

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 76109 / October 8, 2015

INVESTMENT ADVISERS ACT OF 1940
Release No. 4221 / October 8, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16890

In the Matter of

WOLVERINE TRADING, LLC
and WOLVERINE ASSET
MANAGEMENT, LLC,

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 15(b) AND 21C
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 Sections 15(b) and 21C 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 Wolverine Trading, LLC (“WT”) and Wolverine Asset Management, LLC (“WAM”) (together, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (“Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them 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 Sections 15(b) and 21C 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 Respondents' Offer, the Commission finds¹ that:

SUMMARY

1. These proceedings arise out of WT's and WAM's failure to establish, maintain, or enforce written policies and procedures reasonably designed, taking into consideration the nature of their businesses, to prevent the misuse of material, nonpublic information, which came to light as a result of breaches of information barriers by the two affiliated entities from late-February to late-March 2012, relating to an exchange-traded note ("ETN") known as TVIX.

2. On February 21, Credit Suisse AG ("CSAG"), TVIX's issuer, announced a temporary suspension of new issuances of TVIX. For the next month, TVIX experienced a dislocation of its trading price from its indicative value, resulting in the development of a significant premium. During the course of the trading day on March 22, however, TVIX's trading price dropped sharply, and with that, the premium between trading price and indicative value decreased. After the market close that day, CSAG announced a reopening of issuances of TVIX on a limited basis.

3. During this period and thereafter, WT shared information about TVIX with WAM, including information relating to its trading positions, activities, and strategies, while WAM shared with WT its intent to enter into a swap and to request the creation of TVIX notes, including the number of notes it sought to create and eventually received. This information sharing violated existing written policies and procedures. In addition, WT and WAM personnel met to discuss issues relating to TVIX numerous times and participated in negotiations and conference calls together, all of which breached the information barriers between the two entities.

4. This information sharing also exposed inadequacies in WT's and WAM's written policies and procedures, which included various vague provisions and did not provide adequate guidance, monitoring, or surveillance of potential information sharing.

5. WT and WAM failed to enforce their written policies and procedures—most notably, those relating to information barriers—and the various ambiguities and other weaknesses in those policies and procedures rendered them not reasonably designed to prevent the misuse of material, nonpublic information. Accordingly, WT violated Section 15(g) of the Exchange Act, and WAM violated Section 204A of the Advisers Act.

¹ The findings herein are made pursuant to Respondents' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

RESPONDENTS

6. WT is an Illinois limited liability company with its principal place of business in Chicago, Illinois. It is a wholly owned subsidiary of Wolverine Holdings, L.P. (“Wolverine Holdings”) and an affiliate of WAM. WT has been registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Exchange Act since 1994, originally known as Wolverine Trading, L.P. and as of 2003 known as WT. As of July 23, 2015, WT was a member of twelve securities exchanges, on which it traded for its own account.

7. WAM is an Illinois limited liability company with its principal place of business in Chicago, Illinois. It is a wholly owned subsidiary of Wolverine Holdings and an affiliate of WT. WAM has been registered with the Commission as an investment adviser pursuant to Section 203(c) of the Advisers Act since August 2011. As of March 27, 2015, WAM had regulatory assets under management of over \$6.9 billion, providing discretionary advisory services to seven accounts.

OTHER RELEVANT ENTITIES

8. Wolverine Holdings is an Illinois limited partnership that serves as the holding company for WT, WAM, and their affiliates. During the relevant time period, Wolverine Holdings had ten partners; today, Wolverine Holdings has eleven partners (“Partners”). Two of the Partners are controlling shareholders of Wolverine Trading Partners, Inc. (“WTP”), the General Partner of Wolverine Holdings.

9. CSAG is a corporation incorporated and domiciled in Switzerland and headquartered in Zurich, Switzerland. Credit Suisse Securities (USA) LLC (“CSSU”), a CSAG affiliate, is a Delaware limited liability company with its principal place of business in New York, New York and a registered broker-dealer and investment adviser with the Commission. CSAG, acting through its Nassau Branch, is the issuer of the VelocityShares Daily 2x VIX Short Term ETN linked to the S&P 500 VIX Short-Term Futures Index due December 4, 2030, an ETN which, during the relevant time period, was listed on the New York Stock Exchange Arca (“NYSE Arca”) with the exchange ticker TVIX (“TVIX”).

10. Velocity Shares, LLC (“VelocityShares”) is a Delaware limited liability company with its principal place of business in Darien, Connecticut. VLS Securities LLC (“VLS”), a VelocityShares subsidiary, is a Delaware limited liability company with its principal place of business in Darien, Connecticut and a registered broker-dealer with the Commission.

BACKGROUND

Suspension and Subsequent Reopening of Issuances of TVIX

11. TVIX is an ETN issued by CSAG.² According to its pricing supplement, TVIX is intended to provide investors with returns based on a multiple of the performance of the S&P 500 VIX Short-Term Futures Index ER (“Index”), and the Index is intended “to provide investors with exposure to one or more maturities of futures contracts on the CBOE Volatility Index . . . [“VIX”], which reflect implied volatility of the S&P 500 Index at various points along the volatility forward curve.”

12. Any market participant could purchase TVIX on a securities exchange; however, only certain market participants were authorized to request the creation of TVIX notes, which were priced at TVIX’s indicative value³ plus an additional cost. These market participants entered into a “VelocityShares Redemption and Creation Agreement” with VLS (“VLS Agreement”). Referred to in the VLS Agreement as “Market Makers,” these market participants were authorized to submit creation or redemption requests to VLS, which then aggregated, organized, and submitted those requests to CSSU on behalf of those Market Makers. WT entered into a VLS Agreement as of November 24, 2010; to date, WAM has not entered into a VLS Agreement.

13. After the market close on February 21, 2012, CSAG announced in a press release the temporary suspension of new issuances of TVIX due to “internal limits on [its] size” (“February 21 Press Release”). As a result, Market Makers were restricted from requesting the creation of TVIX notes, though not from redeeming notes. Later in the February 21 Press Release, CSAG noted the possibility that the suspension “may cause an imbalance of supply and demand in the secondary market,” which may lead to trading at “a premium or discount in relation to . . . indicative value.”

14. Over the next month, a persistent premium between TVIX’s trading price and indicative value developed. For example, from February 22 to March 9, the closing premium ranged from approximately four to twenty percent, and from March 12 to March 21, the closing premium remained above twenty percent and increased day-over-day, with the exception of March

² ETNs generally are unsecured debt securities issued by public companies (most often, bank holding companies or investment banks), which typically can provide exposure to certain benchmarks or strategies and are traded on securities exchanges.

³ The indicative value of an ETN reflects the intrinsic value of that ETN, as defined in the prospectus. TVIX’s indicative value ticker is TVIXIV.

14, reaching a closing high of 89.4% on March 21. As of March 20, NYSE Arca placed TVIX on its Regulation SHO threshold securities list.⁴

15. From February 22 to March 22 (“Creation Suspension Period”), CSSU considered alternatives that would enable the reopening of new issuances. Over the course of the day on March 22, the trading price of TVIX dropped significantly from an opening price of \$14.78 to a closing price of \$10.20, which affected the closing premium such that it collapsed to 30.2%. After the market close, CSAG announced in a press release its plan to reopen new issuances of TVIX on a “limited basis” (“March 22 Press Release”). In addition to issuing TVIX into its affiliates’ inventory for securities lending, CSAG stated that beginning as soon as March 28, it may issue TVIX “to be sold solely to authorized market makers,” though it “may condition its acceptance of a market maker’s offer to purchase [TVIX] on its agreeing to sell to Credit Suisse specified hedging instruments consistent with Credit Suisse’s hedging strategy, including but not limited to swaps.”

16. On March 28, three market participants other than CSSU submitted individual creation requests for TVIX to VLS. Total return swaps were traded with Credit Suisse International (“CSI”), the relevant CSAG affiliate that served as swap counterparty.

WT’s and WAM’s Trading in TVIX from February 21 to March 22, 2012

17. On February 21, 2012, WT had a long end-of-day position in TVIX. During the Creation Suspension Period and thereafter, WT maintained short end-of-day positions in TVIX. WT’s end-of-day short position in TVIX increased almost every day during the Creation Suspension Period, with a few exceptions, eventually resulting in a short end-of-day position of over 2.4 million TVIX notes on March 22.

18. Prior to the Creation Suspension Period, WAM had never taken a trading position in TVIX. Beginning on February 22, WAM established a short position in TVIX, which increased almost every day, with limited exceptions, until March 13, when WAM believed that it could no longer add to its short position due to its belief that it needed to obtain a locate, which it could not do. From March 13 to March 22, WAM maintained a short end-of-day position of over 800,000 TVIX notes.

⁴ Regulation SHO applies to short sales of “equity securities” as the term is defined in Section 3(a)(11) of the Exchange Act and Rule 3a11-1 thereunder. Because TVIX is not an “equity security” under the Exchange Act, it should not have been placed on the NYSE Arca Regulation SHO threshold securities list.

WT's and WAM's Information Sharing Regarding TVIX

a. **WT's and WAM's Information Sharing During Creation Suspension Period**

i. *WT's TVIX Position and Strategy*

19. On the morning of February 22, 2012, the day after the suspension of new issuances of TVIX, the principal trader on the WT desk responsible for market making in TVIX (“WT Trader”) sent an e-mail to a Partner inquiring whether his desk could undertake a similar trading strategy in TVIX as it had years before in relation to another exchange-traded product (“ETP#2”)—*i.e.*, essentially whether WT could establish and hold a short position in TVIX, which could potentially result in surpassing risk parameters, but which could allow WT to profit eventually from any premium that developed as a result of the suspension. This Partner was the Chief Executive Officer (“CEO”) and Chief Investment Officer (“CIO”) of WAM and had ultimate responsibility for WAM’s investment decisions, and he was a Founder and Co-Managing Partner of Wolverine Holdings and one of the controlling shareholders of WTP (“WTP Partner”).

20. After market close on February 22, another WT trader sent a daily positional profit-and-loss e-mail to, among others, the “Partners” listserv, which included the WTP Partner. An e-mail from the WT Trader to that same group followed in which he provided WT’s approximate end-of-day position in TVIX and his intention to “trade the premium back and forth” and not to “establish a long term position until we get more clarity on when TVIX could open for creations again.” Later that evening, the WTP Partner responded, “Keep me up on the spread and we can discuss sizing.”

21. That same evening, the WTP Partner forwarded an e-mail that he had received from a third party regarding TVIX to a WAM portfolio manager (“WAM PM”) with the following note: “Something I forgot to mention today. Basket desk informed me about this today. Something similar to [ETP#2] may be happening here. Got pushed to a pretty big premium today. Let’s look at it closer tomorrow. Worth starting to put some on and get into the trade.” The term “basket desk” refers to the WT Trader’s desk.

22. The WAM PM responded to the WTP Partner that he had already established a short position in TVIX earlier that day, provided positional information, and indicated that they could discuss tomorrow. The next day, the WAM PM increased the size of WAM’s short position in TVIX from 41,000 to 316,000 notes.

23. Over the course of the Creation Suspension Period, the WT Trader continued to send e-mails to the WTP Partner providing specific information regarding the size of WT’s position in TVIX and WT’s trading strategy. For example, at certain points during the Creation Suspension Period, the WT Trader informed the WTP Partner of WT’s position, the then-current TVIX premium, and how much the WT Trader proposed to add or to reduce his short position if the premium moved within certain ranges. The WTP Partner typically responded with his reaction to this information; for example, in response to one of these snapshots, the WTP Partner responded that he was “good with the levels.” According to the WT Trader, if the WTP Partner had not

responded that he was comfortable with the “levels,” he would have sought guidance from the WTP Partner relating to what his “levels” should be.

24. Meanwhile, during the Creation Suspension Period, the WAM PM provided daily updates on his TVIX position to various WAM personnel, including to the WTP Partner. The WTP Partner and WAM PM discussed WAM’s TVIX position over e-mail and on the trading floor, where the WAM PM sat in close proximity to the WTP Partner. According to the WAM PM, if the WTP Partner had not agreed with WAM’s position in TVIX, the WAM PM would have inquired as to whether the WTP Partner wanted him to shrink his short position in TVIX, and, if so, the WAM PM would have done so immediately.

ii. *Meetings Between WT Trader and WAM PM*

25. Despite the physical separation between WT and WAM, the WT Trader and the WAM PM met several times during the Creation Suspension Period specifically to discuss TVIX. These meetings would sometimes occur in a conference room in the common area between WT’s and WAM’s trading floors. The WTP Partner was aware that the WT Trader and the WAM PM discussed TVIX during the Creation Suspension Period.

iii. *Information Relating to Potential Swaps*

26. On the morning of February 22, 2012, the WT Trader reached out to CSSU, seeking information and guidance regarding the February 21 Press Release and the expected timing of any reopening of new issuances. Specifically, the WT Trader e-mailed a CSSU Director in Equity Derivatives Product Investor Solutions (“CSSU Director”), who was tasked with managing CSSU’s ETN platform. Later that day and then again the next day, the WT Trader contacted CSSU, including the CSSU Director, proposing entry into a swap in exchange for creation of TVIX notes.

27. On March 2, the WT Trader again contacted the CSSU Director regarding, among other things, the potential entry into a swap. Following a telephone call, the WT Trader sent an e-mail to the CSSU Director, introducing the Chief Operating Officer of WAM (“WAM COO”) as WT’s “[s]wap contact” for purposes of “get[ting] the paper work rolling with the ISDA on the trading side.”

28. The term “ISDA” refers to International Swaps and Derivatives Association documentation, which counterparties enter into as a predicate to executing over-the-counter derivative transactions, including swaps. The relevant entity for which an ISDA was to be negotiated was Wolverine Alternative Investments, LLC (“WAI”), another subsidiary of Wolverine Holdings. During the Creation Suspension Period, WT was the only Market Maker that was engaged in active discussions with CSSU regarding an ISDA. Wolverine Convertible Arbitrage Fund Trading Ltd. (“WCAF”)—one of WAM’s pooled investment vehicle clients—had previously entered into an ISDA with CSI.

29. Over the balance of the Creation Suspension Period, the CSSU Director and the WT Trader had conversations relating to, among other things, the potential use of swaps in connection

with the reopening of new issuances of TVIX, which included the WAM PM in addition to the WAM COO. The WAM PM participated in at least eight telephone calls with the WT Trader and the CSSU Director. As a result of these conversations, the WAM PM relayed to the WTP Partner and other WAM personnel, for example, that on March 19, “[s]wap talks are ongoing yet painfully slow,” whereas on March 20, “[s]wap talks were productive today, sounds like action should come soon (barring any currently unforeseen setbacks).” Additionally, in an e-mail exchange with the WAM PM during mid-afternoon on March 22, as the premium between TVIX’s market price and indicative value was collapsing, the WAM COO informed the WAM PM that he had spoken with the WT Trader and CSSU and that he was expecting to receive the WAI ISDA the next day, noting that it “[s]ounds like they are keen to move that quickly now,” which he supposed “could have been perceived by someone else as meaningful.”

b. Swap Execution and Request for TVIX Creation by WAM on March 28, 2012

30. After the March 22 Press Release, the WT Trader contacted the CSSU Director to express interest in requesting the creation of TVIX notes, along with entering into a swap. That evening, the WT Trader corresponded with the WAM COO regarding the impact of the March 22 Press Release on the timing of completion of the WAI ISDA. He also communicated with the WTP Partner regarding his initial view as to the dollar amount of notes that should be requested, as well as on how to trade TVIX, and related instruments, in light of the March 22 Press Release. The next morning, the WAM PM and the WTP Partner also discussed the WAM PM’s thoughts on requesting creation of TVIX notes, as well as how he was trading TVIX following the March 22 Press Release.

31. On March 23, 2012, the CSSU Director circulated a draft swap term sheet to certain Market Makers, including WT. The CSSU Director indicated that they were soliciting indications of interest from Market Makers and asked that any Market Maker that wanted to request the creation of TVIX notes provide the number or dollar amount of notes that they desired. WAM did not receive this draft term sheet directly from the CSSU Director.

32. From March 23 to March 27, correspondence between the WT Trader and the WTP Partner, on the one hand, and between the WAM PM and the WTP Partner, on the other hand, continued regarding the return profile associated with creation of TVIX notes and execution of a swap. These individual exchanges included specific information such as current TVIX positions, the dollar amount of TVIX notes to be requested, terms of the swap including duration and initial margin, and the dollar amount of VIX futures to be used to hedge the swap. In addition, on at least one occasion, the WT Trader and the WAM PM discussed the return profile associated with creation of TVIX notes and execution of a swap.

33. On the morning of March 27, the WT Trader provided the CSSU Director with an indication of interest on behalf of both WT and WAM. That afternoon, the CSSU Director provided the WT Trader with an approved allocation of TVIX notes—which was significantly lower than the indication of interest—along with the initial margin and duration of the swap. That evening, the WT Trader e-mailed the WTP Partner to tell him that he “took the fill.”

34. During the course of the morning of March 28, the exact identity of the entity that was to be the designated swap counterparty vacillated between WCAF and WAI following telephone calls between the WT Trader and the CSSU Director. The WAI ISDA, however, was not completed by March 28, and the WT Trader indicated to the CSSU Director that WCAF would be the swap counterparty.

35. In the early afternoon, the WAM PM submitted a creation request to VLS on behalf of “Wolverine.” Shortly thereafter, the CSSU Director sent the WAM PM and the WT Trader, among others, the final swap term sheet, requesting that the WAM PM confirm the terms on behalf of WCAF and instructing that the WT Trader must submit the creation request to VLS, noting that “[o]n the creation leg, we can only face the same entity authorized as MM for these with Velocity.” In response to the CSSU Director, the WAM PM confirmed the swap on behalf of WCAF and replied that they would “coordinate” with VLS regarding the creation request. Despite the CSSU Director’s instruction, WAM, not WT, submitted the order to create TVIX notes. As a result, WAM earned greater profits because it covered its short position in TVIX with those notes, which were priced close to the then indicative value at \$6.8924, whereas any other non-Market Maker would have had to cover its short position at TVIX’s market price, which continued to reflect a greater premium over indicative value. The closing price of TVIX on March 28 was \$7.20.

c. Additional Correspondence Regarding WT’s TVIX Position and Strategy

36. Even after the Creation Suspension Period and the March 28 note creation and swap execution, WT personnel still updated the WTP Partner and sought his guidance on WT’s position and strategy regarding TVIX. These discussions continued until at least mid-April 2012.

Written Policies and Procedures to Prevent Misuse of Material, Nonpublic Information

a. Information Barrier Procedures

37. The “Information Barrier Procedures,” which were applicable across WT, WAM, and their affiliates (“Wolverine Entities”), set forth in their introduction that they “establish the manner in which [the Wolverine Entities] will conduct business as separate and distinct organizations free from conflicts of interest and prevent the improper use or dissemination of material non-public information.”

38. The Information Barrier Procedures highlighted the “functional and physical separation” among the Wolverine Entities and required that personnel of the Wolverine Entities maintain the confidentiality of trading positions, activities, and strategies. Instructions were given regarding the “responsibility” of any “officer or employee of an entity [that] obtains inappropriate information about another entity’s trades, positions or strategies,” including “inform[ing] the Compliance Department,” “maintain[ing] . . . the confidentiality of such information,” and “refrain[ing] . . . from engaging in any trading or other activities that make improper use of such information.”

39. The Information Barrier Procedures also designated “Supervisors” that were “responsible for the maintenance and surveillance” of the Information Barrier Procedures for each Wolverine Entity or individual trading desk within certain Wolverine Entities (“Information Barrier Supervisors”), including by “actively monitor[ing] the information barriers by ensuring that personnel from other entities are not spending time in space occupied by another entity.” At the time of the events described herein, the WT Trader and the WTP Partner were Information Barrier Supervisors for the WT Trader’s desk and for WAM, respectively.

40. The Information Barrier Procedures devoted a section to “Individuals ‘Above the Wall,’” designated as “[c]ertain individuals responsible for performing various accounting, back office, compliance, risk monitoring and systems-related functions . . . [that] may have position or trading knowledge pertaining to more than one entity or business unit.” The individuals designated as “above the wall” included the risk manager for the Wolverine Entities (who is also a Partner, a Founder and Co-Managing Partner of Wolverine Holdings, and the other controlling shareholder of WTP), the Chief Financial Officer, the Chief Legal Counsel, the WT risk management group, and compliance department personnel.

41. At the time of the events described herein, the only individuals explicitly designated in the Information Barrier Procedures as being “above the wall” were those highlighted in the “Individuals ‘Above the Wall’” section. A freestanding paragraph in the introduction of the Information Barrier Procedures, however, stated that “[s]enior management of the entities who are not active in the day-to-day trading activities and/or day-to-day management of specific trading activities will be responsible for and may participate in general managerial oversight,” defined as “includ[ing], but . . . not limited to market strategy, revenue and profit targets and objectives, establishment of risk parameters, overall trading philosophy, staffing, resources and other administrative and general managerial matters.”

42. The Information Barrier policies were periodically revised after the events described herein. In connection with an August 2012 revision, the Information Barrier Procedures were updated to include a new section entitled “Other Access ‘Above the Wall,’” which added the Partners, including the WTP Partner, to those individuals explicitly identified as “above the wall” for certain purposes. Upfront, the section noted that the Partners “may be ‘walled off’ from seeing the specific trading activity/positions” of Wolverine Entities for which they did not perform day-to-day responsibilities. It continued, however, that despite these limitations, the Partners may see “specific information in relation to the corporate organizational structure in general, as well as information related to the profits and losses of the entities, potential strategies, targets and objectives, risk parameters, overall trading philosophy, staffing, resources and other administrative and general managerial matters.” The revised Information Barrier Procedures also referenced “[o]ther senior management of the entities who are not active in the day-to-day trading activities and/or day-to-day management of specific trading activities,” who “may participate in general managerial oversight and may view information similar” to that accessible to the Partners.

b. Other Relevant Policies and Procedures

43. The “Insider Trading Policies and Procedures,” which were also applicable across all of the Wolverine Entities, stated upfront that all personnel of the Wolverine Entities “must attest to their understanding and acceptance of the [Wolverine Entities’] written procedures as they relate to insider trading and the misuse of material, non-public information.” The Insider Trading Policies and Procedures then provided context regarding the meanings of certain terms, discussed restricted lists, and included instructions for personnel when they believed they were in possession of material, nonpublic information.

44. WAM’s “Code of Ethics” also devoted a section to the “Prohibition Against Insider Trading.” Like the Insider Trading Policies and Procedures, the Code of Ethics provided context for the meaning of certain terms, and instructions for steps to take if personnel believed they had access to material, nonpublic information. It also advised that “[n]on-public information does not change to public information solely by selective dissemination” and that “[e]mployees must be aware that even where there is no expectation of confidentiality, a person may become an insider upon receiving Material Non-Public Information.” On the topic of “Selective Disclosure,” the Code of Ethics restricted the sharing of nonpublic information regarding “investment strategies, trading, and Client holdings” with third parties, “except as is necessary to implement investment decisions and conduct other legitimate business,” adding that “[e]mployees must never disclose proposed or pending trades or other sensitive information to any third party without the prior approval of the [Chief Compliance Officer].”

WT’s and WAM’s Written Policies and Procedures Are Not Reasonably Designed to Prevent Misuse of Material, Nonpublic Information

45. WT and WAM did not adequately enforce their written policies and procedures in connection with their information sharing relating to TVIX. WT’s trading positions, activities, and strategies were shared with WAM through the conversations between the WT Trader and the WTP Partner, who was WAM’s CEO and CIO. In addition, WAM shared with WT its interest in entering into a swap and requesting the creation of TVIX notes, including the quantity of TVIX notes WAM sought to create and eventually received, evidenced by the WT Trader’s providing for both WT and WAM an indication of interest with respect to the dollar amount of TVIX notes requested and subsequent taking of the “fill,” and his relaying the identity of the ultimate swap counterparty, WCAF, to CSSU.

46. The meetings between the WT Trader and the WAM PM, as described in paragraph 25, were contrary to the physical separation that the written policies and procedures required be maintained between the two entities. Exacerbating the issue was the presence of an Information Barrier Supervisor himself in these meetings (the WT Trader) and the knowledge of another Information Barrier Supervisor that the WT Trader and the WAM PM had met (the WTP Partner). The functional separation of WT and WAM was also undermined by, among other things, the collective telephone calls with CSSU, the communication of a cumulative swap indication of interest, and the request for creation of notes by WAM. The blending of WT and WAM provided information and opportunity that other market participants did not have. The participation of WAM

personnel in the WAI ISDA negotiation and the CSSU telephone calls provided WAM with insight into the potential use of swaps in connection with the reopening of new issuances of TVIX. The WT Trader's communication of a cumulative swap indication of interest followed by WAM's submission of an order to create TVIX notes—despite contrary instructions from CSSU—provided WAM with an opportunity that no other non-Market Maker received at that time.

47. To the extent that any of this sharing of information was permitted under the written policies and procedures, such policies and procedures were not reasonably designed to prevent the misuse of material, nonpublic information. As a result of the communications between the WT Trader and the WTP Partner—who was WAM's CEO and CIO—WAM became aware of the trading positions, activities, and strategy of WT, a Market Maker with a significant and increasing short position. Rather than immediately reaching out to the WTP Partner, the WT Trader could have consulted with a Partner that had day-to-day responsibilities over his desk or the risk manager of the Wolverine Entities, who was “above the wall” and had the same titles and authority as the WTP Partner, as well as day-to-day responsibilities with respect to WT. And, although the Information Barrier Procedures operative at the time mentioned that certain “senior management . . . will be responsible for and may participate in general managerial oversight,” including “establishment of risk parameters,” this provision was too vague and unclear in its applicability to be relied upon to justify the information sharing.

48. Although subsequent revisions to the Information Barrier Procedures explicitly designated the Partners and “other senior management” as being given “Other Access ‘Above the Wall,’” the Information Barrier Procedures still lacked a framework to monitor this sharing of information and to surveil afterwards to determine whether recipients were misusing any material, nonpublic information. Moreover, the purposes for which Partners were granted access above the wall were vague and broad—*e.g.*, “potential strategies,” “targets and objectives,” “risk parameters,” and “overall trading philosophy”—and an undefined category of “other senior management” was entitled to the same access. That a Partner or “other senior management” may have had such open access “above the wall” created a risk of misuse, given such individuals’ abilities to guide trading positions and strategies, as the WT Trader and WAM PM both acknowledged with respect to their independent conversations with the WTP Partner regarding TVIX.

49. If the breaches of physical and functional separation between WT and WAM were permissible in any respect, the written policies and procedures did not have any means to ensure that personnel not share or misuse any material, nonpublic information during such interactions. The meetings between the WT Trader and WAM PM, as well as the presence of WAM personnel during the various conversations with CSSU, occurred without safeguards to mitigate or to react to the risks present through cross-affiliate sharing of information.

VIOLATIONS

50. As a result of the conduct described above, WT willfully⁵ violated Section 15(g) of the Exchange Act, which requires every registered broker or dealer to “establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such broker’s or dealer’s business, to prevent the misuse in violation of . . . [the Exchange Act] or the rules or regulations thereunder, of material, nonpublic information by such broker or dealer or any person associated with such broker or dealer.”

51. As a result of the conduct described above, WAM willfully violated Section 204A of the Advisers Act, which requires every registered investment adviser to “establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such investment adviser’s business, to prevent the misuse in violation of . . . [the Advisers Act or the Exchange Act] or the rules or regulations thereunder, of material, nonpublic information by such investment adviser or any person associated with such investment adviser.”

REMEDIAL EFFORTS

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by WT and WAM.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents WT’s and WAM’s Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act and Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

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

B. Respondent WAM cease and desist from committing or causing any violations and any future violations of Section 204A of the Advisers Act.

C. Respondents WT and WAM are censured.

D. Respondent WAM shall, within fourteen (14) days of the entry of this Order, pay disgorgement of \$364,145.80 and prejudgment interest of \$39,158.47 to the Securities and

⁵ 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)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying WAM 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 Steven G. Rawlings, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281.

E. Respondent WT shall, within fourteen (14) days of the entry of this Order, pay a civil money penalty in the amount of \$375,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying WT 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 Steven G. Rawlings, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281.

F. Respondent WAM shall, within fourteen (14) days of the entry of this Order, pay a civil money penalty in the amount of \$375,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

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Payments by check or money order must be accompanied by a cover letter identifying WAM 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 Steven G. Rawlings, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281.

G. 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 penalties, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of

any award of compensatory damages by the amount of any part of Respondents' payments of civil penalties in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they 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 penalties imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents 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.

By the Commission.

Brent J. Fields
Secretary