

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 90413 / November 13, 2020**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 5630 / November 13, 2020**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20153**

**In the Matter of**

**BENJAMIN F. EDWARDS &  
COMPANY, INC.**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO SECTION 15(b) OF THE  
SECURITIES EXCHANGE ACT OF 1934, AND  
SECTIONS 203(e) AND 203(k) OF THE  
INVESTMENT ADVISERS 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 Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”), and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Benjamin F. Edwards & Company, Inc. (“Benjamin Edwards” or “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 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 Section 15(b) of the Securities Exchange Act of 1934, and Sections 203(e) and 203(k) of the Investment Advisers 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 concerns Benjamin Edwards's failure reasonably to supervise certain of its registered representatives ("brokerage representatives") and investment advisory representatives ("advisory representatives") who made unsuitable recommendations to its retail brokerage customers and advisory clients that they buy and hold for extended periods two complex exchange traded products that were intended for short-term holding (the "Complex ETPs"). These Benjamin Edwards brokerage representatives made these recommendations to buy and hold the Complex ETPs without having a reasonable basis to do so. Similarly, the Benjamin Edwards brokerage representatives and advisory representatives failed to make a reasonable determination that these investments were suitable for certain of the customers and clients to whom they recommended the Complex ETPs, based on those retail customers' and clients' investment objectives, risk tolerance, and financial condition. A number of these brokerage and advisory representatives also misled their customers and clients about the Complex ETPs' benefits and risks. Benjamin Edwards failed reasonably to implement its supervisory policies and procedures to prevent and detect these violations. In addition, Benjamin Edwards failed to implement policies and procedures reasonably designed to prevent its advisory representatives from making unsuitable recommendations to its clients.

2. From at least January 2016 through March 2020 (the "Relevant Period"), certain Benjamin Edwards brokerage and advisory representatives believed the financial markets could experience volatility, and, possibly, decline over a period of months or longer. These brokerage and advisory representatives recommended that many of their retail brokerage customers and advisory clients buy and hold one or more of the Complex ETPs for many months at a time, as a hedge against the anticipated marked decline. The Complex ETPs were: (1) the iPath S&P 500 VIX Short-Term Futures ETN, which traded under the ticker symbol VXX, ("VXX"); and (2) the ProShares VIX Short-Term Futures ETF, which traded under the ticker symbol VIXY ("VIXY"). The offering documents for VXX and VIXY generally disclosed that the products carried a higher risk of significant losses if held for extended periods. Benjamin Edwards's brokerage and advisory representatives misunderstood the Complex ETPs, or ignored these disclosures, and made unsuitable recommendations to customers and clients that they buy and hold the Complex ETPs in a way that was contrary to the offering documents' warnings about long-term holding periods, and at times, in a way that was unsuitable for certain of their retail customers and clients in light of their investment objectives and risk tolerances.

3. Benjamin Edwards failed reasonably to implement its supervisory policies and procedures that were intended to provide assurance that its brokerage representatives had a reasonable basis to recommend complex products such as the Complex ETPs to their customers. Benjamin Edwards also failed to implement its supervisory policies and procedures that were intended to provide assurance that its brokerage representatives and advisory representatives

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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.

made reasonable determinations that the investments in Complex ETPs were suitable for each individual brokerage customer or advisory client. In addition, Benjamin Edwards failed to implement advisory policies and procedures reasonably designed to prevent unsuitable recommendations that their retail advisory clients buy and hold the Complex ETPs for extended periods. As a result, Benjamin Edwards's retail brokerage customers and advisory clients bought and held the Complex ETPs for extended periods in approximately 201 accounts and lost on average more than 41 percent of the amounts they invested.

4. Throughout the Relevant Period, Benjamin Edwards failed reasonably to supervise its brokerage and advisory representatives with respect to their unsuitable recommendations to customers and clients, within the meaning of Section 15(b)(4)(E) of the Exchange Act and Section 203(e)(6) of the Advisers Act. Additionally, Benjamin Edwards violated Section 206(4) and Rule 206(4)-7 under the Advisers Act.

### **Respondent**

5. Benjamin Edwards is a Missouri corporation with its headquarters in St. Louis, Missouri. Benjamin Edwards has been registered with the Commission as a broker-dealer since March 2009 and as an investment adviser since May 2010. In its Form ADV filed with the Commission and dated March 31, 2020, Benjamin Edwards reported that it had 425 brokerage representatives, of which 368 are dually registered as investment advisory representatives, based in 75 branch locations in 30 states. Benjamin Edwards is wholly owned by Benjamin F. Edwards, Inc., a Delaware corporation.

### **The Complex ETPs**

6. Throughout the Relevant Period, VXX and VIXY were complex securities that carried significant investment risk. VXX was an unsecured exchange traded note ("ETN"), and VIXY was an exchange traded fund ("ETF"). During the Relevant Period, VXX and VIXY were each listed on the NYSE Arca, Inc. exchange.

7. VXX and VIXY were volatility-linked securities that offered exposure to futures contracts of specified maturities on the CBOE volatility index, known as the VIX. The VIX attempts to track the expected volatility of the S&P 500, not the price level of the S&P 500 itself. Futures contracts on the VIX allow investors to invest in forward volatility based on their view of the near-future direction of the VIX. Because the VIX itself is a non-investable index, VXX and VIXY were linked to the performance of other investable indexes. As a result, the performance of VXX and VIXY were not linked directly to the VIX, but to separate indexes that track the price of certain futures contracts on the VIX. VXX attempted to track the performance of the S&P 500 VIX Short-Term Futures Index Total Return (TR). The performance of this index is based on a hypothetical rolling portfolio of one-month and two-month futures contracts to target a constant weighted average of one-month maturity. VIXY was a similar product that attempted to provide exposure to the forward implied equity market volatility as measured by the S&P 500 VIX Short-Term Futures Index Excess Return. Like VXX, the performance of this index was based on a hypothetical portfolio of short-term monthly VIX futures contracts that rolled positions from first-month contracts into second-month contracts on a daily basis, maintaining a weighted average of

one-month maturity. Thus the indexes that VXX and VIXY attempted to track do not themselves purport to track or measure implied volatility in the medium or long term, but only short term, as their names imply. When the longer term contract costs less to buy than the price received from selling the near term contract, the market is said to be in “backwardation,” and VXX and VIXY would benefit from a positive “roll yield,” which is a positive return. When the longer-term contract costs more to buy than the price received from selling the near term contract, the futures market is said to be in “contango,” and results in a negative “roll yield,” which is a negative return.

8. VXX prospectus supplements in effect during the Relevant Period made clear that, as a historical matter, the VIX futures market typically resides in contango. These supplements disclosed that “VIX futures have frequently exhibited very high contango in the past, resulting in a significant cost to ‘roll’ the futures.” These negative roll yields tend to adversely impact the value of the futures index underlying VXX, especially over the longer term. As a result, an investment in VXX “may experience a significant decline in value over time, the risk of which increases the longer that the ETNs are held.”

9. Similarly, VIXY’s prospectuses and supplements in effect during the Relevant Period explained the nature of contango and backwardation, and warned of the “potential negative impact on VIXY of the rolling futures position” and that “there have been extended periods in the past where the strategies utilized by [VIXY] have caused significant and sustained losses. It also disclosed that “the level of the [index VIXY attempted to track] is based on the value of the VIX short-term futures contracts (“VIX futures contracts”) that comprise the Index. The prior performance section of these documents noted that VIXY had lost nearly all of its value since the inception of trading in 2011. For example, the prospectus dated October 31, 2016 disclosed that VIXY had lost approximately 98% of its value from 2011 to July 2016. In addition, the VIXY prospectus and prospectus supplements in effect during the Relevant Period disclosed that VIXY was generally “intended to be used only for short-term investment horizons. As with all investments, an investor in the Funds can lose the full principal value of his or her investment. Specifically, investors holding shares of [VIXY] beyond a short-term period are subject to increased risk of loss. The longer an investor’s holding period in [VIXY] the greater the potential for loss.”

10. The VXX and VIXY prospectuses and prospectus supplements in effect during the Relevant Period also warned of the limited upside potential of VXX and VIXY if held over the longer term. Specifically, the VXX prospectus stated: “the level of the VIX Index has typically reverted over the longer term to a historical mean, and its absolute level has been constrained within a band. It is likely that spot level of the VIX Index will continue to do so in the future, especially when the current economic uncertainty recedes. If this happens, the value of futures contracts on the VIX Index will likely decrease, reflecting the market expectation of reduced volatility in the future, and the potential upside of your investment in your ETNs will correspondingly be limited as a result.” Similarly, the VIXY prospectus and prospectus supplements disclosed that “[t]he level of the VIX has typically reverted over the longer term to a historical mean, and its absolute level has been constrained within a band. As such the potential upside of long or short exposure to VIX futures contracts may be limited as the performance of VIX reverts to its long-term average. In addition, any gains may be subject to significant and unexpected reversals as the VIX reverts to its long-term mean.”

**Certain Benjamin Edwards Brokerage Representatives Recommended That Their Retail Customers Buy and Hold the Complex ETPs without a Reasonable Basis to Do So**

11. Beginning in January 2016, certain Benjamin Edwards brokerage representatives recommended that their retail brokerage customers buy and hold one or more of VXX and VIXY, in most cases using a small percentage of their overall portfolios.

12. These Benjamin Edwards brokerage representatives had a flawed understanding – and thus a flawed investment philosophy – regarding the Complex ETPs. They recommended the Complex ETPs because they believed that the equity stock markets were overvalued, and that the markets might fall at some unspecified time in the future. In addition, certain media commentators and others predicted that events, after the general election of 2016, would generate volatility and fear and, as a possible result, declines in the market. While these Benjamin Edwards brokerage representatives reviewed parts or all of the prospectus for the Complex ETP(s) they recommended, they either ignored or did not fully understand this information, including the information warning against holding the Complex ETPs as a long-term investment, and they did not conduct a reasonable investigation prior to making their recommendations.

13. Because these Benjamin Edwards brokerage representatives failed reasonably to investigate the Complex ETPs, they did not fully understand how they worked, the risks and benefits inherent in investing in them or how certain features of the Complex ETPs could affect their customers' investment plans, particularly as buy-and-hold investments.

14. Among other things, these brokerage representatives failed to fully understand that VXX's and VIXY's performance were tied to indexes tracking daily performance of futures contracts and did not provide highly correlated inverse exposure to the S&P 500. They also failed to understand that the costs of "rolling" the relevant futures contracts could drive down the value of VXX and VIXY over time, even if the VIX was flat or positive from the start of that period. They also misunderstood the VIX's mean-reverting tendency as also applying to the share price of VXX and VIXY, which it does not. As a result, certain Benjamin Edwards brokerage representatives negligently misrepresented the potential benefits and risks of buying VXX or VIXY when the share price had fallen significantly since the inception of trading.

15. In addition, these Benjamin Edwards brokerage representatives advised their customers that VXX and VIXY would operate variously as a long-term hedge or as protection against a downturn in the market. Given that the indexes VXX and VIXY tracked frequently exhibited contango, both historically and during the Relevant Period, it was not reasonable to recommend that their customers buy and hold VXX and VIXY for extended periods as a hedge against a potential market downturn. VXX and VIXY were only suitable for a short investment horizon.

16. Contrary to the warnings in the prospectuses about the effects of contango and negative roll yield, the Benjamin Edwards brokerage representatives recommended that their retail customers buy and hold VXX and VIXY for an indefinite period of time but failed to inform their customers of the specific risks of investing in VXX and VIXY on a buy-and-hold basis. At the time they made these recommendations, these brokerage representatives planned

for their customers to hold VXX and VIXY for at least several months and did not have in mind a particular time or price at which they would sell. These brokerage representatives did not have a reasonable basis for recommending that their customers buy and hold VXX and VIXY in this manner. Further, they failed to document their buy-and-hold recommendations as required by Benjamin Edwards's policies and procedures. Moreover, Benjamin Edwards's brokerage representatives did not talk to their customers about the length of their planned holding period, nor why they believed VXX and VIXY were suitable for an indefinite holding period, notwithstanding the disclosures in the offering materials.

17. These Benjamin Edwards brokerage representatives did not form a reasonable basis to believe that buying and holding the Complex ETPs was a suitable recommendation for any customer, including their retail brokerage customers. Moreover, they did not understand the products, and negligently misrepresented the risks and characteristics of the Complex ETPs to their customers. As a result of the above conduct, these Benjamin Edwards brokerage representatives made recommendations without a reasonable basis for those recommendations, in violation of Sections 17(a)(2) and 17(a)(3) of the Securities Act.

**Certain Benjamin Edwards Brokerage and Advisory Representatives  
Recommended Customers and Clients Buy and Hold the Complex ETPs  
Without Making a Reasonable Determination that the  
Investment was Suitable for the Customer or Client**

18. Beginning in January 2016, the above representatives, who were also Benjamin Edwards advisory representatives, also recommended the Complex ETPs to certain of their retail brokerage customers and advisory clients without making a reasonable determination that the investment was suitable for that individual brokerage customer or advisory client.

19. These representatives did not make a reasonable determination that these Complex ETPs were suitable to buy and hold for the individual brokerage customer or advisory client in light of their investment objectives, risk tolerance, financial condition, and financial situation. Nor did these representatives accurately disclose to their customers and clients the risks associated with holding these products for extended periods. As an example, a Benjamin Edwards advisory group made a buy and hold recommendation in VXX for a client that had several accounts. The client, which had a conservative investment objective and had indicated it was averse to risk, short-term losses, and fluctuations in its account value, invested more than \$181,000 in VXX, and held those positions for seven months, losing more than \$71,000, or about 39% of the client's investment. As a result of the significant risks associated with holding VXX for extended periods, which were neither understood nor disclosed by these representatives, the representatives failed to make suitable recommendations to certain of their retail brokerage customers and advisory clients, in violation of Sections 17(a)(2) and 17(a)(3) of the Securities Act.

**Benjamin Edwards Failed Reasonably to Supervise Its Brokerage  
And Advisory Representatives Concerning the Complex ETPs**

20. Throughout the Relevant Period, Benjamin Edwards had policies and procedures regarding suitability but failed to implement them effectively in order to supervise its brokerage

and advisory representatives in their recommendations of Complex ETPs. Benjamin Edwards maintained its policies and procedures in two primary documents, its Written Supervisory Procedures (“WSPs”), applicable to both brokerage and advisory representatives and all of its accounts, and its Investment Advisory Procedures (“IAPs”), applicable only to its advisory representatives and advisory accounts.

21. As of January 2016 and throughout the Relevant Period, Benjamin Edwards’s WSPs required its brokerage and advisory representatives to have a reasonable basis for believing that a recommended strategy or transaction was suitable for their customers and clients, and required them to conduct reasonable diligence to understand the potential risks and rewards associated with a recommended security. The policies and procedures also required that the representatives document any strategy, such as to buy and hold a security, and required their supervisors to review transactions daily, review accounts monthly, and review brokerage customer and advisory client trade orders for suitability. However, during the Relevant Period, Benjamin Edwards failed to implement these policies. For example, certain of these representatives did not document their buy-and-hold recommendations for the Complex ETPs, as required by the policy and Benjamin Edwards had no mechanism to determine if the representatives were complying with the documentation policy.

22. As of January 2016 and throughout the Relevant Period, Benjamin Edwards’s WSPs also contained policies and procedures concerning “Non-Conventional Investments,” which included complex securities such as the Complex ETPs. According to the WSPs, before a Non-Conventional Investment could be sold to a brokerage customer or advisory client, Benjamin Edwards would, among other things, conduct adequate due diligence to understand the product, perform a reasonable-basis and customer-specific suitability analysis, provide a balanced disclosure of the risks and rewards, implement appropriate internal controls for the product, and train its registered persons regarding the features, risk and suitability of the product. The firm was responsible for conducting due diligence on each Non-Conventional Investment to understand the features of the product and its suitability for customers and clients, and for documenting the firm’s due diligence review and analysis of the product. Based on the review, Benjamin Edwards was to implement sales practice suitability guidelines, as appropriate, including any special or additional supervisory activities, if needed. However, during the Relevant Period, Benjamin Edwards did nothing to implement this policy. Benjamin Edwards did not conduct Non-Conventional Investment reviews for any security, including the Complex ETPs, and did not provide any guidance or training to its brokerage and advisory representatives or supervisors, despite being aware that certain of its representatives were recommending the Complex ETPs to their customers and clients.

23. As of January 2016 and throughout the Relevant Period, Benjamin Edwards maintained policies and procedures in its WSPs concerning the sale of “New Products,” and assigned the task of determining what products were “new” by having the Product Review Committee (“PRC”) assess certain factors, such as whether the product was new to the markets or new to the firm, or whether it was being newly sold to retail investors by its brokerage and advisory representatives. According to these policies and procedures, prior to the sale of any such product, Benjamin Edwards’s PRC would conduct a “thorough formal review” of the product and approve, deny or condition the sale of the new product and document its decision in

writing. Among other things, the PRC was to review the assumptions underlying the product, the complexity of the product, its risks, whether any risks must be disclosed, and whether any additional training or heightened supervision was appropriate. However, Benjamin Edwards did not have a procedure for identifying and reviewing all New Products being recommended by its brokerage and advisory representatives to its retail customers and clients. The PRC never conducted a “New Product” review of either of the Complex ETPs.

24. Throughout the Relevant Period, Benjamin Edwards’s supervisors reviewed transactions on a daily basis, and over time reviewed the hundreds of brokerage customer and advisory client transactions in VXX and VIXY, but the Benjamin Edwards trading system did not flag VXX or VIXY as complex securities that might require additional scrutiny, documentation, or training, nor did the system track holding periods for VXX or VIXY. As a result, supervisors rarely, if ever, discussed the suitability of VXX or VIXY buy-and-hold transactions with brokerage or advisory representatives, nor did they know whether these representatives understood these Complex ETPs or how long their customers and clients held the positions.

**Benjamin Edwards Failed to Implement Reasonably Designed  
Policies and Procedures Concerning Its  
Advisory Representatives Recommendations of the Complex ETPs**

25. Throughout the Relevant Period, Benjamin Edwards failed to implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules regarding the suitability of recommending investments in the Complex ETPs for retail advisory clients in light of their investment objectives, risk tolerance, and financial condition.

26. Benjamin Edwards’s IAPs stated that as fiduciaries, Benjamin Edwards and its advisory representatives were required to, among other things, make suitable recommendations to clients in light of their needs, financial circumstances and investment objectives, exercise a high degree of care to ensure that adequate and accurate representations and other information are presented to clients, and to have an adequate basis in fact for recommendations, representations and projections. Benjamin Edwards failed to implement these policies and procedures as they related to the advisory representatives and their supervisors, as well as to the firm’s responsibilities. In addition, as Benjamin Edwards’s WSPs were applicable to its advisory representatives and advisory accounts, the firm’s failure to implement the policies and procedures described above in paragraphs 20 to 24 are also failures to implement advisory policies and procedures insofar as the WSPs served to prevent violations of the Advisers Act and its rules.

27. The failure to implement reasonably designed compliance policies and procedures subjected retail advisory clients to significant risk. Many lost a significant portion of their buy-and-hold investments in the Complex ETPs.

**Customer and Client Losses**

28. The recommendations to buy and hold the Complex ETPs subjected Benjamin Edwards’s retail brokerage customers and advisory clients to significant risk. Some lost tens of

thousands of dollars. Between January 2016 and March 2020, Benjamin Edwards’s customers and clients bought and held the Complex ETPs for a number of months, and in some cases, more than a year. Benjamin Edwards’s customers and clients held the Complex ETPs in approximately 201 accounts (46 brokerage accounts and 155 investment advisory accounts) and lost on average more than 41 percent of the amounts invested in the Complex ETPs pursuant to their representatives’ recommendations.

### **Violations and Supervisory Failures**

29. Section 15(b)(4)(E) of the Exchange Act provides that the Commission may sanction a registered broker-dealer for failing reasonably to supervise, with a view to preventing violations of the federal securities laws, another person subject to its supervision who commits such a violation. As a result of the conduct described above, pursuant to Exchange Act Section 15(b)(4)(E) Benjamin Edwards failed reasonably to supervise certain of its brokerage representatives with a view to preventing and detecting their violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act. If Benjamin Edwards had reasonably implemented the firm’s policies and procedures with respect to the Complex ETPs, Benjamin Edwards could have prevented and detected the brokerage representatives’ violations.

30. Section 203(e)(6) of the Advisers Act provides that the Commission may sanction a registered investment adviser that has failed reasonably to supervise, with a view to preventing violations of the federal securities laws, another person subject to its supervision who commits such a violation. As a result of the conduct described above, Benjamin Edwards failed reasonably to supervise certain of its advisory representatives with a view to preventing and detecting their violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act. In addition, throughout the Relevant Period, Benjamin Edwards failed to establish procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect the violations by its representatives concerning their recommendations of the Complex ETPs to its advisory clients. If Benjamin Edwards had reasonably implemented the firm’s policies and procedures with respect to the Complex ETPs, Benjamin Edwards could have prevented and detected the advisory representatives’ violations.

31. Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder require a registered investment adviser to adopt and implement written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and rules thereunder. As a result of the conduct described above, Benjamin Edwards willfully<sup>2</sup> violated Section 206(4) and Rule 206(4)-7.

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<sup>2</sup> “Willfully,” for purposes of imposing relief under Section 15(b) of the Exchange Act and 203(e) of the Advisers Act, “means no more than 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)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term “willfully” for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has “willfully

## **Remedial Efforts**

32. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent. In particular, since December 2018, Respondent adopted and implemented additional policies and procedures for complex securities, such as the Complex ETPs, which it designed to provide greater assurance that the firm and its representatives have analyzed and understand such products before they are sold and that the representatives make suitable recommendations. These enhanced procedures include prohibiting the sale of volatility-linked products, such as VXX and VIXY, in retail accounts of brokerage customers and advisory clients.

### **IV.**

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

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

- A. Respondent Benjamin Edwards cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.
- B. Respondent Benjamin Edwards is censured for failing reasonably to supervise within the meaning of Section 15(b)(4)(E) of the Exchange Act and Section 203(e) of the Advisers Act and for its willful violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.
- C. Respondent Benjamin Edwards shall pay disgorgement, prejudgment interest, and a civil monetary penalty totaling \$685,134.36 as follows:
  - i. Respondent shall pay disgorgement of \$31,417.62, which represents commissions and advisory fees earned on investments in the Complex ETPs, and prejudgment interest of \$3,716.74, consistent with the provisions of this Subsection C.
  - ii. Respondent shall pay a civil monetary penalty in the amount of \$650,000, consistent with the provisions of this Subsection C.
  - iii. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties, disgorgement, and prejudgment interest described above for distribution to affected investors' accounts. 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

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omit[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

Action, it shall not argue that it is entitled to, nor shall it 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 it 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.

- iv. Within 10 days of the issuance of this Order, Respondent shall deposit \$685,134.36 (the "Fair Fund") into an escrow account at a financial institution not unacceptable to the Commission staff and Respondent shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. If timely payment into the escrow account is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600] or 31 U.S.C. § 3717.
- v. Respondent shall be responsible for administering the Fair Fund and may hire a professional to assist it in the administration of the distribution. The costs and expenses of administering the Fair Fund, including any such professional services, shall be borne by Respondent and shall not be paid out of the Fair Fund.
- vi. Respondent shall pay from the Fair Fund an amount representing a portion of the respective loss incurred from the investment of VXX and VIXY to each qualified customer and client of Benjamin Edwards ("Qualified Investor") who incurred a loss as a result of solicited investments made in VXX and VIXY between January 1, 2016 and March 31, 2020 plus reasonable interest at the Internal Revenue Service's rate to calculate underpayment penalties compounded quarterly from the date of the purchase to June 30, 2020 pursuant to a disbursement calculation (the "Calculation") that will be submitted to, reviewed, and approved by the Commission's staff in accordance with this Subsection C. No portion of the Fair Fund shall be paid to any affected investor account in which Respondent, or any of its current or former officers or directors, or its representatives who recommended the Complex ETPs, or their family members, has or had a financial interest.
- vii. Respondent shall, within 90 days from the date of this Order, submit a proposed Calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Calculation to the staff, Respondent shall make its personnel available, and shall require any third-parties or professionals retained by Respondent to assist in formulating the methodology for its Calculation and/or administration of the Distribution to be available, for a conference call with the Commission staff to explain the methodology used in preparing the proposed Calculation and its implementation, and to provide the staff with an opportunity to

ask questions. Respondent also shall provide the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event one or more objections by the Commission staff to Respondent's proposed Calculation or any of its information or supporting documentation, Respondent shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within 10 days of the date that the Commission staff notifies Respondent of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection C.

- viii. After the Calculation has been approved by the Commission staff, Respondent shall submit a payment file (the "Payment File") within thirty (30) days for review and acceptance by the Commission staff demonstrating the application of the Calculation methodology to each Qualified Investor. The Payment File should identify, at a minimum, (1) the name of each Qualified Investor; (2) the exact amount of the payment to be made; (3) the amount of any *de minimis* threshold to be applied; and (4) the amount of reasonable interest paid.
- ix. Respondent shall complete the disbursement of all amounts payable to Qualified Investor accounts or, if the Qualified Investor no longer has an account with Respondent, to the Qualified Investor, within 90 days of the date that the Commission staff accepts the Payment File, unless such time period is extended as provided in Paragraph xiv of this Subsection C. Respondent shall notify the Commission staff of the dates and the amount paid in the initial distribution.
- x. After the Commission accepts the Payment File, but before disbursement, Respondent shall notify each Qualified Investor of the settlement terms of this Order by sending a copy of this Order to each Qualified Investor via mail, email, or such other method not unacceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff.
- xi. If Respondent is unable to distribute or return any portion of the Fair Fund for any reason, including an inability to locate a Qualified Investor or a beneficial owner of an account or any factors beyond Respondent's control, Respondent shall transfer any such undistributed funds to the Commission for further disposition as approved by the Commission. 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 <https://www.sec.gov/paymentoptions>; 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 Benjamin Edwards 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 Jeffrey Shank, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Blvd., Ste. 1450, Chicago, IL 60604.

- xii. A Fair Fund is a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. §§ 1.468B.1-1.468B.5. Respondent shall be responsible for any and all tax compliance responsibilities associated with the Fair Fund, including but not limited to tax obligations resulting from the Fair Fund's status as a QSF and the Foreign Account Tax Compliance Act, and may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services shall be borne by Respondent and shall not be paid out of the Fair Fund.
- xiii. Within 150 days after Respondent completes the disbursement of all amounts payable to Qualified Investors, Respondent shall return all undisbursed funds to the Commission pursuant to the instructions set forth in this Subsection C. The Respondent shall then submit to the Commission staff a final accounting and certification of the disposition of the Fair Fund for Commission approval, which 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 the money transferred; (4) the amount of any returned payment and the date received; (5) a description of the efforts to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission; and (7) an affirmation that Respondent has made payments from the Fair Fund to the Qualified Investors in accordance with the Calculation approved by the Commission staff. The final accounting and certification shall be submitted under a cover letter that identifies Respondent and the file number of these proceedings to Jeffrey Shank, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson, Ste. 1450, Chicago, IL 60604. Respondent shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

- xiv. The Commission staff may extend any of the procedural dates set forth in this Subsection C for good cause shown. Deadlines for dates relating to the Fair 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.

By the Commission.

Vanessa A. Countryman  
Secretary