

14 MAG 0341

Approved: 
SARAH E. MCCALLUM
Assistant United States Attorney

Before: HONORABLE GABRIEL W. GORENSTEIN
United States Magistrate Judge
Southern District of New York

----- x	:	
	:	
UNITED STATES OF AMERICA	:	<u>SEALED COMPLAINT</u>
	:	
- v. -	:	Violations of
	:	18 U.S.C. §§ 2, 1001; 15
FRANK PERKINS HIXON, JR.,	:	U.S.C. §§ 78j(b), 78n(e) &
a/k/a "Perk,"	:	78ff; 17 C.F.R. §§
	:	240.10b-5, 240.10b5-2,
Defendant.	:	240.14e-3(a) & 240.14e-
	:	3(d)
----- x	:	

COUNTY OF OFFENSES:
New York

SOUTHERN DISTRICT OF NEW YORK, ss.:

THOMAS W. MCDONALD, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation ("FBI") and charges as follows:

COUNTS ONE, TWO, and THREE
(Securities Fraud)

1. From at least in or about October 2011 through at least in or about January 2013, in the Southern District of New York and elsewhere, FRANK PERKINS HIXON, JR., a/k/a "Perk," the defendant, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails and the facilities of national securities exchanges, in connection with the purchase and sale of securities, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing devices, schemes, and artifices to defraud; and (b) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, on the basis of material, non-public information that HIXON obtained as part of his employment, HIXON executed and caused to be executed

in an account in the name of another individual ("Individual A") the securities transactions listed below.

Count	Dates	Transaction
1	October 23 and October 31, 2012	Purchase of 40,000 shares of Titanium Metals Corporation ("Titanium")
2	January 28 and January 29, 2013	Purchase of 27,000 shares of Evercore Partners Inc. ("Evercore")
3	October 21 through December 15, 2011	Purchase of 229,000 shares of Westway Group Inc. ("Westway")

(Title 15, United States Code, Sections 78j(b) & 78ff; Title 17, Code of Federal Regulations, Sections 240.10b-5 & 240.10b5-2, and Title 18, United States Code, Section 2.)

COUNT FOUR

(Securities Fraud in Connection with a Tender Offer)

2. In or about October 2012, in the Southern District of New York and elsewhere, FRANK PERKINS HIXON, JR., a/k/a "Perk," the defendant, willfully and knowingly engaged in fraudulent, deceptive, and manipulative acts and practices in connection with a tender offer, in that after the offering person, a manufacturer of metal components and products, had taken substantial steps to commence a tender offer of Titanium securities, HIXON, while in possession of material information that related to such tender offer and which HIXON knew or had reason to know was non-public, and had been acquired directly and indirectly from the offering person, or the issuer of the securities sought or to be sought by such tender offer, or any officer, director, partner, or employee or any other person acting on behalf of the offering person or such issuer, purchased and sold or caused to be purchased or sold such securities, or securities convertible into or exchangeable for any such securities, or an option or right to obtain or to dispose of any of the foregoing securities, without first publicly disclosing such information and its source by press release or otherwise, to wit, HIXON executed and caused to be executed purchases of Titanium shares in an account in the name of Individual A.

(Title 15, United States Code, Sections 78n(e) & 78ff;

Title 17, Code of Federal Regulations, Sections 240.14e-3(a) & 240.14e-3(d), and Title 18, United States Code, Section 2.)

COUNTS FIVE and SIX
(Securities Fraud)

3. From at least in or about October 2012 through at least in or about January 2013, in the Southern District of New York and elsewhere, FRANK PERKINS HIXON, JR., a/k/a "Perk," the defendant, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails and the facilities of national securities exchanges, in connection with the purchase and sale of securities, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing devices, schemes, and artifices to defraud; and (b) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, on the basis of material, non-public information that HIXON obtained as part of his employment, HIXON caused to be executed in the account of another individual ("Individual B") the securities transactions listed below.

Count	Date	Transaction
5	October 31, 2012	Purchase of 15,000 shares of Titanium
6	January 29, 2013	Purchase of 10,000 shares of Evercore

(Title 15, United States Code, Sections 78j(b) & 78ff; Title 17, Code of Federal Regulations, Sections 240.10b-5 & 240.10b5-2, and Title 18, United States Code, Section 2.)

COUNT SEVEN
(Securities Fraud in Connection with a Tender Offer)

4. In or about October 2012, in the Southern District of New York and elsewhere, FRANK PERKINS HIXON, JR., a/k/a "Perk," the defendant, willfully and knowingly engaged in fraudulent, deceptive, and manipulative acts and practices in connection with a tender offer, in that after the offering person, a manufacturer of metal components and products, had taken substantial steps to commence a tender offer of Titanium securities, HIXON, while in possession of material information that related to such tender offer and which HIXON knew or had reason to know was non-public, and had been acquired directly

and indirectly from the offering person, or the issuer of the securities sought or to be sought by such tender offer, or any officer, director, partner, or employee or any other person acting on behalf of the offering person or such issuer, purchased and sold or caused to be purchased or sold such securities, or securities convertible into or exchangeable for any such securities, or an option or right to obtain or to dispose of any of the foregoing securities, without first publicly disclosing such information and its source by press release or otherwise, to wit, HIXON caused to be executed purchases of Titanium shares in an account in the name of Individual B.

(Title 15, United States Code, Sections 78n(e) & 78ff; Title 17, Code of Federal Regulations, Sections 240.14e-3(a) & 240.14e-3(d), and Title 18, United States Code, Section 2.)

COUNT EIGHT
(False Statement)

5. On or about January 28, 2014, in the Southern District of New York, FRANK PERKINS HIXON, JR., a/k/a "Perk," the defendant, in a matter within the jurisdiction of the executive branch of the Government of the United States, willfully and knowingly did falsify, conceal, and cover up by trick, scheme, and device material facts, and made materially false, fictitious, and fraudulent statements and representations, to wit, in an interview with two FBI agents, HIXON falsely denied ever having traded in or accessed a brokerage account in the name of Individual A.

(Title 18, United States Code, Section 1001.)

The bases for my knowledge and for the foregoing charges are, in part, as follows:

6. I have been a Special Agent with the FBI for approximately six years. I am currently assigned to a squad responsible for investigating violations of the federal securities laws and related offenses. I have participated in investigations of such offenses, and have made and participated in arrests of individuals who have committed such offenses.

7. The information contained in this Complaint is based upon my personal knowledge, as well as information obtained during this investigation, directly or indirectly, from other sources, including, but not limited to: (a) business records and

other documents, including trading records, bank records, telephone records, records of electronic communications, and Internet Protocol ("IP") address logs, provided by various entities; (b) publicly available documents; (c) conversations with, and reports of interviews with, non-law-enforcement witnesses; (d) conversations with, and reports prepared by, other FBI agents; and (e) conversations with representatives from the United States Securities and Exchange Commission ("SEC"). Because this Complaint is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions and statements of and conversations with others are reported herein, they are reported in substance and in part. Where figures, calculations, and dates are set forth herein, they are approximate, unless stated otherwise.

Relevant Entities

8. At all times relevant to this Complaint, Evercore Partners Inc. ("Evercore") was an independent investment banking advisory firm with its principal place of business in Manhattan, New York. Evercore's securities traded under the symbol "EVR" on the New York Stock Exchange ("NYSE").

9. At all times relevant to this Complaint, Titanium Metals Corporation ("Titanium") was a manufacturer of titanium-based metals products headquartered in Dallas, Texas. Titanium's securities traded under the symbol "TIE" on the NYSE.

10. At all times relevant to this Complaint, Precision Castparts Corp. ("PCP") was a manufacturer of complex metal components and products used for aerospace and industrial gas turbine applications headquartered in Portland, Oregon. PCP's securities traded under the symbol "PCP" on the NYSE.

11. At all times relevant to this Complaint, Westway Group Inc. ("Westway") was a provider of bulk liquid storage and animal feed headquartered in New Orleans, Louisiana. Westway's securities traded under the symbol "WWAY" on the NASDAQ Stock Market LLC.

The Defendant and Individuals A & B

12. Based on interviews of witnesses, a review of public records, a review of employment records for FRANK PERKINS HIXON,

JR., a/k/a "Perk," the defendant, and a review of electronic communications between HIXON and others, I have learned that:

a. From April 6, 2010 through January 27, 2014, HIXON was a Senior Managing Director with the Mining and Metals Group of Evercore Group, LLC, a subsidiary of Evercore. Before that, from October 2002 through February 2010, HIXON worked as a Managing Director with the New York office of a global financial advisory and asset management firm.

b. Individual A is a 36-year-old woman who, at all times relevant to this Complaint, lived in Austin, Texas. Individual A's legal first name, as reflected in government documents that I have reviewed, is a distinctive one, and differs from the preferred first name she uses in correspondence and other documents. (Her legal surname and preferred surname are the same.) HIXON is the father of Individual A's young child.

c. On or about April 28, 2008, approximately four months before the child of Individual A and HIXON was born, Individual A opened a securities trading account at a brokerage firm (the "Individual A Account"). The first name appearing on the statements for the Individual A Account is Individual A's distinctive, legal first name. At all times relevant to this Complaint, the address appearing on the Individual A Account statements was an address in Austin, Texas.

d. Individual B is a close relative of HIXON's who, at all times relevant to this Complaint, lived in an area in the state of Georgia that shares a zip code with part of the city of Duluth and that was not incorporated as its own city until approximately December 2006.

e. At all times relevant to this Complaint, Individual B maintained a securities trading account with a brokerage firm (the "Individual B Account"). The city listed in the address block appearing on the statements for the Individual B Account is Duluth, Georgia, rather than Johns Creek.

Summary of the Insider Trading Scheme

13. As set forth below, there is probable cause to believe that FRANK PERKINS HIXON, JR., a/k/a "Perk," the defendant, used material non-public information that he acquired as part of his employment to (a) make and cause to be made profitable trades in the Individual A Account; and (b) cause the execution of

profitable trades in the Individual B Account. Specifically:

a. First, in late October 2012, HIXON learned confidential information about an impending acquisition of Titanium by PCP, and used this information to (a) purchase 40,000 shares of Titanium for the Individual A Account and (b) cause the purchase of 15,000 shares of Titanium for the Individual B Account. PCP's acquisition of Titanium by tender offer was announced on November 9, 2012. Sale of the Individual A Account Titanium shares immediately following this announcement yielded a profit of approximately \$180,000. Sale of the Individual B Account Titanium shares eleven days after this announcement yielded profits of approximately \$72,350.

b. Second, on or about January 14, 2013, HIXON learned confidential information that his employer, Evercore, would announce record earnings for the fourth quarter of 2012, and used this information to (a) purchase 27,000 shares of Evercore for the Individual A Account and (b) cause the purchase of 15,000 shares of Evercore for the Individual B Account. Sales of the Individual A Account Evercore shares on January 31, 2013 yielded profits of approximately \$68,700. Sales of the Individual B Account Evercore shares on January 31, 2013 yielded profits of approximately \$28,000.

c. Third, while actively representing Westway, an Evercore client, in connection with contemplated business transactions in 2011, and while himself subject to an Evercore restriction prohibiting him from trading in Westway stock, HIXON executed and caused to be executed purchases of 229,000 Westway shares for the Individual A Account. Profits realized from sales of approximately 140,000 of these shares in 2012 totaled approximately \$260,000.

Evercore's Confidentiality Policy

14. Based on interviews of witnesses from, and review of records supplied by, Evercore, I have learned that:

a. At all times relevant to this Complaint, Evercore had written policy statements, which were distributed to its Senior Managing Directors and other personnel, that prohibited such personnel from using confidential information received during the course of employment to trade in any security or to advise anyone else to trade in any security based on such non-public information.

b. At all times relevant to this Complaint, Evercore company policy, disseminated in writing to Senior Managing Directors and other personnel, prohibited all short-term investment activity in the securities of Evercore.

c. At all times relevant to this Complaint, Evercore company policy, disseminated in writing to Senior Managing Directors and other personnel, required that all employees, including Senior Managing Directors, disclose to Evercore the existence of any accounts controlled by them and provide Evercore on a regular basis with statements and trade confirmations relating to such accounts. Any trading in such accounts had to be approved by Evercore in advance.

d. On March 2, 2011, as well as at other times during the period relevant to this Complaint, FRANK PERKINS HIXON, JR., a/k/a "Perk," the defendant, certified to Evercore that he had reviewed all of the above-described policies of Evercore.

The Insider Trading in Titanium Stock

15. Based on interviews with witnesses and a review of public records, records of the Individual A Account and the Individual B Account, records from an Internet service provider ("ISP") for Evercore, telephone and IP log records, and records supplied by Evercore, including entries in the electronic calendar maintained for FRANK PERKINS HIXON, JR., a/k/a "Perk," the defendant, I have learned that:

a. On or about September 21, 2012, PCP approached Titanium, a company that had long supplied PCP with titanium metal-based products, to discuss a potential business combination.

b. On or about October 3, 2012, a day after PCP's representation to Titanium that any transaction would involve a purchase price at a significant premium to the current market price and current 30-day average market price for Titanium's shares, Titanium responded to PCP's overture by agreeing to enter into discussions.

d. On or about October 18 and 19, 2012, Titanium, through its counsel, contacted Evercore and two other investment banking advisory firms, and invited each to make a presentation to a Special Committee of Titanium's Board of Directors in connection with an unspecified \$3 billion transaction. Evercore

was to make its presentation at a meeting on the morning of October 23, 2012 in Dallas, Texas.

e. This invitation from Titanium was communicated first to a Senior Managing Director of Evercore in Texas ("SMD-1"). The Evercore team that was assembled to attend the October 23, 2012 meeting consisted of SMD-1, HIXON, another Senior Managing Director ("SMD-2"), a Managing Director who worked with HIXON ("MD-1"), and a few other employees. According to SMD-2 and electronic communications I have reviewed, HIXON was invited to participate in the meeting because of his expertise in the metals industry.

f. According to SMD-2 and MD-1, and to electronic communications I have reviewed, the Evercore team was not made aware in advance of the October 23, 2012 meeting that PCP had made an unsolicited offer to acquire Titanium, or that an acquisition was being contemplated. The information about PCP's offer was not public.

g. According to HIXON's electronic calendar and electronic communications between HIXON and others at Evercore, the meeting between members of the Titanium Special Committee and Evercore on October 23, 2012 began at 10:30 a.m. Eastern Standard Time ("EST"). According to SMD-2 and MD-1, the meeting lasted approximately one hour.

h. According to SMD-2, MD-1, and HIXON's electronic calendar, HIXON attended the October 23, 2012 meeting by teleconference from an office of a U.S. law firm located in London, England, where HIXON was traveling on other business. HIXON and SMD-2 did most of the speaking on Evercore's behalf during the meeting.

i. According to SMD-2 and MD-1, the Evercore team learned for the first time during the October 23, 2012 meeting that PCP had made an unsolicited offer to acquire Titanium, and learned the approximate price of the offer, which SMD-2 and MD-1 both thought reflected a significant premium over the then-current market price of Titanium. SMD-2 left the October 23, 2012 meeting with the understanding that the proposed acquisition was very likely to happen, and would likely happen quickly, before the end of 2012. Based on what he learned during the October 23, 2012 meeting, MD-1 believed the deal was already near completion by the time of the meeting.

j. At approximately 12:15 p.m. EST, and then again at approximately 12:36 p.m. EST and 1:27 p.m. EST, on October 23, 2012, the Individual A Account was accessed over the Internet from an IP address in London, England.¹ The Individual A Account was not accessed from any other location on October 23, 2012. Through the accesses from London on October 23, 2012, 20,000 shares of Titanium were purchased for the Individual A Account.

k. Prior to these purchases, the Individual A Account had never purchased Titanium securities.

l. HIXON's electronic calendar and company expense reports show that he flew to London, England, on October 21, 2012; traveled from there to Paris, France, on October 24, 2012; and returned to New York on October 26, 2012.

m. On or about October 26, 2012, Titanium notified Evercore that it had selected another investment banking advisory firm to advise the company in connection with the proposed acquisition by PCP.

n. On October 31, 2012, the Individual A Account was accessed over the Internet from four different IP addresses in New York, New York. The account was not accessed from any other location on that date. Through these accesses, another 20,000 shares of Titanium were purchased for the Individual A Account. Of the three logins to the Individual A Account that correspond to the times during the day when the Titanium shares were purchased, three out of four were from an IP address assigned to Evercore's Manhattan office ("Evercore IP Address-1").

o. HIXON's electronic calendar does not show any travel outside of New York on October 31, 2012.

¹ Connection to the Internet through an ISP is effectuated by means of a modem that is, at any given time, assigned a unique numeric address, or IP address. No two modems connected to the Internet ever have the same IP address at any given time. ISPs typically maintain for discrete periods of time records or "logs" of the IP addresses from which their subscribers have gained access to the Internet. In addition, when an Internet user accesses an Internet site, the entity controlling the site being accessed often has the ability to record the IP address from which the access is being made.

p. Also on October 31, 2012, purchases of 15,000 shares of Titanium were made for the Individual B Account in three orders. According to telephone records for HIXON's personal and work cell phones, HIXON had a three-minute call with Individual B on October 30, 2012, before the first of the October 31 purchases, and a two-minute call with Individual B on the morning of October 31, 2012, after the first of the Titanium purchase orders but before the last two.

q. Prior to these purchases, from at least January 2009, the Individual B Account had never purchased Titanium securities.²

r. After market close on November 9, 2012, Titanium announced its merger with PCP, stating that PCP would begin acquiring all of Titanium's outstanding stock for \$16.50 a share in a tender offer beginning on November 20, 2012. The purchase price represented a premium of approximately 36% over the 30-day average of Titanium shares and a premium of approximately 44% over the closing price of Titanium shares on November 8, 2012. At market close on November 9, 2012, Titanium was trading at \$11.57 a share.

s. According to HIXON's electronic calendar and company expense reports, he was in Austin, Texas, from November 11 to November 13, 2012.

t. On November 12, 2012, the first trading day following the public announcement of Titanium's acquisition by PCP, Titanium stock traded at a high of \$16.56 a share.

u. Beginning at approximately 9:30 a.m. EST on November 12, 2012, the Individual A Account was accessed several times over the Internet from Austin, Texas. Through these accesses, all 40,000 Titanium shares in the account were sold for a total profit of approximately \$180,000.

v. On November 20, 2012, the day of the tender offer, all 15,000 shares of Titanium in the Individual B Account were sold, yielding a profit of approximately \$72,350.

16. I have reviewed governmental travel record databases, and have found no record of travel by Individual A to England in or around October 2012.

² The records I have reviewed for the Individual B Account date from January 2009.

The Insider Trading in Evercore Stock

17. Based on interviews with witnesses and a review of public records, records of the Individual A Account and the Individual B Account, records from an Evercore ISP, telephone and IP log records, and records supplied by Evercore, including entries in the electronic calendar maintained for FRANK PERKINS HIXON, JR., a/k/a "Perk," the defendant, I have learned that:

a. On January 14, 2013, HIXON participated in an Evercore partnership meeting during which he learned Evercore's financial results for the 2012 year and the fourth quarter of 2012.

b. On January 28, 2013, the Individual A Account was accessed three times over the Internet from Evercore IP Address-1, and once from another IP address assigned to a modem at HIXON's residence in Manhattan (the "Hixon Residence"). On January 29, 2013, the Individual A Account was accessed over the Internet from Evercore IP Address-1. On January 28 and 29, 2013, 27,000 shares of Evercore were purchased for the Individual A Account.

c. Also on January 29, 2013, 10,000 shares of Evercore were purchased for the Individual B Account. According to telephone records for HIXON's personal and work cell phones, HIXON had a three-minute call with Individual B on the evening of January 14, 2013, after the Evercore partnership meeting. HIXON communicated again with Individual B a few hours after the purchases of Evercore shares had been made for the Individual B Account on January 29, 2013.

d. At market close on January 29, 2013, Evercore was trading at \$35.60 a share.

e. On the morning of January 30, 2013, Evercore announced record earnings, with net revenues 90% higher than for the same quarter the prior year and 40% higher than for the third quarter of 2012. On January 30, Evercore traded at a high of \$37.50 a share. The next day, January 31, Evercore traded at a high of \$38.48.

f. On January 30 and 31, 2013, all 27,000 shares of Evercore held by the Individual A Account were sold, yielding a profit of approximately \$68,700. Of the eleven logins into the Individual A Account on January 30 and 31, 2013, nine were from

New York IP addresses, and seven of those were from Evercore IP Address-1.

g. On January 31, 2013, all 10,000 shares of Evercore held by the Individual B Account were sold, yielding a profit of approximately \$28,000.

Insider Trading in Westway Stock

18. Based on interviews with witnesses and a review of public records, records for the Individual A Account, records from an Evercore ISP, telephone and IP log records, and records from Evercore, including entries in the electronic calendar maintained for FRANK PERKINS HIXON, JR., a/k/a "Perk," the defendant, I have learned that:

a. At various times between May 2010 and December 2012, Evercore served as a financial advisor to Westway in connection with contemplated business transactions. HIXON was the Senior Managing Director in charge of the Westway business at Evercore.

b. On or about June 18, 2010, Evercore added Westway to its list of restricted stock, meaning that Evercore personnel were prohibited from trading in Westway, until the restriction was lifted. The restriction was not lifted until in or about May 2013.

c. In August 2010, purchases of Westway shares were made for the Individual A Account. Prior to these purchases, no other purchases of Westway stock had ever been made for the Individual A Account. Other purchases and sales of Westway stock in the Individual A Account occurred later in 2010 and through until September 2011.

d. On September 6, 2011, Westway's largest stockholder ("Company A") made an offer to purchase certain components of Westway's business. Three days later, Westway's Board of Directors formed a Special Committee to consider Company A's offer. Company A's offer was not made public at the time.

e. On September 15, 2011, Westway resolved to engage Evercore as its financial advisor in connection with Company A's offer and other potential strategic alternatives involving Westway's other business components. Throughout the fall of 2011, Evercore representatives, including HIXON, met with

members of Westway's Special Committee numerous times to discuss Company A's offer and other strategic alternatives, including potential transactions involving other business components not subject to Company A's offer.

f. From October 21, 2011 through December 15, 2011, 229,000 shares of Westway were purchased electronically for the Individual A Account. Many of these purchases correspond to logins to the account from a computer connected to the Internet via an IP address assigned to Evercore's Manhattan office ("Evercore IP Address-2"). Two such purchases from Evercore IP Address-2, on December 7, 2011, occurred during the time HIXON had marked on his electronic calendar for a conference call about Westway.

g. Other purchases of Westway for the Individual A Account from October 21, 2011 through December 15, 2011 correspond to IP addresses in places where, according to HIXON's electronic calendar, he was located on the relevant dates. For example, according to his calendar, on December 13, 2011, HIXON had a 10:00 a.m. meeting at a New York law firm (the "NY Law Firm"). The Individual A Account was accessed several times on December 13, 2011, starting at 10:07 a.m., from an IP address assigned to the NY Law Firm. Minutes after the first access, shares of Westway were purchased for the Individual A Account.

h. At market close on December 14, 2011, Westway was trading at \$4.00 a share.

i. On the morning of December 15, 2011, Westway issued a press release announcing Company A's unsolicited offer to purchase certain components of Westway's business and the formation by Westway's Board of Directors of a Special Committee - previously undisclosed events about which HIXON had been aware since September 2011. The release also announced that Westway was exploring other possible strategic alternatives related to components of its business not subject to Company A's offer. HIXON was listed as the principal contact person on the press release. On December 15, 2011, Westway traded at a high of \$4.50 a share.

j. On December 18, 2011, Westway received an unsolicited offer from another entity ("Company B") to purchase those components of Westway's business that were not the subject of Company A's offer.

k. On December 21, 2011, Westway issued a press release announcing Company B's offer. That day, Westway traded at a high of \$6.60 a share.

l. According to an Evercore Managing Director who worked with HIXON in advising Westway ("MD-2"), the purchases of Westway's business that were being contemplated at the end of 2011 did not come to fruition as swiftly as expected. Throughout 2012, Westway, with Evercore as its financial advisor, continued to consider and negotiate offers for purchase of its business components. Only beginning in around late summer 2012 did it appear very likely that these transactions would be consummated by the end of 2012. On December 20, 2012, Westway finally issued a press release announcing two transactions by which its principal business components would be acquired by one company in a tender offer and Company A would purchase Westway's other business components.

m. Meanwhile, from January 26, 2012 through September 18, 2012, sales of approximately 140,000 Westway shares acquired on or after October 21, 2011 were made from the Individual A Account over the Internet, for total profits of approximately \$260,000. Many of these sales correspond to logins from IP addresses in New York, New York, including Evercore IP Address-1. Sales dated May 23, 2012 correspond to logins from an IP address in London, England. According to the electronic calendar that HIXON maintained at Evercore, and HIXON's company expense records, HIXON was in London, England, on May 23, 2012.

19. I have reviewed governmental travel record databases, and have found no record of travel by Individual A to England in October 2012.

Events Following the Insider Trading

20. From my review of documents obtained from the SEC and interviews of witnesses from Evercore, I have learned the following:

a. In or about early 2013, Evercore circulated to FRANK PERKINS HIXON, JR., a/k/a "Perk," the defendant, and other Evercore employees, a list of names that it had received from the Financial Industry Regulatory Authority ("FINRA") of individuals who had traded in Titanium stock from September to November 2012 (the "FINRA Titanium List"), and asked that HIXON and other Evercore employees identify any names they recognized.

b. Individual A's name was on the list, with her distinctive, legal first name, and the associated location of Austin, Texas.

c. Individual B's name was also on the list, with an associated location of Duluth, Georgia - the location appearing on the Individual B Account statements.

d. In a February 14, 2013 e-mail communication responding to Evercore's request that he identify known individuals or entities on the FINRA Titanium List, HIXON replied: "No known relationships."

e. Later, when confronted by an Evercore employee with his failure to identify Individual A, HIXON claimed, in sum and substance, that he did not know Individual A by the name appearing on the FINRA Titanium List but knew her instead by her preferred first name (with the same surname).

f. When confronted by an Evercore employee with his failure to identify Individual B, HIXON claimed, in sum and substance, that Individual B lived in Johns Creek, not Duluth (the city appearing on the Individual B Account statements, and the city with which Johns Creek shares a zip code), and that HIXON therefore failed to identify Individual B.

21. Based on my review of records for a bank account in the name of Individual A and documents obtained from Evercore, including electronic communications between FRANK PERKINS HIXON, JR., a/k/a "Perk," the defendant, and Individual A, I have learned the following:

a. In an electronic communication with HIXON approximately a year-and-a-half before the circulation of the FINRA Titanium List, Individual A referred to herself by her legal first name, which is the same first name that appeared on the FINRA Titanium List. Specifically, Individual A jokingly wrote in a text message to HIXON: "The name's [preferred first name with surname] aka [legal first name]!" In another text message, also about a year-and-a-half before the circulation of the FINRA Titanium List, Individual A complained to HIXON that he had written her preferred first name instead of her legal first name in the payee line of a check.

b. In or about September 2012, HIXON received by email from Individual A copies of records from the Individual A

Account. These records bear the same name that appears on the FINRA Titanium List: Individual A's distinctive, legal first name, rather than the preferred first name by which HIXON claimed to know Individual A.

c. From at least in or about January 2009 through in or about January 2010, HIXON wrote monthly checks of approximately \$10,000 to Individual A, using her legal name rather than her preferred name.

22. From my conversations with employees and other representatives of Evercore, I know that FRANK PERKINS HIXON, JR., a/k/a "Perk," the defendant, was asked by counsel for Evercore to swear out a declaration memorializing certain statements he made upon having been confronted with matters related to Titanium. I have reviewed the resulting sworn declaration, which states, in part, as follows: "I did not share any information about Titanium Metals Corporation ('TIMET') with anyone outside of [Investment Bank A], and was fully aware of my obligations to keep any information I learned about any transaction involving TIMET confidential. . . ."

Interview of the Defendant

23. On or about January 28, 2014, I and another FBI agent met with FRANK PERKINS HIXON, JR., a/k/a "Perk," the defendant, in Manhattan, New York. During that interview, HIXON stated, in substance and in part, the following:

a. HIXON and Individual A ceased their romantic relationship in or about 2008, approximately around the time their child was born.

b. HIXON travels to Austin, Texas, regularly to visit the child he has with Individual A.

c. HIXON operates under the assumption that the information he learns about companies in connection with his work as an investment banker is material, non-public information.

d. HIXON has never conveyed to anyone any information about companies that he learned in connection with his role as an investment banker. He has never traded on information that he learned in connection with that work, and has never recommended or suggested trading to anyone else on the basis of such information.

e. Although HIXON was aware of the existence of the Individual A Account, he never conducted trades in, or even accessed, the Individual A Account.

f. At the Titanium pitch meeting that HIXON attended by teleconference on October 23, 2012, the Evercore team learned of a potential acquisition of Titanium by PCP, but neither an offer price nor any other terms of the proposed deal were discussed.

g. HIXON does not know whether Individual A traded in Titanium stock in October or November 2012.

h. Until he saw Individual B's trading records in or about the fall of 2013, HIXON had not been aware that Individual B traded in Titanium stock. HIXON questioned Individual B about his trades after seeing the trading records, and Individual B told HIXON that Individual B had placed Titanium on his "stock watch" list after HIXON recommended to Individual B the aerospace industry generally, and then purchased Titanium because it looked like a good investment based on share price and dividends.

i. HIXON has never provided to Individual A or Individual B any information that HIXON learned through his work as an investment banker, and has never suggested that Individual A or Individual B trade based on any such information.

j. The reason that HIXON did not identify Individual A on the FINRA Titanium List is that, while he may have known her legal name, he thinks of her by her preferred name.

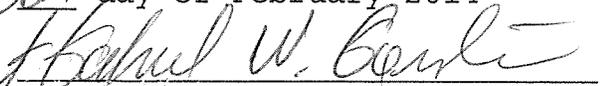
k. The reason that HIXON did not identify Individual B's name on the FINRA Titanium List is that the associated address given was in Duluth rather than Johns Creek, Georgia, and HIXON knew that Individual B had lived in Johns Creek for approximately 18 to 20 years preceding circulation of the list.

WHEREFORE, I respectfully request that an arrest warrant be issued for FRANK PERKINS HIXON, JR., a/k/a "Perk," the defendant, and that he be arrested and imprisoned or bailed, as the case may be.



THOMAS W. MCDONALD
Special Agent
Federal Bureau of Investigation

Sworn to before me this
20th day of February 2014



UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK

GABRIEL W. GORENSTEIN
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK