

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 64558 / May 27, 2011**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3211 / May 27, 2011**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-14403**

**In the Matter of**

**WUNDERLICH SECURITIES, INC.,**  
**TRACY L. WISWALL, and**  
**GARY K. WUNDERLICH, JR.,**

**Respondents.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS  
PURSUANT TO SECTION 15(b) OF THE  
SECURITIES EXCHANGE ACT OF 1934  
AND SECTIONS 203(e), 203(f), AND 203(k)  
OF THE INVESTMENT ADVISERS ACT OF  
1940, MAKING FINDINGS, AND IMPOSING  
REMEDIAL SANCTIONS AND CEASE-  
AND-DESIST ORDERS**

**I.**

The Securities and Exchange Commission (the "Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (the "Advisers Act") against Wunderlich Securities, Inc. ("WSI"), and pursuant to Section 15(b) of the Exchange Act and Sections 203(f) and 203(k) of the Advisers Act against Tracy L. Wiswall ("Wiswall") and Gary K. Wunderlich, Jr. ("Wunderlich") (WSI, Wiswall, and Wunderlich being sometimes hereinafter referred to individually as a "Respondent" and collectively as the "Respondents").

**II.**

In anticipation of the institution of these proceedings, each Respondent has submitted an Offer of Settlement (the "Offers") 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 Respondents and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting

Administrative and Cease-and-Desist Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Orders (the "Order"), as set forth below.

### III.

On the basis of this Order and Respondents' Offers, the Commission finds that:

#### A. Summary

1. WSI, an investment adviser and broker-dealer registered with the Commission, willfully<sup>1</sup> violated several antifraud and compliance provisions of the Advisers Act and the rules thereunder. Wiswall and Wunderlich willfully aided and abetted and caused certain of WSI's violations. During the relevant periods, Wiswall served as WSI's chief compliance officer ("CCO") and Wunderlich served as WSI's chief executive officer ("CEO").

2. From at least 2007 through 2009, WSI: overcharged advisory clients for commissions and other transactional fees in violation of Section 206(2) of the Advisers Act; failed to satisfy the disclosure and consent requirements of Section 206(3) of the Advisers Act when WSI engaged in principal trades with advisory clients; failed to adopt, implement and review written policies and procedures as required by Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder; and failed to establish, maintain, and enforce a written code of ethics as required by Section 204A of the Advisers Act and Rule 204A-1 thereunder. Wiswall was a cause of WSI's violations relating to the firm's principal trades with advisory clients. In addition, both Wiswall and Wunderlich willfully aided and abetted and caused WSI's violations relating to its written policies and procedures and written code of ethics.

#### B. Respondents

3. WSI is a Tennessee corporation based in Memphis, Tennessee with several branch offices throughout the United States. WSI founded its brokerage operations in or about 1996 and later maintained state investment adviser registrations. Effective February 2007, WSI registered with the Commission as an investment adviser. In its Form ADV filed as of April 2011, WSI reported approximately \$469 million in advisory client assets under management held in 1,136 discretionary accounts and 1,140 non-discretionary accounts.

4. Wiswall, age 37, served as the CCO of WSI's brokerage and advisory businesses from 2004 until at least 2009. During the relevant periods, Wiswall maintained securities licenses as a registered representative associated with WSI.

5. Wunderlich, age 40, is the principal founder, CEO, a director, and an indirect part-owner of WSI. He has held general and/or principal securities licenses since at least

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<sup>1</sup> A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949)).

1992. During the relevant periods, Wunderlich served as Wiswall's sole and direct supervisor. In addition, during the relevant periods, Wunderlich maintained securities licenses as an investment adviser representative and a registered representative associated with WSI.

**C. Facts**

***Overview of WSI Operations and Roles of Wunderlich and Wiswall***

6. WSI established its operations in or about 1996 through the acquisition of an existing registered broker-dealer. WSI's core business historically has been its brokerage operations. However, after its formation, WSI also provided investment advisory services to advisory clients.

7. Wunderlich is WSI's principal founder and has served as the CEO or other senior executive officer of WSI since its inception. As CEO, Wunderlich has had overall responsibility for ensuring that WSI complies with its regulatory requirements, including applicable requirements under the Advisers Act and its rules.

8. In 2004, Wunderlich hired Wiswall to serve as CCO of WSI's brokerage and advisory businesses. When hired, Wiswall was a senior compliance examiner with the National Association of Securities Dealers, Inc. ("NASD"), with several years experience in broker-dealer compliance. Prior to joining the NASD, Wiswall briefly was employed as a registered representative associated with a registered broker-dealer. Wiswall had little or no practical experience with the regulatory requirements applicable to investment advisers when he joined WSI, including those regulatory requirements specifically applicable to Commission-registered advisers. Wunderlich knew that Wiswall had little or no such practical experience when Wunderlich hired Wiswall.

9. At the time that Wiswall joined WSI, the firm maintained only state investment adviser registrations and typically had less than \$10 million in advisory client assets under management. Under Wunderlich's direction, Wiswall was responsible for overseeing the preparation and filing of the Form ADVs used to maintain WSI's state investment adviser registrations.

10. In October 2006, WSI filed a Form ADV to register with the Commission as an investment adviser. Wiswall oversaw the preparation and filing of the Form ADV, which Wunderlich signed. WSI's registration with the Commission as an investment adviser became effective on February 5, 2007 (the "SEC Registration").

11. Shortly after the SEC Registration, WSI substantially expanded its advisory operations. First, in March 2007, WSI added more than \$70 million of new client assets under management through WSI's purchase of all of the advisory and brokerage accounts of a Commission-registered investment adviser and broker-dealer based in Ohio with offices in other states (the "Ohio Registered Entity"). WSI formed a separate division for this new business (the "Ohio Division"), and most of the persons formerly associated with the Ohio Registered Entity became new associated persons of WSI. As a result, within weeks of the SEC Registration, WSI

became responsible for overseeing the activities of numerous new associated persons in Ohio and around the United States as well as hundreds of new client accounts.

12. In addition, within months of the SEC Registration, WSI began to convert hundreds of its existing fee-based brokerage accounts to investment advisory accounts, in response to regulatory changes affecting certain broker-dealers that provided investment advice. The conversions of the brokerage accounts likely resulted in at least \$100 million of additional client assets under management for WSI and a substantial increase in new advisory client accounts.

13. Wunderlich assigned to Wiswall, as CCO, the responsibility for establishing and administering WSI's advisory compliance programs under Wunderlich's direction. As WSI's advisory operations rapidly expanded, Wiswall's compliance responsibilities grew substantially. When WSI initially formed the Ohio Division, Wiswall was assisted in his duties by the individual who formerly served as CCO of the Ohio Registered Entity. A few weeks after the acquisition, however, WSI terminated that individual's employment. As a result, after the acquisition of the Ohio Division and the firm's conversion of its existing fee-based brokerage accounts to advisory accounts, Wiswall became responsible for monitoring the compliance functions of more than \$170 million of client assets under management in hundreds of new advisory client accounts.

14. Wiswall served as CCO from 2004 throughout the relevant periods at issue. However, for limited periods in 2008 and 2009, another WSI employee served as CCO of the Ohio Division while Wiswall continued to serve as CCO for the remainder of the firm.

***WSI Charged Excessive Fees to Numerous Advisory Clients in Thousands of Separate Transactions***

15. From at least January 2007 through October 2009, WSI overcharged commissions and other transactional fees to advisory clients totaling approximately \$120,835 in approximately 6,338 separate transactions. The overcharges appear to have occurred primarily due to back-office errors, when WSI representatives throughout the firm incorrectly entered fees when placing trade orders and the firm's internal systems for fee reviews did not uncover the errors. The overcharged amounts varied and generally ranged from \$5 to \$29. Prior to the entry of this Order, WSI voluntarily refunded \$120,835 in overcharges to the affected clients.

16. The fee overcharges occurred in two contexts. First, many of the clients who were overcharged were enrolled in certain "wrap fee" investment advisory programs offered through WSI (the "Wrap Fee Programs"). Clients in these Wrap Fee Programs had contracted with WSI to pay one bundled or "wrap" fee for advisory, execution, clearing, and custodial services, except as specifically provided in their written advisory client agreements. However, in at least 5,764 separate transactions, WSI charged commissions and other transactional fees to certain of these wrap fee accounts that were contrary to the fees disclosed in the clients' written advisory agreements.

17. Second, WSI overcharged numerous clients who participated in an investment advisory program offered by the Ohio Division called the CSA Advisor Program (the "CAP Program"). Advisory client agreements for the CAP Program typically disclosed that clients would pay "one all-inclusive fee and a minimal \$29.00 per trade commission." Some agreements

added a \$5 per trade confirmation fee. In addition, many individual client agreements contained different fee arrangements that were negotiated with the client, so that some clients might pay reduced or no trade-related fees. In at least 574 separate transactions, WSI erroneously collected commissions and other transactional fees that were not consistent with the fees disclosed in the clients' individual CAP Program agreements.

***WSI Failed to Satisfy Disclosure and Client Consent Requirements When WSI Engaged in Principal Trades with Clients, and Wiswall Was a Cause of the Violations***

18. From at least February 2007 through September 2009, WSI knowingly effected thousands of securities transactions for advisory clients while WSI acted as a principal for its own account. Pursuant to Section 206(3) of the Advisers Act, WSI was required to disclose to such clients in writing before the completion of each transaction that WSI was acting as a principal. WSI also was required to obtain the clients' consent to each transaction. However, with respect to at least 3,000 of these principal trades (the "Relevant Principal Trades"), WSI failed to satisfy the disclosure and consent requirements mandated by Section 206(3) of the Advisers Act.

19. WSI profited from the Relevant Principal Trades because WSI received commissions in connection with the trades as well as mark-ups or mark-downs represented by the spread between the cost of the traded securities to WSI and the cost of the traded securities to the advisory clients. From February 2007 through September 2009, WSI obtained \$398,570.51 in such compensation from the Relevant Principal Trades, consisting of \$134,793.51 in commissions and \$263,777 in mark-ups or mark-downs. WSI voluntarily refunded or credited \$29,234.36 of such commissions to affected advisory clients prior to the entry of this Order. WSI has not yet refunded or credited to affected clients the remaining difference of \$369,336.15 (the "Remaining Principal Trade Compensation").

20. Wiswall, at Wunderlich's direction, was responsible for monitoring WSI's overall compliance with the Advisers Act, including WSI's disclosure and consent requirements when the firm engaged in principal trades with advisory clients. In 2007, a representative of an outside consulting firm (the "Consultant") specifically brought the disclosure and consent requirements of Section 206(3) of the Advisers Act to Wiswall's attention. At Wiswall's request and with Wunderlich's consent, WSI had retained the Consultant in July 2007 to conduct a review of WSI's advisory business in light of Wiswall's inexperience with Commission-registered investment advisers. The Consultant interviewed Wiswall in an on-site visit, obtained from Wiswall various documents relating to the advisory business, and engaged in follow-up communications with Wiswall concerning the Consultant's review and recommendations.

21. In August 2007, the Consultant sent Wiswall an e-mail containing the subject line "Principal Transaction Rules." The Consultant stated in the e-mail that "[h]ere is the specific rule regarding principal transactions from the RIA side," and then quoted for Wiswall the precise language of Section 206(3) of the Advisers Act. Following Wiswall's receipt of the Consultant's e-mail, WSI failed to implement the statutory disclosure and consent requirements of Section 206(3) of the Advisers Act. WSI's disregard of the disclosure and consent requirements continued until at least 2008, when staff from the Commission's Office of Compliance Inspections and Examinations (the "Exam Staff") discovered the violations. Moreover, Wiswall failed to take

reasonable steps: (a) to ascertain whether WSI had written policies and procedures designed reasonably to prevent violation of Section 206(3) when WSI engaged in principal trades with its clients; and (b) to adopt and implement such policies and procedures on behalf of WSI.

***WSI Failed to Maintain Required Written Policies and Procedures and a Written Code of Ethics, and Wiswall and Wunderlich Aided and Abetted and Caused WSI's Violations***

22. For more than one year after its SEC Registration, WSI failed to comply with the mandate under Rule 206(4)-7 of the Advisers Act that every Commission-registered investment adviser adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and its rules by the adviser and its supervised persons. In addition, in early 2008, WSI failed to comply with the mandate under Rule 206(4)-7 that every Commission-registered investment adviser review at least annually the adequacy of such policies and procedures and the effectiveness of their implementation. Furthermore, for more than one year after its SEC Registration, WSI failed to comply with the mandate under Rule 204A-1 of the Advisers Act that every Commission-registered investment adviser establish, maintain, and enforce a written code of ethics that meets the minimum standards set out in the rule. WSI did not put in place written policies and procedures and a written code of ethics designed to comply with applicable regulatory requirements until after the Commission's examination staff began a review of WSI's advisory operations in April 2008.

23. WSI, at Wunderlich's direction, tasked Wiswall with responsibility for establishing and administering WSI's compliance programs. Several months before the SEC Registration, Wiswall arranged for WSI to purchase, with Wunderlich's consent, an "off the shelf" investment adviser compliance manual containing sample written policies and procedures for investment advisers (the "IA Manual"). Wiswall purchased the IA Manual to supplement WSI's manual of supervisory procedures and other written policies and procedures already in place with respect to WSI's brokerage business (the "BD Manual"). The BD Manual, however, contained virtually no compliance policies and procedures specifically relating to WSI's advisory operations.

24. From the effective date of the SEC Registration, Wiswall was responsible for revising the draft IA Manual under Wunderlich's direction so that the written compliance policies and procedures in the IA Manual reflected WSI's actual advisory business. Wiswall also was in charge of overseeing the implementation of such policies and procedures. In addition, Wiswall was responsible under Wunderlich's direction for preparing the mandatory written code of ethics on behalf of WSI that complied with the Advisers Act and its rules, and distributing the written code of ethics to appropriate WSI personnel.

25. When WSI retained the Consultant in July 2007 to assist Wiswall with respect to the firm's advisory operations, the Consultant obtained from Wiswall and reviewed the IA Manual. At that time, several months after the SEC Registration, Wiswall still had not completed the revisions to the written compliance policies and policies reflected in the draft IA Manual and Wiswall still had not distributed the required written code of ethics to appropriate WSI personnel.

26. In September 2007, the Consultant sent WSI a written report that outlined certain regulatory requirements for WSI's advisory operations and contained recommendations for compliance improvements (the "Consultant's Report"). Among other things, the Consultant's Report specifically cited Rule 206(4)-7 under the Advisers Act and recommended that WSI adopt a compliance manual of written policies and procedures tailored to WSI's advisory business after documenting a risk assessment of its advisory operations. The Consultant's Report also reminded WSI to conduct its annual review of its advisory compliance program.

27. In addition, the Consultant's Report expressly cited Rule 204A-1 under the Advisers Act, which requires among other things that WSI maintain a written code of ethics. The Consultant's Report pointed out that the rule specified certain requirements that must be included in the code of ethics, including that "access persons" must periodically report personal trading and the CCO or other designee must review such personal trading. The Consultant's Report noted that the Consultant would review WSI's ethics provisions maintained for its broker-dealer registration and modify as necessary "to comply with the Advisers Act as well as FINRA rules."

28. Both Wiswall and Wunderlich received and reviewed the Consultant's Report in or around September 2007.

29. By April 2008, when the Commission's Exam Staff arrived at WSI's offices to conduct the staff's first review of WSI's advisory operations after its SEC Registration, WSI and Wiswall still had not implemented written compliance policies and procedures or distributed a written code of ethics to appropriate WSI personnel in accordance with the Advisers Act and its rules.

30. Consequently, for more than six months after the issuance of the Consultant's Report and for more than one year after the SEC Registration, WSI did not have in place written compliance policies and procedures or a written code of ethics that complied with mandatory regulatory requirements. In particular, WSI did not have in place written compliance policies and procedures reasonably designed to detect whether fees to clients were being billed consistent with the representations set out in their written advisory client agreements. In addition, WSI did not have in place written compliance policies and procedures reasonably designed to detect and prevent violations of the disclosure and consent requirements when WSI engaged in principal trades with its clients. Furthermore, WSI failed to comply with the requirement that it review at least annually the adequacy and implementation of its written compliance policies and procedures.

31. As CEO, Wunderlich had overall responsibility for ensuring that WSI complied with regulatory mandates under the Advisers Act and its rules, including the requirements that WSI maintain adequate written compliance policies and procedures and a written code of ethics. The Consultant's Report, received by WSI and Wunderlich several months after the SEC Registration, provided notice to WSI and Wunderlich that the firm already had neglected to complete and implement required written compliance policies and procedures and a required written code of ethics in accordance with the Advisers Act and its rules. Yet, from the time of the Consultant's Report until after the Exam Staff arrived for its review in 2008, WSI failed to implement these regulatory requirements.

**D. Violations**

32. As a result of the conduct described above, WSI willfully violated Section 206(2) of the Advisers Act, which prohibits an investment adviser from engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client, because WSI overcharged numerous advisory clients for commissions and other transactional fees in thousands of separate transactions.

33. As a result of the conduct described above, WSI willfully violated, and Wiswall was a cause of WSI's violation of, Section 206(3) of the Advisers Act, which prohibits an investment adviser, acting as principal for its own account, from knowingly selling securities to or purchasing securities from the adviser's clients without disclosing to such clients in writing before the completion of such transactions the capacity in which the adviser is acting and obtaining the consent of the clients to such transactions.

34. As a result of the conduct described above, WSI willfully violated, and Wiswall and Wunderlich willfully aided and abetted and caused WSI's violation of, Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which requires an investment adviser registered with the Commission to adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and the rules thereunder by the adviser and its supervised persons, and requires at least annual reviews of the adequacy of such policies and procedures and the effectiveness of their implementation. Proof of scienter is not required to establish a violation of Section 206(4) of the Advisers Act. *SEC v. Steadman*, 967 F.2d 636, 647 (D.C. Cir. 1992).

35. As a result of the conduct described above, WSI willfully violated, and Wiswall and Wunderlich willfully aided and abetted and caused WSI's violation of, Section 204A of the Advisers Act and Rule 204A-1 thereunder, which requires an investment adviser registered with the Commission to establish, maintain and enforce a written code of ethics that includes certain minimum standards and to take certain steps to monitor the personal trading of supervised persons with access to certain nonpublic information.

**E. Remedial Efforts**

36. In determining to accept Respondents' Offers, the Commission considered remedial acts promptly undertaken by Respondents and cooperation afforded the Commission staff.

**F. Undertakings**

37. Respondents undertake to take the following actions, as applicable.

38. Independent Compliance Consultant. WSI shall retain, within thirty (30) days of the entry of this Order, the services of an independent compliance consultant (the "Independent Consultant") that is not unacceptable to the Commission's staff. The Independent Consultant's compensation and expenses shall be borne exclusively by WSI.

39. WSI shall require that the Independent Consultant conduct periodic comprehensive reviews of WSI's supervisory, compliance, and other policies and procedures reasonably designed to detect and prevent breaches of fiduciary duty and federal securities law violations by WSI and its employees (the "Reviews"), including: (a) conflicts and other compliance factors creating risk exposure for WSI and its advisory clients in light of WSI's particular operations; (b) WSI's policies and procedures required by Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, including policies and procedures designed to detect and prevent fee overcharges to advisory clients; (c) WSI's policies and procedures designed to detect and prevent violations of the disclosure and consent requirements of Section 206(3) of the Advisers Act to the extent that WSI engages in principal trades with advisory clients; and (d) the adequacy of WSI's written code of ethics and WSI's compliance with the requirements of Section 204A of the Advisers Act and Rule 204A-1 thereunder.

40. During the three (3) year period beginning on the date of entry of this Order, WSI shall require the Independent Consultant to conduct its Reviews at least quarterly for the first year of review and at least twice per year for each of the second and third years of review.

41. WSI shall provide to the Commission's staff, within thirty (30) days of retaining the Independent Consultant, a copy of an engagement letter detailing the Independent Consultant's responsibilities, which shall include the Reviews to be made by the Independent Consultant as described in this Order.

42. WSI shall require that, within forty-five (45) days of the end of the applicable quarterly or semi-annual review period, the Independent Consultant shall submit a written and dated report of its findings to WSI and to the Commission's staff (the "Report"). WSI shall require that each Report include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, the Independent Consultant's recommendations for changes in or improvements to WSI's policies and procedures and/or disclosures to clients, and a procedure for implementing the recommended changes in or improvements to WSI's policies and procedures and/or disclosures.

43. WSI shall adopt all recommendations contained in each Report within sixty (60) days of the applicable Report; provided, however, that within forty-five (45) days after the date of the applicable Report, WSI shall in writing advise the Independent Consultant and the Commission's staff of any recommendations that WSI considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that WSI considers unduly burdensome, impractical or inappropriate, WSI need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose.

44. As to any recommendation with respect to WSI's policies and procedures on which WSI and the Independent Consultant do not agree, WSI and the Independent Consultant shall attempt in good faith to reach an agreement within sixty (60) days after the date of the applicable Report. Within fifteen (15) days after the conclusion of the discussion and evaluation by WSI and the Independent Consultant, WSI shall require that the Independent Consultant inform WSI and the Commission's staff in writing of the Independent Consultant's final determination concerning any recommendation that WSI considers to be unduly burdensome, impractical, or

inappropriate. WSI shall abide by the determinations of the Independent Consultant and, within sixty (60) days after final agreement between WSI and the Independent Consultant or final determination by the Independent Consultant, whichever occurs first, WSI shall adopt and implement all of the recommendations that the Independent Consultant deems appropriate.

45. Within ninety (90) days of WSI's adoption of all of the recommendations in a Report that the Independent Consultant deems appropriate, as determined pursuant to the procedures set forth herein, WSI shall certify in writing to the Independent Consultant and the Commission's staff that WSI has adopted and implemented all of the Independent Consultant's recommendations in the applicable Report. Unless otherwise directed by the Commission's staff, all Reports, certifications, and other documents required to be provided to the Commission's staff shall be sent to Aaron W. Lipson, Assistant Regional Director, Securities and Exchange Commission, 3475 Lenox Road, N.E., Suite 1000, Atlanta, Georgia 30326, or such other address as the Commission's staff may provide.

46. WSI, Wunderlich, and Wiswall shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to such of their files, books, records, and personnel as are reasonably requested by the Independent Consultant for review.

47. To ensure the independence of the Independent Consultant, WSI: (a) shall not have the authority to terminate the Independent Consultant or substitute another independent compliance consultant for the initial Independent Consultant, without the prior written approval of the Commission's staff; and (b) shall compensate the Independent Consultant and persons engaged to assist the Independent Consultant for services rendered pursuant to this Order at their reasonable and customary rates.

48. WSI shall require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two (2) years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with WSI, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Independent Consultant will require that any firm with which the Independent Consultant is affiliated or of which the Independent Consultant is a member, and any person engaged to assist the Independent Consultant in the performance of the Independent Consultant's duties under this Order shall not, without prior written consent of the Commission's staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with WSI, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two (2) years after the engagement.

49. Recordkeeping. WSI shall preserve for a period of not less than six (6) years from the end of the fiscal year last used, the first two (2) years in an easily accessible place, any record of WSI's compliance with the undertakings set forth in this Order.

50. Notice to Advisory Clients. Within ten (10) days of the entry of this Order, WSI shall post prominently on its principal website a summary of this Order in a form and location acceptable to the Commission's staff, with a hyperlink to the entire Order. WSI shall maintain the

posting and hyperlink on WSI's website for a period of twelve (12) months from the entry of this Order. Within thirty (30) days of the entry of this Order, WSI shall provide a copy of the Order to each of WSI's existing advisory clients as of the entry of this Order via mail, e-mail, or such other method as may be acceptable to the Commission's staff, together with a cover letter in a form not unacceptable to the Commission's staff. Furthermore, for a period of twelve (12) months from the entry of this Order, to the extent that WSI is required to deliver a brochure to a client and/or prospective client pursuant to Rule 204-3 of the Advisers Act, WSI shall also provide a copy of this Order to such client and/or prospective client at the same time that WSI delivers the brochure.

51. Deadlines. For good cause shown, the Commission's staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

52. Certifications of Compliance by Respondents. Respondents shall each certify, in writing, compliance with their respective undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission's staff may make reasonable requests for further evidence of compliance, and Respondents each agree to provide such evidence. The certification and supporting material shall be submitted to Aaron W. Lipson, Assistant Regional Director, Securities and Exchange Commission, 3475 Lenox Road, N.E., Suite 1000, Atlanta, Georgia 30326, or such other address as the Commission's staff may provide, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

#### IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, and for the protection of investors to impose the sanctions agreed to in each of Respondents' Offers.

Accordingly, pursuant to Section 15(b) of the Exchange Act and Sections 203(e) and 203(k) of the Advisers Act with respect to WSI, and pursuant to Section 15(b) of the Exchange Act and Sections 203(f) and 203(k) of the Advisers Act with respect to Wiswall and Wunderlich, it is hereby ORDERED that:

A. WSI cease and desist from committing or causing any violations and any future violations of Sections 204A, 206(2), 206(3), and 206(4) of the Advisers Act and Rules 204A-1 and 206(4)-7 promulgated thereunder.

B. Wiswall cease and desist from committing or causing any violations and any future violations of Sections 204A, 206(3), and 206(4) of the Advisers Act and Rules 204A-1 and 206(4)-7 promulgated thereunder.

C. Wunderlich cease and desist from committing or causing any violations and any future violations of Sections 204A and 206(4) of the Advisers Act and Rules 204A-1 and 206(4)-7 promulgated thereunder.

D. WSI, Wiswall, and Wunderlich are censured.

E. WSI shall pay disgorgement and prejudgment interest as follows:

(1) WSI shall pay disgorgement of \$369,336.15 (representing the amount of the Remaining Principal Trade Compensation as defined in this Order) and prejudgment interest of \$38,288.54, consistent with the provisions of this Subsection E. Within sixty (60) days of the entry of this Order, WSI shall deposit the full amount of the disgorgement (the "Disgorgement Fund") into an escrow account acceptable to the Commission's staff and WSI shall provide the Commission's staff with evidence of such deposit in a form acceptable to the Commission's staff. In addition, within ten (10) days of the entry of this Order, WSI shall pay the full amount of the prejudgment interest to the Commission for transmittal to the United States Treasury, in the manner provided in paragraph (6) below of this Subsection E. If timely deposit of the Disgorgement Fund or timely payment of the prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

(2) WSI shall be responsible for administering the Disgorgement Fund. WSI shall pay applicable portions of the Disgorgement Fund to affected current and former advisory clients who engaged in the Relevant Principal Trades, pursuant to a disbursement calculation (the "Calculation") that has been submitted to, reviewed and approved by the Commission's staff in accordance with this Subsection E. If the total amount otherwise payable to a client is less than \$25.00, WSI shall instead pay such amount to the Commission for transmittal to the United States Treasury as provided in this Subsection E.

(3) WSI shall, within thirty (30) days from the entry of this Order, submit a proposed Calculation to the Commission's staff for its review and approval that identifies, at a minimum: (1) the name and account number of each affected advisory client; (2) the exact amount of the payment to be made to such client, consisting of the amount of the Remaining Principal Trade Compensation applicable to such client's Relevant Principal Trade, separately identifying commissions and mark-ups or mark-downs received by WSI; (3) the exact amount of any portion of the Remaining Principal Trade Compensation that WSI claims already has been paid to such client in anticipation of this Order, along with supporting proof of such advance payment; and (4) a description of the Relevant Principal Trade to which the client's payment relates. WSI also shall provide to the Commission's staff such additional information and supporting documentation relating to the Remaining Principal Trade Compensation as the Commission's staff may request for the purpose of its review. No portion of the Disgorgement Fund shall be paid to any client account directly or indirectly in the name of or for the benefit of Wiswall or Wunderlich. In the event of one or more objections by the Commission's staff to WSI's proposed Calculation and/or any of its information or supporting documentation, WSI shall submit a revised Calculation for the review and approval of the Commission's staff and/or additional information or supporting documentation within ten (10) days of the date that WSI is notified of the objection, which revised Calculation shall be subject to all of the provisions of this Subsection E.

(4) WSI shall complete the transmission of all amounts otherwise payable to affected advisory clients pursuant to a Calculation approved by the Commission's staff within one hundred and twenty (120) days of the entry of this Order, unless such time period is extended as provided in paragraph (10) below of this Subsection E.

(5) WSI has indicated to the Commission's staff a willingness to begin paying amounts to affected advisory clients in advance of this Order that otherwise would be payable through the Disgorgement Fund. Any such amount that WSI pays to an affected advisory client in advance of this Order shall be credited against the total amount to be paid by WSI from the Disgorgement Fund and shall be returned to WSI from the Disgorgement Fund, but only if such payment is reviewed and approved by the Commission's staff in accordance with this Order and WSI provides information and supporting documentation acceptable to the Commission's staff as proof of such payment.

(6) If WSI does not distribute or return any portion of the Disgorgement Fund for any reason, including an inability to locate an affected advisory client or any factors beyond WSI's control, or if WSI has not transferred any portion of the Disgorgement Fund to a client because that client is due less than \$25.00, WSI shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury after the final accounting provided for in this Subsection E is approved by the Commission. Any such payment shall be: (1) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (2) made payable to the Securities and Exchange Commission; (3) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, 100 F St., N.E., Stop 6042, Washington, DC 20549; and (4) submitted under cover letter that identifies WSI, Wiswall, and Wunderlich as Respondents in these proceedings, and the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Aaron W. Lipson, Assistant Regional Director, Securities and Exchange Commission, 3475 Lenox Road, N.E., Suite 1000, Atlanta, Georgia 30326, or such other address as the Commission's staff may provide.

(7) WSI shall be responsible for any and all tax compliance responsibilities associated with the Disgorgement Fund and may retain any professional services necessary or appropriate. The costs and expenses of any such professional services shall be borne by WSI and shall not be paid out of the Disgorgement Fund.

(8) Within one hundred and eighty (180) days after the date of entry of this Order, WSI shall submit to the Commission's staff for its approval a final accounting and certification of the disposition of the Disgorgement Fund, which final accounting and certification shall be in a format to be provided by the Commission's staff. The final accounting and certification shall include, but not be limited to: (1) the amount paid to each payee; (2) the date of each payment; (3) the check number or other identifier of money transferred; (4) the date and amount of any returned payment; (5) a description of any effort to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; (6) any amounts to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that the Remaining Principal Trade Compensation, plus any related amounts that WSI claims to have been refunded to affected advisory clients before the date of this Order, represents a fair and reasonable calculation of the compensation received by WSI from February 2007 through September 2009 with respect to the Relevant Principal Trades for which WSI failed to satisfy the disclosure and consent requirements mandated by Section 206(3) of the Advisers Act. WSI shall submit proof and supporting documentation of such payment (whether in the form of cancelled checks or otherwise) in a form acceptable to the Commission's staff and under a cover letter that identifies WSI, Wiswall, and Wunderlich as Respondents in these proceedings and the file number

of these proceedings, to Aaron W. Lipson, Assistant Regional Director, Securities and Exchange Commission, 3475 Lenox Road, N.E., Suite 1000, Atlanta, Georgia 30326, or such other address as the Commission's staff may provide. WSI shall provide any and all supporting documentation for the accounting and certification to the Commission's staff upon its request, and shall cooperate with any additional requests by the Commission's staff in connection with the accounting and certification.

(9) After WSI has submitted the final accounting to the Commission's staff, the staff shall submit the final accounting to the Commission for approval and shall request Commission approval to send any remaining amount to the United States Treasury.

(10) The Commission's staff may extend any of the procedural dates set forth in this Subsection E for good cause shown. Deadlines for dates relating to the Disgorgement Fund shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

F. WSI shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$125,000 to the United States Treasury. Wiswall shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$50,000 to the United States Treasury. Wunderlich shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$45,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Such payment shall be: (a) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (b) made payable to the Securities and Exchange Commission; (c) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, 100 F St., N.E., Stop 6042, Washington, DC 20549; and (d) submitted under cover letter that identifies WSI, Wiswall, and Wunderlich as Respondents in these proceedings, and the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Aaron W. Lipson, Assistant Regional Director, Securities and Exchange Commission, 3475 Lenox Road, N.E., Suite 1000, Atlanta, Georgia 30326, or such other address as the Commission's staff may provide.

G. WSI, Wiswall, and Wunderlich shall comply with their respective undertakings enumerated in Section III, Subsection F, above.

By the Commission.

Elizabeth M. Murphy  
Secretary

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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 Section 15(b) of the Securities Exchange Act of 1934 and Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Orders (the "Order"), on the Respondents and their legal agents.

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

Aaron W. Lipson, Esq.  
Atlanta Regional Office  
Securities and Exchange Commission  
3475 Lenox Road, N.E., Suite 1000  
Atlanta, GA 30326

Wunderlich Securities, Inc.  
c/o Lori H. Patterson, Esq.  
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC  
First Tennessee Building  
165 Madison Avenue, Suite 2000  
Memphis, TN 38103

Mr. Tracy L. Wiswall  
c/o Lori H. Patterson, Esq.  
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC  
First Tennessee Building  
165 Madison Avenue, Suite 2000  
Memphis, TN 38103

Mr. Gary K. Wunderlich, Jr.  
c/o Lori H. Patterson, Esq.  
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC  
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165 Madison Avenue, Suite 2000  
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Lori H. Patterson, Esq.  
Mark D. Griffin, Esq.  
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC  
First Tennessee Building  
165 Madison Avenue, Suite 2000  
Memphis, TN 38103  
(Counsel for Wunderlich Securities, Inc., Tracy L. Wiswall, and Gary K. Wunderlich, Jr.)

