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

**SECURITIES EXCHANGE ACT OF 1934**
**Release No. 77649 / April 19, 2016**

**INVESTMENT ADVISERS ACT OF 1940**
**Release No. 4372 / April 19, 2016**

**INVESTMENT COMPANY ACT OF 1940**
**Release No. 32076 / April 19, 2016**

**ADMINISTRATIVE PROCEEDING**
**File No. 3-17217**

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| **In the Matter of**<br><br>**TPG ADVISORS LLC d/b/a THE PHILLIPS GROUP ADVISORS, AND LARRY M. PHILLIPS,**<br><br>**Respondents.** | **ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(e), 203(f), AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940** |

## 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)(6) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against TPG Advisors LLC (d/b/a The Phillips Group Advisors) ("TPG") and Larry M. Phillips ("Phillips") (collectively, "Respondents").

## II.

After an investigation, the Division of Enforcement alleges that:

## A. SUMMARY

1. Phillips, the sole owner and principal of TPG, an investment adviser registered with the Commission, engaged in fraudulent trade allocations – "cherry-picking." From at least January 2010 to at least August 2014, Phillips unfairly and systematically allocated profitable trades to a set of accounts while other accounts were harmed by the allocation of unprofitable trades.

## B. RESPONDENTS

2. **TPG Advisors, LLC**, is a California limited liability company with its principal place of business in Woodland Hills, California and has been registered with the Commission as an investment adviser since October 2009. According to its Form ADV filed in May 2015, TPG had approximately 280 clients, 852 accounts, and a total of $220 million in assets under management. TPG is wholly owned and controlled by Phillips. TPG's clients are almost all individuals and families.

3. **Larry M. Phillips**, age 66, resides in Westlake Village, California. Phillips is the sole owner, principal, and CCO of TPG, which he formed in 2009. Phillips is also a registered representative associated with a registered broker-dealer. Phillips has been licensed since 1971 and holds Series 1, 8, 15, 63, 65, 101, and PC licenses. Phillips has been the subject of three disciplinary actions: (1) in 2005, pursuant to a settlement with NASD, Phillips agreed to be suspended from association for ten days and to a fine of $20,000 for making misleading statements and for failing to disclose material facts regarding investment products and strategies in written communications to investors; (2) in 2006, based on the NASD claim, Phillips agreed to be barred by the State of Illinois from offering or selling securities for two years and to pay $1,000 in costs; and (3) in 2015, pursuant to a settlement with FINRA, Phillips agreed to a forty-five day suspension from association, a $7,500 fine, and $3,436.81 in restitution to customers based on claims that Phillips overcharged certain customers by charging both a markup and investment advisory fees on the same products in violation of FINRA Rule 2010 and MSRB Rule G-17.

## C. RESPONDENTS' CHERRY-PICKING SCHEME

### 1. TPG's Trade Allocation Policies

4. TPG's Forms ADV Part 2A, which were provided to clients, stated that TPG sought "to allocate trade executions in a most equitable manner possible" through "consistently non-arbitrary methods of allocation." All ten Forms ADV Part 2A filed by TPG from February 2011 through May 2015 used the same language. TPG's internal written policies and procedures required equitable trade allocation. Specifically, TPG's compliance manual states: "TPG will not allocate trades in such a way that TPG's own or affiliated account(s) (including those of supervised persons) or selected Clients receive more favorable treatment than TPG's other Client accounts." TPG's compliance manual also states that in any aggregated trade, "[n]o advisory Client will be favored over any other Client," and that the adviser would "prepare, before entering an aggregated order, a written

statement (Allocation Statement) specifying the participating Client accounts and how it intends to allocate the order among those Clients." To ensure that no account was favored, the compliance manual stated that "[p]eriodic reviews should be conducted to ensure no accounts are being systematically disadvantaged."

### 2. TPG and Phillips Favored Certain Accounts

5. Contrary to TPG's Forms ADV Part 2A and internal policies and procedures, Phillips did not allocate equities and options trades equitably. From at least January 2010 to August 2014, Phillips unfairly allocated a disproportionate number of profitable equity and options trades to at least six favored accounts held by at least four favored clients and allocated unprofitable trades to certain other, disfavored client accounts. Phillips had personal connections to the favored clients, which included (1) Phillips' lifelong family friend; (2) Phillips' cousin; (3) a long-standing, high-net worth client with a background in the entertainment industry; and (4) a client whom Phillips had served for over twenty years and whose mother had also been a longtime client of Phillips.

6. TPG's client accounts are held in custody by a third-party broker. TPG and Phillips traded securities initially in a master account without allocating the trade to a specific client account. If a security could be bought and sold in a day for a profit, then TPG and Phillips usually allocated those profitable "day trades" to favored accounts. To do so, the position would be closed in the master account, a positive gain would be realized on the trade and that profitable day trade would then be allocated to one of the favored accounts. But if the security could not be closed for a gain on the day it was purchased, the security was not sold and was usually allocated to one of the disfavored accounts. TPG's favored clients received first-day profits on day trades that were virtually impossible to have achieved by chance.

7. Certain accounts had a large proportion of day trades, while other accounts had almost none. For the six most-favored accounts, more than 90% of the trades were day trades and more than 90% of the trades in the account had single-day profits. By contrast, in at least eleven accounts in which only a small proportion of the trades were day trades, the vast majority of trades had unrealized losses in the first day.

8. The performance in each of the six most-favored accounts is a statistical anomaly. The likelihood that their profitability originated from random chance is less than 1%. Similarly, the performance in each of the eleven harmed accounts is also a statistical anomaly. Random chance would have provided them with better performance with a probability exceeding 99%.

9. By disproportionately allocating the more favorable trades to the favored accounts through this cherry picking scheme, TPG and Phillips provided a benefit to the favored clients and inflicted harm on the disfavored clients.

10. TPG and Phillips had been expressly warned about their allocation process by the third-party broker that maintained custody of the accounts. Between March 2010 and January 2015, the third-party broker's trade allocation surveillance system

flagged TPG for suspicious trade allocations at least twenty-one times. From August 2010 to December 2012, the broker's employees called Phillips at least five times about TPG's allocation practices, each time making suggestions that Phillips disregarded. The broker's employees instructed Phillips to trade directly in the clients' accounts instead of the master accounts, but Phillips failed to follow the broker's instructions. The broker also suggested, and Phillips appeared to agree, that the accounts receiving the profitable day trades at issue be moved to another master account so they could be identified as day-trading accounts, but Phillips failed to comply with that suggestion. While TPG has multiple master accounts, only one is used regularly and no master account appears to be limited to the day-trading clients.

## D. <u>VIOLATIONS</u>

11. By knowingly or recklessly allocating profitable trades to certain clients at the expense of other clients and by making false and misleading statements to clients concerning trade allocation, TPG and Phillips willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities. In the alternative, Phillips willfully aided and abetted and caused TPG's violations. Section 10(b) of the Exchange Act makes it unlawful for any person to use or employ, in connection with the purchase or sale of any security, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe. Rule 10b-5 under the Exchange Act makes it unlawful for any person, directly or indirectly, (a) to employ any device, scheme, or artifice to defraud, (b) to make any untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

12. In addition, by engaging in this cherry-picking scheme, TPG and Phillips breached their fiduciary duty to clients and willfully violated Sections 206(1) and 206(2) of the Advisers Act, and in the alternative, Phillips willfully aided and abetted and caused TPG's violations. TPG and Phillips made false and misleading statements to clients and omitted disclosure of TPG's inequitable trade allocation practices. By engaging in the cherry-picking scheme, and by making materially false and misleading statements and material omissions, TPG and Phillips breached their fiduciary duty to clients and willfully violated Sections 206(1) and 206(2) of the Advisers Act. Section 206(1) of the Advisers Act prohibits any investment adviser from employing any device, scheme, or artifice to defraud any client or prospective client, and Section 206(2) of the Advisers Act prohibits any 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.

13. As a result of making untrue statements of material fact in the Forms ADV Part 2A filed with the Commission, TPG and Phillips willfully violated Section 207 of the Advisers Act, and in the alternative, Phillips willfully aided and abetted and caused TPG's violations. Section 207 makes it "unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the

Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein."

**III.**

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Phillips pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act.

C. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 203(e) and 203(f) of the Advisers Act including, but not limited to, disgorgement and civil penalties pursuant to Section 203 of the Advisers Act;

D. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 9(b) of the Investment Company Act including, but not limited to, disgorgement and civil penalties pursuant to Section 9 of the Investment Company Act; and

E. Whether, pursuant to Section 21C of the Exchange Act and Section 203(k) of the Advisers Act, Respondents should be ordered to cease and desist from committing or causing violations of and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Sections 206(1), 206(2), and 207 of the Advisers Act, whether Respondent should be ordered to pay a civil penalty pursuant to Section 21B(a) of the Exchange Act, Section 203(i) of the Advisers Act, and Section 9(d) of the Investment Company Act, and whether Respondent should be ordered to pay disgorgement pursuant Sections 21B(e) and 21C(e) of the Exchange Act, Section 203(j) of the Advisers Act, and Section 9 of the Investment Company Act.

**IV.**

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent as provided for in the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary