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

**SECURITIES EXCHANGE ACT OF 1934**
**Release No. 79568 / December 15, 2016**

**INVESTMENT ADVISERS ACT OF 1940**
**Release No. 4588 / December 15, 2016**

**INVESTMENT COMPANY ACT OF 1940**
**Release No. 32394 / December 15, 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 MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940** |

**I.**

On April 19, 2016, the Securities and Exchange Commission ("Commission") instituted proceedings 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 Respondents TPG Advisors LLC (d/b/a The Phillips Group Advisors) ("TPG") and Larry M. Phillips ("Phillips") (collectively, "Respondents").

**II.**

Respondents have submitted an Offer of Settlement ("Offer") that the Commission has determined to accept. Respondents admit the facts set forth in Section III below, acknowledge that their conduct violated the federal securities laws, admit the Commission's jurisdiction over them and the subject matter of these proceedings, and consent to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections

15(b) and 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, as set forth below.

**III.**

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

**SUMMARY**

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

**RESPONDENTS**

2. TPG Advisors, LLC, is a California limited liability company with its principal place of business in Woodland Hills, California and had been registered with the Commission as an investment adviser from October 2009 to August 9, 2016. 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 were almost all individuals and families. TPG withdrew its registration on August 9, 2016, and no longer has any assets under management.

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.

**RESPONDENTS' CHERRY-PICKING SCHEME**

**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."

## 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.

## VIOLATIONS

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. 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. 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. 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."

## IV.

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

Accordingly, pursuant to Sections 15(b)(6) and 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondents TPG and Phillips shall cease and desist from committing or causing any violations 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.

B. Respondent Phillips shall be, and hereby is:

> barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;
>
> prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and
>
> barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock or inducing or attempting to induce the purchase or sale of any penny stock.

C. Any reapplication for association by Respondent Phillips will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against Phillips, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondents TPG and Phillips shall, within 30 days of the entry of this Order, pay, jointly and severally, disgorgement of $25,295.00 and prejudgment interest of $3,142.69 to the Securities and Exchange Commission. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or transfer them to the general fund of the United States Treasury, subject to Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

E. Respondents TPG and Phillips shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of $300,000 to the Securities and Exchange Commission. This penalty is owed jointly and severally by Respondents TPG and Phillips. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

F. Payment must be made in one of the following ways:

(1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondents 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) Respondents 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 TPG and Phillips as Respondents 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 Ms. Victoria Levin, Los Angeles Regional Office, Division of Enforcement, Securities and Exchange Commission, 444 S. Flower St., 9th Floor, Los Angeles, CA 90071.

G. Regardless of whether the Commission in its discretion orders the creation of a Fair Fund for the penalties ordered in this proceeding, 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, 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' payment of a civil penalty 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 penalty 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.

**V.**

It is further Ordered that, for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent Phillips, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Phillips under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent Phillips of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary