease and desist from committing or causing any violations and any future violations of Section 15(g) of the Exchange Act.

B. Respondent MCH is censured.

C. Respondent MCH shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$150,000 to the Securities and Exchange Commission. 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

Payment by check or money order must be accompanied by a cover letter identifying MCH 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 Stephen L. Cohen, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

By the Commission.

Jill M. Peterson
Assistant Secretary