

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 81025 / June 26, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18046

In the Matter of

WM SMITH & CO., and
WILLIAM S. SMITH,

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934, 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”), against Wm Smith & Co. (“WSC”) and William S. Smith (“Smith”) (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, 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, 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' Offers, the Commission finds¹ that:

Summary

1. These proceedings arise out of the failure of WSC, a registered broker-dealer, to establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of its business, to prevent the misuse of material nonpublic information by WSC and its associated persons from at least January 2013 through December 2015 ("the relevant period"). Specifically, WSC failed to enforce its policies and procedures: (i) requiring written pre-approval of all employee personal securities trades; (ii) establishing and maintaining information barriers between WSC's research department and other personnel; (iii) prohibiting WSC personnel from disseminating material nonpublic information, as defined by the firm's own written policies and procedures (hereinafter, "MNPI"), to the public; and (iv) prohibiting WSC personnel from trading ahead of research reports. WSC also failed to establish policies and procedures to track and prevent trading on information related to unpublished research reports prior to the time that WSC initiated coverage on the companies at issue.

2. During the relevant period, Smith, WSC's president: (i) failed to comply with WSC's trading written pre-approval procedures with regard to his personal securities trades; (ii) repeatedly violated WSC's policies related to internal information barriers; and (iii) knew or should have known of instances in which firm personnel violated WSC's policies regarding the dissemination of MNPI to the public.

3. Accordingly, WSC willfully violated Section 15(g) of the Exchange Act² and Smith willfully aided and abetted and caused WSC's violations.

Respondents

4. WSC is a registered broker-dealer with its principal place of business in Englewood, Colorado. WSC provides equity research, trading, and investment banking services to institutional customers. WSC has been registered with the Commission since 1992.

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

² Section 15(g) of the Exchange Act was formerly Section 15(f) of the Exchange Act. The provision changed in July 2010 following the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

5. **Smith**, age 66, is a resident of Englewood, Colorado. Smith is the president, founder, and majority owner of WSC. Smith holds Series 1, 7, 24, 63, 79, and 87 registrations and has been associated with WSC since 1992.

Background

6. Throughout the relevant period WSC employed approximately 6-14 associated persons, including two to three research analysts. WSC's research analysts covered approximately 15-30 public companies at any given time.

7. WSC's research analysts used public information as the basis for WSC research reports, and, as part of their duties, had access to information regarding the upcoming publication of WSC research reports, including price targets, analysis of the target companies' filings, and other information learned from the target companies that was not contained in public filings and was included in research reports. Smith, the supervisor of WSC's research department, reviewed draft research reports prior to their publication. This created a risk of potential misuse of MNPI and insider trading by those with knowledge of upcoming research reports, and through communications by the analysts and Smith to other firm employees and customers of information related to those research reports.

8. In view of the nature of its business, WSC developed written policies and procedures in a Written Supervisory Procedures Manual ("Procedures Manual") to protect against the misuse of material nonpublic information, which the Procedures Manual defined as information that was not generally available to the public and which: a) in reasonable and objective contemplation might affect the value of an issuer's publicly traded securities, or b) if known, would clearly affect investment judgment, or which directly bears on the intrinsic value of an issuer's publicly traded securities. The Procedures Manual defined forthcoming research reports as examples of "material information." Moreover, WSC considered non-public research analysis, such as price targets, to be MNPI. WSC revised and updated its Procedures Manual on an annual basis, and Smith comprehensively reviewed, approved, and signed each annual edition of the Procedures Manual before it was circulated to firm personnel. As WSC's president, it was Smith's responsibility to ensure that the firm was in compliance with the Procedures Manual.

9. The Procedures Manual contained specific policies and procedures designed to protect information that the firm considered to be MNPI, including a strict prohibition on insider trading. WSC failed, however, to maintain and enforce several of those written policies and procedures and failed to establish procedures reasonably designed to prevent the misuse of MNPI.

A. WSC failed to enforce its policy requiring written pre-approval of all employee personal trades.

10. During the relevant period, Smith engaged in active personal trading in securities.

11. On April 18, 2013, the Financial Industry Regulatory Authority, Inc. ("FINRA") issued a cautionary action letter to WSC based on its finding that Smith had placed four trades in

companies covered by WSC's research analysts without first receiving written pre-approval from the firm's compliance personnel, in apparent violation of certain FINRA rules.

12. On April 24, 2013, WSC replied to FINRA and represented that going forward, no employee would be allowed to place a personal trade without first receiving written pre-approval from WSC's chief compliance officer. WSC stated that the written pre-approval procedure would be followed "no matter which employee" traded.

13. On December 20, 2013, WSC updated its Procedures Manual to reflect that it was the firm's policy to require all employees to receive written pre-approval from WSC's chief compliance officer prior to placing personal trades.

14. WSC failed to enforce its trading pre-approval procedure with regard to Smith during the relevant period. From May 2013 through December 2015, Smith did not receive written pre-approval from the firm's chief compliance officer on numerous occasions. The firm's failure to enforce its pre-approval procedures limited WSC's ability to review adequately Smith's trading for the misuse of MNPI.

B. WSC failed to enforce its policies creating information barriers between the research department and other personnel.

15. To protect against insider trading, WSC's Procedures Manual established an information barrier policy to separate different departments of the firm and keep inside information within the research department. Specifically, the Procedures Manual prohibited research personnel from disclosing "any non-public information about the timing and content of pending research publications to non-research personnel" and forbade non-research personnel from reviewing pending research reports.

16. Notwithstanding those written policies, on numerous occasions WSC research analysts and Smith disclosed to WSC sales and trading personnel the analysts' unpublished views and analyses that appeared in subsequent WSC research reports. For example:

a. On 25 separate occasions during the relevant period, a contract research analyst associated with WSC sent emails containing non-public research analysis, often including price targets, to members of the firm's sales and trading departments. In multiple instances, the contract research analyst sent full draft research reports to members of WSC's sales personnel. Smith was included on all 25 emails sent by the analyst and WSC's chief compliance officer was included on 23 of the 25 emails, but there is no record that the analyst faced any remedial action.

b. On February 28, 2013, Smith forwarded an email from an analyst to two sales employees, indicating that the analyst was likely to initiate coverage on a new company and that the analyst expected "significant price appreciation" for the company's

stock price. The email contained non-public research analysis regarding why the analyst expected the company's stock price to rise.

c. On December 31, 2013, Smith emailed a sales employee a copy of a full draft research report from an analyst. The draft report contained non-public research analysis and price target information, as well as Smith's redline edits to the report.

d. On July 1, 2014, Smith forwarded to a sales employee a full draft initiation research report from an analyst. Smith asked the sales employee for comments and edits, and the sales employee sent back a marked-up version of the draft report. On July 2, 2014, Smith forwarded a copy of the analyst's draft research report to another sales employee.

C. WSC failed to enforce its policies prohibiting WSC personnel from disseminating MNPI to the public.

17. In a section titled "Firm Policy on Insider Trading," WSC's Procedures Manual established a policy stating that "no personnel may communicate any material non-public information to anyone outside the Company."

18. Notwithstanding this written policy, on multiple occasions WSC sales and trading personnel publicly disseminated MNPI related to non-public research analysis, and sometimes Smith knew of and approved these emails. For example:

a. On May 1, 2013, an analyst sent a firm-wide email containing non-public research analysis, including a projected price target, in connection with a public company that had recently made an earnings announcement. Later that day, two sales employees and a member of the firm's trading department forwarded the analyst's email to a total of 14 existing and prospective customers. Smith was copied on one of the emails sent by a sales employee. In response, Smith wrote "good follow" and suggested the name of another customer to whom the sales employee should forward the analyst's email.

b. On May 7, 2014, an analyst sent two sales employees and others an email containing non-public research analysis, including a projected price target, in connection with a public company that had recently made an earnings announcement. Subsequently, the sales employees forwarded the analyst's email to a total of 10 existing and prospective customers. Smith received two of the emails sent to customers.

D. WSC failed to enforce its policies prohibiting personnel from trading ahead of research reports.

19. To protect against insider trading, the Procedures Manual established a written policy prohibiting WSC personnel from trading either personally or on behalf of others in securities about which they may possess MNPI. The Procedures Manual also expressly prohibited WSC personnel from trading ahead of research reports.

20. Notwithstanding those policies, on May 1, 2013, a trading employee placed a trade for a customer account while in possession of non-public research analysis that was later contained in a research report that was published the following day. The trading employee placed the trade the day after the company at issue made a positive earnings announcement, and just hours after receiving an email from an analyst that contained non-public research analysis, including a projected price target, regarding the company. In an email to the customer informing him of the trade, the trading employee twice mentioned that the analyst had a “high conviction” in the company and referenced the specific price target that the analyst had included in his internal firm email from May 1, 2013.

E. WSC failed to establish policies and procedures to track and prevent trading on information related to possible unpublished research reports prior to the time that WSC initiated coverage on the companies at issue.

21. From January 2013 through September 2015, WSC had no written policies or procedures in place to track and prevent trading on WSC’s research related to companies about which WSC was contemplating a research report. During that period, WSC maintained a Restricted Stock List that tracked the companies that WSC’s research analysts actively covered. WSC personnel were prohibited from purchasing the stock of companies on the Restricted Stock List. WSC did not add companies to the Restricted Stock List until after WSC had disseminated the research.

22. From the time that a research analyst decided to initiate coverage on a company through the time that an initiation report was actually published, WSC had no procedure in place to track that new company and prevent personnel from trading securities in that company. Specifically, during that time period, the firm’s chief compliance officer was unable to take into account whether a proposed employee trade in a given security involved a company that could be covered by WSC. Thus, the firm’s chief compliance officer could have approved an employee trade even when that employee may have been privy to non-public details related to an unpublished research initiation report.

23. For example, on February 28, 2013, the firm’s chief compliance officer pre-approved a sales employee’s purchase of stock in a company on which a research analyst was preparing to initiate coverage. The chief compliance officer was unaware of the impending initiation at the time that the stock purchase was approved, and was further unaware that the sales employee had contacted the research analyst about that same company during the prior month.

24. On September 4, 2015, following an on-site examination, the Commission’s examination staff informed WSC of the issue outlined above. In response, on September 29, 2015, WSC instituted a Research Idea List to track companies on which analysts had begun research, but for which WSC had not yet published initiation reports.

Violations

25. As a result of the conduct described above, WSC willfully 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.”³

26. As a result of the conduct described above, Smith willfully aided and abetted and caused WSC’s violations of Section 15(g) of the Exchange Act.

Respondents’ Remedial Efforts

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

IV.

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

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

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

B. Respondents WSC and Smith are censured.

C. Respondent WSC shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$50,000 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.

D. Respondent Smith shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$35,000 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.

³ 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)).

E. Payments 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 the payor 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 Mary S. Brady, Assistant Director, Division of Enforcement, Denver Regional Office, U.S. Securities and Exchange Commission, 1961 Stout Street, Suite 1700, Denver, Colorado 80294-1961.

F. 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 agrees 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, solely 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 Smith, and further, any debt for disgorgement, prejudgment interest, civil penalty, or other amounts due by Respondent Smith 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 Smith 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