

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

Form 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended June 30, 2022

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____.

Commission File Number 001-10932

WisdomTree Investments, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

13-3487784
(IRS Employer
Identification No.)

250 West 34th Street
3rd Floor
New York, New York
(Address of principal executive offices)

10119
(Zip Code)

212-801-2080
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Exchange Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.01 par value	WETF	The NASDAQ Stock Market LLC

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, anon-accelerated filer, a smaller reporting company, or emerging growth company. See definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer
Non-accelerated filer Smaller reporting company
Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

As of July 26, 2022, there were 146,584,951 shares of the registrant's Common Stock, \$0.01 par value per share, outstanding.

WISDOMTREE INVESTMENTS, INC.
Form 10-Q
For the Quarterly Period Ended June 30, 2022

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Unless otherwise indicated, references to “the Company,” “we,” “us,” “our” and “WisdomTree” mean WisdomTree Investments, Inc. and its subsidiaries.

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains forward-looking statements that are based on our management's beliefs and assumptions and on information currently available to our management. Although we believe that the expectations reflected in these forward-looking statements are reasonable, these statements relate to future events or our future financial performance, and involve known and unknown risks, uncertainties and other factors that may cause our actual results, levels of activity, performance or achievements to be materially different from any future results, levels of activity, performance or achievements expressed or implied by these forward-looking statements.

In some cases, you can identify forward-looking statements by terminology such as "may," "will," "should," "expects," "intends," "plans," "anticipates," "believes," "estimates," "predicts," "potential," "continue" or the negative of these terms or other comparable terminology. These statements are only predictions. You should not place undue reliance on forward-looking statements because they involve known and unknown risks, uncertainties and other factors, which are, in some cases, beyond our control and which could materially affect our results. Factors that may cause actual results to differ materially from current expectations include, among other things, those listed in the section entitled "Risk Factors" included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2021, as amended. If one or more of these or other risks or uncertainties occur, or if our underlying assumptions prove to be incorrect, actual events or results may vary significantly from those implied or projected by the forward-looking statements. No forward-looking statement is a guarantee of future performance. You should read this Report and the documents that we reference in this Report and have filed with the Securities and Exchange Commission, or the SEC, as exhibits to this Report, completely and with the understanding that our actual future results may be materially different from any future results expressed or implied by these forward-looking statements.

In particular, forward-looking statements in this Report may include statements about:

- the ultimate duration of the COVID-19 pandemic, or the war in Ukraine, and their short-term and long-term impact on our business and the global economy;
- anticipated trends, conditions and investor sentiment in the global markets and exchange traded products, or ETPs;
- anticipated levels of inflows into and outflows out of our ETPs;
- our ability to deliver favorable rates of return to investors;
- competition in our business;
- whether we will experience future growth;
- our ability to develop new products and services and their success;
- our ability to maintain current vendors or find new vendors to provide services to us at favorable costs;
- our ability to successfully implement our digital assets strategy, including WisdomTree PrimeSM, and achieve its objectives;
- our ability to successfully operate and expand our business in non-U.S. markets; and
- the effect of laws and regulations that apply to our business.

The forward-looking statements in this Report represent our views as of the date of this Report. We anticipate that subsequent events and developments may cause our views to change. However, while we may elect to update these forward-looking statements at some point in the future, we have no current intention of doing so except to the extent required by applicable law. Therefore, these forward-looking statements do not represent our views as of any date other than the date of this Report.

PART I: FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

WisdomTree Investments, Inc. and Subsidiaries

Consolidated Balance Sheets
(In Thousands, Except Per Share Amounts)

	June 30, 2022 (unaudited)	December 31, 2021
Assets		
Current assets:		
Cash and cash equivalents	\$ 109,736	\$ 140,709
Securities owned, at fair value (including \$12,841 and \$18,526 invested in WisdomTree ETFs at June 30, 2022 and December 31, 2021, respectively)	128,852	127,166
Accounts receivable (including \$23,905 and \$25,628 due from related parties at June 30, 2022 and December 31, 2021, respectively)	34,061	31,864
Prepaid expenses	7,461	3,952
Income taxes receivable	1,290	—
Other current assets	391	276
Total current assets	281,791	303,967
Fixed assets, net	641	557
Indemnification receivable (Note 20)	1,351	21,925
Securities held-to-maturity	277	308
Deferred tax assets, net	6,067	8,881
Investments (Note 7)	26,012	14,238
Right of use assets—operating leases (Note 12)	2,034	520
Goodwill (Note 22)	85,856	85,856
Intangible assets (Note 22)	601,971	601,247
Other noncurrent assets	473	361
Total assets	<u>\$1,006,473</u>	<u>\$ 1,037,860</u>
Liabilities and stockholders' equity		
Liabilities		
Current liabilities:		
Convertible notes—current (Note 10)	\$ 173,325	\$ —
Fund management and administration payable	20,797	20,661
Compensation and benefits payable	18,647	32,782
Deferred consideration—gold payments (Note 9)	16,626	16,739
Operating lease liabilities (Note 12)	1,093	209
Income taxes payable	—	3,979
Accounts payable and other liabilities	11,135	9,297
Total current liabilities	241,623	83,667
Convertible notes—long term (Note 10)	146,592	318,624
Deferred consideration—gold payments (Note 9)	226,141	211,323
Operating lease liabilities (Note 12)	941	328
Other noncurrent liabilities (Note 20)	1,351	21,925
Total liabilities	616,648	635,867
Preferred stock – Series A Non-Voting Convertible, par value \$0.01; 14,750 shares authorized, issued and outstanding; redemption value of \$81,970 and \$90,741 at June 30, 2022 and December 31, 2021, respectively) (Note 11)	132,569	132,569
<i>Contingencies (Note 13)</i>		
Stockholders' equity		
Preferred stock, par value \$0.01; 2,000 shares authorized:	—	—
Common stock, par value \$0.01; 250,000 shares authorized; issued and outstanding: 146,511 and 145,107 at June 30, 2022 and December 31, 2021, respectively	1,465	1,451
Additional paid-in capital	282,017	289,736
Accumulated other comprehensive (loss) income	(1,525)	682
Accumulated deficit	(24,701)	(22,445)
Total stockholders' equity	257,256	269,424
Total liabilities and stockholders' equity	<u>\$1,006,473</u>	<u>\$ 1,037,860</u>

The accompanying notes are an integral part of these consolidated financial statements

WisdomTree Investments, Inc. and Subsidiaries

Consolidated Statements of Operations
(In Thousands, Except Per Share Amounts)
(Unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Operating Revenues:				
Advisory fees	\$ 75,586	\$ 74,169	\$ 152,103	\$ 144,211
Other income	1,667	1,606	3,518	2,820
Total revenues	<u>77,253</u>	<u>75,775</u>	<u>155,621</u>	<u>147,031</u>
Operating Expenses:				
Compensation and benefits	24,565	20,331	49,352	42,958
Fund management and administration	16,076	14,367	31,570	28,314
Marketing and advertising	3,894	3,594	7,917	6,600
Sales and business development	3,131	2,159	5,740	4,304
Contractual gold payments (Note 9)	4,446	4,314	8,896	8,584
Professional fees	4,308	1,921	8,767	3,934
Occupancy, communications and equipment	1,049	1,266	1,802	2,741
Depreciation and amortization	53	256	100	508
Third-party distribution fees	1,818	2,130	4,030	3,473
Other	2,109	1,752	3,954	3,323
Total operating expenses	<u>61,449</u>	<u>52,090</u>	<u>122,128</u>	<u>104,739</u>
Operating income	15,804	23,685	33,493	42,292
Other Income/(Expenses):				
Interest expense	(3,733)	(2,567)	(7,465)	(4,863)
Gain/(loss) on revaluation of deferred consideration—gold payments (Note 9)	2,311	497	(14,707)	3,329
Interest income	770	225	1,564	456
Impairments (Note 12)	—	—	—	(303)
Other losses and gains, net	(4,474)	49	(29,181)	(5,844)
Income/(loss) before income taxes	10,678	21,889	(16,296)	35,067
Income tax expense/(benefit)	2,673	4,259	(14,040)	2,290
Net income/(loss)	<u>\$ 8,005</u>	<u>\$ 17,630</u>	<u>\$ (2,256)</u>	<u>\$ 32,777</u>
Earnings/(loss) per share—basic	<u>\$ 0.05</u>	<u>\$ 0.11</u>	<u>\$ (0.02)</u>	<u>\$ 0.20</u>
Earnings/(loss) per share—diluted	<u>\$ 0.05</u>	<u>\$ 0.11</u>	<u>\$ (0.02)</u>	<u>\$ 0.20</u>
Weighted-average common shares—basic	<u>143,046</u>	<u>145,542</u>	<u>142,915</u>	<u>145,652</u>
Weighted-average common shares—diluted	<u>158,976</u>	<u>164,855</u>	<u>142,915</u>	<u>163,062</u>
Cash dividends declared per common share	<u>\$ 0.03</u>	<u>\$ 0.03</u>	<u>\$ 0.06</u>	<u>\$ 0.06</u>

The accompanying notes are an integral part of these consolidated financial statements
(See Note 2 for revisions made to certain amounts previously reported)

WisdomTree Investments, Inc. and SubsidiariesConsolidated Statements of Comprehensive Income/(Loss)
(In Thousands)
(Unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Net income/(loss)	\$ 8,005	\$ 17,630	\$ (2,256)	\$ 32,777
Other comprehensive (loss)/income				
Foreign currency translation adjustment, net of income taxes	(1,721)	170	(2,207)	53
Other comprehensive (loss)/income	(1,721)	170	(2,207)	53
Comprehensive income/(loss)	<u>\$ 6,284</u>	<u>\$ 17,800</u>	<u>\$ (4,463)</u>	<u>\$ 32,830</u>

The accompanying notes are an integral part of these consolidated financial statements

WisdomTree Investments, Inc. and Subsidiaries

Consolidated Statements of Changes in Stockholders' Equity
(In Thousands)
(Unaudited)

	For the Three Months Ended June 30, 2022					
	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income	Accumulated Deficit	Total
	Shares Issued	Par Value				
Balance—April 1, 2022	146,560	\$1,466	\$284,421	\$ 196	\$ (32,706)	\$253,377
Restricted stock issued and vesting of restricted stock units, net	(49)	(1)	1	—	—	—
Stock-based compensation	—	—	2,432	—	—	2,432
Other comprehensive loss	—	—	—	(1,721)	—	(1,721)
Dividends	—	—	(4,837)	—	—	(4,837)
Net income	—	—	—	—	8,005	8,005
Balance—June 30, 2022	<u>146,511</u>	<u>\$1,465</u>	<u>\$282,017</u>	<u>\$ (1,525)</u>	<u>\$ (24,701)</u>	<u>\$257,256</u>

	For the Three Months Ended June 30, 2021					
	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income	Accumulated Deficit	Total
	Shares Issued	Par Value				
Balance—April 1, 2021	149,811	\$1,498	\$314,274	\$ 985	\$ (42,573)	\$274,184
Restricted stock issued and vesting of restricted stock units, net	(134)	(2)	2	—	—	—
Shares repurchased	(4,631)	(46)	(31,830)	—	—	(31,876)
Exercise of stock options, net	68	1	435	—	—	436
Stock-based compensation	—	—	2,121	—	—	2,121
Other comprehensive loss	—	—	—	170	—	170
Dividends	—	—	—	—	(4,928)	(4,928)
Net income	—	—	—	—	17,630	17,630
Balance—June 30, 2021	<u>145,114</u>	<u>\$1,451</u>	<u>\$285,002</u>	<u>\$ 1,155</u>	<u>\$ (29,871)</u>	<u>\$257,737</u>

The accompanying notes are an integral part of these consolidated financial statements

WisdomTree Investments, Inc. and Subsidiaries

Consolidated Statements of Changes in Stockholders' Equity (Continued)
(In Thousands)
(Unaudited)

	For the Six Months Ended June 30, 2022					
	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income	Accumulated Deficit	Total
	Shares Issued	Par Value				
Balance—January 1, 2022	145,107	\$1,451	\$289,736	\$ 682	\$ (22,445)	\$269,424
Restricted stock issued and vesting of restricted stock units, net	1,993	20	(20)	—	—	—
Shares repurchased	(589)	(6)	(3,388)	—	—	(3,394)
Stock-based compensation	—	—	5,368	—	—	5,368
Other comprehensive loss	—	—	—	(2,207)	—	(2,207)
Dividends	—	—	(9,679)	—	—	(9,679)
Net loss	—	—	—	—	(2,256)	(2,256)
Balance—June 30, 2022	<u>146,511</u>	<u>\$1,465</u>	<u>\$282,017</u>	<u>\$ (1,525)</u>	<u>\$ (24,701)</u>	<u>\$257,256</u>

	For the Six Months Ended June 30, 2021					
	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income	Accumulated Deficit	Total
	Shares Issued	Par Value				
Balance—January 1, 2021	148,716	\$1,487	\$317,075	\$ 1,102	\$ (53,399)	\$266,265
Reclassification of equity component related to convertible notes, net deferred taxes of \$1,022, upon the implementation of Accounting Standards Update 2020-06 (Note 10)	—	—	(3,682)	—	616	(3,066)
Balance—January 1, 2021 (as adjusted)	148,716	\$1,487	\$313,393	\$ 1,102	\$ (52,783)	\$263,199
Restricted stock issued and vesting of restricted stock units, net	1,376	13	(13)	—	—	—
Shares repurchased	(5,121)	(51)	(34,455)	—	—	(34,506)
Exercise of stock options, net	143	2	813	—	—	815
Stock-based compensation	—	—	5,264	—	—	5,264
Other comprehensive income	—	—	—	53	—	53
Dividends	—	—	—	—	(9,865)	(9,865)
Net income	—	—	—	—	32,777	32,777
Balance—June 30, 2021	<u>145,114</u>	<u>\$1,451</u>	<u>\$285,002</u>	<u>\$ 1,155</u>	<u>\$ (29,871)</u>	<u>\$257,737</u>

The accompanying notes are an integral part of these consolidated financial statements

WisdomTree Investments, Inc. and Subsidiaries

Consolidated Statements of Cash Flows
(In Thousands)
(Unaudited)

	Six Months Ended June 30,	
	2022	2021
Cash flows from operating activities:		
Net (loss)/income	\$ (2,256)	\$ 32,777
Adjustments to reconcile net (loss)/income to net cash provided by operating activities:		
Loss/(gain) on revaluation of deferred consideration—gold payments	14,707	(3,329)
Advisory and license fees paid in gold, other precious metals and cryptocurrency	(31,511)	(39,341)
Deferred income taxes	3,378	3,367
Losses on securities owned, at fair value	9,322	696
Contractual gold payments	8,896	8,584
Stock-based compensation	5,368	5,264
Amortization of issuance costs—convertible notes	1,293	899
Amortization of right of use asset	332	1,340
Depreciation and amortization	100	508
Impairments	—	303
Other	120	(372)
Changes in operating assets and liabilities:		
Accounts receivable	(3,718)	(2,622)
Prepaid expenses	(3,613)	(2,497)
Gold and other precious metals	23,743	27,959
Other assets	(241)	(202)
Intangibles—software development	(724)	—
Fund management and administration payable	423	(896)
Compensation and benefits payable	(13,537)	(7,396)
Income taxes payable	(5,235)	(1,852)
Operating lease liabilities	(348)	(1,658)
Accounts payable and other liabilities	2,043	858
Net cash provided by operating activities	<u>8,542</u>	<u>22,390</u>
Cash flows from investing activities:		
Purchase of securities owned, at fair value	(32,488)	(29,819)
Purchase of investments	(11,863)	(5,750)
Purchase of fixed assets	(205)	(173)
Proceeds from the sale of securities owned, at fair value	21,455	5,212
Proceeds from held-to-maturity securities maturing or called prior to maturity	31	77
Net cash used in investing activities	<u>(23,070)</u>	<u>(30,453)</u>
Cash flows from financing activities:		
Dividends paid	(9,679)	(9,865)
Shares repurchased	(3,394)	(34,506)
Convertible notes issuance costs	—	(4,297)
Proceeds from the issuance of convertible notes	—	150,000
Proceeds from exercise of stock options	—	815
Net cash (used in)/provided by financing activities	<u>(13,073)</u>	<u>102,147</u>
(Decrease)/increase in cash flow due to changes in foreign exchange rate	<u>(3,372)</u>	<u>126</u>
Net (decrease)/increase in cash and cash equivalents	(30,973)	94,210
Cash and cash equivalents—beginning of year	140,709	73,425
Cash and cash equivalents—end of period	<u>\$ 109,736</u>	<u>\$ 167,635</u>
Supplemental disclosure of cash flow information:		
Cash paid for income taxes	<u>\$ 7,724</u>	<u>\$ 5,846</u>
Cash paid for interest	<u>\$ 6,156</u>	<u>\$ 3,719</u>

NON-CASH ACTIVITIES

On January 1, 2021, the Company reclassified the equity component related to the convertible notes, net of deferred taxes, reducing accumulated deficit by \$616, increasing the carrying value of the convertible notes by \$4,088, reducing additional paid in capital by \$3,682 and reducing deferred tax liabilities by \$1,022, upon the implementation of Accounting Standards Update (“ASU”) 2020-06, *Debt – Debt with Conversion and Other Options* (Note 10).

*The accompanying notes are an integral part of these consolidated financial statements
(See Note 2 for reclassifications made to certain amounts previously reported)*

WisdomTree Investments, Inc. and Subsidiaries

Notes to Consolidated Financial Statements
(In Thousands, Except Share and Per Share Amounts)

1. Organization and Description of Business

WisdomTree Investments, Inc., through its global subsidiaries (collectively, “WisdomTree” or the “Company”), is an exchange-traded product (“ETP”) sponsor and asset manager headquartered in New York. WisdomTree offers ETPs covering equity, commodity, fixed income, leveraged and inverse, currency, cryptocurrency and alternative strategies. The Company has the following wholly-owned operating subsidiaries:

- *WisdomTree Asset Management, Inc.* is a New York based investment adviser registered with the SEC, providing investment advisory and other management services to the WisdomTree Trust (“WTT”) and WisdomTree exchange-traded funds (“ETFs”). The WisdomTree ETFs are issued in the U.S. by WTT. WTT is a non-consolidated Delaware statutory trust registered with the SEC as an open-end management investment company. The Company has licensed to WTT the use of certain of its own indexes on an exclusive basis for the WisdomTree ETFs in the U.S.
- *WisdomTree Management Jersey Limited* (“ManJer”) is a Jersey based management company providing management services to seven issuers (the “ManJer Issuers”) in respect of the ETPs issued and listed by the ManJer Issuers covering commodity, currency, cryptocurrency and leveraged-and-inverse strategies.
- *WisdomTree Multi Asset Management Limited* (“WTMAML”) is a Jersey based management company providing management services to WisdomTree Multi Asset Issuer PLC (“WMAI”) in respect of the ETPs issued by WMAI. WMAI is a non-consolidated public limited company domiciled in Ireland.
- *WisdomTree Management Limited* (“WML”) is an Ireland based management company providing management services to WisdomTree Issuer ICAV (“WTI”) in respect of the WisdomTree UCITS ETFs issued by WTI. WTI is a non-consolidated public limited company domiciled in Ireland.
- *WisdomTree UK Limited* (“WTUK”) is a U.K. based company registered with the Financial Conduct Authority currently providing distribution and support services to ManJer, WTMAML and WML.
- *WisdomTree Europe Limited* is a U.K. based company which is the legacy distributor of the WMAI ETPs and WisdomTree UCITS ETFs. These services are now provided directly by WTUK. WisdomTree Europe Limited is no longer regulated and does not provide any regulated services.
- *WisdomTree Ireland Limited* is an Ireland based company authorized by the Central Bank of Ireland providing distribution services to ManJer, WTMAML and WML.
- *WisdomTree Digital Commodity Services, LLC* is a New York based company that has been formed to serve as the sponsor of the WisdomTree Bitcoin Trust and WisdomTree Ethereum Trust, each an ETF currently under review with the SEC.
- *WisdomTree Digital Management, Inc.* is a New York based company that has been formed to serve as a SEC-registered investment adviser and will provide investment advisory and other management services to blockchain-enabled mutual funds whose shares are secondarily recorded on a blockchain.
- *WisdomTree Digital Movement, Inc.* is a New York based company that has been formed to operate a money services business registered with the Financial Crimes Enforcement Network (“FinCEN”) and is seeking state money transmitter licenses to operate a platform for the purchase, sale and exchange of digital assets, while also providing digital wallet services to facilitate such activity.
- *WisdomTree Securities, Inc.* is a New York based company that has been formed to operate as a limited purpose broker-dealer (i.e., mutual fund retailer) upon registration with the SEC, FINRA and state regulatory authorities.

2. Significant Accounting Policies

Basis of Presentation

These consolidated financial statements have been prepared in conformity with U.S. generally accepted accounting principles (“GAAP”) and in the opinion of management reflect all adjustments, consisting of only normal recurring adjustments, necessary for a fair statement of financial condition, results of operations, and cash flows for the periods presented. The consolidated financial statements include the accounts of the Company’s wholly-owned subsidiaries. All intercompany accounts and transactions have been eliminated in consolidation.

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The presentation of the amounts collected on behalf of third parties of \$1,828 and \$3,402 for the three and six months ended June 30, 2021 have been revised due to an immaterial error correction. These amounts were originally recorded as advisory fee revenue and fund management and administration expense while no such amounts should have been recorded in the Consolidated Statements of Operations. The following table summarizes these revisions, which had no effect on previously reported net income:

	Three Months Ended June 30, 2021	Six Months Ended June 30, 2021
Operating Revenues:		
Advisory fees (previously reported)	\$ 75,997	\$ 147,613
Amounts collected on behalf of third parties	(1,828)	(3,402)
Advisory fees (as corrected)	\$ 74,169	\$ 144,211
Total revenues (previously reported)	\$ 77,603	\$ 150,433
Amounts collected on behalf of third parties	(1,828)	(3,402)
Total revenues (as corrected)	\$ 75,775	\$ 147,031
Operating Expenses:		
Fund management and administration (previously reported)	\$ 16,195	\$ 31,716
Amounts collected on behalf of third parties	(1,828)	(3,402)
Fund management and administration (as corrected)	\$ 14,367	\$ 28,314
Total operating expenses (previously reported)	\$ 53,918	\$ 108,141
Amounts collected on behalf of third parties	(1,828)	(3,402)
Total operating expenses (as corrected)	\$ 52,090	\$ 104,739

Reclassifications—Consolidated Statements of Cash Flows

Cash flows from purchasing securities owned, at fair value of \$29,819 and selling securities owned, at fair value of \$5,212 during the six months ended June 30, 2021 that were not acquired specifically for resale or associated with the Company's business activities have been reclassified from operating activities to investing activities to conform to the current year's presentation in the Consolidated Statements of Cash Flows.

The following table summarizes these reclassifications for the six months ended June 30, 2021:

	Six Months Ended June 30, 2021
Consolidated Statements of Cash Flows	
<i>Cash Flows from Operating Activities</i>	
Net cash used in operating activities (previously reported)	\$ (2,217)
Reclassification of net cash flows from securities purchases and sales	24,607
Net cash provided by operating activities (currently reported)	<u>\$ 22,390</u>
<i>Cash Flows from Investing Activities</i>	
Net cash used in investing activities (previously reported)	\$ (5,846)
Reclassification of purchases of securities owned, at fair value	(29,819)
Reclassification of proceeds from the sale of securities owned, at fair value	5,212
Net cash used in investing activities (currently reported)	<u>\$ (30,453)</u>

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Consolidation

The Company consolidates entities in which it has a controlling financial interest. The Company determines whether it has a controlling financial interest in an entity by first evaluating whether the entity is a voting interest entity (“VOE”) or a variable interest entity (“VIE”). The usual condition for a controlling financial interest in a VOE is ownership of a majority voting interest. If the Company has a majority voting interest in a VOE, the entity is consolidated. The Company has a controlling financial interest in a VIE when the Company has a variable interest that provides it with (i) the power to direct the activities of the VIE that most significantly impact the VIE’s economic performance and (ii) the obligation to absorb losses of the VIE or the right to receive benefits from the VIE that could potentially be significant to the VIE.

The Company reassesses its evaluation of whether an entity is a VOE or VIE when certain reconsideration events occur.

Segment and Geographic Information

The Company, through its subsidiaries in the U.S. and Europe, conducts business as a single operating segment as an ETP sponsor and asset manager which is based upon the Company’s current organizational and management structure, as well as information used by the chief operating decision maker to allocate resources and other factors.

Foreign Currency Translation

Assets and liabilities of subsidiaries whose functional currency is not the U.S. dollar are translated based on the end of period exchange rates from local currency to U.S. dollars. Results of operations are translated at the average exchange rates in effect during the period. The impact of the foreign currency translation adjustment is included in the Consolidated Statements of Comprehensive Income/(Loss) as a component of other comprehensive (loss)/income.

Use of Estimates

The preparation of the Company’s consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities as of the balance sheet dates and the reported amounts of revenues and expenses for the periods presented. Actual results could differ materially from those estimates.

Revenue Recognition

The Company earns substantially all of its revenue in the form of advisory fees from its ETPs and recognizes this revenue over time, as the performance obligation is satisfied. Advisory fees are based on a percentage of the ETPs’ average daily net assets. Progress is measured using the practical expedient under the output method resulting in the recognition of revenue in the amount for which the Company has a right to invoice.

Contractual Gold Payments

Contractual gold payments are measured and paid monthly based upon the average daily spot price of gold (Note 9).

Marketing and Advertising

Marketing and advertising costs, including media advertising and production costs, are expensed when incurred.

Depreciation and Amortization

Depreciation and amortization is provided for using the straight-line method over the estimated useful lives of the related assets as follows:

Equipment	3 to 5 years
Internally-developed software	3 years

The assets listed above are recorded at cost less accumulated depreciation and amortization.

Stock-Based Awards

Accounting for stock-based compensation requires the measurement and recognition of compensation expense for all equity awards based on estimated fair values. Stock-based compensation is measured based on the grant-date fair value of the award and is amortized over the relevant service period. Forfeitures are recognized when they occur.

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Third-Party Distribution Fees

The Company pays a percentage of its advisory fee revenues based on incremental growth in assets under management (“AUM”), subject to caps or minimums, to marketing agents to sell WisdomTree ETFs and for including WisdomTree ETFs on third-party customer platforms and recognizes these expenses as incurred.

Cash and Cash Equivalents

The Company considers all highly liquid investments with an original maturity of 90 days or less at the time of purchase to be classified as cash equivalents. The Company maintains deposits with financial institutions in an amount that is in excess of federally insured limits.

Accounts Receivable

Accounts receivable are customer and other obligations due under normal trade terms. The Company measures credit losses, if any, by applying historical loss rates, adjusted for current conditions and reasonable and supportable forecasts to amounts outstanding using the aging method.

Impairment of Long-Lived Assets

The Company performs a review for the impairment of long-lived assets when events or changes in circumstances indicate that the estimated undiscounted future cash flows expected to be generated by the assets are less than their carrying amounts or when other events occur which may indicate that the carrying amount of an asset may not be recoverable.

Securities Owned and Securities Sold, but not yet Purchased (at fair value)

Securities owned and securities sold, but not yet purchased are securities classified as either trading or available-for-sale (“AFS”). These securities are recorded on their trade date and are measured at fair value. All equity securities are classified by the Company as trading. Debt securities are classified based primarily on the Company’s intent to hold or sell the security. Changes in the fair value of debt securities classified as trading and AFS are reported in other income and other comprehensive income, respectively, in the period the change occurs. Debt securities classified as AFS are assessed for impairment on a quarterly basis and an estimate for credit loss is provided when the fair value of the AFS debt security is below its amortized cost basis. Credit-related impairments are recognized in earnings with a corresponding adjustment to the security’s amortized cost basis if the Company intends to sell the impaired AFS debt security or it is more likely than not the Company will be required to sell the security before recovering its amortized cost basis. Other credit-related impairments are recognized as an allowance with a corresponding adjustment to earnings. Impairments resulting from noncredit-related factors are recognized in other comprehensive income. Amounts recorded in other comprehensive income are reclassified into earnings upon sale of the AFS debt security using the specific identification method.

Securities Held-to-Maturity

The Company accounts for certain of its securities as held-to-maturity on a trade date basis, which are recorded at amortized cost. For held-to-maturity securities, the Company has the intent and ability to hold these securities to maturity and it is not more likely than not that the Company will be required to sell these securities before recovery of their amortized cost bases, which may be maturity. Held-to-maturity securities are placed on non-accrual status when the Company is in receipt of information indicating collection of interest is doubtful. Cash received on held-to-maturity securities placed on non-accrual status is recognized on a cash basis as interest income if and when received.

The Company reviews its portfolio of held-to-maturity securities for impairment on a quarterly basis, recognizing an allowance, if any, by applying an estimated loss rate after consideration for the nature of collateral securing the financial asset as well as potential future changes in collateral values and historical loss information for financial assets secured with similar collateral.

Investments in pass-through government-sponsored enterprises (“GSEs”) are determined to have an estimated loss rate of zero due to an implicit U.S. government guarantee.

Investments

The Company accounts for equity investments that do not have a readily determinable fair value under the measurement alternative prescribed in Accounting Standards Codification (“ASC”) Topic 321, *Investments – Equity Securities* (“ASC 321”), to the extent such investments are not subject to consolidation or the equity method. Under the measurement alternative, these financial instruments are carried at cost, less any impairment (assessed quarterly), plus or minus changes resulting from observable price changes in orderly transactions for an identical or similar investment of the same issuer. In addition, income is recognized when dividends are received only to the extent they are distributed from net accumulated earnings of the investee. Otherwise, such distributions are considered returns of investment and are recorded as a reduction of the cost of the investment.

Investments in debt instruments are accounted for at fair value, with changes in fair value reported in other income.

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Goodwill

Goodwill is the excess of the purchase price over the fair values of the identifiable net assets at the acquisition date. The Company tests goodwill for impairment at least annually and at the time of a triggering event requiring re-evaluation, if one were to occur. Goodwill is considered impaired when the estimated fair value of the reporting unit that was allocated the goodwill is less than its carrying value. If the estimated fair value of such reporting unit is less than its carrying value, goodwill impairment is recognized based on that difference, not to exceed the carrying amount of goodwill. A reporting unit is an operating segment or a component of an operating segment provided that the component constitutes a business for which discrete financial information is available and management regularly reviews the operating results of that component.

Goodwill is allocated to the Company's U.S. business and European business components. For impairment testing purposes, these components are aggregated as a single reporting unit as they fall under the same operating segment and have similar economic characteristics.

Goodwill is assessed for impairment annually on November 30th. When performing its goodwill impairment test, the Company considers a qualitative assessment, when appropriate, and a quantitative assessment using the market approach and its market capitalization when determining the fair value of the reporting unit.

Intangible Assets

Indefinite-lived intangible assets are tested for impairment at least annually and are also reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Indefinite-lived intangible assets are impaired if their estimated fair values are less than their carrying values.

Finite-lived intangible assets, if any, are amortized over their estimated useful life, which is the period over which the assets are expected to contribute directly or indirectly to the future cash flows of the Company. These intangible assets are tested for impairment at the time of a triggering event, if one were to occur. Finite-lived intangible assets may be impaired when the estimated undiscounted future cash flows generated from the assets are less than their carrying amounts.

The Company may rely on a qualitative assessment when performing its intangible asset impairment test. Otherwise, the impairment evaluation is performed at the lowest level of reasonably identifiable cash flows independent of other assets. The annual impairment testing date for all of the Company's intangible assets is November 30th.

Software Development Costs

Software development costs incurred after the preliminary project stage is complete are capitalized if it is probable that the project will be completed and the software will be used as intended. Capitalized costs consist of employee compensation costs and fees paid to third parties who are directly involved in the application development efforts. Capitalized costs are amortized over the estimated useful life of the software on a straight-line basis and are included in depreciation and amortization in the Consolidated Statements of Operations. Once the application development stage is complete, additional costs are expensed as incurred.

Leases

The Company accounts for its lease obligations in accordance with ASC Topic 842 *Leases* ("ASC 842"), which requires the recognition of both (i) a lease liability equal to the present value of the remaining lease payments and (ii) an offsetting right-of-use asset. The remaining lease payments are discounted using the rate implicit in the lease, if known, or otherwise the Company's incremental borrowing rate. After lease commencement, right-of-use assets are assessed for impairment and otherwise are amortized over the remaining lease term on a straight-line basis. These recognition requirements are not applied to short-term leases which are those with a lease term of 12 months or less. Instead, lease payments associated with short-term leases are recognized as an expense on a straight-line basis over the lease term.

ASC 842 also provides a practical expedient which allows for consideration in a contract to be accounted for as a single lease component rather than allocated between lease and non-lease components. The Company has elected to apply this practical expedient to all lease contracts, where applicable.

Deferred Consideration – Gold Payments

Deferred consideration represents the present value of an obligation to pay gold to a third party into perpetuity and is measured using forward-looking gold prices observed on the CMX exchange, a selected discount rate and perpetual growth rate (Note 9). Changes in the fair value of this obligation are reported as (loss)/gain on revaluation of deferred consideration – gold payments in the Consolidated Statements of Operations.

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Convertible Notes

Convertible notes are carried at amortized cost, net of issuance costs. In accordance with Accounting Standards Update (“ASU”) 2020-06 *Debt – Debt with Conversion and Other Options*, the Company accounts for convertible instruments as a single liability (applicable to the convertible notes) or equity with no separate accounting for embedded conversion features unless the conversion feature meets the criteria for accounting under the substantial premium model or does not qualify for a derivative scope exception. Interest expense is recognized using the effective interest method and includes amortization of issuance costs over the life of the debt.

Contingencies

The Company may be subject to reviews, inspections and investigations by regulatory authorities as well as legal proceedings arising in the ordinary course of business. The Company evaluates the likelihood of an unfavorable outcome of all legal or regulatory proceedings to which it is a party and accrues a loss contingency when the loss is probable and reasonably estimable.

Contingent Payments

The Company recognizes a gain on contingent payments when the contingency is resolved and the gain is realized.

Earnings per Share

Basic earnings per share (“EPS”) is computed by dividing net income available to common stockholders by the weighted-average number of common shares outstanding for the period. Net income available to common stockholders represents net income of the Company reduced by an allocation of earnings to participating securities. The Series A non-voting convertible preferred stock (Note 12) and unvested share-based payment awards that contain non-forfeitable rights to dividends or dividend equivalents (whether paid or unpaid) are participating securities and are included in the computation of EPS pursuant to the two-class method. Share-based payment awards that do not contain such rights are not deemed participating securities and are included in diluted shares outstanding (if dilutive).

Diluted EPS is calculated under the treasury stock method and the two-class method. The calculation that results in the lowest diluted EPS amount for the common stock is reported in the Company’s consolidated financial statements. The treasury stock method includes the dilutive effect of potential common shares including unvested stock-based awards, the Series A non-voting convertible preferred stock and the convertible notes, if any. Potential common shares associated with the Series A non-voting convertible preferred stock and the convertible notes are computed under their converted method. Potential common shares associated with the conversion option embedded in the convertible notes are dilutive when the Company’s average stock price exceeds the conversion price.

Income Taxes

The Company accounts for income taxes using the liability method, which requires the determination of deferred tax assets and liabilities based on the differences between the financial and tax bases of assets and liabilities using the enacted tax rates in effect for the year in which differences are expected to reverse. Deferred tax assets are reduced by a valuation allowance if, based on the weight of available evidence, it is more-likely-than-not that some portion or all the deferred tax assets will not be realized.

Tax positions are evaluated utilizing a two-step process. The Company first determines whether any of its tax positions are more-likely-than-not to be sustained upon examination, based solely on the technical merits of the position. Once it is determined that a position meets this recognition threshold, the position is measured as the largest amount of benefit that is greater than 50% likely of being realized upon ultimate settlement. The Company records interest expense and penalties related to tax expenses as income tax expense.

The Global Intangible Low-Taxed Income (“GILTI”) provisions of the Tax Reform Act requires the Company to include in its U.S. income tax return foreign subsidiary earnings in excess of an allowable return on the foreign subsidiary’s tangible assets. An accounting policy election is available to either account for the tax effects of GILTI in the period that is subject to such taxes or to provide deferred taxes for book and tax basis differences that upon reversal may be subject to such taxes. The Company accounts for the tax effects of these provisions in the period that is subject to such tax.

Non-income based taxes are recorded as part of other liabilities and other expenses.

3. Cash and Cash Equivalents

Of the total cash and cash equivalents of \$109,736 and \$140,709 at June 30, 2022 and December 31, 2021, respectively, \$107,666 and \$127,328 were held at two financial institutions. At June 30, 2022 and December 31, 2021, cash equivalents were approximately \$2,001 and \$11,488, respectively.

Certain of the Company’s international subsidiaries are required to maintain a minimum level of regulatory capital, which was \$5,450 and \$12,320 at June 30, 2022 and December 31, 2021, respectively. These requirements are generally satisfied by cash on hand.

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4. Fair Value Measurements

The fair value of financial instruments is defined as the price that would be received to sell an asset or paid to transfer a liability (i.e., “the exit price”) in an orderly transaction between market participants at the measurement date. ASC 820, *Fair Value Measurement*, establishes a hierarchy for inputs used in measuring fair value that maximizes the use of observable inputs and minimizes the use of unobservable inputs by requiring that the most observable inputs be used when available. Observable inputs are inputs that market participants would use in pricing the asset or liability developed based on market data obtained from independent sources. Unobservable inputs reflect assumptions that market participants would use in pricing the asset or liability developed based on the best information available in the circumstances. The hierarchy is broken down into three levels based on the transparency of inputs as follows:

Level 1 – Quoted prices for identical instruments in active markets.

Level 2 – Quoted prices for similar instruments in active markets; quoted prices for identical or similar instruments in markets that are not active; and model-derived valuations whose inputs are observable or whose significant value drivers are observable.

Level 3 – Instruments whose significant drivers are unobservable.

The availability of observable inputs can vary from product to product and is affected by a wide variety of factors, including, for example, the type of product, whether the product is new and not yet established in the marketplace, and other characteristics particular to the transaction. To the extent that valuation is based on models or inputs that are less observable or unobservable in the market, the determination of fair value requires more judgment. Accordingly, the degree of judgment exercised by management in determining fair value is greatest for instruments categorized in Level 3. In certain cases, the inputs used to measure fair value may fall into different levels of the fair value hierarchy. In such cases, for disclosure purposes, the level in the fair value hierarchy within which the fair value measurement in its entirety falls is determined based on the lowest level input that is significant to the fair value measurement in its entirety.

The tables below summarize the categorization of the Company’s assets and liabilities measured at fair value. During the three and six months ended June 30, 2022 and 2021 there were no transfers between Levels 2 and 3.

	June 30, 2022			
	Total	Level 1	Level 2	Level 3
Assets:				
Recurring fair value measurements:				
Cash equivalents	\$ 2,001	\$ 2,001	\$ —	\$ —
Securities owned, at fair value				
ETFs	13,091	13,091	—	—
Pass-through GSEs	114,004	24,347	89,657	—
Corporate bonds	1,757	—	1,757	—
Investments in Convertible Notes				
Securrency, Inc. – convertible note (Note 7)	5,279	—	—	5,279
Fnality International Limited – convertible note (Note 7)	6,433	—	—	6,433
Total	<u>\$142,565</u>	<u>\$39,439</u>	<u>\$91,414</u>	<u>\$ 11,712</u>
Non-recurring fair value measurements:				
Onramp Invest, Inc. – preferred stock (Note 7) ⁽¹⁾	312	—	—	312
Liabilities:				
Recurring fair value measurements:				
Deferred consideration (Note 9)	<u>\$242,767</u>	\$ —	\$ —	<u>\$242,767</u>

(1) Fair value determined on May 10, 2022 (Note 7).

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	December 31, 2021			
	Total	Level 1	Level 2	Level 3
Assets:				
Recurring fair value measurements:				
Cash equivalents	\$ 11,488	\$ 11,488	\$ —	\$ —
Securities owned, at fair value				
ETFs	18,812	18,812	—	—
Pass-through GSEs	106,245	24,720	81,525	—
Corporate bonds	2,109	—	2,109	—
Total	<u>\$138,654</u>	<u>\$55,020</u>	<u>\$83,634</u>	<u>\$ —</u>
Non-recurring fair value measurements:				
Securrency, Inc. – Series A convertible preferred stock ⁽¹⁾	8,488	—	—	8,488
Liabilities:				
Recurring fair value measurements:				
Deferred consideration (Note 9)	<u>\$228,062</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$228,062</u>

⁽¹⁾ Fair value of \$8,488 and \$8,349 determined on June 9, 2021 and March 8, 2021, respectively (Note 7).

Recurring Fair Value Measurements—Methodology

Cash Equivalents (Note 3) – These financial assets represent cash invested in highly liquid investments with original maturities of less than 90 days. These investments are valued at par, which approximates fair value, and are classified as Level 1 in the fair value hierarchy.

Securities Owned (Note 5) – Securities owned are investments in ETFs, pass-through GSEs and corporate bonds. ETFs are generally traded in active, quoted and highly liquid markets and are therefore classified as Level 1 in the fair value hierarchy. Pricing of pass-through GSEs and corporate bonds include consideration given to collateral characteristics and market assumptions related to yields, credit risk and timing of prepayments and are therefore generally classified as Level 2. Pass-through GSE positions invested in through a fund structure with a quoted market price on an exchange are generally classified as Level 1.

Fair Value Measurements classified as Level 3—The following tables presents a reconciliation of beginning and ending balances of recurring fair value measurements classified as Level 3:

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2022	2021	2022	2021
Investments in Convertible Notes (Note 7)				
Beginning balance	\$ 6,700	\$ —	\$ —	\$ —
Purchases	5,000	—	11,863	—
Net unrealized gains/(losses) ⁽¹⁾	12	—	(151)	—
Ending balance	<u>\$ 11,712</u>	<u>\$ —</u>	<u>\$ 11,712</u>	<u>\$ —</u>
Deferred Consideration (Note 9)				
Beginning balance	\$245,177	\$227,146	\$228,062	\$230,137
Net realized losses ⁽²⁾	4,446	4,314	8,896	8,584
Net unrealized (gains)/losses ⁽³⁾	(2,311)	(497)	14,707	(3,329)
Settlements	(4,545)	(4,257)	(8,898)	(8,686)
Ending balance	<u>\$242,767</u>	<u>\$226,706</u>	<u>\$242,767</u>	<u>\$226,706</u>

(1) Recorded in other losses and gains, net in the Consolidated Statements of Operations.

(2) Recorded as contractual gold payments expense in the Consolidated Statements of Operations.

(3) Recorded as gain/(loss) on revaluation of deferred consideration—gold payments in the Consolidated Statements of Operations.

5. Securities Owned

These securities consist of the following:

	June 30, 2022	December 31, 2021
Securities Owned		
Trading securities	<u>\$128,852</u>	<u>\$ 127,166</u>

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The Company recognized net trading losses on securities owned that were still held at the reporting dates of \$,596 and \$272 during the three months ended June 30, 2022 and 2021, respectively, and \$7,912 and \$833 during the six months ended June 30, 2022 and 2021, respectively, which were recorded in other losses and gains, net, in the Consolidated Statements of Operations.

6. Securities Held-to-Maturity

The following table is a summary of the Company's securities held-to-maturity:

	<u>June 30,</u> <u>2022</u>	<u>December 31,</u> <u>2021</u>
Debt instruments: Pass-through GSEs (amortized cost)	<u>\$ 277</u>	<u>\$ 308</u>

During the six months ended June 30, 2022 and 2021, the Company received proceeds of \$1 and \$77, respectively, from held-to-maturity securities maturing or being called prior to maturity.

The following table summarizes unrealized gains, losses and fair value (classified as Level 2 within the fair value hierarchy) of securities held-to-maturity:

	June 30, 2022	December 31, 2021
Cost/amortized cost	\$ 277	\$ 308
Gross unrealized gains	2	13
Gross unrealized losses	(12)	—
Fair value	<u>\$ 267</u>	<u>\$ 321</u>

An allowance for credit losses was not provided on the Company's held-to-maturity securities as all securities are investments in pass-through GSEs which are determined to have an estimated loss rate of zero due to an implicit U.S. government guarantee.

The following table sets forth the maturity profile of the securities held-to-maturity; however, these securities may be called prior to maturity date:

	June 30, 2022	December 31, 2021
Due within one year	\$ —	\$ —
Due one year through five years	—	—
Due five years through ten years	30	—
Due over ten years	247	308
Total	<u>\$ 277</u>	<u>\$ 308</u>

7. Investments

The following table sets forth the Company's investments:

	June 30, 2022		December 31, 2021	
	Carrying Value	Cost	Carrying Value	Cost
Securrency, Inc. – Series A convertible preferred stock	\$ 8,488	\$ 8,112	\$ 8,488	\$ 8,112
Securrency, Inc. – Series B convertible preferred stock	5,500	5,500	5,500	5,500
Securrency, Inc. – convertible note	5,279	5,000	—	—
Subtotal – Securrency, Inc.	\$19,267	\$18,612	\$13,988	\$13,612
Fnality International Limited – convertible note	6,433	6,863	—	—
Onramp Invest, Inc. – Series A-4 preferred stock	312	250	250	250
	<u>\$26,012</u>	<u>\$25,725</u>	<u>\$14,238</u>	<u>\$13,862</u>

Securrency, Inc. – Preferred Stock

The Company owns approximately 22% (or 18% on a fully-diluted basis) of the capital stock of Securrency, Inc. ("Securrency"), a developer of institutional-grade blockchain-based financial and regulatory technology, issued as a result of strategic investments totaling \$13,612. In consideration of such investments, the Company received 5,178,488 shares of Series A convertible preferred stock ("Series A Shares") in December of 2019 and 2,004,665 shares of Series B convertible preferred stock ("Series B Shares") in March of 2021. The Series B Shares contain a liquidation preference that is pari passu with shares of Series B-1 convertible preferred stock (which are substantially the same as the Series B Shares except that they have limited voting rights) and senior to that of the holders of the Series A Shares, which are senior to the holders of common stock. Otherwise, the Series A Shares and Series B Shares have substantially the same terms, are convertible into common stock at the option of the Company and contain various rights and protections including a non-cumulative 6.0% dividend, payable if and when declared by the board of directors of Securrency. In addition, the Series A

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Shares and Series B Shares (together with the Series B-1 convertible preferred stock) are separately redeemable, with respect to all of the shares outstanding of the applicable series of preferred stock (subject to certain regulatory restrictions of certain investors), for the original issue price thereof, plus all declared and unpaid dividends, upon approval by holders of at least 60% of the Series A Shares (at any time on or after December 31, 2029) and 90% of the Series B Shares (at any time on or after March 31, 2031).

The investment is accounted for under the measurement alternative prescribed in ASC 321, as it does not have a readily determinable fair value and is not considered to be in-substance common stock. The investment is assessed for impairment and similar observable transactions on a quarterly basis. There was no impairment recognized during the three and six months ended June 30, 2022 based upon a qualitative assessment. During the three and six months ended June 30, 2021, the Company recognized a gain of \$139 and \$376, respectively, on its Series A Shares, which were re-measured to fair value upon the issuance of Securrency's Series B Shares. Fair value was determined using the backsolve method, a valuation approach that determines the value of shares for companies with complex capital structures based upon the price paid for shares recently issued. Fair value is allocated across the capital structure using the Black-Scholes option pricing model.

The table below presents the inputs used in backsolve valuation approach (classified as Level 3 in the fair value hierarchy):

	Inputs	
	June 9, 2021	March 8, 2021
Expected volatility	50%	55%
Time to exit (in years)	4.75	5

Securrency – Convertible Note

In April 2022, the Company participated in a convertible note financing, making a \$5,000 investment in Securrency. In consideration for its investment, the Company was issued a 7% Convertible Promissory Note maturing on April 21, 2023.

The note is convertible into either Securrency’s common stock or the class of securities convertible into, exchangeable for, or conferring the right to purchase Securrency’s common stock that is issued in the event of a future equity financing at a conversion price equal to a discount of 25% (or, if applicable, a greater discount offered to other holders of convertible securities in such future equity financing round) to the lowest price paid per equity share issued in the future equity financing round.

The note is redeemable upon the occurrence of a corporate transaction for an amount which is the greater of (i) the principal amount and all accrued interest and (ii) the amount that would be received had the note been converted to common stock immediately prior to the occurrence of the corporate transaction. At maturity, redemption or conversion may occur upon the election by the holders of a majority-in-interest of the aggregate principal amount of outstanding notes. If no such election is made, Securrency may elect to pay or convert the notes in its sole discretion.

The note is accounted for at fair value. Fair value is determined by the Company using the probability-weighted expected return method (“PWERM”), a valuation approach that estimates the value of the note assuming various outcomes. During the three and six months ended June 30, 2022, the Company recognized a gain of \$279 when re-measuring the notes to fair value.

The table below presents the probability ascribed to potential outcomes used in the PWERM (classified as Level 3 in the fair value hierarchy):

	June 30, 2022
Conversion of note upon a future equity financing	85%
Redemption of note upon a corporate transaction	10%
Default	5%

Fnlity International Limited – Convertible Note

In February 2022, the Company participated in a convertible note financing, making a £5,000 (\$6,863) investment in Fnlity International Limited (“Fnlity”), a company incorporated in England and Wales and focused on creating a peer-to-peer digital wholesale settlement ecosystem comprised of a consortium of financial institutions, offering real time cross-border payments from a single pool of liquidity. In consideration for its investment, the Company was issued a 5% Convertible Unsecured Loan Note maturing on December 31, 2023.

The note is convertible into equity shares in the event of a future financing round at a conversion price equal to the lower of (i) a discount of 20% to lowest price paid per equity share issued pursuant to such future financing round and (ii) an amount paid per share subject to a pre-money valuation cap. Mandatory conversion may occur on or after the maturity date or, if earlier, in the event a future financing round has not been completed within a specified time from an initial closing of such financing round (“Long Stop Date”), upon the approval of holders of at least 75% of the outstanding notes. The note is also convertible, at the option of the Company, following the earlier of the maturity date or such Long Stop Date.

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The note is redeemable upon the occurrence of a change of control for an amount which is the greater of (i) the principal amount and all accrued interest and (ii) the amount that would be received had the note been converted to equity shares immediately prior to the occurrence of the change of control. Redemption may also occur on or after maturity or prior to maturity upon approval by holders of at least 50% and 75%, respectively, of the outstanding notes, or in connection with bankruptcy or other liquidation events.

The note is accounted for at fair value. Fair value is determined by the Company using the PWERM and is also remeasured for changes in the British pound and U.S. dollar exchange rate. During the three and six months ended June 30, 2022, the Company recognized a loss of \$163 and \$430, respectively, when re-measuring the notes to fair value.

The table below presents the probability ascribed to potential outcomes used in the PWERM (classified as Level 3 in the fair value hierarchy):

	June 30, 2022
Conversion of note upon a future financing round	85%
Redemption of note upon a change of control	10%
Default	5%

Onramp Invest, Inc. – Preferred Stock

In June 2021, the Company invested \$250 in Onramp Invest, Inc. (“Onramp”), a technology company that provides access to cryptoassets for registered investment advisers. In consideration for its investment, the Company was issued a Simple Agreement for Future Equity (“SAFE”), which provided the Company with the right to be issued certain shares of Onramp’s preferred stock in connection with Onramp’s future equity financing for preferred stock, at a 20% discount to the price per share issued in connection with such equity financing, subject to a pre-determined valuation cap. In May 2022, in connection with a Series A financing by Onramp, the Company’s SAFE was converted into shares of Series A-4 Preferred Stock, representing a small ownership interest in Onramp.

The investment is accounted for under the measurement alternative prescribed in ASU2016-01, as it does not have a readily determinable fair value and is not considered to be in-substance common stock. The investment is assessed for impairment and similar observable transactions on a quarterly basis. During the three and six months ended June 30, 2022, the Company recognized a gain of \$62 in connection with the conversion of the SAFE into Series A-4 Preferred Stock of Onramp. There was no impairment recognized during the three and six months ended June 30, 2021 based upon a qualitative assessment.

8. Fixed Assets, net

The following table summarizes fixed assets:

	June 30, 2022	December 31, 2021
Equipment	\$ 947	\$ 784
Less: accumulated depreciation	(306)	(227)
Total	<u>\$ 641</u>	<u>\$ 557</u>

9. Deferred Consideration

Deferred consideration represents an obligation the Company assumed in connection with its acquisition of the European exchange-traded commodity, currency and leveraged and inverse business of ETFS Capital Limited (“ETFS Capital”) which occurred on April 11, 2018 (“ETFS Acquisition”). The obligation is for fixed payments to ETFS Capital of physical gold bullion equating to 9,500 ounces of gold per year through March 31, 2058 and then subsequently reduced to 6,333 ounces of gold continuing into perpetuity (“Contractual Gold Payments”).

The Contractual Gold Payments are paid from advisory fee income generated by any Company-sponsored financial product backed by physical gold and are subject to adjustment and reduction for declines in advisory fee income generated by such products, with any reduction remaining due and payable until paid in full. ETFS Capital’s recourse is limited to such advisory fee income and it has no recourse back to the Company for any unpaid amounts that exceed advisory fees earned. ETFS Capital ultimately has the right to claw back Gold Bullion Securities Ltd. (a physically backed gold ETP issuer) if the Company fails to remit any amounts due.

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The Company determined the present value of the deferred consideration of \$242,767 and \$228,062 at June 30, 2022 and December 31, 2021 using the following assumptions:

	June 30, 2022	December 31, 2021
Forward-looking gold price (low) – per ounce	\$ 1,812	\$ 1,833
Forward-looking gold price (high) – per ounce	\$ 3,148	\$ 2,705
Forward-looking gold price (weighted average) – per ounce	\$ 2,265	\$ 2,106
Discount rate	9.0%	9.0%
Perpetual growth rate	1.43%	1.0%

The forward-looking gold prices at June 30, 2022 were extrapolated from the last observable CMX exchange price (beyond 2027) and the weighted-average price per ounce was derived from the relative present values of the annual payment obligations. The perpetual growth rate was determined based upon the increase in observable forward-looking gold prices through 2027. This obligation is classified as Level 3 as the discount rate, the extrapolated forward-looking gold prices and perpetual growth rate are significant unobservable inputs. An increase in spot gold prices, forward-looking gold prices and the perpetual growth rate would result in an increase in deferred consideration, whereas an increase in the discount rate would reduce the fair value.

Current amounts payable were \$16,626 and \$16,739 and long-term amounts payable were \$226,141 and \$211,323, respectively, at June 30, 2022 and December 31, 2021, respectively.

During the three and six months ended June 30, 2022 and 2021, the Company recognized the following in respect of deferred consideration:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Contractual gold payments	\$ 4,446	\$ 4,314	\$ 8,896	\$8,584
Contractual gold payments – gold ounces paid	2,375	2,375	4,750	4,750
Gain/(loss) on revaluation of deferred consideration – gold payments ⁽¹⁾	\$ 2,311	\$ 497	\$(14,707)	\$3,329

- (1) Gains on revaluation of deferred consideration—gold payments result from a decrease in spot gold prices, a decrease in the forward-looking price of gold, a decrease in the perpetual growth rate and an increase in the discount rate used to compute the present value of the annual payment obligations. Losses on revaluation of deferred consideration—gold payments result from an increase in spot gold prices, an increase in the forward-looking price of gold, an increase in the perpetual growth rate and a decrease in the discount rate used to compute the present value of the annual payment obligations.

10. Convertible Notes

On June 14, 2021, the Company issued and sold \$150,000 in aggregate principal amount of 3.25% Convertible Senior Notes due 2026 (the “2021 Notes”) pursuant to an indenture dated June 14, 2021, between the Company and U.S. Bank National Association, as trustee (the “Trustee”), in a private offering to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933, as amended (“Rule 144A”).

On June 16, 2020, the Company issued and sold \$150,000 in aggregate principal amount of 4.25% Convertible Senior Notes due 2023 (the “June 2020 Notes”) pursuant to an indenture dated June 16, 2020, between the Company and the Trustee, in a private offering to qualified institutional buyers pursuant to Rule 144A. On August 13, 2020, the Company issued and sold \$25,000 in aggregate principal amount of 4.25% Convertible Senior Notes due 2023 at a price equal to 101% of the principal amount thereof, plus interest deemed to have accrued since June 16, 2020, and constitute a further issuance of, and form a single series with, the Company’s June 2020 Notes (the “August 2020 Notes” and together with the June 2020 Notes, the “2020 Notes”).

After the issuance of the 2021 Notes (and together with the 2020 Notes, the “Convertible Notes”), the Company had \$325,000 aggregate principal amount of Convertible Notes outstanding.

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Key terms of the Convertible Notes are as follows:

	<u>2021 Notes</u>	<u>2020 Notes</u>
Maturity date (unless earlier converted, repurchased or redeemed)	June 15, 2026	June 15, 2023
Interest rate	3.25%	4.25%
Conversion price	\$ 11.04	\$ 5.92
Conversion rate	90.5797	168.9189
Redemption price	\$ 14.35	\$ 7.70

- *Interest rate:* Payable semiannually in arrears on June 15 and December 15 of each year.
- *Conversion price:* Convertible at an initial conversion rate of the Company's common stock, per \$1,000 principal amount of notes (equivalent to an initial conversion price as disclosed in the table above).
- *Conversion:* Holders may convert at their option at any time prior to the close of business on the business day immediately preceding March 15, 2026 and March 15, 2023 in respect of the 2021 Notes and 2020 Notes, respectively, only under the following circumstances: (i) if the last reported sale price of the Company's common stock for at least 20 trading days during a period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each applicable trading day; (ii) during the five business day period after any ten consecutive trading day period (the "measurement period") in which the trading price per \$1,000 principal amount of the Convertible Notes for each trading day of the measurement period was less than 98% of the product of the last reported sales price of the Company's common stock and the conversion rate on each such trading day; (iii) upon a notice of redemption delivered by the Company in accordance with the terms of the indentures but only with respect to the Convertible Notes called (or deemed called) for redemption; or (iv) upon the occurrence of specified corporate events. On or after March 15, 2026 and March 15, 2023 in respect of the 2021 Notes and 2020 Notes, respectively, until the close of business on the second scheduled trading day immediately preceding the maturity date, holders may convert their Convertible Notes at any time, regardless of the foregoing circumstances.

- *Cash settlement of principal amount:* Upon conversion, the Company will pay cash up to the aggregate principal amount of the Convertible Notes to be converted. At its election, the Company will also settle its conversion obligation in excess of the aggregate principal amount of the Convertible Notes being converted in either cash, shares of its common stock or a combination of cash and shares of its common stock.
- *Redemption price:* The Company may redeem for cash all or any portion of the notes, at its option, on or after June 20, 2023 and June 20, 2021 in respect of the 2021 Notes and 2020 Notes, respectively, and on or prior to the 55th scheduled trading day immediately preceding the maturity date, if the last reported sale price of the Company's common stock has been at least 130% of the conversion price then in effect for at least 20 trading days, including the trading day immediately preceding the date on which the Company provides notice of redemption, during any 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date on which the Company provides notice of redemption, at a redemption price equal to 100% of the principal amount of the notes to be redeemed, plus accrued and unpaid interest to, but excluding the redemption date. No sinking fund is provided for the Convertible Notes.
- *Limited investor put rights:* Holders of the Convertible Notes have the right to require the Company to repurchase for cash all or a portion of their notes at 100% of their principal amount, plus any accrued and unpaid interest, upon the occurrence of certain change of control transactions or liquidation, dissolution or common stock delisting events.
- *Conversion rate increase in certain customary circumstances:* In certain circumstances, conversions in connection with a "make-whole fundamental change" (as defined in the indentures) or conversions of Convertible Notes called (or deemed called) for redemption may result in an increase to the conversion rate, provided that the conversion rate will not exceed 144.9275 shares and 270.2702 shares of the Company's common stock per \$1,000 principal amount of the 2021 Notes and 2020 Notes, respectively (the equivalent of 69,036,410 shares of the Company's common stock), subject to adjustment.
- *Seniority and Security:* The 2021 Notes and 2020 Notes rank equal in right of payment, and are the Company's senior unsecured obligations, but are subordinated in right of payment to the Company's obligations to make certain redemption payments (if and when due) in respect of its Series A Non-Voting Convertible Preferred Stock (Note 12).

The indentures contain customary terms and covenants, including that upon certain events of default occurring and continuing, either the Trustee or the holders of not less than 25% in aggregate principal amount of the Convertible Notes outstanding may declare the entire principal amount of all the Convertible Notes to be repurchased, plus any accrued special interest, if any, to be immediately due and payable.

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The following table provides a summary of the carrying value of the Convertible Notes at June 30, 2022 and December 31, 2021:

	June 30, 2022			December 31, 2021		
	2021 Notes	2020 Notes	Total	2021 Notes	2020 Notes	Total
Principal amount	\$150,000	\$175,000	\$325,000	\$150,000	\$175,000	\$325,000
Plus: Premium	—	250	250	—	250	250
Gross proceeds	150,000	175,250	325,250	150,000	175,250	325,250
Less: Unamortized issuance costs ⁽¹⁾	(3,408)	(1,925)	(5,333)	(3,833)	(2,793)	(6,626)
Carrying amount	\$146,592	\$173,325	\$319,917	146,167	\$172,457	\$318,624
Effective interest rate ⁽¹⁾	3.83%	5.26%	4.60%	3.83%	5.26%	4.60%

(1) Includes amortization of the issuance costs and premium.

On January 1, 2021, the Company early adopted ASU 2020-06, which simplified the accounting for convertible instruments by providing for such instruments being reported as a single liability (applicable to the convertible notes) or equity with no separate accounting for the embedded conversion features unless the conversion feature meets the criteria for accounting under the substantial premium model or does not qualify for a derivative scope exception. Previously, convertible instruments were required to be separated into their liability and equity components by allocating the issuance proceeds to each of those components. The discount arising from the recognition of the equity component was amortized as interest expense over the life of the 2020 Notes.

Interest expense on the Convertible Notes was \$3,733 and \$7,465, respectively, during the three and six months ended June 30, 2022, and \$2,567 and \$4,863, respectively, during the comparable periods in 2021. Interest payable of \$605 and \$590 at June 30, 2022 and December 31, 2021 is included in accounts payable and other liabilities in the Consolidated Balance Sheets.

The fair value of the Convertible Notes (classified as Level 2 in the fair value hierarchy) was \$22,311 and \$360,571 at June 30, 2022 and December 31, 2021, respectively. The if-converted value of the 2020 Notes did not exceed the principal amount at June 30, 2022 and was \$80,912 at December 31, 2021. The if-converted value of the 2021 Notes did not exceed the principal amount at June 30, 2022 and December 31, 2021.

11. Preferred Shares

On April 10, 2018, the Company filed a Certificate of Designations of Series A Non-Voting Convertible Preferred Stock with the Secretary of State of the State of Delaware establishing the rights, preferences, privileges, qualifications, restrictions, and limitations relating to the Preferred Shares (defined below). The Preferred Shares are intended to provide ETFS Capital with economic rights equivalent to the Company's common stock on an as-converted basis. The Preferred Shares have no voting rights, are not transferable and have the same priority with regard to dividends, distributions and payments as the common stock.

As described in the Certificate of Designations, the Company will not issue, and ETFS Capital does not have the right to require the Company to issue, any shares of common stock upon conversion of the Preferred Shares, if, as a result of such conversion, ETFS Capital (together with certain attribution parties) would beneficially own more than 9.99% of the Company's outstanding common stock immediately after giving effect to such conversion.

In connection with the completion of the ETFS Acquisition, the Company issued 14,750 shares of Series A Non-Voting Convertible Preferred Stock (the "Preferred Shares"), which are convertible into an aggregate of 14,750,000 shares of common stock. The fair value of this consideration was \$132,750, based on the closing price of the Company's common stock on April 10, 2018 of \$9.00 per share, the trading day prior to the closing of the acquisition.

The following is a summary of the Preferred Share balance:

	June 30, 2022	December 31, 2022
Issuance of Preferred Shares	\$ 132,750	\$ 132,750
Less: Issuance costs	(181)	(181)
Preferred Shares – carrying value	\$ 132,569	\$ 132,569
Cash dividends declared per share	\$ 0.03	\$ 0.03

Temporary equity classification is required for redeemable instruments for which redemption triggers are outside of the issuer's control. ETFS Capital has the right to redeem all the Preferred Shares specified to be converted during the period of time specified in the Certificate of Designations in the event that: (a) the number of shares of the Company's common stock authorized by its certificate of incorporation is insufficient to permit the Company to convert all of the Preferred Shares requested by ETFS Capital to be converted; or (b) ETFS Capital does not, upon completion of a change of control of the Company, receive the same amount per Preferred Share as it would have received had each outstanding Preferred Share been converted into common stock immediately prior to the change of control. However, the Company will not be obligated to make any such redemption payments to the extent such payments would be a breach of any covenant or obligation the Company owes to any of its secured creditors or is otherwise prohibited by applicable law.

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Any such redemption will be at a price per Preferred Share equal to the dollar volume-weighted average price for a share of common stock for the 30-trading day period ending on the date of such attempted conversion or change of control, as applicable, multiplied by 1,000. Such redemption payment will be made in one payment no later than 10 business days following the last day of the Company's first fiscal quarter that begins on a date following the date ETFs Capital exercises such redemption right. The redemption value of the Preferred Shares was \$81,970 and \$90,741 at June 30, 2022 and December 31, 2021, respectively.

The carrying amount of the Preferred Shares was not adjusted as it was not probable that the Preferred Shares would become redeemable.

12. Leases

The Company has entered into operating leases for its corporate headquarters and office facilities, financial data terminals and equipment. The Company has no finance leases.

The following table provides additional information regarding the Company's leases:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Lease cost:				
Operating lease cost	\$ 243	\$ 643	\$ 332	\$ 1,340
Short-term lease cost	251	259	527	554
Total lease cost	<u>\$ 494</u>	<u>\$ 902</u>	<u>\$ 859</u>	<u>\$ 1,894</u>
Other information:				
Cash paid for amounts included in the measurement of operating liabilities (operating leases)	\$ 251	\$ 740	\$ 348	\$ 1,658
Right-of-use assets obtained in exchange for new operating lease liabilities	n/a	n/a	n/a	n/a
Weighted-average remaining lease term (in years) – operating leases	1.8	8.4	1.8	8.4
Weighted-average discount rate – operating leases	6.3%	6.3%	6.3%	6.3%

None of the Company's leases include variable payments, residual value guarantees or any restrictions or covenants relating to the Company's ability to pay dividends or incur additional financing obligations.

During the three and six months ended June 30, 2021, the Company recognized an impairment charge of \$3 resulting from the derecognition of a right-of-use asset upon exiting its London office in February 2021, as well as costs incurred to restore the office space to its original condition. This loss is included in impairments in the Consolidated Statements of Operations.

The following table discloses future minimum lease payments at June 30, 2022 with respect to the Company's operating lease liabilities:

Remainder of 2022	\$ 958
2023	1,128
2024	317
2025	—
2026	—
2027 and thereafter	—
Total future minimum lease payments (undiscounted)	<u>\$2,403</u>

The following table reconciles the future minimum lease payments (disclosed above) at June 30, 2022 to the operating lease liabilities recognized in the Consolidated Balance Sheets:

Amounts recognized in the Consolidated Balance Sheets	
Lease liability – short term	\$1,093
Lease liability – long term	941
Subtotal	2,034
Difference between undiscounted and discounted cash flows	369
Total future minimum lease payments (undiscounted)	<u>\$2,403</u>

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13. Contingencies

The Company may be subject to reviews, inspections and investigations by regulatory authorities as well as legal proceedings arising in the ordinary course of business.

Closure of the WisdomTree WTI Crude Oil 3x Daily Leveraged ETP

In December 2020, WMAI, WTMAML, WTUK and WisdomTree Ireland Limited (“WT Ireland”) were served with a writ of summons to appear before the Court of Milan, Italy. In January 2021, WTUK was served with a writ of summons to appear before the Court of Udine, Italy. Investors had filed actions seeking damages resulting from the closure of the WisdomTree WTI Crude Oil 3x Daily Leveraged ETP (“3OIL”) in March 2020. The product was dependent on the receipt of payments from a swap provider to satisfy payment obligations to the investors. Due to an extreme adverse move in oil futures relative to the oil futures’ closing price, the swap contract underlying 3OIL was terminated by the swap provider, which resulted in the compulsory redemption of 3OIL, all in accordance with the prospectus.

In February 2022, the Court of Udine ruled in the Company’s favor. Also in February 2022, WMAI, WTMAML, WTUK and WT Ireland were served with another writ of summons to appear before the Court of Milan by additional investors seeking damages resulting from the closure of 3OIL.

In March 2022, WMAI and WTUK were served with writs of summons to appear before the Court of Turin and the Court of Milan by additional investors seeking damages. These writs also were served on the intermediary brokers for the respective claimants, with the claimants alleging joint and several liability of WMAI, WTUK and such intermediary brokers.

Total damages sought by all investors are approximately €15,800 (\$16,600) at June 30, 2022.

The Company is currently assessing these claims with its external counsel. An accrual has not been made with respect to these matters at June 30, 2022 and December 31, 2021.

14. Variable Interest Entities

VIEs are entities with any of the following characteristics: (i) the entity does not have enough equity to finance its activities without additional financial support; (ii) the equity holders, as a group, lack the characteristics of a controlling financial interest; or (iii) the entity is structured with non-substantive voting rights.

Consolidation of a VIE is required for the party deemed to be the primary beneficiary, if any. The primary beneficiary is the party who has both (a) the power to direct the activities of a VIE that most significantly impact the entity's economic performance and (b) an obligation to absorb losses of the entity or a right to receive benefits from the entity that could potentially be significant to the entity. The Company is not the primary beneficiary of any entities in which it has a variable interest as it does not have the power to direct the activities that most significantly impact the entities' economic performance. Such power is conveyed through the entities' boards of directors and the Company does not have control over the boards.

The following table presents information about the Company's variable interests in non-consolidated VIEs:

	June 30, 2022	December 31, 2021
Carrying Amount – Assets (Securrency)		
Preferred stock – Series A Shares	\$ 8,488	\$ 8,488
Preferred stock – Series B Shares	5,500	5,500
Convertible note	5,279	—
Subtotal – Securrency	\$ 19,267	\$ 13,988
Carrying Amount – Assets (Fnality)		
Convertible note	6,433	—
Carrying Amount – Assets (Onramp)		
Preferred stock	312	250
Total (Note 7)	<u>\$ 26,012</u>	<u>\$ 14,238</u>
Maximum exposure to loss	<u>\$ 26,012</u>	<u>\$ 14,238</u>

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15. Revenues from Contracts with Customers

The following table presents the Company's total revenues from contracts with customers:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Revenues from contracts with customers:				
Advisory fees ⁽¹⁾	\$ 75,586	\$ 74,169	\$ 152,103	\$ 144,211
Other	1,667	1,606	3,518	2,820
Total operating revenues	<u>\$ 77,253</u>	<u>\$ 75,775</u>	<u>\$ 155,621</u>	<u>\$ 147,031</u>

- (1) Advisory fees previously reported have been revised due to an immaterial error correction. These revisions had no effect on previously reported net income. See Note 2 for additional information.

The Company recognizes revenues from contracts with customers when the performance obligation is satisfied, which is when the promised services are transferred to the customer. A service is considered to be transferred when the customer obtains control, which is represented by the transfer of rights with regard to the service. Transfer of control happens either over time or at a point in time. When a performance obligation is satisfied over time, an entity is required to select a single method of measuring progress for each performance obligation that depicts the entity's performance in transferring control of services to the customer.

Substantially all the Company's revenues from contracts with customers are derived primarily from investment advisory agreements with related parties (Note 16). These advisory fees are recognized over time, are earned from the Company's ETPs and are calculated based on a percentage of the ETPs' average daily net assets. There is no significant judgment in calculating amounts due which are invoiced monthly in arrears and are not subject to any potential reversal. Progress is measured using the practical expedient under the output method resulting in the recognition of revenue in the amount for which the Company has a right to invoice.

There are no contract assets or liabilities that arise in connection with the recognition of advisory fee revenue. In addition, there are no costs incurred to obtain or fulfill the contracts with customers, all of which are investment advisory agreements with related parties.

Geographic Distribution of Revenue

The following table presents the Company's total revenues geographically as determined by where the respective management companies reside:

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2022	2021	2022	2021
Revenues from contracts with customers:				
United States	\$ 45,807	\$ 44,522	\$ 92,036	\$ 85,221
Jersey ⁽¹⁾	27,811	28,812	56,409	57,228
Ireland	3,635	2,441	7,176	4,582
Total operating revenues	<u>\$ 77,253</u>	<u>\$ 75,775</u>	<u>\$ 155,621</u>	<u>\$ 147,031</u>

- (1) Advisory fees previously reported have been revised due to an immaterial error correction. These revisions had no effect on previously reported net income. See Note 2 for additional information.

16. Related Party Transactions

The Company's revenues are derived primarily from investment advisory agreements with related parties. Under these agreements, the Company has licensed to related parties the use of certain of its own indexes for the U.S. WisdomTree ETFs and WisdomTree UCITS ETFs. The Board of Trustees and Board of Directors (including certain officers of the Company) of the related parties are primarily responsible for overseeing the management and affairs of the entities for the benefit of their stakeholders and have contracted with the Company to provide for general management and administration services. The Company is also responsible for certain expenses of the related parties, including the cost of transfer agency, custody, fund administration and accounting, legal, audit, and other non-distribution services, excluding extraordinary expenses, taxes and certain other expenses, which are included in fund management and administration in the Consolidated Statements of Operations. In exchange, the Company receives fees based on a percentage of the ETPs' average daily net assets. A majority of the independent members of the Board of Trustees are required to annually approve the advisory agreements of the U.S. WisdomTree ETFs and these agreements may be terminated by the Board of Trustees upon notice.

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The following table summarizes accounts receivable from related parties which are included as a component of accounts receivable in the Consolidated Balance Sheets:

	June 30, 2022	December 31, 2021
Receivable from WTT	\$14,719	\$ 15,987
Receivable from ManJer Issuers	5,871	6,460
Receivable from WMAI and WTI	3,315	3,181
Total	<u>\$23,905</u>	<u>\$ 25,628</u>

The allowance for credit losses on accounts receivable from related parties is insignificant when applying historical loss rates, adjusted for current conditions and supportable forecasts, to the amounts outstanding in the table above. Amounts outstanding are all invoiced in arrears, are less than 30 days aged and are collected shortly after the applicable reporting period.

The following table summarizes revenues from advisory services provided to related parties:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Advisory services provided to WTT	\$45,670	\$ 44,442	\$ 91,740	\$ 84,978
Advisory services provided to ManJer Issuers ⁽¹⁾	26,282	25,065	53,187	50,536
Advisory services provided to WMAI and WTI	3,634	4,662	7,176	8,697
Total	<u>\$75,586</u>	<u>\$ 74,169</u>	<u>\$152,103</u>	<u>\$144,211</u>

(1) Advisory fees previously reported have been revised due to an immaterial error correction. These revisions had no effect on previously reported net income. See Note 2 for additional information.

The Company also has investments in certain WisdomTree ETFs of approximately \$12,841 and \$18,526 at June 30, 2022 and December 31, 2021, respectively. Net gains and losses related to trading WisdomTree ETFs were (\$313) and (\$1,119), respectively, during the three and six months ended June 30, 2022, and \$167 and (\$217), respectively, during the comparable periods in 2021. Such gains and losses are recorded in other losses and gains, net in the Consolidated Statements of Operations.

17. Stock-Based Awards

On June 20, 2016, the Company's stockholders approved an equity award plan under which the Company can issue up to 10,000,000 shares of common stock (less one share for every share granted under prior plans since March 31, 2016 and inclusive of shares available under the prior plans as of March 31, 2016) in the form of stock options and other stock-based awards.

The Company grants equity awards to employees and directors which include restricted stock awards ("RSAs"), restricted stock units ("RSUs"), performance-based restricted stock units ("PRSUs") and stock options. Certain awards described below are subject to acceleration under certain conditions.

- Stock options: Generally issued for terms of ten years and may vest after at least one year of service and have an exercise price equal to the Company's stock price on the grant date. The Company estimates the fair value of stock options (when granted) using the Black-Scholes option pricing model.
- RSAs/RSUs: Awards are valued based on the Company's stock price on grant date and generally vest ratably over three years.
- PRSUs: These awards cliff vest three years from the grant date and contain a market condition whereby the number of PRSUs ultimately vesting is tied to how the Company's total shareholder return ("TSR") compares to a peer group of other publicly traded asset managers over the three-year period. A Monte Carlo simulation is used to value these awards.
- The number of PRSUs vesting ranges from 0% to 200% of the target number of PRSUs granted, as follows:
- If the relative TSR is below the 25th percentile, then 0% of the target number of PRSUs granted will vest;
 - If the relative TSR is at the 25th percentile, then 50% of the target number of PRSUs granted will vest; and
 - If the relative TSR is above the 25th percentile, then linear scaling is applied such that the percent of the target number of PRSUs vesting is 100% at the 50th percentile and capped at 200% of the target number of PRSUs granted for performance at the 85th percentile (or 100th percentile for grants made during 2019 and 2020).
 - If the Company's TSR is negative, the target number of PRSUs vesting is capped at 100% regardless of the relative TSR percentile.

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Stock-based compensation expense was \$2,432 and \$5,368, respectively, during the three and six months ended June 30, 2022, and \$2,121 and \$5,264, respectively, during the comparable periods in 2021.

A summary of unrecognized stock-based compensation expense and average remaining vesting period is as follows:

	June 30, 2022	
	Unrecognized Stock-Based Compensation	Average Remaining Vesting Period (Years)
Employees and directors	\$ 17,044	1.90

A summary of stock-based compensation award activity (shares) during the three months ended June 30, 2022 is as follows:

	RSAs	RSUs	PRSUs
Balance at April 1, 2022	3,526,697	47,656	668,188
Granted	2,146	—	—
Exercised/vested	(78,125)	—	—
Forfeitures	(51,444)	—	—
Balance at June 30, 2022	<u>3,399,274</u>	<u>47,656</u>	<u>668,188</u>

18. Stockholder Rights Plan

On March 13, 2022, the Board of Directors of the Company adopted a stockholder rights plan, as set forth in the Stockholder Rights Agreement, dated March 14, 2022, between the Company and Continental Stock Transfer & Trust Company, as Rights Agent (the “Rights Agreement”). Pursuant to the terms of the Rights Agreement, the Board of Directors declared a dividend distribution of one Preferred Stock Purchase Right (a “Right”) for each outstanding share of the Company’s common stock and 1,000 Rights for each outstanding share of the Company’s Series A Non-Voting Convertible Preferred Stock to stockholders of record as of the close of business on March 25, 2022 (the “Record Date”). In addition, one Right would automatically attach to each share of common stock and 1,000 Rights would automatically attach to each share of Series A Non-Voting Convertible Preferred Stock, in each case, issued between the Record Date and the earlier of the Distribution Date (as defined in the Rights Agreement) and the expiration date of the Rights. Each Right entitled the registered holder thereof to purchase from the Company a unit consisting of one ten-thousandth of a share (a “Unit”) of Series B Junior Participating Cumulative Preferred Stock, par value \$0.01 per share, of the Company at a cash exercise price of \$27.00 per Unit, subject to adjustment, under certain conditions specified in the Rights Agreement.

On May 25, 2022, the Company entered into a cooperation agreement (the “Cooperation Agreement”) with ETFs Capital, Graham Tuckwell, Lion Point Capital, LP, Lion Point Capital Holdings GP, LLC and Didric Cederholm. Also, on May 25, 2022, in connection with the Cooperation Agreement, the Company and the Rights Agent entered into Amendment No. 1 (the “Amendment”) to the Rights Agreement. Pursuant to the Amendment, effective as of the Close of Business (as defined in the Rights Agreement) on June 2, 2022, the Rights expired and no longer remain outstanding, and the Rights Agreement, as amended by the Amendment, terminated.

19. Earnings Per Share

The following tables set forth reconciliations of the basic and diluted earnings/(loss) per share computations for the periods presented:

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2022	2021	2022	2021
Basic Earnings/(Loss) per Share				
Net income/(loss)	\$ 8,005	\$ 17,630	\$ (2,256)	\$ 32,777
Less: Income distributed to participating securities	(548)	(538)	(1,097)	(1,096)
Less: Undistributed income allocable to participating securities	(358)	(1,394)	—	(2,550)
Net income/(loss) available to common stockholders – Basic EPS	\$ 7,099	\$ 15,698	\$ (3,353)	\$ 29,131
Weighted average common shares (in thousands)	143,046	145,542	142,915	145,652
Basic earnings/(loss) per share	<u>\$ 0.05</u>	<u>\$ 0.11</u>	<u>\$ (0.02)</u>	<u>\$ 0.20</u>

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	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Diluted Earnings/(Loss) per Share				
Net income/(loss) available to common stockholders	\$ 7,099	\$ 15,698	\$ (3,353)	\$ 29,131
Add back: Undistributed income allocable to participating securities	358	1,394	—	2,550
Less: Reallocation of undistributed income allocable to participating securities considered potentially dilutive	(357)	(1,367)	—	(2,529)
Net income/(loss) available to common stockholders – Diluted EPS	\$ 7,100	\$ 15,725	\$ (3,353)	\$ 29,152
Weighted Average Diluted Shares (in thousands):				
Weighted average common shares	143,046	145,542	142,915	145,652
Dilutive effect of common stock equivalents, excluding participating securities	379	3,272	—	1,352
Weighted average diluted shares, excluding participating securities (in thousands)	143,425	148,814	142,915	147,004
Diluted earnings/(loss) per share	\$ 0.05	\$ 0.11	\$ (0.02)	\$ 0.20

Diluted earnings/(loss) per share presented above is calculated using the two-class method as this method results in the lowest diluted earnings per share amount for common stock. During the six months ended June 30, 2022, there were no dilutive common stock equivalents as the Company reported a net loss for the period. Total antidilutive non-participating common stock equivalents were 303 and 300, respectively, during the three and six months ended June 30, 2022, and 55 and 130, respectively, during the comparable periods in 2021 (shares herein are reported in thousands).

Potential common shares associated with the conversion option embedded in the Convertible Notes were excluded from the computation for the three and six months ended June 30, 2022 as the Company's average stock price during those respective periods was lower than the conversion price. Potential common shares associated with the conversion option embedded in the Convertible Notes for the three and six months ended June 30, 2021 were 3,019 and 1,191, respectively (shares herein are reported in thousands).

The following table reconciles weighted average diluted shares as reported in the Consolidated Statements of Operations for the three and six months ended June 30, 2022 and 2021, which are determined pursuant to the treasury stock method, to the weighted average diluted shares used to calculate diluted earnings/(loss) per share as disclosed in the table above:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Reconciliation of Weighted Average Diluted Shares (in thousands)				
Weighted average diluted shares as disclosed on the consolidated statements of operations	158,976	164,855	142,915 ⁽¹⁾	163,062
Less: Participating securities				
Weighted average shares of common stock issuable upon conversion of the Preferred Shares (Note 11)	(14,750)	(14,750)	—	(14,750)
Potentially dilutive restricted stock awards	(801)	(1,291)	—	(1,308)
Weighted average diluted shares used to calculate diluted earnings/(loss) per share as disclosed in the table above	<u>143,425</u>	<u>148,814</u>	<u>142,915</u>	<u>147,004</u>

(1) Excludes 15,486 participating securities and 356 potentially dilutive non-participating common stock equivalents for the six months ended June 30, 2022 as the Company reported a net loss for the period (shares herein are reported in thousands).

20. Income Taxes

Effective Income Tax Rate – Three and Six Months Ended June 30, 2022

The Company's effective income tax rate during the three months ended June 30, 2022 of 25.0% resulted in income tax expense of \$2,673. The effective income tax rate differs from the federal statutory tax rate of 21% primarily due a valuation allowance on losses recognized on securities owned and non-deductible executive compensation. These items were partly offset by a non-taxable gain on revaluation of deferred consideration and a lower tax rate on foreign earnings.

The Company's effective income tax rate benefit during the six months ended June 30, 2022 of 86.2% resulted in an income tax benefit of \$14,040. The Company's effective income tax rate differs from the federal statutory tax rate of 21% primarily due to a \$19,897 reduction in unrecognized tax benefits (including interest and penalties) and a lower tax rate on foreign earnings. These items were partly offset by a non-taxable loss on revaluation of deferred consideration and an increase in the deferred tax asset valuation allowance on losses recognized on securities owned.

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Effective Income Tax Rate – Three and Six Months Ended June 30, 2021

The Company's effective income tax rate during the three months ended June 30, 2021 of 9.5% resulted in income tax expense of \$4,259. The effective income tax rate differs from the federal statutory tax rate of 21% primarily due to a lower tax rate on foreign earnings.

The Company's effective income tax rate for the six months ended June 30, 2021 of 6.5% resulted in income tax expense of \$2,290. The effective income tax rate differs from the federal statutory rate of 21% primarily due to a \$5,171 reduction in unrecognized tax benefits, a lower tax rate on foreign earnings and a non-taxable gain on revaluation of deferred consideration. These items were partly offset by tax shortfalls associated with the vesting and exercise of stock-based compensation and state and local taxes.

Deferred Tax Assets

A summary of the components of the Company's deferred tax assets at June 30, 2022 and December 31, 2021 are as follows:

	June 30, 2022	December 31, 2021
Deferred tax assets:		
Capital losses	\$16,953	\$ 16,601
Accrued expenses	2,833	4,993
Unrealized losses	2,559	614
NOLs – Foreign	1,677	1,934
Goodwill and intangible assets	1,181	1,276
Interest carryforwards	1,066	437
Stock-based compensation	741	1,359
Foreign currency translation adjustment	405	—
NOLs – U.S.	255	382
Outside basis differences	122	122
Other	357	376
Deferred tax assets	<u>28,149</u>	<u>28,094</u>
	June 30, 2022	December 31, 2021
Deferred tax liabilities:		
Fixed assets and prepaid assets	597	257
Unremitted earnings – International subsidiaries	174	118
Foreign currency translation adjustment	—	181
Deferred tax liabilities	<u>771</u>	<u>556</u>
Total deferred tax assets less deferred tax liabilities	27,378	27,538
Less: Valuation allowance	<u>(21,311)</u>	<u>(18,657)</u>
Deferred tax assets, net	<u>\$ 6,067</u>	<u>\$ 8,881</u>

Net Operating and Capital Losses – U.S.

The Company's tax effected net operating losses ("NOLs") at June 30, 2022 were \$255, which expire in 2024. The net operating loss carryforwards have been reduced by the impact of annual limitations described in the Internal Revenue Code Section 382 that arose as a result of an ownership change.

The Company's tax effected capital losses at June 30, 2022 were \$16,953. These capital losses expire between the years 2023 and 2027.

Net Operating Losses – International

One of the Company's European subsidiaries generated NOLs outside the U.S. These tax effected NOLs, all of which are carried forward indefinitely, were \$1,677 at June 30, 2022.

Valuation Allowance

The Company's valuation allowance has been established on its net capital losses, international net operating losses, unrealized losses and outside basis differences, as it is more-likely-than-not that these deferred tax assets will not be realized.

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Uncertain Tax Positions

Tax positions are evaluated utilizing a two-step process. The Company first determines whether any of its tax positions are more-likely-than-not to be sustained upon examination, based solely on the technical merits of the position. Once it is determined that a position meets this recognition threshold, the position is measured as the largest amount of benefit that is greater than 50% likely of being realized upon ultimate settlement.

In connection with the ETFS Acquisition, the Company accrued a liability for uncertain tax positions and interest and penalties at the acquisition date. The Company also recorded an offsetting indemnification asset provided by ETFS Capital as part of its agreement to indemnify the Company for any potential claims. The table below sets forth the aggregate changes in the balance of these gross unrecognized tax benefits:

	Total	Unrecognized Tax Benefits	Interest and Penalties
Balance on January 1, 2022	\$ 21,925	\$ 18,218	\$ 3,707
Decrease—Settlements ⁽¹⁾	(13,052)	(11,865)	(1,187)
Decrease—Lapse of statute of limitations ⁽¹⁾	(6,845)	(4,825)	(2,020)
Increases	7	—	7
Foreign currency translation ⁽²⁾	(583)	(485)	(98)
Balance at March 31, 2022	\$ 1,452	\$ 1,043	\$ 409
Increases	7	—	7
Foreign currency translation ⁽²⁾	(108)	(78)	(30)
Balance at June 30, 2022	<u>\$ 1,351</u>	<u>\$ 965</u>	<u>\$ 386</u>

- (1) In January 2022, an audit of ManJer's tax returns (a Jersey-based subsidiary) for the years ended December 31, 2014, 2016, 2017 and 2018 were resolved in favor of ManJer. The settlement, as well as the reduction in unrecognized tax benefits from the lapse of the statute of limitations totaling \$19,897 during the three months ended March 31, 2022, was recorded as an income tax benefit with an equal and offsetting amount recorded in other losses and gains, net, to recognize a reduction in the indemnification asset. During the three months ended March 31, 2021, an income tax benefit of \$5,171 was recorded along with an equal and offsetting amount in other losses and gains, net.
- (2) The gross unrecognized tax benefits were accrued in British pounds.

The gross unrecognized tax benefits and interest and penalties totaling \$1,351 at June 30, 2022 are included in other non-current liabilities in the Consolidated Balance Sheets. It is reasonably possible that these unrecognized tax benefits will reduce to zero in the next 12 months upon lapsing of the statute of limitations. If recognized, these unrecognized tax benefits would impact the effective tax rate. The recognition of any unrecognized tax benefits would result in an equal and offsetting adjustment to the indemnification asset which would be recorded in income before taxes due to the indemnity for any potential claims.

Income Tax Examinations

The Company is subject to U.S. federal income tax as well as income tax of multiple state, local and certain foreign jurisdictions and is currently under review by the State of Michigan for the years ended 2017 through 2020. As of June 30, 2022, with few exceptions, the Company was no longer subject to income tax examinations by any taxing authority for the years before 2017.

ManJer's tax returns (a Jersey-based subsidiary) were previously under review for the years ended December 31, 2014, 2016, 2017 and 2018. In January 2022, the audit was resolved in favor of ManJer.

Undistributed Earnings of Foreign Subsidiaries

ASC 740-30, *Income Taxes*, provides guidance that US companies do not need to recognize tax effects on foreign earnings that are indefinitely reinvested. The Company repatriates earnings of its foreign subsidiaries and therefore has recognized a deferred tax liability of \$174 and \$118 at June 30, 2022 and December 31, 2021, respectively.

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21. Shares Repurchased

On February 22, 2022, the Company's board of directors approved an increase of \$85,709 to the Company's share repurchase program to \$100,000 and extended the term for three years through April 27, 2025. Included under the Company's share repurchase program are purchases to offset future equity grants made under the Company's equity plans and purchases made in open market or privately negotiated transactions. This authority may be exercised from time to time, subject to regulatory considerations. The timing and actual number of shares repurchased will depend on a variety of factors including price, corporate and regulatory requirements, market conditions and other corporate liquidity requirements and priorities. The repurchase program may be suspended or terminated at any time without prior notice. Shares repurchased under this program are returned to the status of authorized and unissued on the Company's books and records.

The Company repurchased 588,694 shares of its common stock under this program during the three and six months ended June 30, 2022, and 4,630,733 and 5,120,496 shares, respectively, during the comparable periods in 2021. The aggregate cost of the shares repurchased during the three and six months ended June 30, 2022 was \$3,394 and the aggregate cost of the shares repurchased during the comparable periods in 2021 was \$31,876 and \$34,506, respectively. Shares repurchased under this program were returned to the status of authorized and unissued on the Company's books and records.

As of June 30, 2022, \$100,000 remained under this program for future purchases.

22. Goodwill and Intangible Assets

Goodwill

The table below sets forth goodwill which is tested annually for impairment on November 30th:

	Total
Balance at January 1, 2022	\$85,856
Changes	—
Balance at June 30, 2022	<u>\$85,856</u>

Goodwill arising from the ETFS Acquisition of \$84,057 is not deductible for tax purposes as the acquisition was structured as a stock acquisition occurring in the United Kingdom. The remainder of the goodwill is deductible for U.S. tax purposes.

Intangible Assets

Item	Gross Asset	Accumulated Amortization	Net Asset
ETFS acquisition	\$601,247	\$ —	\$601,247
Software development	724	—	724
Balance at June 30, 2022	<u>\$601,971</u>	<u>\$ —</u>	<u>\$601,971</u>

ETFS Acquisition (Indefinite-Lived)

In connection with the ETFS Acquisition, which was completed on April 11, 2018, the Company identified intangible assets valued at \$601,247 related to the right to manage AUM through customary advisory agreements. These intangible assets were determined to have indefinite useful lives and are not deductible for tax purposes. The Company's tests these indefinite-lived intangible assets annually for impairment on November 30th.

Software Development (Finite-Lived)

Internally-developed software is amortized over a useful life of three years. As of June 30, 2022, the assets were not subject to amortization, as none of the related projects have completed the software development stage.

As of June 30, 2022, expected amortization expense for the unamortized finite-lived intangible assets for the next five years and thereafter is as follows:

Remainder of 2022	\$105
2023	241
2024	241
2025	137
2026	—
2027 and thereafter	—
Total expected amortization expense	<u>\$724</u>

The weighted-average remaining useful life of the finite-lived intangible assets is 3.0 years.

23. Contingent Payments

AdvisorEngine – Sale of Financial Interests

On May 4, 2020, the Company closed a transaction to exit its investment in AdvisorEngine Inc. The fair value of upfront consideration paid to the Company was \$9,592. Consideration also included contingent payments totaling up to \$10,408 which will be payable only upon AdvisorEngine achieving certain revenue milestones during the first through fourth anniversaries of such exit. No value has been ascribed to these contingent payments at June 30, 2022 and December 31, 2021 and no contingent payments were received during the three and six months ended June 30, 2022 and 2021.

Sale of Canadian ETF Business

On February 19, 2020, the Company completed the sale of all the outstanding shares of WisdomTree Asset Management Canada, Inc., the operating entity of the Company's prior Canadian ETF business, to CI Financial Corp. The Company received CDN \$3,720 (USD \$2,774) in cash at closing and was paid CDN \$3,000 (USD \$2,360) of additional cash consideration based upon the achievement of certain AUM growth targets as determined during the 18-month anniversary of the closing date.

The Company may receive additional cash consideration of CDN \$0 to \$4,000 depending on the achievement of certain AUM growth targets as determined on the 36-month anniversary of the closing date. No value has been ascribed to these contingent payments at June 30, 2022 and December 31, 2021 and no contingent payments were received during the three and six months ended June 30, 2022 and 2021.

24. Subsequent Events

The Company evaluated subsequent events through the date of issuance of the accompanying consolidated financial statements.

Increase in Authorized Shares of Common Stock

On July 15, 2022, stockholders of the Company approved an amendment to Article IV of the Company's Amended and Restated Certificate of Incorporation to increase the Company's authorized common stock from 250,000,000 shares to 400,000,000 shares and the corresponding increase in the total number of authorized shares of capital stock the Company may issue from 252,000,000 shares to 402,000,000 shares.

The increase in the Company's authorized common stock has no impact on shares currently outstanding.

Approval of 2022 Equity Plan

On July 15, 2022, the Company's stockholders approved the 2022 Equity Plan under which the Company may issue up to 16,000,000 shares of common stock (less one share for every share granted under the 2016 Equity Plan since March 31, 2022 and inclusive of shares available under the 2016 Equity Plan as of March 31, 2022) in the form of stock options and other stock-based awards.

ITEM 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of our financial condition and results of operations should be read together with our consolidated financial statements and the related notes and the other financial information included elsewhere in this Report. In addition to historical consolidated financial information, the following discussion contains forward-looking statements that reflect our plans, estimates and beliefs. Our actual results could differ materially from those discussed in the forward-looking statements. Factors that could cause or contribute to these differences include those discussed below. For a more complete description of the risks noted above and other risks that could cause our actual results to materially differ from our current expectations, please see Item 1A “Risk Factors” in our Annual Report on Form 10-K for the fiscal year ended December 31, 2021, as amended. We assume no obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events or otherwise, unless required by law.

Executive Summary

Introduction

We are an asset management company in the business of offering transparent financial exposures to our clients and are a leading global ETP sponsor based on assets under management, or AUM, with AUM of \$74.3 billion as of June 30, 2022. More recently, we have been positioning ourselves to expand beyond our existing ETP business by leveraging blockchain technology, digital assets and principles of decentralized finance, or DeFi, to deliver transparency, choice and inclusivity to customers and consumers around the world.

Our family of ETPs includes providing exposure to equities, commodities, fixed income, leveraged and inverse, currency, cryptocurrency and alternative strategies. We have launched many first-to-market products and pioneered alternative weighting we call “Modern Alpha,” which combines the outperformance potential of active management with the benefits of passive management to offer investors cost-effective funds that are built to perform. Most of our equity-based funds employ a fundamentally weighted investment methodology, which weights securities based on factors such as dividends, earnings or investment factors, whereas most other industry indexes use a capitalization weighted methodology. These products are distributed through all major channels in the asset management industry, including banks, brokerage firms, registered investment advisers, institutional investors, private wealth managers and online brokers primarily through our sales force.

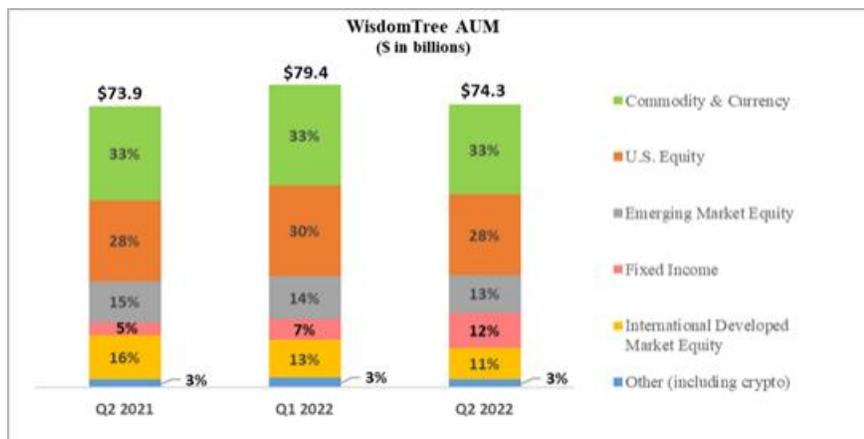
We are at the forefront of innovation and have differentiated ourselves through continued investments in technology-enabled and research-driven solutions such as our Advisor Solutions program, which includes portfolio construction, asset allocation, practice management services and digital tools for financial advisors. We seek to usher in the next chapter of financial services by introducing new revenue streams and expanding our offerings to include a new financial services mobile application, branded WisdomTree Prime™, a digital wallet that is native to the blockchain and being developed for saving, spending and investing in both native crypto assets and tokenized versions of mainstream financial assets (e.g., blockchain enabled investment funds). We also are planning to launch asset- and fund-tokenization products beginning with a dollar token, gold token and digital short term treasury fund which will be available on multiple public and permissioned blockchains, leveraging federal and state regulated entities. As we pursue our digital assets strategy, we are embracing a concept we refer to as “responsible DeFi,” which we believe upholds the foundational principles of regulation in this innovative and quickly evolving space.

We were incorporated under the laws of the state of Delaware on September 19, 1985 as Financial Data Systems, Inc. and ultimately renamed WisdomTree Investments, Inc. on September 6, 2005.

Assets Under Management

WisdomTree ETPs

We offer ETPs covering equity, commodity, fixed income, leveraged and inverse, currency, cryptocurrency and alternative strategies. The chart below sets forth the asset mix of our ETPs at June 30, 2021, March 31, 2022 and June 30, 2022:



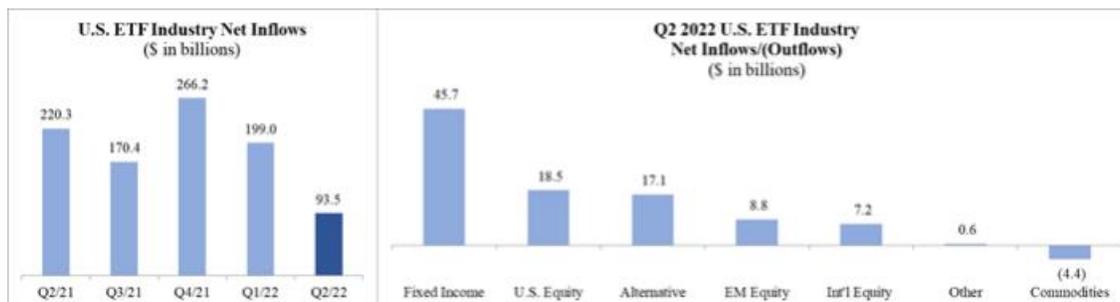
Market Environment

During the second quarter of 2022, the U.S. and Eurozone markets were under pressure as investors reacted to further interest rate rises and an increased risk of recession. U.S. and European equities fell as focus was on inflation and the continued war in Ukraine. Gold’s steady performance stood in contrast to equities as it gained support due to the high-risk environment brought on by multi-decade highs for inflation.

The S&P 500, MSCI EAFE (local currency), MSCI Emerging Markets Index (U.S. dollar) and gold prices decreased by 16.1%, 7.6%, 11.3%, and 6.4%, respectively, during the quarter. In addition, the European and Japanese equities markets both depreciated with the MSCI EMU Index and MSCI Japan Index decreasing 10.0% and 4.4%, respectively, in local currency terms for the quarter. Also, the U.S. dollar rose 5.8%, 7.4% and 10.6% versus the euro, British pound and the Japanese yen, respectively, during the quarter.

U.S. Listed ETF Industry Flows

U.S. listed ETF industry net flows for the three months ended June 30, 2022 were \$93.5 billion. Fixed income gathered the majority of those flows.

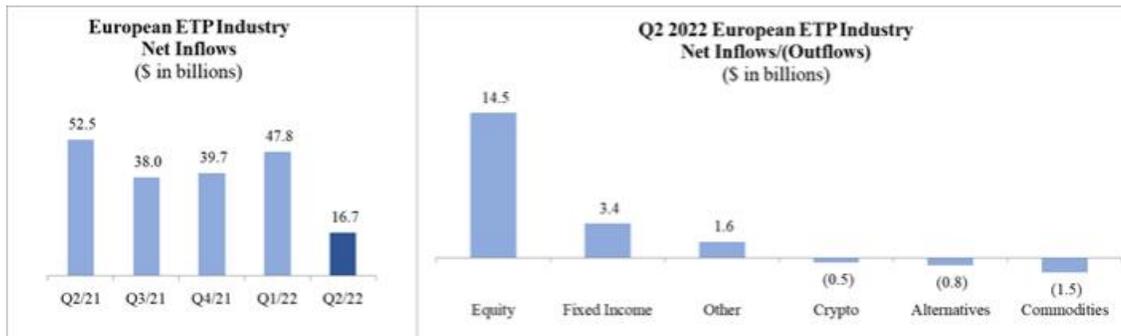


Source: Morningstar

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European Listed ETP Industry Flows

European listed ETP industry net flows were \$16.7 billion for the three months ended June 30, 2022. Equities gathered the majority of those flows.



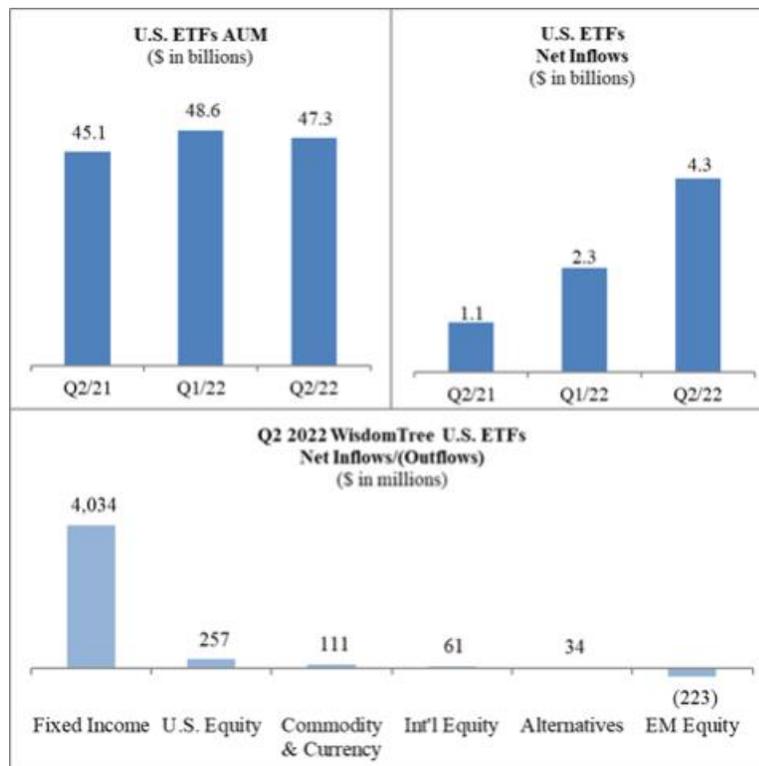
Source: Morningstar

Our Operating and Financial Results

We operate as an ETP sponsor and asset manager providing investment advisory services globally through our subsidiaries in the United States and Europe.

U.S. Listed ETFs

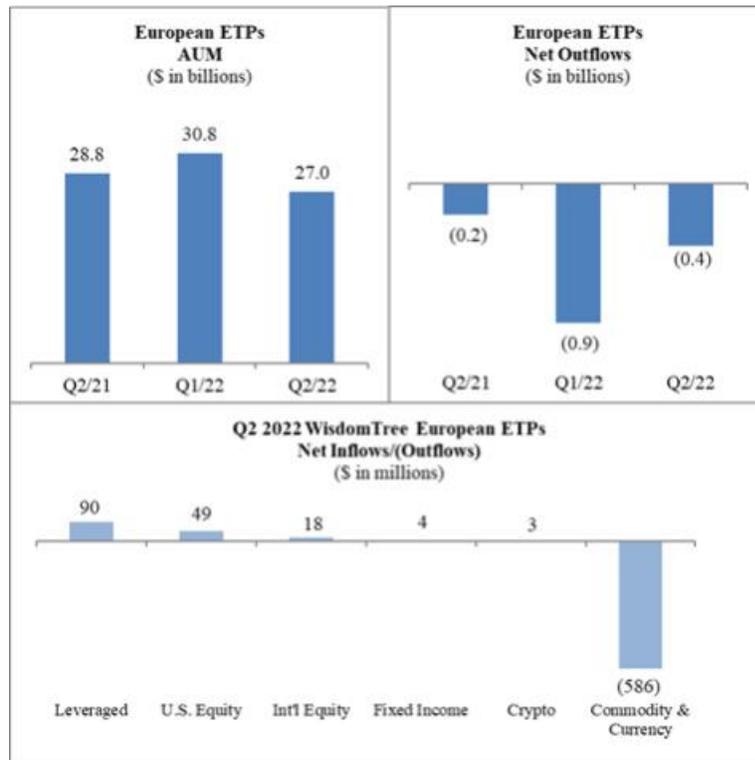
Our U.S. listed ETFs' AUM decreased from \$48.6 billion at March 31, 2022 to \$47.3 billion at June 30, 2022 due to market depreciation, partly offset by net inflows.



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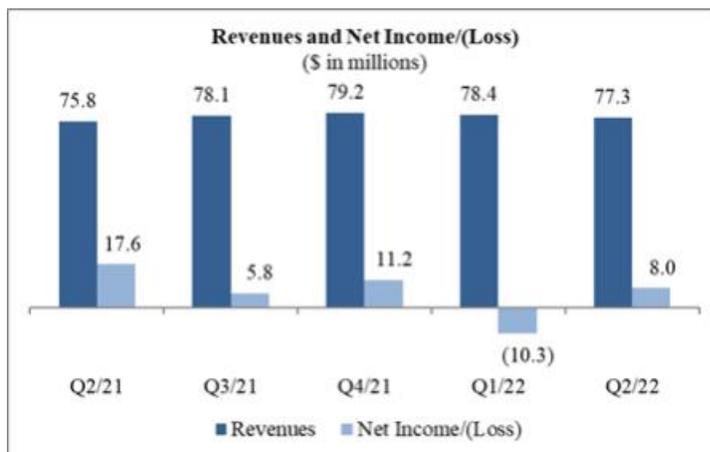
European Listed ETPs

Our European listed ETPs' AUM decreased from \$30.8 billion at March 31, 2022 to \$27.0 billion at June 30, 2022 due to market depreciation and net outflows.



Consolidated Operating Results

The following table sets forth our revenues and net income/(loss) for the most recent five quarters. Prior period amounts previously disclosed for the three months ended June 30, 2021 have been revised due to an immaterial error correction to conform with our current presentation. These revisions had no effect on previously reported net income. See Note 2 to our Consolidated Financial Statements for additional information.



- *Revenues* – We recorded operating revenues of \$77.3 million during the three months ended June 30, 2022, up 2.0% from the three months ended June 30, 2021 due to higher average AUM, partly offset by a lower average advisory fee.
- *Operating Expenses* – Total operating expenses increased 18.0% from the three months ended June 30, 2021 to \$61.4 million primarily due to higher incentive compensation and headcount, higher professional fees including \$2.0 million incurred in responding to an activist campaign, higher fund management and administration costs and higher sales and business development expenses. These increases were partly offset by lower occupancy expenses, lower depreciation and amortization expenses and lower third-party distribution fees.
- *Other Income/(Expenses)* – Other income/(expenses) includes interest income and interest expense, gains on revaluation of deferred consideration–gold payments, impairments and other net losses. For the three months ended June 30, 2022 and 2021, the gains on revaluation of deferred consideration–gold payments were \$2.3 million and \$0.5 million, respectively. In addition, during the three months ended June 30, 2022 we recognized losses on our securities owned of \$4.2 million.
- *Net income* – We reported net income of \$8.0 million during the three months ended June 30, 2022, compared to net income of \$17.6 million during the three months ended June 30, 2021.

Expense Guidance Update for the Year Ending December 31, 2022

Compensation Expense

Our compensation expense for the year ending December 31, 2022 is currently estimated to range from \$96.0 million to \$99.0 million (previously \$92.0 million to \$102.0 million). The high-end of our guidance range has been reduced as we temper our hiring plans in the wake of uncertain market conditions.

Discretionary Spending

Discretionary spending includes marketing, sales, professional fees, occupancy and equipment, depreciation and amortization and other expenses. We currently estimate our discretionary spending for the year ending December 31, 2022 to range from \$51.0 million to \$53.0 million (previously \$49.0 million to \$57.0 million).

Not included in the guidance above are non-recurring expenses of \$4.5 million incurred during the six months ended June 30, 2022, in response to an activist campaign. We do not anticipate any significant activist campaign expenses during the remainder of this year.

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Gross Margin

We define gross margin as total operating revenues less fund management and administration expenses. Gross margin percentage is calculated as gross margin divided by total operating revenues. At current AUM and flow levels, we estimate our gross margin percentage will be 79% (previously 80% to 81%) for the year ending December 31, 2022.

Contractual Gold Payments

We currently estimate our contractual gold payments expense for the year ending December 31, 2022 to be approximately \$17.0 million (previously \$18.0 million to \$19.0 million) taking into consideration current lower gold prices.

Third-Party Distribution Expense

We currently estimate third-party distribution expense to be approximately \$8.5 million (previously \$9.5 million) as recent market volatility has suppressed AUM growth on our third-party platforms.

Income Tax Expense

We currently estimate that our consolidated normalized effective tax rate will range from 21% to 22% for the year ending December 31, 2022 (unchanged from prior guidance). This estimated rate may change and is dependent upon our actual taxable income earned in relation to our forecasts as well as any other items that may arise that are not currently forecasted. Such items may include, but are not limited to, any revaluation on deferred consideration – gold payments, reductions in unrecognized tax benefits and any stock-based compensation windfalls or shortfalls.

Key Operating Statistics

The following table presents key operating statistics that serve as indicators for the performance of our business:

	Three Months Ended			Six Months Ended	
	June 30, 2022	March 31, 2022	June 30, 2021	June 30, 2022	June 30, 2021
GLOBAL ETPs (in millions)					
Beginning of period assets	\$ 79,390	\$ 77,456	\$ 69,515	\$ 77,456	\$ 67,383
Inflows/(outflows)	3,852	1,319	931	5,171	2,210
Market appreciation/(depreciation)	(8,941)	615	3,481	(8,326)	4,334
Fund closures	(4)	—	(4)	(4)	(4)
End of period assets	<u>\$ 74,297</u>	<u>\$ 79,390</u>	<u>\$ 73,923</u>	<u>\$ 74,297</u>	<u>\$ 73,923</u>
Average assets during the period	\$ 77,731	\$ 77,794	\$ 73,603	\$ 77,763	\$ 71,581
Average ETP advisory fee during the period	0.39%	0.40%	0.40%	0.39%	0.42%
Revenue days	91	90	91	181	181
Number of ETPs—end of period	346	341	318	346	318
U.S. LISTED ETFs (in millions)					
Beginning of period assets	\$ 48,622	\$ 48,210	\$ 42,163	\$ 48,210	\$ 38,517
Inflows/(outflows)	4,278	2,250	1,130	6,528	2,473
Market appreciation/(depreciation)	(5,645)	(1,838)	1,836	(7,483)	4,139
Fund closures	—	—	—	—	—
End of period assets	<u>\$ 47,255</u>	<u>\$ 48,622</u>	<u>\$ 45,129</u>	<u>\$ 47,255</u>	<u>\$ 45,129</u>
Average assets during the period	\$ 48,273	\$ 47,503	\$ 44,183	\$ 47,888	\$ 42,445
Number of ETFs – end of the period	77	77	73	77	73
EUROPEAN LISTED ETPs (in millions)					
Beginning of period assets	\$ 30,768	\$ 29,246	\$ 27,352	\$ 29,246	\$ 28,866
Inflows/(outflows)	(426)	(931)	(199)	(1,357)	(263)
Market appreciation/(depreciation)	(3,296)	2,453	1,645	(843)	195
Fund closures	(4)	—	(4)	(4)	(4)
End of period assets	<u>\$ 27,042</u>	<u>\$ 30,768</u>	<u>\$ 28,794</u>	<u>\$ 27,042</u>	<u>\$ 28,794</u>
Average assets during the period	\$ 29,458	\$ 30,291	\$ 29,420	\$ 29,875	\$ 29,137
Number of ETPs—end of period	269	264	245	269	245

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	Three Months Ended			Six Months Ended	
	June 30, 2022	March 31, 2022	June 30, 2021	June 30, 2022	June 30, 2021
PRODUCT CATEGORIES (in millions)					
Commodity & Currency					
Beginning of period assets	\$ 26,301	\$ 24,597	\$ 23,656	\$ 24,597	\$ 25,880
Inflows/(outflows)	(475)	(1,053)	(318)	(1,528)	(979)
Market appreciation/(depreciation)	(2,201)	2,757	1,434	556	(129)
End of period assets	\$ 23,625	\$ 26,301	\$ 24,772	\$ 23,625	\$ 24,772
Average assets during the period	\$ 25,765	\$ 25,890	\$ 25,550	\$ 25,828	\$ 25,420
U.S. Equity					
Beginning of period assets	\$ 23,738	\$ 23,860	\$ 20,019	\$ 23,860	\$ 18,367
Inflows/(outflows)	306	779	191	1,085	409
Market appreciation/(depreciation)	(2,986)	(901)	1,075	(3,887)	2,509
End of period assets	\$ 21,058	\$ 23,738	\$ 21,285	\$ 21,058	\$ 21,285
Average assets during the period	\$ 22,366	\$ 23,139	\$ 20,982	\$ 22,753	\$ 20,151
International Developed Market Equity					
Beginning of period assets	\$ 11,407	\$ 11,876	\$ 9,975	\$ 11,876	\$ 9,406
Inflows/(outflows)	79	97	398	176	415
Market appreciation/(depreciation)	(1,523)	(566)	403	(2,089)	955
End of period assets	\$ 9,963	\$ 11,407	\$ 10,776	\$ 9,963	\$ 10,776
Average assets during the period	\$ 10,687	\$ 11,527	\$ 10,511	\$ 11,107	\$ 10,145
Emerging Market Equity					
Beginning of period assets	\$ 9,991	\$ 10,375	\$ 10,477	\$ 10,375	\$ 8,539
Inflows/(outflows)	(223)	189	531	(34)	2,194
Market appreciation/(depreciation)	(1,382)	(573)	511	(1,955)	786
End of period assets	\$ 8,386	\$ 9,991	\$ 11,519	\$ 8,386	\$ 11,519
Average assets during the period	\$ 9,155	\$ 10,116	\$ 11,012	\$ 9,636	\$ 10,444
Fixed Income					
Beginning of period assets	\$ 5,417	\$ 4,352	\$ 3,241	\$ 4,352	\$ 3,308
Inflows/(outflows)	4,038	1,242	168	5,280	178
Market appreciation/(depreciation)	(264)	(177)	27	(441)	(50)
End of period assets	\$ 9,191	\$ 5,417	\$ 3,436	\$ 9,191	\$ 3,436
Average assets during the period	\$ 7,425	\$ 4,688	\$ 3,332	\$ 6,057	\$ 3,282
Leveraged & Inverse					
Beginning of period assets	\$ 1,856	\$ 1,775	\$ 1,519	\$ 1,775	\$ 1,477
Inflows/(outflows)	90	(2)	(2)	88	(7)
Market appreciation/(depreciation)	(328)	83	174	(245)	221
End of period assets	\$ 1,618	\$ 1,856	\$ 1,691	\$ 1,618	\$ 1,691
Average assets during the period	\$ 1,765	\$ 1,830	\$ 1,664	\$ 1,798	\$ 1,609
Cryptocurrency					
Beginning of period assets	\$ 383	\$ 357	\$ 377	\$ 357	\$ 167
Inflows/(outflows)	3	37	8	40	44
Market appreciation/(depreciation)	(235)	(11)	(156)	(246)	18
End of period assets	\$ 151	\$ 383	\$ 229	\$ 151	\$ 229
Average assets during the period	\$ 265	\$ 324	\$ 300	\$ 295	\$ 282
Alternatives					
Beginning of period assets	\$ 293	\$ 261	\$ 227	\$ 261	\$ 215
Inflows/(outflows)	34	29	(39)	63	(39)
Market appreciation/(depreciation)	(22)	3	10	(19)	22
End of period assets	\$ 305	\$ 293	\$ 198	\$ 305	\$ 198
Average assets during the period	\$ 299	\$ 275	\$ 231	\$ 287	\$ 227
Closed ETPs					
Beginning of period assets	\$ 4	\$ 3	\$ 24	\$ 3	\$ 24
Inflows/(outflows)	—	1	(6)	1	(5)
Market appreciation/(depreciation)	—	—	3	—	2
Fund closures	(4)	—	(4)	(4)	(4)
End of period assets	\$ —	\$ 4	\$ 17	\$ —	\$ 17
Average assets during the period	\$ 4	\$ 5	\$ 21	\$ 5	\$ 23
Headcount:	264	253	227	264	227

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Note: Previously issued statistics may be restated due to fund closures and trade adjustments
Source: WisdomTree

Three Months Ended June 30, 2022 Compared to Three Months Ended June 30, 2021

Selected Operating and Financial Information

AUM (in millions)	Three Months Ended June 30,		Change	Percent Change
	2022	2021		
Average AUM	\$ 77,731	\$ 73,603	\$ 4,128	5.6%
Operating Revenues (in thousands)				
Advisory fees ⁽¹⁾	\$ 75,586	\$ 74,169	\$ 1,417	1.9%
Other income	1,667	1,606	61	3.8%
Total revenues	\$ 77,253	\$ 75,775	\$ 1,478	2.0%

⁽¹⁾ Advisory fees previously reported have been revised due to an immaterial error correction. These revisions had no effect on previously reported net income. See Note 2 to our Consolidated Financial Statements for additional information.

Average AUM

Our average AUM increased 5.6% from \$73.6 billion at June 30, 2021 to \$77.7 billion at June 30, 2022 due to net inflows, partly offset by market depreciation.

Operating Revenues

Advisory fees

Advisory fee revenues increased 1.9% from \$74.2 million during the three months ended June 30, 2021 to \$75.6 million in the comparable period in 2022 due to higher average AUM, partly offset by a lower average advisory fee. Our average advisory fee was 0.39% during the three months ended June 30, 2022 and 0.40% during the same period in 2021.

Other income

Other income increased 3.8% from \$1.6 million during the three months ended June 30, 2021 to \$1.7 million in the comparable period in 2022 primarily due to higher fees associated with our European listed products.

Operating Expenses

(in thousands)	Three Months Ended June 30,		Change	Percent Change
	2022	2021		
Compensation and benefits	\$24,565	\$ 20,331	\$4,234	20.8%
Fund management and administration ⁽¹⁾	16,076	14,367	1,709	11.9%
Marketing and advertising	3,894	3,594	300	8.3%
Sales and business development	3,131	2,159	972	45.0%
Contractual gold payments	4,446	4,314	132	3.1%
Professional fees	4,308	1,921	2,387	124.3%
Occupancy, communications and equipment	1,049	1,266	(217)	(17.1%)
Depreciation and amortization	53	256	(203)	(79.3%)
Third-party distribution fees	1,818	2,130	(312)	(14.6%)
Other	2,109	1,752	357	20.4%
Total operating expenses	\$61,449	\$ 52,090	\$9,359	18.0%

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As a Percent of Revenues:	Three Months Ended June 30,	
	2022	2021
Compensation and benefits	31.7%	26.8%
Fund management and administration ⁽¹⁾	20.7%	19.0%
Marketing and advertising	5.0%	4.8%
Sales and business development	4.1%	2.8%
Contractual gold payments	5.8%	5.7%
Professional fees	5.6%	2.5%
Occupancy, communications and equipment	1.4%	1.7%
Depreciation and amortization	0.1%	0.3%
Third-party distribution fees	2.4%	2.8%
Other	2.7%	2.3%
Total operating expenses	79.5%	68.7%

⁽¹⁾ Fund management and administration expenses previously reported have been revised due to an immaterial error correction. These revisions had no effect on previously reported net income. See Note 2 to our Consolidated Financial Statements for additional information.

Compensation and benefits

Compensation and benefits expense increased 20.8% from \$20.3 million during the three months ended June 30, 2021 to \$24.6 million in the comparable period in 2022 due to higher incentive compensation and headcount. Headcount was 227 and 264 at June 30, 2021 and 2022, respectively.

Fund management and administration

Fund management and administration expense increased 11.9% from \$14.4 million during the three months ended June 30, 2021 to \$16.1 million in the comparable period in 2022 due to higher average AUM.

Marketing and advertising

Marketing and advertising expense increased 8.3% from \$3.6 million during the three months ended June 30, 2021 to \$3.9 million in the comparable period in 2022 primarily due to higher spending on online marketing campaigns.

Sales and business development

Sales and business development expense increased 45.0% from \$2.2 million during the three months ended June 30, 2021 to \$3.1 million in the comparable period in 2022 primarily due to higher spending on conferences and market data.

Contractual gold payments

Contractual gold payments expense increased 3.1% from \$4.3 million during the three months ended June 30, 2021 to \$4.4 million in the comparable period in 2022. This expense was associated with the payment of 2,375 ounces of gold and was calculated using the average daily spot price of \$1,816 and \$1,872 per ounce during the three months ended June 30, 2021 and 2022, respectively.

Professional fees

Professional fees increased 124.3% from \$1.9 million during the three months ended June 30, 2021 to \$4.3 million in the comparable period in 2022 due to expenses incurred in response to an activist campaign.

Occupancy, communications and equipment

Occupancy, communications and equipment expense decreased 17.1% from \$1.3 million during the three months ended June 30, 2021 to \$1.0 million in the comparable period in 2022 due to the termination of our New York office lease in September 2021.

Depreciation and amortization

Depreciation and amortization expense decreased 79.3% from \$0.3 million during the three months ended June 30, 2021 to \$0.1 million in the comparable period in 2022 due to the write-off of fixed assets related to exiting our New York office in September 2021.

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Third-party distribution fees

Third-party distribution fees decreased 14.6% from \$2.1 million during the three months ended June 30, 2021 to \$1.8 million in the comparable period in 2022 primarily due to lower fees paid to our third-party marketing agent in Latin America, partly offset by new platform relationships in Europe.

Other

Other expenses increased 20.4% from \$1.8 million during the three months ended June 30, 2021 to \$2.1 million in the comparable period in 2022 due to higher insurance costs and other miscellaneous items.

Other Income/(Expenses)

(in thousands)	Three Months Ended June 30,		Change	Percent Change
	2022	2021		
Interest expense	\$ (3,733)	\$ (2,567)	\$ (1,166)	45.4%
Gain on revaluation of deferred consideration – gold payments	2,311	497	1,814	365.0%
Interest income	770	225	545	242.2%
Other losses and gains, net	(4,474)	49	(4,523)	n/a
Total other expenses, net	<u>\$ (5,126)</u>	<u>\$ (1,796)</u>	<u>\$ (3,330)</u>	<u>185.4%</u>

As a Percent of Revenues:	Three Months Ended June 30,	
	2022	2021
Interest expense	(4.8%)	(3.5%)
Gain on revaluation of deferred consideration – gold payments	3.0%	0.7%
Interest income	1.0%	0.3%
Other losses and gains, net	(5.8%)	0.1%
Total other expenses, net	<u>(6.6%)</u>	<u>(2.4%)</u>

Interest expense

Interest expense increased 45.4% from \$2.6 million during the three months ended June 30, 2021 to \$3.7 million in the comparable period in 2022 due to a higher level of debt outstanding, partly offset by a lower effective interest rate. Our effective interest rate during the three months ended June 30, 2021 and 2022 was 5.2% and 4.6%, respectively.

Gain on revaluation of deferred consideration

We recognized a gain on revaluation of deferred consideration of \$0.5 million and \$2.3 million during the three months ended June 30, 2021 and 2022, respectively. The gain in the current quarter was due to lower spot gold prices, partly offset by a steepening of the forward-looking gold curve. The magnitude of any gain or loss is highly correlated to the magnitude of the change in the forward-looking price of gold.

Interest income

Interest income increased 242.2% from \$0.2 million during the three months ended June 30, 2021 to \$0.8 million in the comparable period in 2022 due to an increase in securities owned.

Other losses and gains, net

Other losses and gains, net were \$0.0 million and (\$4.5) million during the three months ended June 30, 2021 and 2022, respectively. During the three months ended June 30, 2022, we recognized losses on our securities owned of \$4.2 million. Gains and losses also generally arise from the sale of gold earned from management fees paid by our physically-backed gold ETPs, foreign exchange fluctuations and other miscellaneous items.

Income taxes

Our effective income tax rate for the three months ended June 30, 2022 of 25.0% resulted in an income tax expense of \$2.7 million. Our tax rate differs from the federal statutory rate of 21% primarily due to a valuation allowance on losses recognized on securities owned and non-deductible compensation. These items were partly offset by a non-taxable gain on revaluation of deferred consideration and a lower tax rate on foreign earnings.

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Our effective income tax rate for the three months ended June 30, 2021 of 19.5% resulted in income tax expense of \$4.3 million. Our effective income tax rate differs from the federal statutory tax rate of 21% primarily due to a lower tax rate on foreign earnings.

Six Months Ended June 30, 2022 Compared to Six Months Ended June 30, 2021

Selected Operating and Financial Information

	Six Months Ended June 30,		Change	Percent Change
	2022	2021		
Global AUM (in millions)				
Average global AUM	\$ 77,763	\$ 71,581	\$6,182	8.6%
Revenues (in thousands)				
Advisory fees ⁽¹⁾	\$152,103	\$144,211	\$7,892	5.5%
Other income	3,518	2,820	698	24.8%
Total revenues	<u>\$155,621</u>	<u>\$147,031</u>	<u>\$8,590</u>	<u>5.8%</u>

(1) Advisory fees previously reported have been revised due to an immaterial error correction. These revisions had no effect on previously reported net income. See Note 2 to our Consolidated Financial Statements for additional information.

Average Global AUM

Our average global AUM increased 8.6% from \$71.6 billion at June 30, 2021 to \$77.8 billion at June 30, 2022 due to net inflows, partly offset by market depreciation.

Operating Revenues

Advisory fees

Advisory fee revenues increased 5.5% from \$144.2 million during the six months ended June 30, 2021 to \$152.1 million in the comparable period in 2022 due to higher average global AUM, partly offset by a lower average advisory fee. Our average global advisory fee was 0.42% and 0.39% during the six months ended June 30, 2021 and June 30, 2022, respectively.

Other income

Other income increased 24.8% from \$2.8 million during the six months ended June 30, 2021 to \$3.5 million in the comparable period in 2022 primarily due to higher fees associated with our European listed products.

Operating Expenses

(in thousands)	Six Months Ended June 30,		Change	Percent Change
	2022	2021		
Compensation and benefits	\$ 49,352	\$ 42,958	\$ 6,394	14.9%
Fund management and administration	31,570	28,314	3,256	11.5%
Marketing and advertising	7,917	6,600	1,317	20.0%
Sales and business development	5,740	4,304	1,436	33.4%
Contractual gold payments	8,896	8,584	312	3.6%
Professional fees	8,767	3,934	4,833	122.9%
Occupancy, communications and equipment	1,802	2,741	(939)	(34.3%)
Depreciation and amortization	100	508	(408)	(80.3%)
Third-party distribution fees	4,030	3,473	557	16.0%
Other	3,954	3,323	631	19.0%
Total operating expenses	<u>\$122,128</u>	<u>\$104,739</u>	<u>\$17,389</u>	<u>16.6%</u>

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As a Percent of Revenues:	Six Months Ended	
	June 30,	
	2022	2021
Compensation and benefits	31.7%	29.2%
Fund management and administration	20.3%	19.3%
Marketing and advertising	5.1%	4.4%
Sales and business development	3.7%	2.9%
Contractual gold payments	5.7%	5.8%
Professional fees	5.6%	2.7%
Occupancy, communications and equipment	1.2%	1.9%
Depreciation and amortization	0.1%	0.3%
Third-party distribution fees	2.6%	2.4%
Other	2.5%	2.3%
Total operating expenses	<u>78.5%</u>	<u>71.2%</u>

Compensation and benefits

Compensation and benefits expense increased 14.9% from \$43.0 million during the six months ended June 30, 2021 to \$49.4 million in the comparable period in 2022 due to higher incentive compensation and headcount.

Fund management and administration

Fund management and administration expense increased 11.5% from \$28.3 million during the six months ended June 30, 2021 to \$31.6 million in the comparable period in 2022 primarily due to higher average global AUM.

Marketing and advertising

Marketing and advertising expense increased 20.0% from \$6.6 million during the six months ended June 30, 2021 to \$7.9 million in the comparable period in 2022 due to higher spending on online marketing campaigns.

Sales and business development

Sales and business development expense increased 33.4% from \$4.3 million during the six months ended June 30, 2021 to \$5.7 million in the comparable period in 2022 primarily due to higher spending on conferences and market data.

Contractual gold payments

Contractual gold payments expense increased 3.6% from \$8.6 million during the six months ended June 30, 2021 to \$8.9 million in the comparable period in 2022. This expense was associated with the payment of 4,750 ounces of gold and was calculated using the average daily spot price of \$1,807 and \$1,873 per ounce during the six months ended June 30, 2021 and 2022, respectively.

Professional fees

Professional fees increased 122.9% from \$3.9 million during the six months ended June 30, 2021 to \$8.8 million in the comparable period in 2022 due to expenses incurred in response to an activist campaign.

Occupancy, communications and equipment

Occupancy, communications and equipment expense decreased 34.3% from \$2.7 million during the six months ended June 30, 2021 to \$1.8 million in the comparable period in 2022 due to the termination of our New York office lease in September 2021.

Depreciation and amortization

Occupancy, communications and equipment expense decreased 80.3% from \$0.5 million during the six months ended June 30, 2021 to \$0.1 million in the comparable period in 2022 due to the write-off of fixed assets related to exiting our New York office in September 2021.

Third-party distribution fees

Third-party distribution fees increased 16.0% from \$3.5 million during the six months ended June 30, 2021 to \$4.0 million in the comparable period in 2022 due to new platform relationships in Europe.

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Other

Other expenses increased 19.0% from \$3.3 million during the six months ended June 30, 2021 to \$4.0 million in the comparable period in 2022 due to miscellaneous expenses incurred in response to an activist campaign, higher insurance costs and other miscellaneous matters.

Other Income/(Expenses)

<i>(in thousands)</i>	Six Months Ended June 30,			Percent Change
	2022	2021	Change	
Interest expense	\$ (7,465)	\$(4,863)	\$ (2,602)	53.5%
(Loss)/gain on revaluation of deferred consideration – gold payments	(14,707)	3,329	(18,036)	n/a
Interest income	1,564	456	1,108	243.0%
Impairments	—	(303)	303	(100.0%)
Other losses, net	(29,181)	(5,844)	(23,337)	399.3%
Total other expenses, net	<u>\$(49,789)</u>	<u>\$(7,225)</u>	<u>\$(42,564)</u>	<u>589.1%</u>

<i>As a Percent of Revenues:</i>	Six Months Ended June 30,	
	2022	2021
Interest expense	(4.8%)	(3.3%)
(Loss)/gain on revaluation of deferred consideration – gold payments	(9.5%)	2.3%
Interest income	1.0%	0.3%
Impairments	n/a	(0.2%)
Other losses, net	<u>(18.7%)</u>	<u>(4.0%)</u>
Total other expenses, net	<u>(32.0%)</u>	<u>(4.9%)</u>

Interest expense

Interest expense increased 53.5% from \$4.9 million during the six months ended June 30, 2021 to \$7.5 million in the comparable period in 2022 due to a higher level of debt outstanding, partly offset by a lower effective interest rate. Our effective interest rate during the six months ended June 30, 2021 and 2022 was 5.2% and 4.6%, respectively.

(Loss)/gain on revaluation of deferred consideration

We recognized a gain on revaluation of deferred consideration of \$3.3 million during the six months ended June 30, 2021 as compared to a loss of (\$14.7) million during the six months ended June 30, 2022. The loss in the current period was due to an increase in forward-looking gold prices. The gain in the prior period was due to a decline in spot gold prices, partly offset by a steepening of the forward-looking gold curve. The magnitude of any gain or loss is highly correlated to the magnitude of the change in the forward-looking price of gold.

Interest income

Interest income increased 243.0% from \$0.5 million during the six months ended June 30, 2021 to \$1.6 million in the comparable period in 2022 due to an increase in our securities owned.

Impairments

During the six months ended June 30, 2021, we recognized an impairment charge of \$0.3 million upon exiting our London office. There were no impairment charges during the six months ended June 20, 2022.

Other losses, net

Other losses, net were \$5.9 million and \$29.2 million during the six months ended June 30, 2021 and 2022, respectively. The six months ended June 30, 2022 includes a non-cash charge of \$19.9 million arising from the release of a tax-related indemnification asset due to the favorable resolution of certain tax audits as well as the expiration of the statute of limitations (an equal and offsetting benefit has been recognized in income tax expense). We also recognized \$9.3 million of losses on our securities owned.

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Gains and losses also generally arise from the sale of gold earned from management fees paid by our physically-backed gold ETPs, foreign exchange fluctuations, securities owned and other miscellaneous items.

Income taxes

Our effective income tax rate benefit for the six months ended June 30, 2022 was 86.2% resulting in an income tax benefit of \$14.0 million. Our tax rate differs from the federal statutory rate of 21% primarily due to a reduction in unrecognized tax benefits associated with the release of the tax-related indemnification asset described above and a lower tax rate on foreign earnings. These items were partly offset by a non-taxable loss on revaluation of deferred consideration and an increase in the deferred tax asset valuation allowance on losses recognized on securities owned.

Our effective income tax rate for the six months ended June 30, 2021 of 6.5% resulted in income tax expense of \$2.3 million. Our effective income tax rate differs from the federal statutory rate of 21% primarily due to a \$5.2 million reduction in unrecognized tax benefits, a lower tax rate on foreign earnings and a non-taxable gain on revaluation of deferred consideration. These items were partly offset by tax shortfalls associated with the vesting and exercise of stock-based compensation and state and local taxes.

Non-GAAP Financial Measurements

In an effort to provide additional information regarding our results as determined by GAAP, we also disclose certain non-GAAP information which we believe provides useful and meaningful information. Our management reviews these non-GAAP financial measurements when evaluating our financial performance and results of operations; therefore, we believe it is useful to provide information with respect to these non-GAAP measurements so as to share this perspective of management. Non-GAAP measurements do not have any standardized meaning, do not replace nor are superior to GAAP financial measurements and are unlikely to be comparable to similar measures presented by other companies. These non-GAAP financial measurements should be considered in the context with our GAAP results. The non-GAAP financial measurements contained in this Report include:

Adjusted Net Income and Diluted Earnings per Share

We disclose adjusted net income and adjusted diluted earnings per share as non-GAAP financial measurements in order to report our results exclusive of items that are non-recurring or not core to our operating business. We believe presenting these non-GAAP financial measurements provides investors with a consistent way to analyze our performance. These non-GAAP financial measurements exclude the following:

Unrealized gains or losses on the revaluation of deferred consideration: Deferred consideration is an obligation we assumed in connection with the ETFS Acquisition that is carried at fair value. This item represents the present value of an obligation to pay fixed ounces of gold into perpetuity and is measured using forward-looking gold prices. Changes in the forward-looking price of gold and changes in the discount rate used to compute the present value of the annual payment obligations may have a material impact on the carrying value of the deferred consideration and our reported financial results. We exclude this item when calculating our non-GAAP financial measurements as it is not core to our operating business. The item is not adjusted for income taxes as the obligation was assumed by a wholly-owned subsidiary of ours that is based in Jersey, a jurisdiction where we are subject to a zero percent tax rate.

Gains or losses on securities owned: We account for securities owned as trading securities which requires these instruments to be measured at fair value with gains and losses reported in net income. In the third quarter of 2021, we began excluding these items when calculating our non-GAAP financial measurements as these securities have become a more meaningful percentage of total assets and the gains and losses introduce volatility in earnings and are not core to our operating business.

Tax shortfalls and windfalls upon vesting and exercise of stock-based compensation awards: GAAP requires the recognition of tax windfalls and shortfalls within income tax expense. These items arise upon the vesting and exercise of stock-based compensation awards and the magnitude is directly correlated to the number of awards vesting/exercised as well as the difference between the price of our stock on the date the award was granted and the date the award vested or was exercised. We exclude these items when calculating our non-GAAP financial measurements as they introduce volatility in earnings and are not core to our operating business.

Other items: Unrealized gains and losses recognized on our investments, changes in the deferred tax asset valuation allowance on securities owned, expenses incurred in response to an activist campaign and impairment charges.

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	Three Months Ended		Six Months Ended	
	June 30, 2022	June 30, 2021	June 30, 2022	June 30, 2021
Adjusted Net Income and Diluted Earnings per Share:				
Net income/(loss), as reported	\$ 8,005	\$ 17,630	\$ (2,256)	\$ 32,777
Deduct/add back: (Gain)/loss on revaluation of deferred consideration	(2,311)	(497)	14,707	(3,329)
Add back: Increase in deferred tax asset valuation allowance on securities owned	901	—	2,911	—
Add back: Losses on securities owned, net of income taxes	3,165	—	7,058	—
Add back: Expenses incurred in response to an activist campaign, net of income taxes	1,532	—	3,376	—
Add back/deduct: Tax shortfalls/(windfalls) upon vesting and exercise of stock-based compensation awards	20	(233)	(545)	(110)
Deduct/add back: Unrealized (gain)/loss recognized on our investments, net of income taxes	(55)	(105)	69	(284)
Add back: Impairments, net of income taxes (where applicable)	—	—	—	245
Adjusted net income	\$ 11,257	\$ 16,795	\$ 25,320	\$ 29,299
Deduct: Income distributed to participating securities	(548)	(538)	(1,097)	(1,096)
Deduct: Undistributed income allocable to participating securities	(724)	(1,277)	(1,763)	(2,145)
Adjusted net income available to common stockholders	\$ 9,985	\$ 14,980	\$ 22,460	\$ 26,058
Weighted average diluted shares, excluding participating securities (in thousands) (See Note 19 to our Consolidated Financial Statements)	143,425	148,814	143,271	147,004
Adjusted earnings per share – diluted	\$ 0.07	\$ 0.10	\$ 0.16	\$ 0.18

Liquidity and Capital Resources

The following table summarizes key data regarding our liquidity, capital resources and use of capital to fund our operations:

	June 30, 2022	December 31, 2021
Balance Sheet Data (in thousands):		
Cash and cash equivalents	\$109,736	\$ 140,709
Securities owned, at fair value	128,852	127,166
Accounts receivable	34,061	31,864
Securities held-to-maturity	277	308
Total: Liquid assets	272,926	300,047
Less: Total current liabilities ⁽¹⁾	(68,298)	(83,667)
Less: Regulatory capital requirement – certain international subsidiaries	(25,450)	(12,320)
Total: Available liquidity	\$179,178	\$ 204,060

- (1) Excludes convertible notes in the amount of \$173,325 scheduled to mature on June 15, 2023, as we are actively exploring refinancing and extension alternatives.

	Six Months Ended June 30,	
	2022	2021
Cash Flow Data (in thousands):		
Operating cash flows ⁽¹⁾	\$ 8,542	\$ 22,390
Investing cash flows ⁽¹⁾	(23,070)	(30,453)
Financing cash flows	(13,073)	102,147
Foreign exchange rate effect	(3,372)	126
(Decrease)/increase in cash and cash equivalents	\$ (30,973)	\$ 94,210

- (1) Cash flows from purchasing securities owned, at fair value of \$29,819 and selling securities owned, at fair value of \$5,212 during the six months ended June 30, 2021 that were not acquired specifically for resale or associated with the Company's business activities have been reclassified from operating activities to investing activities to conform to the current year's presentation in the Consolidated Statements of Cash Flows. See Note 2 for additional information.

Liquidity

We consider our available liquidity to be our liquid assets, less our current liabilities and regulatory capital requirements of certain international subsidiaries. Liquid assets consist of cash and cash equivalents, securities owned, at fair value, accounts receivable and securities held-to-maturity. Our securities owned, at fair value are highly liquid investments. Accounts receivable are current assets and primarily represent receivables from advisory fees we earn from our ETPs. Our current liabilities consist primarily of payments owed to vendors and third parties in the normal course of business, deferred consideration and accrued incentive compensation for employees.

Cash and cash equivalents decreased \$31.0 million during the six months ended June 30, 2022 due to \$32.5 million used to purchase securities owned, \$11.9 million used to purchase investments, \$9.7 million used to pay dividends on our common stock, \$3.4 million used to repurchase our common stock, \$3.4 million of foreign exchange rate losses and \$0.1 million used in other activities. These decreases were partly offset by \$21.5 million of proceeds from the sale of securities owned and \$8.5 million of net cash provided by operating activities.

Cash and cash equivalents increased \$94.2 million during the six months ended June 30, 2021 due to \$150.0 million of proceeds received from the issuance of the 2021 Notes, \$22.4 million of net cash provided by operating activities, \$5.2 million of proceeds from the sale of securities owned, at fair value and \$0.9 million provided by other activities. These increases were partly offset by \$34.5 million used to repurchase our common stock, \$29.8 million used to purchase securities owned, at fair value, \$9.9 million used to pay dividends on our common stock, \$5.8 million used to purchase investments and \$4.3 million used to pay the 2021 Note issuance costs.

Issuance of Convertible Notes

On June 14, 2021, we issued and sold \$150.0 million in aggregate principal amount of 3.25% Convertible Senior Notes due 2026 (the “2021 Notes”) pursuant to an indenture dated June 14, 2021, between us and U.S. Bank National Association, as trustee, in a private offering to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933, as amended (“Rule 144A”).

On June 16, 2020, we issued and sold \$150.0 million in aggregate principal amount of 4.25% Convertible Senior Notes due 2023 (the “June 2020 Notes”) pursuant to an indenture dated June 16, 2020, between us and the trustee, in a private offering to qualified institutional buyers pursuant to Rule 144A. On August 13, 2020, we issued and sold \$25.0 million in aggregate principal amount of 4.25% Convertible Senior Notes due 2023 at a price equal to 101% of the principal amount thereof, plus interest deemed to have accrued since June 16, 2020, which constitute a further issuance of, and form a single series with, our June 2020 Notes (the “August 2020 Notes” and together with the June 2020 Notes, the “2020 Notes”).

After the issuance of the 2021 Notes (and together with the 2020 Notes, the “Convertible Notes”), we had \$325.0 million aggregate principal amount of Convertible Notes outstanding.

Key terms of the Convertible Notes are as follows:

	2021 Notes	2020 Notes
	June 15, 2026	June 15, 2023
Maturity date (unless earlier converted, repurchased or redeemed)	June 15, 2026	June 15, 2023
Interest rate	3.25%	4.25%
Conversion price	\$ 11.04	\$ 5.92
Conversion rate	90.5797	168.9189
Redemption price	\$ 14.35	\$ 7.70

- *Interest rate:* Payable semiannually in arrears on June 15 and December 15 of each year.
- *Conversion price:* Convertible at an initial conversion rate (as disclosed in the table above) of shares of our common stock per \$1,000 principal amount of notes (equivalent to an initial conversion price as disclosed in the table above).
- *Conversion:* Holders may convert at their option at any time prior to the close of business on the business day immediately preceding March 15, 2026 and March 15, 2023 in respect of the 2021 Notes and 2020 Notes, respectively, only under the following circumstances: (i) if the last reported sale price of our common stock for at least 20 trading days during a period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each applicable trading day; (ii) during the five business day period after any ten consecutive trading day period (the “measurement period”) in which the trading price per \$1,000 principal amount of the Convertible Notes for each trading day of the measurement period was less than 98% of the product of the last reported sales price of our common stock and the conversion rate on each such trading day; (iii) upon a notice of redemption delivered by us in accordance with the terms of the indentures but only with respect to the Convertible Notes called (or deemed called) for redemption; or (iv) upon the occurrence of specified corporate events. On or after March 15, 2026 and March 15, 2023 in respect of the 2021 Notes and 2020 Notes, respectively, until the close of business on the second scheduled trading day immediately preceding the maturity date, holders may convert their Convertible Notes at any time, regardless of the foregoing circumstances.

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- *Cash settlement of principal amount:* Upon conversion, we will pay cash up to the aggregate principal amount of the Convertible Notes to be converted. At our election, we will also settle our conversion obligation in excess of the aggregate principal amount of the Convertible Notes being converted in either cash, shares of our common stock or a combination of cash and shares of our common stock.
- *Redemption price:* We may redeem for cash all or any portion of the notes, at our option, on or after June 20, 2023 and June 20, 2021 in respect of the 2021 Notes and 2020 Notes, respectively, and on or prior to the 55th scheduled trading day immediately preceding the maturity date, if the last reported sale price of our common stock has been at least 130% of the conversion price then in effect for at least 20 trading days, including the trading day immediately preceding the date on which we provide notice of redemption, during any 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date on which we provide notice of redemption, at a redemption price equal to 100% of the principal amount of the notes to be redeemed, plus accrued and unpaid interest to, but excluding the redemption date. No sinking fund is provided for the Convertible Notes.
- *Limited investor put rights:* Holders of the Convertible Notes have the right to require us to repurchase for cash all or a portion of their notes at 100% of their principal amount, plus any accrued and unpaid interest, upon the occurrence of certain change of control transactions or liquidation, dissolution or common stock delisting events.
- *Conversion rate increase in certain customary circumstances:* In certain circumstances, conversions in connection with a “make-whole fundamental change” (as defined in the indentures) or conversions of Convertible Notes called (or deemed called) for redemption may result in an increase to the conversion rate, provided that the conversion rate will not exceed 144.9275 shares and 270.2702 shares of our common stock per \$1,000 principal amount of the 2021 Notes and 2020 Notes, respectively (the equivalent of 69,036,410 shares of our common stock), subject to adjustment.
- *Seniority and Security:* The 2021 Notes and 2020 Notes rank equal in right of payment, and are our senior unsecured obligations, but are subordinated in right of payment to our obligations to make certain redemption payments (if and when due) in respect of our Series A Non-Voting Convertible Preferred Stock (See Note 10 to our Consolidated Financial Statements).

The indentures contain customary terms and covenants, including that upon certain events of default occurring and continuing, either the trustee or the holders of not less than 25% in aggregate principal amount of the Convertible Notes outstanding may declare the entire principal amount of all the Convertible Notes to be repurchased, plus any accrued special interest, if any, to be immediately due and payable.

Capital Resources

Our principal source of financing is our operating cash flow. We believe that cash flows generated by our operating activities and existing cash balances should be sufficient for us to fund our operations for the foreseeable future.

Our ability to satisfy our contractual obligations as they arise are discussed in the section titled “Contractual Obligations” below.

Use of Capital

Our business does not require us to maintain a significant cash position. However, certain of our international subsidiaries are required to maintain a minimum level of regulatory capital, which at June 30, 2022 was approximately \$25.5 million in the aggregate. Notwithstanding these regulatory capital requirements, we expect that our main uses of cash will be to fund the ongoing operations of our business. We also maintain a capital return program which includes a \$0.03 per share quarterly cash dividend and authority to purchase our common stock through April 27, 2025, including purchases to offset future equity grants made under our equity plans.

There were no shares repurchased during the three months ended June 30, 2022. As of June 30, 2022, \$100 million remains under this program for future purchases.

Contractual Obligations

Convertible Notes

At June 30, 2022, we had \$325.0 million aggregate principal amount of Convertible Notes outstanding, of which \$175.0 million are scheduled to mature on June 15, 2023 and \$150.0 million are scheduled to mature on June 15, 2026, unless earlier converted, repurchased or redeemed. Conditional conversions or a requirement to repurchase the Convertible Notes upon the occurrence of a fundamental change may accelerate payment.

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The Convertible Notes require cash settlement of the principal amount, while settlement of the conversion obligation in excess of the aggregate principal amount may be satisfied in either cash, shares of our common stock or a combination of cash and shares of our common stock. We currently anticipate refinancing these obligations when due.

See the section titled “Issuance of Convertible Notes” above for additional information.

Deferred Consideration – Gold Payments

Deferred consideration represents an obligation we assumed in April 2018 in connection with our acquisition of the European exchange-traded commodity, currency and leveraged and inverse business of ETFS Capital Limited. The obligation is for fixed payments to ETFS Capital Limited of physical gold bullion equating to 9,500 ounces of gold per year through March 31, 2058 and then subsequently reduced to 6,333 ounces of gold continuing into perpetuity (“Contractual Gold Payments”). The present value of the deferred consideration was \$242.8 million at June 30, 2022.

The Contractual Gold Payments are paid from advisory fee income generated by any of our sponsored financial products backed by physical gold with no recourse back to us for any unpaid amounts that exceed advisory fees earned.

See Note 9 to our Consolidated Financial Statements for additional information.

Operating Leases

In keeping with our hybrid remote-first philosophy, employees primarily work remotely on a permanent basis. However, we maintain office space in New York and London, as well as other regional locations, to align with employees choosing to collaborate in person.

Total future minimum lease payments with respect to our office space was \$2.4 million at June 30, 2022. Cash flows generated by our operating activities and existing cash balances should be sufficient to satisfy the future minimum lease payments. See Note 12 to our Consolidated Financial Statements for additional information.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet financing or other arrangements and have neither created nor are party to any special-purpose or off-balance sheet entities for the purpose of raising capital, incurring debt or operating our business.

Critical Accounting Policies

Goodwill and Intangible Assets

Goodwill is the excess of the purchase price over the fair values of the identifiable net assets at the acquisition date. We test goodwill for impairment at least annually and at the time of a triggering event requiring re-evaluation, if one were to occur. Goodwill is considered impaired when the estimated fair value of the reporting unit that was allocated the goodwill is less than its carrying value. If the estimated fair value of such reporting unit is less than its carrying value, goodwill impairment is recognized based on that difference, not to exceed the carrying amount of goodwill. A reporting unit is an operating segment or a component of an operating segment provided that the component constitutes a business for which discrete financial information is available and management regularly reviews the operating results of that component.

Goodwill is allocated to our U.S. business and European business components. For impairment testing purposes, these components are aggregated as a single reporting unit as they fall under the same operating segment and have similar economic characteristics.

Goodwill is assessed for impairment annually on November 30th. When performing our goodwill impairment test, we consider a qualitative assessment, when appropriate, the market approach and its market capitalization when determining the fair value of the reporting unit. The results of our analysis indicated no impairment based upon a quantitative assessment.

Indefinite-lived intangible assets are tested for impairment at least annually and are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Indefinite-lived intangible assets are impaired if their estimated fair value is less than their carrying value. We may rely on a qualitative assessment when performing our intangible asset impairment test. Otherwise, the impairment evaluation is performed at the lowest level of reasonably identifiable cash flows independent of other assets. The annual impairment testing date for our intangible assets is November 30th.

Investments

We account for equity investments that do not have a readily determinable fair value under the measurement alternative prescribed in ASU 2016-01, *Financial Instruments – Recognition and Measurement of Financial Assets and Financial Liabilities*, to the extent such investments are not subject to consolidation or the equity method. Under the measurement alternative, these financial instruments are carried at cost, less any impairment (assessed quarterly), plus or minus changes resulting from observable price changes in orderly transactions for an identical or similar investment of the same issuer. In addition, income is recognized when dividends are received only to the extent they are distributed from net accumulated earnings of the investee. Otherwise, such distributions are considered returns of investment and are recorded as a reduction of the cost of the investment.

Deferred Consideration – Gold Payments

Deferred consideration represents the present value of an obligation to pay gold to a third party into perpetuity and is measured using forward-looking gold prices observed on the CMX exchange, a selected discount rate and perpetual growth rate. The weighted average forward-looking gold price per ounce, discount rate and perpetual growth rate were \$2,265, 9.0% and 1.4%, respectively, at June 30, 2022. Changes in the fair value of this obligation are reported as gain/(loss) on revaluation of deferred consideration–gold payments in our Consolidated Statements of Operations.

During the three months ended June 30, 2022, we reported a gain on deferred consideration–gold payments of \$2.3 million. A 1.0% increase in the weighted average forward-looking gold price per ounce would have reduced this reported gain by \$1.7 million, a 1 percentage point increase in the discount rate would have increased this reported gain by \$25.7 million and a 1 percentage point increase in the perpetual growth rate would have reduced this reported gain by \$22.0 million. See Note 9 to our Consolidated Financial Statements for additional information.

Revenue Recognition

We earn substantially all of our revenue in the form of advisory fees from our ETPs and recognize this revenue over time, as the performance obligation is satisfied. Advisory fees are based on a percentage of the ETPs' average daily net assets. Progress is measured using the practical expedient under the output method resulting in the recognition of revenue in the amount for which we have a right to invoice.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

The following information, together with information included in other parts of this Management's Discussion and Analysis of Financial Condition and Results of Operations, describes key aspects of our market risk.

Market Risk

Market risk to us generally represents the risk of changes in the value of our ETPs that results from fluctuations in securities or commodity prices, foreign currency exchange rates against the U.S. dollar, and interest rates. Nearly all our revenues are derived from advisory agreements for the WisdomTree ETPs. Under these agreements, the advisory fee we receive is based on the average market value of the assets in the WisdomTree ETP portfolios we manage.

Fluctuations in the value of the ETPs are common and are generated by numerous factors such as market volatility, the global economy, inflation, changes in investor strategies and sentiment, availability of alternative investment vehicles, domestic and foreign government regulations, emerging markets developments and others. Accordingly, changes in any one or a combination of these factors may reduce the value of investment securities and, in turn, the underlying AUM on which our revenues are earned. These declines may cause investors to withdraw funds from our ETPs in favor of investments that they perceive as offering greater opportunity or lower risk, thereby compounding the impact on our revenues. We believe challenging and volatile market conditions will continue to be present in the foreseeable future.

Interest Rate Risk

We invest our corporate cash in short-term interest earning assets, primarily in federal agency debt instruments, WisdomTree fixed income ETFs, corporate bonds, money market instruments at a commercial bank and other securities which totaled \$138.3 million and \$131.1 million as of December 31, 2021 and June 30, 2022, respectively. During the six months ended June 30, 2022, we recognized losses on these securities of \$9.3 million and any losses recognized in the future may be material to our operating results. We do not anticipate that changes in interest rates will have a material impact on our financial condition or cash flows.

In addition, our Convertible Notes bear interest at fixed rates of 3.25% and 4.25% for the 2021 Notes and the 2020 Notes, respectively. Therefore, we have no direct financial statement risk associated with changes in interest rates. However, the fair value of the Convertible Notes changes primarily when the market price of our common stock fluctuates or interest rates change.

Exchange Rate Risk

We are subject to currency translation exposure on the results of our non-U.S. operations, primarily in the United Kingdom and Europe. Foreign currency translation risk is the risk that exchange rate gains or losses arise from translating foreign entities' statements of earnings and balance sheets from functional currency to our reporting currency (the U.S. dollar) for consolidation purposes. The advisory fees earned on our international listed ETPs are predominantly in U.S. dollars (and also paid in gold ounces, as described below); however, expenses for corporate overhead are generally incurred in British pounds. Currently, we do not enter into derivative financial instruments aimed at offsetting certain exposures in the statement of operations or the balance sheet but may seek to do so in the future.

Exchange rate risk associated with the euro is not considered to be significant.

Commodity and Cryptocurrency Price Risk

Fluctuations in the prices of commodities and cryptocurrencies that are linked to certain of our ETPs could have a material adverse effect on our AUM and revenues. In addition, a portion of the advisory fee revenues we receive on our ETPs backed by gold, other precious metals and cryptocurrencies are paid in the underlying metal or cryptocurrency. In addition, we pay gold ounces to satisfy our deferred consideration obligation (See Note 9 to our Consolidated Financial Statements). While we readily sell the gold, precious metals and cryptocurrencies that we earn under these advisory contracts, we still may maintain a position. We currently do not enter into arrangements to hedge against fluctuations in the price of these commodities and cryptocurrencies and any hedging we may undertake in the future may not be cost-effective or sufficient to hedge against this exposure.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

As of June 30, 2022, our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures pursuant to Rule 13a-15(b) promulgated under the Exchange Act. Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of June 30, 2022, our disclosure controls and procedures were effective at a reasonable assurance level in ensuring that material information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules, regulations and forms of the SEC, including ensuring that such material information is accumulated by and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

Changes in Internal Control over Financial Reporting

During the quarter ended June 30, 2022, there were no changes in our internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II: OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

We may be subject to reviews, inspections and investigations by the SEC, Commodity Futures Trading Commission (CFTC), National Futures Association (NFA), state and foreign regulators, as well as legal proceedings arising in the ordinary course of business. See Note 13 to our Consolidated Financial Statements for additional information regarding claims brought by investors in our WisdomTree WTI Crude Oil 3x Daily Leveraged ETP totaling approximately €15.8 million (\$16.6 million).

ITEM 1A. RISK FACTORS

In addition to the risk factor and other information set forth below and elsewhere in this Report, you should carefully consider the information set forth in Part 1, Item 1A. "Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended December 31, 2021, as amended.

Failure to repay, refinance or extend the maturity of our indebtedness may expose us to material risks.

Our 2020 Notes in the aggregate principal amount of \$175.0 million are scheduled to mature on June 15, 2023. We are actively exploring refinancing and extension alternatives. Our ability to repay, refinance or extend the maturity of outstanding amounts under our 2020 Notes will depend on our performance, as well as other general economic factors, including prevailing interest rates, many of which are beyond our control. Any such alternatives may not be available to us on satisfactory terms or at all. Failure to repay, refinance or extend the maturity of outstanding amounts under our 2020 Notes could result in an event of default, which would have a material adverse effect on our business.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

Recent sales of Unregistered Securities

None.

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Use of Proceeds

Not applicable.

Purchases of Equity Securities by the Issuer and Affiliated Purchasers

The following table provides information with respect to purchases made by or on behalf of the Company or any “affiliated purchaser” of shares of our common stock.

<u>Period</u>	<u>Total Number of Shares Purchased</u>	<u>Average Price Paid Per Share</u>	<u>Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs⁽¹⁾</u>	<u>Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs</u> <u>(in thousands)</u>
April 1, 2022 to April 30, 2022	—	\$ —	—	
May 1, 2022 to May 31, 2022	—	\$ —	—	
June 1, 2022 to June 30, 2022	—	\$ —	—	
Total	—	\$ —	—	\$ 100,000

On February 22, 2022, our board of directors approved an increase of \$85.7 million to our share repurchase program to \$100 million and extended the term for three years through April 27, 2025.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

This disclosure is intended to satisfy any obligation to provide disclosures pursuant to Item 5.03 of Form 8-K.

Effective August 1, 2022, our Board of Directors approved an amendment and restatement of our Second Amended and Restated By-Laws (as amended and restated, the “Third Amended and Restated By-Laws,” which are referred to in this Report as the “By-laws”). The By-laws were amended to:

- revise the advance notice of nomination provisions to enhance the informational and procedural requirements for the submission by stockholders of proposals of business and director nominees, including changes to address Rule 14a-19 of the Exchange Act, which takes effect on September 1, 2022 (Article II, Section 2);
- implement proxy access to allow a stockholder, or group of up to 20 stockholders, owning at least 3% of our outstanding common stock continuously for at least three years, to nominate and include in our proxy materials for an annual meeting of stockholders, director nominees constituting up to the greater of two nominees or 25% of the Board of Directors (Article II, Section 11);
- provide that the Chair of the Board or the President can call a meeting of the Board of Directors with less than the required time for notice if they determine it is necessary (Article III, Section 3);
- provide that a majority of the members of the Board of Directors then in office constitutes a quorum, provided that a quorum cannot be less than one third (1/3) of the total number of directors (Article III, Section 4);
- provide that the Board of Directors may by resolution decide that some or all classes or series of stock will be uncertificated stock (Article VI, Section 1);
- provide that action by a majority of the Board of Directors is required to amend the By-laws, rather than the majority vote of the directors then in office (Article IX, Section 1); and
- provide that the federal district courts of the United States be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933 and the Exchange Act (Article X).

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The By-laws also contain conforming, clarifying and updating changes to supplement the foregoing amendments, as well as certain other routine, technical, and non-substantive updates and revisions.

The foregoing description of the amendments contained in the By-laws is qualified in its entirety by reference to the By-laws, which are filed as Exhibit 3.5 to this Report.

ITEM 6. EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
3.1	<u>Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 of the Registrant's Registration Statement on Form 10 filed with the SEC on March 31, 2011)</u>
3.2	<u>Certificate of Amendment to the Amended and Restated Certificate of Incorporation (Declassification of Board of Directors) (incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K filed with the SEC on July 20, 2022)</u>
3.3	<u>Certificate of Amendment to the Amended and Restated Certificate of Incorporation (Increase in Authorized Shares) (incorporated by reference to Exhibit 3.2 of the Registrant's Current Report on Form 8-K filed with the SEC on July 20, 2022)</u>
3.4	<u>Certificate of Designations of Series A Non-Voting Convertible Preferred Stock of the Registrant (incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K filed with the SEC on April 13, 2018)</u>
3.5 ⁽¹⁾	<u>Third Amended and Restated By-Laws</u>
4.1	<u>Specimen Common Stock Certificate (incorporated by reference to Exhibit 4.1 of the Registrant's Registration Statement on Form 10 filed with the SEC on March 31, 2011)</u>
4.2	<u>Amended and Restated Stockholders Agreement among the Registrant and certain investors dated December 21, 2006 (incorporated by reference to Exhibit 4.2 of the Registrant's Registration Statement on Form 10 filed with the SEC on March 31, 2011)</u>
4.3	<u>Securities Purchase Agreement among the Registrant and certain investors dated December 21, 2006 (incorporated by reference to Exhibit 4.3 of the Registrant's Registration Statement on Form 10 filed with the SEC on March 31, 2011)</u>
4.4	<u>Securities Purchase Agreement among the Registrant and certain investors dated October 15, 2009 (incorporated by reference to Exhibit 4.4 of the Registrant's Registration Statement on Form 10 filed with the SEC on March 31, 2011)</u>
4.5	<u>Third Amended and Restated Registration Rights Agreement dated October 15, 2009 (incorporated by reference to Exhibit 4.5 of the Registrant's Registration Statement on Form 10 filed with the SEC on March 31, 2011)</u>
4.6	<u>Investor Rights Agreement, dated April 11, 2018, between the Registrant and ETF Capital (incorporated by reference to Exhibit 4.1 of the Registrant's Current Report on Form 8-K filed with the SEC on April 13, 2018)</u>
4.7	<u>Indenture, dated as of June 16, 2020, by and between the Registrant and U.S. Bank National Association, as Trustee (incorporated by reference to Exhibit 4.1 of the Registrant's Current Report on Form 8-K filed with the SEC on June 17, 2020)</u>
4.8	<u>Form of Global Note, representing the Registrant's 4.25% Convertible Senior Notes due 2023 (included as Exhibit A to the Indenture filed as Exhibit 4.1 of the Registrant's Current Report on Form 8-K filed with the SEC on June 17, 2020)</u>
4.9	<u>Indenture, dated as of June 14, 2021, by and between the Registrant and U.S. Bank National Association, as Trustee (incorporated by reference to Exhibit 4.1 of the Registrant's Current Report on Form 8-K filed with the SEC on June 14, 2021)</u>
4.10	<u>Form of Global Note, representing the Registrant's 3.25% Convertible Senior Notes due 2026 (incorporated by reference to Exhibit 4.2 of the Registrant's Current Report on Form 8-K filed with the SEC on June 14, 2021)</u>
4.11	<u>WisdomTree Investments, Inc. 2022 Equity Plan (incorporated by reference to Exhibit 99.1 of the Registrant's Registration Statement on Form S-8 filed with the SEC on July 25, 2022)</u>

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<u>Exhibit No.</u>	<u>Description</u>
31.1 ⁽¹⁾	Rule 13a-14(a) / 15d-14(a) Certification
31.2 ⁽¹⁾	Rule 13a-14(a) / 15d-14(a) Certification
32 ⁽¹⁾	Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101 ⁽¹⁾	Financial Statements from the Quarterly Report on Form 10-Q of the Company for the three months ended March 31, 2022, formatted in XBRL: (i) Consolidated Balance Sheets at June 30, 2022 (Unaudited) and December 31, 2021; (ii) Consolidated Statements of Operations and Comprehensive Income/(Loss) for the three and six months ended June 30, 2022 and June 30, 2021 (Unaudited); (iii) Consolidated Statements of Changes in Stockholders' Equity for the three and six months ended June 30, 2022 and June 30, 2021 (Unaudited) (iv) Consolidated Statements of Cash Flows for the six months ended June 30, 2022 and June 30, 2021 (Unaudited); and (v) Notes to Consolidated Financial Statements, as blocks of text and in detail.
101.SCH ⁽¹⁾	Inline XBRL Taxonomy Extension Schema Document
101.CAL ⁽¹⁾	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF ⁽¹⁾	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB ⁽¹⁾	Inline XBRL Taxonomy Extension Labels Linkbase Document
101.PRE ⁽¹⁾	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104 ⁽¹⁾	Cover Page Interactive Data File (formatted as inline XBRL with applicable taxonomy extension information contained in Exhibits 101.*)

(1) Filed herewith.

SIGNATURE

Pursuant to the requirements of the Exchange Act, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized on this 5th day of August 2022.

WISDOMTREE INVESTMENTS, INC.

By: /s/ Jonathan Steinberg

Jonathan Steinberg
Chief Executive Officer
(Principal Executive Officer)

WISDOMTREE INVESTMENTS, INC.

By: /s/ Bryan Edmiston

Bryan Edmiston
Chief Financial Officer (Principal Financial Officer)

Adopted by the Board of Directors: August 1, 2022

**THIRD AMENDED AND RESTATED BY-LAWS
OF
WISDOMTREE INVESTMENTS, INC.**

(the “Corporation”)

ARTICLE I

Offices

SECTION 1. Registered Office. The registered office of the Corporation and the registered agent of the Corporation shall be as stated from time to time in the certificate of incorporation of the Corporation (as amended and/or restated from time to time, the “Certificate”).

SECTION 2. Other Offices. The Corporation may also have an office or offices at such other place or places, within or without the State of Delaware, as the Board of Directors of the Corporation (the “Board of Directors”) may from time to time designate or the business of the Corporation may require.

ARTICLE II

Stockholders’ Meetings

SECTION 1. Annual Meetings. The annual meeting of stockholders (any such meeting being referred to in these By-laws as an “Annual Meeting”) shall be held at the time, date and place, if any, within or without the State of Delaware that is fixed by the Board of Directors, which time, date and place may subsequently be changed at any time, before or after the notice for such meeting has been sent to the stockholders, by vote of the Board of Directors. The Board of Directors may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the General Corporation Law of the State of Delaware (the “DGCL”). In the absence of any such designation or determination, stockholders’ meetings shall be held at the Corporation’s principal executive office.

SECTION 2. Notice of Stockholder Business and Nominations.

(a) Annual Meetings of Stockholders.

(1) Nominations of persons for election to the Board of Directors and the proposal of other business to be considered by the stockholders may be brought before an Annual Meeting (i) by or at the direction of the Board of Directors or a duly authorized committee thereof, (ii) by any stockholder of the Corporation who was a stockholder of record at the time of giving of notice provided for in these By-laws, who is entitled to vote at the meeting, who is present (in person or by proxy) at the meeting and who complies with the notice procedures set forth in these By-laws as to such nomination or business, or (iii) by any Eligible Stockholder (as defined in Section 11(a)(1) of this Article II) who has complied with the procedures set forth in Section 11 of this Article II. For the avoidance of doubt, the foregoing clauses (ii) and (iii) shall be the exclusive means for a stockholder to bring nominations or business properly before an Annual Meeting (other than matters properly brought under Rule 14a-8 (or any successor rule) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and such stockholder must comply with the notice and other procedures set forth in Sections 2(a)(2), (3) and (4) of this Article II or Section 11 of this Article II to bring such nominations or business properly before an Annual Meeting. In addition to the other requirements set forth in these By-laws, for any proposal of business to be considered at an Annual Meeting, it must be a proper subject for action by stockholders of the Corporation under Delaware law.

(2) For nominations or other business to be properly brought before an Annual Meeting by a stockholder pursuant to clause (ii) of Section 2(a)(1) of this Article II, the stockholder must (i) have given Timely Notice (as defined below) thereof in writing to the Secretary of the Corporation, (ii) have provided any updates or supplements to such notice at the times and in the forms required by these By-laws and (iii) together with the beneficial owner(s), if any, on whose behalf the nomination or business proposal is made, have acted in accordance with the representations set forth in the Solicitation Statement (as defined below) required by these By-laws. To be timely, a stockholder's written notice shall be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the one-year anniversary of the preceding year's Annual Meeting; provided, however, that in the event the Annual Meeting is first convened more than thirty (30) days before or more than sixty (60) days after such anniversary date, or if no Annual Meeting was held in the preceding year, notice by the stockholder to be timely must be received by the Secretary of the Corporation not later than the close of business on the later of the ninetieth (90th) day prior to the scheduled date of such Annual Meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made (such notice within such time periods shall be referred to as "Timely Notice"). Such stockholder's Timely Notice shall set forth:

(A) as to each person whom the stockholder proposes to nominate for election or reelection as a director, (i) the name, age, business address and residence address of the nominee, (ii) the principal occupation or employment of the nominee, (iii) the class and number of shares of capital stock of the Corporation that are held of record or are beneficially owned by the nominee or their affiliates or associates and any Synthetic Equity Interest (as defined below) held or beneficially owned by the nominee or their affiliates or associates, (iv) a description of all arrangements or understandings between or among the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the stockholder or concerning the nominee's potential service on the Board of Directors, (v) a questionnaire with respect to the background and qualifications of the nominee completed by the nominee in the form required by the Corporation (which questionnaire shall be provided by the Secretary upon written request), (vi) a representation and agreement in the form required by the Corporation (which form shall be provided by the Secretary upon written request) that: (a) such proposed nominee is not and will not become party to any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the Corporation, with such person's fiduciary duties under applicable law; (b) such proposed nominee is not and will not become a party to any agreement, arrangement, or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement, or indemnification in connection with service or action as a director that has not been disclosed to the Corporation; (c) such proposed nominee would, if elected as a director, comply with all applicable rules and regulations of the exchanges upon which shares of the Corporation's capital stock trade, all of the Corporation's corporate governance, ethics, conflict of interest, confidentiality, stock ownership and trading policies and guidelines applicable generally to the Corporation's directors, and applicable fiduciary duties and other obligations under state law and, if elected as a director of the Corporation, such person currently would be in compliance with any such policies and guidelines that have been publicly disclosed; (d) intends to serve as a director for the full term for which he or she is to stand for election; (e) such proposed nominee will provide facts, statements and other information in all communications with the Corporation and its stockholders that are or will be true and correct in all material respects and that do not and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading; and (f) will promptly provide to the Corporation such other information as it may reasonably request; (vii) any other information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act (including without limitation such person's

written consent to being named in the proxy statement as a nominee and to serving as a director if elected); and (viii) a written statement of such person that such person, if elected, intends to tender, promptly following such person's election or re-election, an irrevocable resignation effective upon such person's failure to receive the required vote for re-election at the next meeting at which such person would face re-election and upon acceptance of such resignation by the Board of Directors, in accordance with the Corporation's corporate governance guidelines;

(B) as to any other business that the stockholder proposes to bring before the meeting: a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting, the text, if any, of any resolutions or By-law amendment proposed for adoption, and any material interest in such business of each Proposing Person (as defined below);

(C) (i) the name and address of the stockholder giving the notice, as they appear on the Corporation's books, and the names and addresses of the other Proposing Persons (if any) and (ii) as to each Proposing Person, the following information: (a) the class or series and number of all shares of capital stock of the Corporation which are, directly or indirectly, owned beneficially or of record by such Proposing Person or any of its affiliates or associates (as such terms are defined in Rule 12b-2 promulgated under the Exchange Act), including any shares of any class or series of capital stock of the Corporation as to which such Proposing Person or any of its affiliates or associates has a right to acquire beneficial ownership at any time in the future (whether or not such right is exercisable immediately or only after the passage of time or upon the satisfaction of any conditions or both) pursuant to any agreement, arrangement or understanding (whether or not in writing), (b) all Synthetic Equity Interests (as defined below) in which such Proposing Person or any of its affiliates or associates, directly or indirectly, holds an interest including a description of the material terms of each such Synthetic Equity Interest, including without limitation, identification of the counterparty to each such Synthetic Equity Interest and disclosure, for each such Synthetic Equity Interest, as to (1) whether or not such Synthetic Equity Interest conveys any voting rights, directly or indirectly, in such shares to such Proposing Person or any of its affiliates or associates, (2) whether or not such Synthetic Equity Interest is required to be, or is capable of being, settled through delivery of such shares and (3) whether or not such Proposing Person, any of its affiliates or associates and/or, to the extent known, the counterparty to such Synthetic Equity Interest has entered into other transactions that hedge or mitigate the economic effect of such Synthetic Equity Interest, (c) any proxy (other than a revocable proxy given in response to a public proxy solicitation made pursuant to, and in accordance with, the Exchange Act), agreement, arrangement, understanding or relationship pursuant to which such Proposing Person or any of its affiliates or associates has or shares a right to, directly or indirectly, vote any shares of any class or series of capital stock of the Corporation, (d) any rights to dividends or other distributions on the shares of any class or series of capital stock of the Corporation, directly or indirectly, owned beneficially by such Proposing Person or any of its affiliates or associates that are separated or separable from the underlying shares of the Corporation, (e) any performance-related fees (other than an asset-based fee) to which such Proposing Person or any of their affiliates or associates, directly or indirectly, is entitled to receive based on any increase or decrease in the value of shares of any class or series of capital stock of the Corporation, or any Synthetic Equity Interests, (f)(1) if such Proposing Person is not a natural person, the identity of the natural person or persons associated with such Proposing Person responsible for (i) the formulation of and decision to propose the director nomination or business to be brought before the meeting and (ii) making voting and investment decisions on behalf of the Proposing Person (irrespective of whether such person or persons have "beneficial ownership" for purposes of Rule 13d-3 of the Exchange Act of any securities owned of record or beneficially by the Proposing Person) (such person or persons, the "Responsible Person"), the manner in which such Responsible Person was selected, any fiduciary duties owed by such Responsible Person to the equity holders or other beneficiaries of such Proposing Person and, the qualifications and background of such Responsible Person or (2) if such Proposing Person is a natural person, the qualifications and background of such natural person, (g) any equity interests or any Synthetic Equity Interests in any principal competitor of the Corporation beneficially owned by such Proposing Person or any of its affiliates or associates, (h)

any direct or indirect interest of such Proposing Person or any of its affiliates or associates in any contract with the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation (including, without limitation, in any such case, any employment agreement, collective bargaining agreement or consulting agreement), (i) any pending or threatened litigation in which such Proposing Person or any of its affiliates or associates is a party or material participant involving the Corporation or any of its officers or directors, or any affiliate of the Corporation, (j) any material transaction occurring during the prior twelve months between such Proposing Person or any of its affiliates or associates, on the one hand, and the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation, on the other hand, and (k) any other information relating to such Proposing Person or any of its affiliates or associates that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies or consents by such Proposing Person in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act (the disclosures to be made pursuant to the foregoing clauses (a) through (l) are referred to, collectively, as “Material Ownership Interests”); provided, however, that the Material Ownership Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder of record directed to prepare and submit the notice required by these By-laws on behalf of a beneficial owner;

(D) (i) a description of all agreements, arrangements or understandings to which any Proposing Person or any of its affiliates or associates is a party (whether the counterparty or counterparties are a Proposing Person or any affiliate or associate thereof, on the one hand, or one or more other third parties, on the other hand, (including any proposed nominee(s)) (a) pertaining to the nomination(s) or other business proposed to be brought before the meeting of stockholders or (b) entered into for the purpose of acquiring, holding, disposing or voting of any shares of any class or series of capital stock of the Corporation (which description shall identify the name of each other person who is party to such an agreement, arrangement or understanding), and (ii) identification of the names and addresses of other stockholders (including beneficial owners) known by any of the Proposing Persons to support such nominations or other business proposal(s) and, to the extent known, the class and number of all shares of the Corporation’s capital stock owned beneficially or of record by such other stockholder(s) or other beneficial owner(s); and

(E) a statement (i) that the stockholder is a holder of record of capital stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business, (ii) whether or not the stockholder giving the notice and/or the other Proposing Person(s), if any, (a) will deliver a proxy statement and form of proxy to holders of, in the case of a business proposal, at least the percentage of voting power of all of the shares of capital stock of the Corporation required under applicable law to approve the proposal or, in the case of a nomination or nominations, at least 67 percent of the voting power of all of the shares of capital stock of the Corporation entitled to vote on the election of directors or (b) otherwise solicit proxies or votes from stockholders in support of such proposal or nomination, as applicable, (iii) providing a representation as to whether or not such Proposing Person intends to solicit proxies in support of director nominees other than the Corporation’s director nominees in accordance with Rule 14a-19 promulgated under the Exchange Act, and (iv) that the stockholder will provide any other information relating to such item of business that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act (such statement, the “Solicitation Statement”).

For purposes of this Article II of these By-laws, the term “Proposing Person” shall mean the following persons: (i) the stockholder of record providing the notice of nominations or business proposed to be brought before a stockholders’ meeting, and (ii) the beneficial owner(s), if different, on whose behalf the nominations or business proposed to be brought before a stockholders’ meeting is made. For purposes of this Section 2 of Article II of these By-laws, the term “Synthetic Equity Interest” shall mean any transaction, agreement or arrangement (or series of transactions, agreements or arrangements), including,

without limitation, any derivative, swap, hedge, repurchase or so-called "stock borrowing" or securities lending agreement or arrangement, the purpose or effect of which is to, directly or indirectly: (a) give a person or entity economic benefit and/or risk similar to ownership of shares of any class or series of capital stock of the Corporation, in whole or in part, including due to the fact that such transaction, agreement or arrangement provides, directly or indirectly, the opportunity to profit, or share in any profit, or avoid a loss from any increase or decrease in the value of any shares of any class or series of capital stock of the Corporation, (b) mitigate loss to, reduce the economic risk of, or manage the risk of share price changes for, any person or entity with respect to any shares of any class or series of capital stock of the Corporation, (c) otherwise provide in any manner the opportunity to profit, or share in any profit, or avoid a loss from any decrease in the value of any shares of any class or series of capital stock of the Corporation, or (d) increase or decrease the voting power of any person or entity with respect to any shares of any class or series of capital stock of the Corporation.

(3) A stockholder providing Timely Notice of nominations or business proposed to be brought before an Annual Meeting shall further update and supplement such notice, if necessary, so that the information (including, without limitation, the Material Ownership Interests information) provided or required to be provided in such notice pursuant to these By-laws shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to such Annual Meeting, and such update and supplement shall be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the fifth (5th) business day after the record date for the Annual Meeting (in the case of the update and supplement required to be made as of the record date), and not later than the close of business on the eighth (8th) business day prior to the date of the Annual Meeting (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting). For the avoidance of doubt, the obligation to update as set forth in this Section 2(a)(3) shall not: limit the Corporation's rights with respect to any deficiencies in any notice provided by a stockholder, be construed to extend any applicable deadlines hereunder, or enable or be deemed to permit a stockholder who has previously submitted notice hereunder to amend or update any proposal or nomination or to submit any new proposal, including by changing or adding nominees, matters, business and/or resolutions proposed to be brought before a meeting of the stockholders.

(4) Notwithstanding anything in the second sentence of Article II, Section 2(a)(2) of these By-laws to the contrary, in the event that the number of directors to be elected to the Board of Directors is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors made by the Corporation at least ten (10) days before the last day a stockholder may deliver a notice of nomination in accordance with the second sentence of Article II, Section 2(a)(2), a stockholder's notice required by these By-laws shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be received by the Secretary of the Corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the Corporation.

(b) General.

(1) Only such persons who are nominated in accordance with the provisions of Sections 2 or 11 of Article II of these By-laws shall be eligible for election and to serve as directors, and only such business shall be conducted at an Annual Meeting as shall have been brought before the meeting in accordance with the provisions of these By-laws or in accordance with Rule 14a-8 under the Exchange Act. The Board of Directors or a designated committee thereof shall have the power to determine whether a nomination or any business proposed to be brought before the meeting was made in accordance with the provisions of Sections 2 or 11 of Article II of these By-laws. If neither the Board of Directors nor such designated committee makes a determination as to whether any stockholder proposal or nomination was made in accordance with the provisions of Sections 2 or 11 of Article II of these By-laws, the presiding officer of the Annual Meeting shall have the power and duty to determine whether the stockholder proposal or nomination was made in accordance with the provisions of Sections 2 or 11 of Article II of these By-laws. If the Board of Directors or a designated committee thereof or the presiding officer, as applicable, determines that any stockholder proposal or nomination was not made in accordance with the provisions of Sections 2 or 11 of Article II of these By-laws, such proposal or nomination shall be disregarded and shall not be presented for action at the Annual Meeting.

(2) Except as otherwise required by law or Section 11 of Article II of these By-laws, nothing in this Article II, Section 2 shall obligate the Corporation or the Board of Directors to include in any proxy statement or other stockholder communication distributed on behalf of the Corporation or the Board of Directors information with respect to any nominee for director or any other matter of business submitted by a stockholder.

(3) Notwithstanding the foregoing provisions of this Article II, Section 2, if the nominating or proposing stockholder (or a qualified representative of the stockholder) does not appear at the Annual Meeting to present a nomination or any business, such nomination or business shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the Corporation.

For purposes of this Article II, Section 2, to be considered a qualified representative of the proposing stockholder, a person must be authorized by a written instrument executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such written instrument or electronic transmission, or a reliable reproduction of the written instrument or electronic transmission, to the presiding officer at the meeting of stockholders.

(4) For purposes of these By-laws, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(5) Notwithstanding the foregoing provisions of these By-laws, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder, including, but not limited to, Rule 14a-19 of the Exchange Act, with respect to the matters set forth in these By-laws. If a stockholder fails to comply with any applicable requirements of the Exchange Act, including, but not limited to, Rule 14a-19 promulgated thereunder, such stockholder's proposed nomination or proposed business shall be deemed to have not been made in compliance with these By-laws and shall be disregarded. Nothing in these By-laws shall be deemed to affect any rights of (i) stockholders to have proposals included in the Corporation's proxy statement pursuant to Rule 14a-8 (or any successor rule), as applicable, under the Exchange Act and, to the extent required by such rule, have such proposals considered and voted on at an Annual Meeting or (ii) the holders of any series of Undesignated Preferred Stock (as defined in the Certificate) to elect directors under specified circumstances.

(6) Further notwithstanding the foregoing provisions of these By-laws, unless otherwise required by law, if any Proposing Person (i) provides notice pursuant to Rule 14a-19(b) promulgated under the Exchange Act and (ii) subsequently fails to comply with the requirements of Rule 14a-19(a)(2) or Rule 14a-19(a)(3) promulgated under the Exchange Act, then the Corporation shall disregard any proxies or votes solicited for any proposed nominee of such Proposing Person. Upon request by the Corporation, if any Proposing Person provides notice pursuant to Rule 14a-19(b) promulgated under the Exchange Act, such Proposing Person shall deliver to the Corporation, no later than five (5) business days prior to the applicable meeting, reasonable evidence that it has met the requirements of Rule 14a-19(a)(3) promulgated under the Exchange Act.

(7) The number of nominees a stockholder may nominate for election at the Annual Meeting (or in the case of a stockholder giving the notice on behalf of a beneficial owner, the number of nominees a stockholder may nominate for election at the Annual Meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected at such Annual Meeting.

SECTION 3. Special Meetings. Except as otherwise required by statute and subject to the rights, if any, of the holders of any series of Undesignated Preferred Stock, special meetings of the stockholders of the Corporation may be called only by the Board of Directors acting pursuant to a resolution approved by the affirmative vote of a majority of the directors then in office. The Board of Directors may postpone or reschedule any previously scheduled special meeting of stockholders. Only those matters set forth in the notice of the special meeting may be considered or acted upon at a special meeting of stockholders of the Corporation. Nominations of persons for election to the Board of Directors and stockholder proposals of other business shall not be brought before a special meeting of stockholders to be considered by the stockholders unless such special meeting is held in lieu of an Annual Meeting in accordance with Article II, Section 1 of these By-laws, in which case such special meeting in lieu thereof shall be deemed an Annual Meeting for purposes of these By-laws and the provisions of Article II, Section 2 of these By-laws shall govern such special meeting.

SECTION 4. Notice of Meetings; Adjournments.

(a) A notice of each Annual Meeting stating the hour, date and place, if any, of such Annual Meeting and the means of remote communication, if any, by which stockholders, and proxyholders may be deemed to be present in person and vote at such meeting, shall be given not less than ten (10) days nor more than sixty (60) days before the Annual Meeting, to each stockholder of record entitled to vote thereat by delivering such notice to such stockholder or by mailing it, postage prepaid, addressed to such stockholder at the address of such stockholder as it appears on the Corporation's stock transfer books. Without limiting the manner by which notice may otherwise be given to stockholders, any notice to stockholders may be given by electronic transmission in the manner provided in Section 232 of the DGCL.

(b) Notice of all special meetings of stockholders shall be given in the same manner as provided for Annual Meetings, except that the notice of all special meetings shall state the purpose or purposes for which the meeting has been called.

(c) Notice of an Annual Meeting or special meeting of stockholders need not be given to a stockholder if a waiver of notice is executed, or waiver of notice by electronic transmission is provided, before or after such meeting by such stockholder or if such stockholder attends such meeting, unless such attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting was not lawfully called or convened.

(d) The Board of Directors may postpone and reschedule or cancel any previously scheduled Annual Meeting or special meeting of stockholders and any record date with respect thereto, regardless of whether any notice or public disclosure with respect to any such meeting has been sent or made pursuant to Section 2 of this Article II or otherwise. In no event shall the public announcement of an adjournment, postponement or rescheduling of any previously scheduled meeting of stockholders commence a new time period (or extend any time period) for the giving of a stockholder's notice under this Article II.

(e) When any meeting is convened, the presiding officer or the stockholders present or represented by proxy at such meeting, by a majority of the voting power present at the meeting, may adjourn the meeting from time to time for any reason, regardless of whether a quorum is present, to reconvene at any other time and at any place at which a meeting of stockholders may be held under these By-laws. When any Annual Meeting or special meeting of stockholders is adjourned to another hour, date or place (including an adjournment taken to address a technical failure to convene or continue a meeting using remote communication), notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken or are provided in any other manner permitted by the DGCL; provided, however, that if the adjournment is for more than thirty (30) days from the meeting date, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting shall be given to each stockholder of record entitled to vote thereat and each stockholder who, by law or under the Certificate or these By-laws, is entitled to such notice.

SECTION 5. Quorum. Except as otherwise provided by law, the Certificate or these By-laws, at each meeting of stockholders, the presence in person or by proxy, of the holders of a majority in voting power of the outstanding shares of stock entitled to vote at the meeting shall be necessary and sufficient to constitute a quorum. At any adjourned meeting at which a quorum is present, any business may be transacted which might

have been transacted at the meeting as originally noticed. The stockholders present at a duly constituted meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Shares of the Corporation's capital stock shall neither be entitled to vote nor counted for quorum purposes if such shares belong to (i) the Corporation, (ii) another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation or (iii) any other entity, if a majority of the voting power of such other entity is otherwise controlled, directly or indirectly, by the Corporation; provided, however, that the foregoing shall not limit the right of the Corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

SECTION 6. Voting and Proxies. The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Article VI, Section 4 of these By-laws, subject to Section 217 (relating to voting rights of fiduciaries, pledgors and joint owners of stock) and Section 218 (relating to voting trusts and other voting agreements) of the DGCL. Stockholders shall have one vote for each share of stock entitled to vote owned by them of record according to the stock ledger of the Corporation as of the record date, unless otherwise provided by law or by the Certificate. Stockholders may vote either (i) in person, (ii) by written proxy or (iii) by a transmission permitted by Section 212(c) of the DGCL. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission permitted by Section 212(c) of the DGCL may be substituted for or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission. Proxies shall be filed in accordance with the procedures established for the meeting of stockholders. Except as otherwise limited therein or as otherwise provided by law, proxies authorizing a person to vote at a specific meeting shall entitle the persons authorized thereby to vote at any adjournment of such meeting, but they shall not be valid after final adjournment of such meeting. A proxy with respect to stock held in the name of two or more persons shall be valid if executed by or on behalf of any one of them unless at or prior to the exercise of the proxy the Corporation receives a specific written notice to the contrary from any one of them.

SECTION 7. Action at Meeting When a quorum is present at any meeting of stockholders, any matter before any such meeting shall be decided by a majority of the votes cast, unless a different or minimum vote is required by the Certificate, these By-laws, the rules or regulations of any stock exchange applicable to the Corporation, or any law or regulation applicable to the Corporation or its securities, in which case such different or minimum vote shall be the applicable vote on the matter. When a quorum is present at any meeting, a nominee for director shall be elected to the Board of Directors if the number of votes cast for such nominee's election exceed the number of votes cast against such nominee's election; provided, however, that in a contested election, a nominee shall be elected by a plurality of the votes cast by the stockholders entitled to vote at the election on such election of directors. An election shall be considered contested if, as of the last date on which nominees for director may be submitted in accordance with these By-laws, the nominees for election to the Board of Directors exceeds the number of positions on the Board of Directors to be filled by election at that meeting. If an incumbent director is not re-elected, the director shall tender his or her resignation to the Board of Directors. The Nominating Committee of the Board of Directors (or any future committee the equivalent thereof) will make a recommendation to the Board of Directors on whether to accept or reject the resignation, or whether other action should be taken. The Board of Directors will act on the recommendation of such committee and will publicly disclose its decision within ninety (90) days from the date of the certification of the election results. A director who tenders his or her resignation may not participate in any meeting of the Board of Directors or any committee thereof until the Board of Directors has determined not to accept his or her resignation.

SECTION 8. Stockholder Lists. The Corporation shall prepare no later than the tenth day before each Annual Meeting or special meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting, for a period of ten (10) days prior to the meeting in the manner provided by law.

SECTION 9. Presiding Officer. The Board of Directors shall designate a representative to preside over all Annual Meetings or special meetings of stockholders, provided that if the Board of Directors does not so designate such a presiding officer, then the Chair of the Board of Directors, if one is elected, shall preside over such meetings. If the Board of Directors does not so designate such a presiding officer and there is no Chair of the Board of Directors or the Chair of the Board of Directors is unable to so preside or is absent, then the Chief Executive Officer, if one is elected, shall preside over such meetings, provided further that if there is no Chief Executive Officer or the Chief Executive Officer is unable to so preside or is absent, then a director or officer chosen by resolution of the Board of Directors shall act as Chair at all meetings of stockholders. The presiding officer or director at any Annual Meeting or special meeting of stockholders shall have the power, among other things, to adjourn such meeting at any time and from time to time, subject to Sections 4 and 5 of this Article II. The order of business and all other matters of procedure at any meeting of the stockholders shall be determined by the presiding officer.

SECTION 10. Inspectors of Elections. The Corporation shall, in advance of any meeting of stockholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the presiding officer shall appoint one or more inspectors to act at the meeting. Any inspector may, but need not, be an officer, employee or agent of the Corporation. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall perform such duties as are required by the DGCL, including the counting of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors. The presiding officer may review all determinations made by the inspectors, and in so doing the presiding officer shall be entitled to exercise his or her sole judgment and discretion and he or she shall not be bound by any determinations made by the inspectors. All determinations by the inspectors and, if applicable, the presiding officer, shall be subject to further review by any court of competent jurisdiction.

SECTION 11. Proxy Access Rights.

(a) Proxy Access Nomination.

(1) Whenever the Board of Directors solicits proxies with respect to the election of directors at an Annual Meeting, nominations of individuals for election to the Board of Directors at such Annual Meeting may be made by a stockholder or group of no more than 20 stockholders that satisfies the requirements of this Section 11 (as further qualified by the provisions of this Section 11, any such individual or group, including as the context requires each member thereof, being hereinafter referred to as an "Eligible Stockholder"). The nomination provisions set forth in this Section 11 are separate from, and in addition to, the nomination provisions set forth in Section 2 of this Article II. Subject to the provisions of this Section 11 and to the extent permitted by applicable law, the Corporation shall include in its proxy materials for such Annual Meeting, in addition to any persons nominated for election by, or at the direction of, a majority of the Board of Directors, the name, together with the Required Information (as defined below), of any person nominated for election (each such person being hereinafter referred to as a "Stockholder Nominee") to the Board of Directors by an Eligible Stockholder pursuant to this Section 11.

(2) For purposes of this Section 11, the "Required Information" that the Corporation will include in its proxy materials is (A) the information concerning the Stockholder Nominee and the Eligible Stockholder that is required to be disclosed in the Corporation's proxy statement by the rules and regulations promulgated under the Exchange Act, by these By-laws, by the Certificate and/or by the listing standards of each principal U.S. exchange upon which the common stock of the Corporation is listed; and (B) the written statement, if any, consisting of 500 words or fewer delivered by the Eligible Stockholder pursuant to Section 11(d)(4) hereof in support of the Stockholder Nominee's candidacy that is clearly and specifically identified as the written statement that the Eligible Stockholder requests the Corporation to include in its proxy materials and does not include any references to any other statements or written materials in support of the Stockholder Nominee's candidacy or any website or other locations where any such statements or written materials may be found (the "Statement"). If the Eligible Stockholder has not provided to the Secretary of the Corporation a Statement within the time period specified in this Section 11

for delivering the Notice of Proxy Access Nomination (as defined below), the Eligible Stockholder will be deemed to have not provided the Statement and the Required Information will not include the Statement. Notwithstanding anything to the contrary contained in this Section 11, the Corporation may omit from its proxy materials any information or Statement (or portion thereof) if the Corporation believes that (A) such information is not true in all material respects or omits a material statement necessary to make the statements made not misleading; (B) such information directly or indirectly impugns the character, integrity or personal reputation of, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation, with respect to, any person; or (C) the inclusion of such information in the proxy statement would otherwise violate the Securities and Exchange Commission proxy rules or any other applicable law, rule or regulation.

(b) Notice Requirements.

(1) In order to nominate a Stockholder Nominee pursuant to this Section 11, an Eligible Stockholder must, in addition to satisfying the other requirements of Section 11, provide to the Secretary of the Corporation, a written notice expressly nominating its Stockholder Nominee(s) and electing to have its Stockholder Nominee(s) included in the Corporation's proxy materials pursuant to this Section 11 that complies with the requirements set forth in this Section 11 (a "Notice of Proxy Access Nomination") within the time period set forth below. In order for an Eligible Stockholder to nominate a Stockholder Nominee pursuant to this Section 11, the Eligible Stockholder's Notice of Proxy Access Nomination must be received by the Secretary of the Corporation at the principal executive office of the Corporation not earlier than the one hundred twentieth (120th) day nor later than the close of business on the ninetieth (90th) day prior to the first anniversary of the date of the notice for the preceding year's Annual Meeting; provided, however, that in the event that the date of the Annual Meeting is advanced or delayed by more than thirty (30) days from the first anniversary of the date of the preceding year's Annual Meeting, Notice of Proxy Access Nomination by the Eligible Stockholder to be timely must be so delivered not earlier than the one hundred twentieth (120th) day prior to the date of such Annual Meeting and not later than 5:00 p.m., local time, on the later of the ninetieth (90th) day prior to the date of such Annual Meeting, as originally convened, or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made. In no event shall an adjournment, postponement or rescheduling of any previously scheduled meeting of stockholders, or the public announcement thereof, commence a new time period (or extend any time period) for the giving of a Notice of Proxy Access Nomination under this Section 11. For purposes of this Section 11, "public announcement" shall have the meaning given to such term in Section 2(b)(4) of this Article II.

(2) In order to nominate a Stockholder Nominee pursuant to this Section 11, an Eligible Stockholder providing the Required Information within the time period specified in Section 11(b)(1) for delivering the Notice of Proxy Access Nomination must further update and supplement such Required Information, if necessary, so that all such information provided or required to be provided shall be true and correct as of the close of business on the record date for purposes of determining the stockholders entitled to vote at such Annual Meeting and as of the date that is ten (10) business days prior to such Annual Meeting, and such update and supplement (or a written notice stating that there is no such update or supplement) must be delivered in writing to the Secretary of the Corporation at the principal executive office of the Corporation not later than 5:00 p.m., local time, on the fifth (5th) business day after the record date for purposes of determining the stockholders entitled to vote at the meeting (in the case of the update and supplement required to be made as of the record date), and not later than 5:00 p.m., local time, on the fifth (5th) business day prior to the date for the meeting (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting).

(3) In the event that any of the information or communications provided by the Eligible Stockholder or the Stockholder Nominee to the Corporation or its stockholders ceases to be true and correct in all material respects or omits a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, each Eligible Stockholder or Stockholder Nominee, as the case may be, shall promptly notify the Secretary of the Corporation of any defect in such previously provided information or communications and of the information that is required to correct any such defect.

(c) Maximum Number of Stockholder Nominees.

(1) The maximum number of Stockholder Nominees nominated by all Eligible Stockholders that will be included in the Corporation's proxy materials with respect to an Annual Meeting shall not exceed the greater of (i) two or (ii) 25% of the number of directors in office as of the last day on which a Notice of Proxy Access Nomination may be timely delivered pursuant to and in accordance with this Section 11 (the "Final Proxy Access Nomination Date"), or if such amount is not a whole number, the closest whole number below 25%; *provided*, that the maximum number of Stockholder Nominees that will be included in the Corporation's proxy materials with respect to an Annual Meeting will be reduced by (i) the number of Stockholder Nominees whom the Board of Directors itself decides to nominate for election at such Annual Meeting; (ii) the number of individuals who will be included in the Corporation's proxy materials as nominees recommended by the Board of Directors pursuant to an agreement, arrangement or other understanding with a stockholder or group of stockholders entered into after August 1, 2022 (other than any such agreement, arrangement or understanding entered into in connection with an acquisition of shares from the Corporation by such stockholder or group of stockholders) and (iii) the number of individuals that the Board of Directors decides to nominate for re-election who were previously elected to the Board of Directors with respect to any of the preceding two Annual Meetings based on a nomination by one or more stockholders pursuant to Section 2 of Article II or this Section 11.

(2) Any Eligible Stockholder submitting more than one Stockholder Nominee for inclusion in the Corporation's proxy materials pursuant to this Section 11 shall rank such Stockholder Nominees based on the order that the Eligible Stockholder desires such Stockholder Nominees to be selected for inclusion in the Corporation's proxy statement in the event that the total number of Stockholder Nominees submitted by all Eligible Stockholders pursuant to this Section 11 exceeds the maximum number of Stockholder Nominees provided for in Section 11(c)(1) (including by operation of Section 11(c)(3)). In the event that the number of Stockholder Nominees submitted by all Eligible Stockholders pursuant to this Section 11 for an Annual Meeting exceeds the maximum number of Stockholder Nominees provided for in Section 11(c)(1) (including by operation of Section 11(c)(3)), the highest ranking Stockholder Nominee who meets the requirements of this Section 11 from each Eligible Stockholder (with such determination and the determination of whether a stockholder or group of stockholders constitutes an Eligible Stockholder to be based on compliance with the provisions of this Section 11 as of the Final Proxy Access Nomination Date) will be selected for inclusion in the Corporation's proxy materials until the maximum number is reached, going in order from the largest to the smallest of such Eligible Stockholders based on the number of shares of common stock of the Corporation each Eligible Stockholder disclosed as owned by such Eligible Stockholder in the Notice of Proxy Access Nomination submitted to the Corporation hereunder. If the maximum number of Stockholder Nominees provided for in this Section 11 is not reached after the highest ranking Stockholder Nominee who meets the requirements of this Section 11 from each Eligible Stockholder determined in the manner set forth above has been selected, this selection process will continue as many times as necessary, following the same order each time, until the maximum number of Stockholder Nominees provided for in this Section 11 is reached. The Stockholder Nominees initially selected in accordance with this Section 11(c)(2) will be the only Stockholder Nominees eligible to be nominated or included in the Corporation's proxy materials pursuant to this Section 11. The Notices of Proxy Access Nomination and nominations of all of the remaining Stockholder Nominees not initially selected pursuant to this Section 11(c)(2) will be deemed to have been withdrawn by each of the applicable Eligible Stockholders as of the Final Proxy Access Nomination Date, and, following such initial selection, if any one or more of the Stockholder Nominees so selected are (A) nominated by the Board of Directors or (B) not included in the Corporation's proxy materials or are not submitted for election for any reason, including, without limitation, a subsequent failure to comply with this Section 11 by the Eligible Stockholder or the Eligible Stockholder's withdrawal of the nomination, then, in each case, no additional Stockholder Nominees will be included in the Corporation's proxy materials or otherwise submitted for stockholder election pursuant to this Section 11.

(3) If for any reason one or more vacancies occur on the Board of Directors after the Final Proxy Access Nomination Date but before the date of the applicable Annual Meeting and the Board of Directors resolves to reduce the size of the Board of Directors in connection therewith, the maximum number of Stockholder Nominees eligible to be nominated or included in the Corporation's proxy materials

pursuant to this Section 11 shall be calculated based on the number of directors in office as so reduced. The Notices of Proxy Access Nomination and nominations of any Stockholder Nominees who cease to be eligible to be nominated or included in the Corporation's proxy materials pursuant to this Section 11 as a result of the operation of this Section 11(c)(3) will be deemed to have been withdrawn by each of the applicable Eligible Stockholders as of the Final Proxy Access Nomination Date.

(d) Stockholder Eligibility.

(1) For purposes of this Section 11, an Eligible Stockholder shall be deemed to "own" only those outstanding shares of common stock of the Corporation as to which the Eligible Stockholder possesses both (A) the full voting and investment rights pertaining to the shares and (B) the full economic interest in (including the opportunity for profit from and risk of loss on) such shares; provided that the number of shares calculated in accordance with clauses (A) and (B) (x) shall not include any shares (I) borrowed by such Eligible Stockholder for any purposes or purchased by such Eligible Stockholder pursuant to an agreement to resell, (II) sold by such Eligible Stockholder or any of its affiliates in any transaction that has not been settled or closed or (III) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such Eligible Stockholder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of shares of outstanding common stock of the Corporation, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of (1) reducing in any manner, to any extent or at any time in the future, such Eligible Stockholder's or its affiliates' full right to vote or direct the voting of any such shares by such Eligible Stockholder or any of its affiliates and/or (2) hedging, offsetting or altering to any degree any gain or loss realized or realizable from maintaining the full economic ownership of such shares by such Eligible Stockholder or affiliate, and (y) shall be reduced by the notional amount of shares of common stock of the Corporation subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such Eligible Stockholder or any of its affiliates, whether or not any such instrument is to be settled with shares or with cash, to the extent the number of shares owned by the Eligible Stockholder was not already reduced by such amount pursuant to clause (x)(III) above, and a number of shares of common stock of the Corporation equal to the net "short" position in the common stock of the Corporation held by such Eligible Stockholder's affiliates, whether through short sales, options, warrants, forward contracts, swaps, contracts of sale, other derivatives or similar agreements or any other agreement or arrangement. An Eligible Stockholder shall "own" shares held in the name of a nominee or other intermediary so long as the Eligible Stockholder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. An Eligible Stockholder's ownership of shares shall be deemed to continue during any period in which the Eligible Stockholder has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement which is unconditionally revocable at any time by the Eligible Stockholder. The terms "owned," "owning" and other variations of the word "own" shall have correlative meanings. Whether outstanding shares of the common stock of the Corporation are "owned" for these purposes shall be determined by the Board of Directors or any committee thereof. For purposes of this Section 11, the term "affiliate" or "affiliates" shall have the meaning ascribed thereto under the General Rules and Regulations of the Exchange Act.

(2) In order to make a nomination pursuant to this Section 11, an Eligible Stockholder must have owned the Required Ownership Percentage (as defined below) of the Corporation's outstanding common stock (the "Required Shares") continuously for the Minimum Holding Period (as defined below) or longer as of both the date the Notice of Proxy Access Nomination is required to be received by the Corporation in accordance with this Section 11 and the close of business on the record date for determining stockholders entitled to vote at the applicable Annual Meeting, and must continue to own the Required Shares through the applicable meeting date (and any postponement or adjournment thereof); *provided*, that, up to, but not more than, 20 individual stockholders who otherwise meet all of the requirements to be an Eligible Stockholder may aggregate their stockholdings in order to meet the Required Ownership Percentage, but not the Minimum Holding Period, of the Required Shares. For purposes of this Section 11, the "Required Ownership Percentage" is 3% or more of the Corporation's issued and outstanding common stock, and the "Minimum Holding Period" is three years.

(3) Whenever the Eligible Stockholder consists of a group of more than one stockholder, each provision in this Section 11 that requires the Eligible Stockholder to provide any written statements, representations, undertakings, agreements or other instruments or to meet any other conditions shall be deemed to require each stockholder that is a member of such group to provide such statements, representations, undertakings, agreements or other instruments and to meet such other conditions. In determining the aggregate number of stockholders in a group, a "group of investment companies," as such term is defined in Section 12(d)(1)(G)(ii) of the Investment Company Act of 1940, as amended, (a "Qualifying Fund Family") shall be treated as one stockholder. Not later than the deadline for delivery of the Notice of Proxy Access Nomination pursuant to this Section 11, a Qualifying Fund Family whose stock ownership is counted for purposes of determining whether a stockholder or group of stockholders qualifies as an Eligible Stockholder shall provide to the Secretary of the Corporation such documentation as is reasonably satisfactory to the Board of Directors, in its sole discretion, that demonstrates that the funds comprising the Qualifying Fund Family satisfy the definition hereof. When an Eligible Stockholder is comprised of a group, a violation of any provision of these By-laws by any member of the group shall be deemed a violation by the entire Eligible Stockholder group. No person may be a member of more than one group of persons constituting an Eligible Stockholder with respect to any Annual Meeting.

(4) In addition to providing the Notice of Proxy Access Nomination in accordance with Section 11(b)(1) above, in order to nominate a Stockholder Nominee pursuant to this Section 11, an Eligible Stockholder or the Stockholder Nominee, as applicable, must provide the following information in writing to the Secretary of the Corporation within the time period specified in this Section 11 for delivering the Notice of Proxy Access Nomination:

(A) one or more written statements from the record holders of the Required Shares or from the intermediaries through which the Required Shares are or have been held during the Minimum Holding Period verifying that, as of a date within seven business days prior to the date the Notice of Proxy Access Nomination is received by the Secretary of the Corporation, the Eligible Stockholder owns, and has owned continuously for the Minimum Holding Period, the Required Shares, and the Eligible Stockholder's agreement to provide the updates and supplements (or written notices stating that there are no such updates or supplements) described in Section 11(b)(2) within the time periods set forth therein;

(B) a copy of the Schedule 14N filed or to be filed with the Securities and Exchange Commission (and, if not included in such Schedule 14N, the details of any relationship that existed within the past three years and that would have been described pursuant to Item 6(e) of Schedule 14N (or any successor item) if it existed on the date of submission of the Schedule 14N);

(C) the Required Information (with the Statement, if any, clearly and specifically identified as such) and all other information, representations and agreements that are required to be set forth in a stockholder's notice, or provided to the Corporation in order to nominate an individual for election as a director, pursuant to Section 2 of this Article II;

(D) the written consent of each Stockholder Nominee to being named in the proxy statement as a nominee and to serving as a director if elected;

(E) in the case of a Notice of Proxy Access Nomination that is submitted by an Eligible Stockholder that is comprised of a group of stockholders, the designation by all of such stockholders of one of such stockholders who is authorized to act on behalf of all of such stockholders with respect to all matters relating to the nomination or inclusion in the Corporation's proxy materials of the Stockholder Nominee(s) nominated by such Eligible Stockholder, including, without limitation, the withdrawal of such nomination;

(F) an agreement by each Stockholder Nominee, upon such Stockholder Nominee's election, to make such acknowledgements, enter into such agreements and provide such information as the Board of Directors requires of all directors at such time, including without limitation, agreeing to be bound by the Corporation's code of ethics, insider trading policies and procedures and other similar policies and procedures;

(G) an irrevocable resignation of the Stockholder Nominee, which shall become effective upon a determination in good faith by the Board of Directors or any committee thereof that the information provided to the Corporation by such individual pursuant to this Section 11 was untrue in any material respect or omitted 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;

(H) a representation (in the form provided by the Secretary of the Corporation upon written request) that the Eligible Stockholder (I) acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control at the Corporation, and that the Eligible Stockholder does not presently have such intent, (II) has not nominated and will not nominate for election to the Board of Directors at the Annual Meeting (or any postponement or adjournment thereof) any person other than the Stockholder Nominee(s) being nominated pursuant to this Section 11, (III) has not engaged and will not engage in, and has not and will not be a “participant” in, another person’s “solicitation” within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a director at the Annual Meeting other than its Stockholder Nominee(s) or a nominee of the Board of Directors, (IV) will not distribute to any stockholder any form of proxy for the Annual Meeting other than the form of proxy distributed by the Corporation, (V) agrees to comply with all other laws and regulations applicable to any solicitation in connection with the Annual Meeting, including, without limitation, Rule 14a-9 promulgated under the Exchange Act, (VI) meets the requirements set forth in this Section 11, and (VII) has provided and will continue to provide facts, statements and other information in all communications with the Corporation and its stockholders in connection with the nomination hereunder that is or will be true and correct in all material respects and does not and will not 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

(I) a written undertaking (in the form provided by the Secretary of the Corporation upon written request) that the Eligible Stockholder agrees to (I) assume all liability stemming from any legal or regulatory violation arising out of the communications with stockholders of the Corporation by the Eligible Stockholder, its affiliates and associates, or their respective agents or representatives, either before or after the furnishing of the Notice of Proxy Access Nomination, or out of the facts, statements or information that the Eligible Stockholder or its Stockholder Nominee(s) has provided or will provide to the Corporation or filed with the Securities and Exchange Commission, (II) indemnify and hold harmless the Corporation and each of its directors, officers, agents, employees, affiliates, control persons or other persons acting on behalf of the Corporation individually against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Corporation or any of its directors, officers, agents, employees, affiliates, control persons or other persons acting on behalf of the Corporation arising out of any nomination of a Stockholder Nominee submitted by the Eligible Stockholder pursuant to this Section 11, and (III) promptly provide to the Corporation such additional information as requested pursuant to this Section 11.

In connection with Section 11(d)(4)(A), if any intermediary that verifies the Eligible Stockholder’s ownership of the Required Shares for the Minimum Holding Period is not the record holder of such shares, a Depository Trust Company (“DTC”) participant or an affiliate of a DTC participant, then the Eligible Stockholder will also need to provide a written statement as required by Section 11(d)(4)(A) from the record holder of such shares, a DTC participant or an affiliate of a DTC participant that can verify the holdings of such intermediary.

(e) Stockholder Nominee Requirements.

(1) Notwithstanding anything in these By-laws to the contrary, the Corporation shall not be required to include, pursuant to this Section 11, any Stockholder Nominee in its proxy materials (and no such Stockholder Nominee may be nominated pursuant to this Section 11) for any Annual Meeting (A) for which the Secretary of the Corporation receives a notice that the Eligible Stockholder or any other stockholder of the Corporation has nominated one or more persons for election to the Board of Directors pursuant to the advance notice requirements for nominees for director set forth in Section 2 of this Article II, (B) if the Eligible Stockholder who has nominated such Stockholder Nominee has engaged in or is currently engaged in, or has been or is a “participant” in another person’s “solicitation” within the meaning of Rule 14a-1(l) under the Exchange Act, in support of the election of any individual as a director at the Annual Meeting other than its Stockholder Nominee(s) or a nominee of the Board of Directors, (C) if such Stockholder Nominee is or becomes a party to any compensatory, payment or other financial agreement, arrangement or understanding with any person or entity other than the Corporation, or is receiving or will receive any such compensation or other payment from any person or entity other than the Corporation, in each case, in connection with service as a director of the Corporation, (D) who is not independent under the listing standards of each principal U.S. exchange upon which the common stock of the Corporation is listed, any applicable rules of the Securities and Exchange Commission and any publicly disclosed standards used by the Board of Directors in determining and disclosing independence of the Corporation’s directors, in each case, as determined by the Board of Directors or any committee thereof, (E) who does not meet the audit committee and compensation committee independence requirements under the rules of the primary stock exchange on which the shares of common stock of the Corporation are listed, (F) who is not a “non-employee director” for the purposes of Rule 16b-3 under the Exchange Act (or any successor rule), (G) whose election as a member of the Board of Directors would cause the Corporation to be in violation of these By-laws, the Certificate, the rules and listing standards of the principal U.S. exchanges upon which the common stock of the Corporation is listed or over-the-counter market on which any securities of the Corporation are traded, or any applicable state or federal law, rule or regulation, (H) who provides any information to the Corporation or its stockholders required or requested pursuant to any provision of these By-laws that is not accurate, truthful and complete in all material respects, or that otherwise contravenes any of the agreements, representations or undertakings made by the Stockholder Nominee in connection with the nomination, (I) who is or has been, within the past three years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, (J) who is a defendant in or named subject of a pending criminal proceeding (excluding traffic violations) or has been convicted or has pleaded nolo contendere in such a criminal proceeding within the past ten (10) years, (K) is subject to any order of the type specified in Rule 506(d) of Regulation D promulgated under the Securities Act of 1933, as amended, (L) if such Stockholder Nominee or the applicable Eligible Stockholder shall have provided information to the Corporation in respect of such nomination that was untrue in any material respect or omitted to state a material fact necessary in order to make the statement made, in light of the circumstances under which they were made, not misleading, as determined by the Board of Directors or any committee thereof or (M) the Eligible Stockholder or applicable Stockholder Nominee fails to comply with its obligations pursuant to this Section 11.

(2) Any Stockholder Nominee who is included in the Corporation’s proxy materials for a particular Annual Meeting but either (A) withdraws from or becomes ineligible or unavailable for election to the Board of Directors at such Annual Meeting, or (B) does not receive a number of “for” votes equal to at least 25% of the number of shares present and entitled to vote for the election of directors, will be ineligible for nomination or inclusion in the Corporation’s proxy materials as a Stockholder Nominee pursuant to this Section 11 for the next two Annual Meetings.

(3) Notwithstanding anything to the contrary set forth herein, if the Board of Directors or a designated committee thereof determines that any stockholder nomination was not made in accordance with the terms of this Section 11 or that the information provided in a Notice of Proxy Access Nomination does not satisfy the informational requirements of this Section 11 in any material respect, then such nomination shall not be considered at the applicable Annual Meeting. If neither the Board of Directors nor such committee makes a determination as to whether a nomination was made in accordance with the provisions of this Section 11, the presiding officer of the Annual Meeting shall determine whether a nomination was made in accordance with such provisions. If the presiding officer determines that any stockholder nomination was not made in accordance with the terms of this Section 11 or that the information provided in a stockholder’s notice does not satisfy the informational requirements of this Section 11 in any material respect, then such nomination shall not be considered at the applicable Annual Meeting. Additionally, such

nomination will not be considered at the Annual Meeting in question if the Eligible Stockholder (or a qualified representative thereof) does not appear at the applicable Annual Meeting to present any nomination of the Stockholder Nominee(s) included in the Corporation's proxy materials pursuant to this Section 11. For purposes of this Section 11, to be considered a qualified representative of a stockholder, a person must be authorized by a written instrument executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such written instrument or electronic transmission, or a reliable reproduction of the written instrument or electronic transmission, to the presiding officer at the meeting of stockholders. If the Board of Directors, a designated committee thereof or the presiding officer determines that a nomination was made in accordance with the terms of this Section 11, the presiding officer shall so declare at the applicable Annual Meeting and ballots shall be provided for use at such meeting with respect to such Stockholder Nominee.

(f) This Section 11 provides the exclusive method for stockholders to include nominees for director in the Corporation's proxy materials. A stockholder's compliance with the procedures set forth in this Section 11 will not also be deemed to constitute compliance with the procedures set forth in, or notice pursuant to, Section 2 of this Article II.

(g) For the avoidance of doubt, the Corporation may solicit against, and include in the proxy statement its own statement relating to, any Stockholder Nominee.

(h) For purposes of this Section 11, any determination to be made by the Board of Directors may be made by the Board of Directors, a committee of the Board of Directors or any officer of the Corporation designated by the Board of Directors or a committee of the Board of Directors, and any such determination shall be final and binding on the Corporation, any Eligible Holder, Stockholder Nominee and any other person so long as made in good faith (without any further requirements). The presiding officer of any Annual Meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall have the power and duty to determine whether a Stockholder Nominee has been nominated in accordance with the requirements of this Section 11 and, if not so nominated, shall direct and declare at the meeting that such Stockholder Nominee shall not be considered.

ARTICLE III

Directors

SECTION 1. General Power; Number. The property, affairs and business of the Corporation shall be managed by or under the direction of its Board of Directors, except as otherwise provided by the Certificate or required by law. The Board of Directors shall consist of not less than one (1) nor more than twenty (20) persons. The exact number of directors within the maximum and minimum limitations specified shall be fixed solely and exclusively by resolution duly adopted from time to time by the Board of Directors.

SECTION 2. Term of Office. Each director (whether elected at an annual meeting, or to fill a vacancy or newly created directorship or otherwise) shall hold office until his or her successor shall be elected and shall qualify or until his or her earlier resignation, death or removal.

SECTION 3. Meetings. Meetings of the Board of Directors shall be held at such place within or outside of the State of Delaware as may from time to time be fixed by resolution of the Board of Directors, or as may be specified in the notice of the meeting. Regular meetings of the Board of Directors shall be held at such times as may from time to time be fixed by resolution of the Board of Directors. Special meetings may be held at any time upon the call of the Chair of the Board or Chief Executive Officer or a majority of the directors. Notice of any special meeting of the Board of Directors shall be given to each director in person, by telephone, or by electronic mail or other form of electronic communication, sent to his or her business, electronic mail or home address, at least twenty-four (24) hours in advance of the meeting, or by written notice mailed to his or her business, electronic mail or home address, at least forty-eight (48) hours in advance of the meeting *provided, however*, that if the Chair of the Board or the President determines that it is otherwise necessary or advisable to hold the meeting sooner, then the Chair of the Board or the President, as the case may be, may

prescribe a shorter time period for notice to be given personally or by telephone, electronic mail or other similar means of communication. Such notice shall be deemed to be delivered when hand-delivered to such address; read to such director by telephone; deposited in the mail so addressed, with postage thereon prepaid, if mailed; or dispatched or transmitted if sent by electronic mail or other form of electronic communications. A meeting of the Board of Directors may be held without notice immediately after an Annual Meeting. Notice need not be given of regular meetings of the Board of Directors. A written waiver of notice signed or electronically transmitted before or after a meeting by a director and filed with the records of the meeting shall be deemed to be equivalent to notice of the meeting. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because such meeting is not lawfully called or convened. Except as otherwise required by law, by the Certificate or by these By-laws, neither the business to be transacted at, nor the purpose of, any meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

SECTION 4. Quorum. A majority of the members of the Board of Directors then in office shall constitute a quorum for the transaction of business; provided, however, that a quorum of directors shall not be less than 1/3 of the total number of directors.

SECTION 5. Vacancies. Vacancies in the Board of Directors shall be filled in the manner provided in the Certificate.

SECTION 6. Removal from Office. Directors may be removed from office only in the manner provided in the Certificate.

SECTION 7. Qualification. No director need be a stockholder of the Corporation.

SECTION 8. Resignation. A director may resign at any time by giving written notice or notice by electronic transmission to the Chair of the Board, if one is elected, the President or the Secretary. A resignation shall be effective upon receipt, unless the resignation otherwise provides. A resignation which is conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable.

SECTION 9. Action at Meeting. At any meeting of the Board of Directors at which a quorum is present, the vote of a majority of the directors present shall constitute action by the Board of Directors, unless otherwise required by law, by the Certificate or by these By-laws.

SECTION 10. Action without a Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors or any committee thereof may be taken without a meeting if all members of the Board of Directors or of the committee, as the case may be, consent thereto in writing or by electronic transmission and any consent may be documented, signed and delivered in any manner permitted by Section 116 of the DGCL. After an action is taken, the consent or consents relating thereto shall be filed with the minutes of proceedings of the Board of Directors or committee in the same paper or electronic form as the minutes are maintained. Such consent shall be treated as a resolution of the Board of Directors for all purposes.

SECTION 11. Regulations; Manner of Acting. To the extent consistent with law, the Certificate and these By-laws, the Board of Directors and any committee thereof may adopt such rules and regulations for the conduct of meetings of the Board of Directors or such committee and for the management of the property, affairs and business of the Corporation as the Board of Directors may deem appropriate. Members of the Board of Directors and any committee thereof may participate in a meeting of the Board of Directors or such committee by means of video conference, conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation shall constitute presence in person at such meeting for all purposes of these By-laws.

SECTION 12. Compensation. Directors may, by resolution of the Board of Directors or a designated committee thereof, be allowed a fixed sum and expenses for attendance at regular or special meetings of the Board of Directors; provided that directors who are serving the Corporation as employees and who receive compensation for their services as such, shall not receive any salary or other compensation for their services as directors of the Corporation. Nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees, and others who attend pursuant to direction, may, by vote of the Board of Directors, be allowed a like fixed sum and expenses of attendance for attending committee meetings.

SECTION 13. Executive Committee. The Board of Directors, in its discretion, may, by a resolution adopted by a vote of a majority of the whole Board of Directors, appoint an Executive Committee consisting of one or more members of the Board of Directors, who shall serve at the pleasure of the Board of Directors. The Executive Committee shall, to the fullest extent permitted by law, have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it. The Executive Committee shall also have the power and authority to declare a dividend and to authorize the issuance of stock. The Executive Committee powers shall be subject to the limitations set forth in Section 141(c) of the Delaware General Corporation Law, as amended. The Executive Committee shall also have authority to adopt a certificate of ownership and merger pursuant to Section 253 of the Delaware General Corporation Law, as amended.

SECTION 14. Other Committees. The Board of Directors, in its discretion, by a vote of a majority of the whole Board of Directors, may appoint one or more committees (in addition to the Executive Committee), each consisting of one or more directors. Each such committee shall have such powers and duties as may be provided by resolution or resolutions of the Board of Directors, subject to any limitations imposed by applicable law. All members of such committees shall hold such offices at the pleasure of the Board of Directors. The Board of Directors may abolish any such committee at any time. Any committee to which the Board of Directors delegates any of its powers or duties shall keep records of its meetings and shall report its action to the Board of Directors.

ARTICLE IV

Officers

SECTION 1. General. The officers of the Corporation shall be appointed by the Board of Directors and shall be a Chief Executive Officer, a President, one or more Vice Presidents (one or more of which may be designated Executive or Senior Vice Presidents by the Board of Directors), a Secretary and a Treasurer. From time to time the Board of Directors may appoint such Assistant Secretaries, Assistant Treasurers and such other officers, agents and employees as it may deem proper. Any number of offices may be held by the same person. Subject to Article V and such limitations as the Board of Directors may from time to time proscribe, each such office shall have such powers and perform such duties as generally pertain to their respective offices, as well as such powers as duties as the Board of Directors may from time to time designate or confer. The Chief Executive Officer shall be chosen from among the members of the Board of Directors. The Board of Directors may also appoint a non-executive Chair of the Board, who shall be chosen from among the members of the Board of Directors.

SECTION 2. Term. All officers shall hold their offices until their respective successors are elected and qualify, or until their earlier resignation or removal. Any officer may be removed from office, either with or without cause, at any time by the affirmative vote of the Board of Directors. Any officer may resign by delivering his or her written or electronically transmitted resignation to the Corporation addressed to the President or the Secretary and such resignation shall be effective upon receipt, unless the resignation otherwise provides.

SECTION 3. Power to Vote Securities Owned by the Corporation. Unless otherwise ordered by the Board of Directors, the Chief Executive Officer and the President, acting singly or together, shall have full power and authority on behalf of the Corporation to attend, to act and to vote at any meetings of security holders of the corporations or other entities in which the Corporation may hold securities, and at any such meetings shall possess and may exercise any and all the rights and powers incident to the ownership of such securities, and which, as the owner thereof, the Corporation might have possessed and exercised, if present. The Board of Directors by resolution from time to time may confer like powers upon any other person or persons.

ARTICLE V

Duties of Officers

SECTION 1. Chair of the Board. If there is a Chair of the Board, he or she shall preside at all meetings of the Board of Directors and of the stockholders and the Chair of the Board shall have and perform such other duties as from time to time may be assigned to him or her by the Board of Directors.

SECTION 2. Chief Executive Officer. The Chief Executive Officer of the Corporation shall be the principal executive officer of the Corporation and shall have general charge and control of all the property, business and affairs of the Corporation and, subject to the supervision of the Board of Directors, the Chief Executive Officer shall have general supervision over the Corporation's officers, employees and agents. The Chief Executive Officer shall, in the absence of the Chair of the Board, preside at meetings of the stockholders and of the Board of Directors and shall, in case of a vacancy in the office of the Chair of the Board, have the power to perform the duties incident to such office. The Chief Executive Officer may sign certificates representing the stock of the Corporation authorized for issuance by the Board of Directors or the Executive Committee. The Chief Executive Officer may enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation in the ordinary course of the Corporation's business. The Chief Executive Officer shall have all powers and perform all duties incident to the office of a chief executive officer of a corporation and such other duties as are given to the Chief Executive Officer by these By-laws or as from time to time may be assigned to the Chief Executive Officer by the Board of Directors.

SECTION 3. President. The President shall, in the absence of the Chair of the Board and the Chief Executive Officer, preside at meetings of the stockholders and shall, in case of a vacancy in the office of the Chief Executive Officer, have the power to perform the duties incident to such office other than for presiding at meetings of the Board of Directors unless the President shall be a member of the Board of Directors.

SECTION 4. Vice Presidents. Each Vice President shall have such powers and perform such duties as may be assigned to him or her by the Board of Directors, the Chief Executive Officer or the President. At the request or in the absence or disability of the Chief Executive Officer, the President, the Vice President (or if none shall have been designated, the senior of the Vice Presidents present and able to act or such other Vice President as may be designated by the Board of Directors) may perform all the duties of such officers and, when so acting, shall have all the powers of and be subject to all the restrictions upon such officers. Any Vice President may sign certificates representing stock of the Corporation authorized for issuance by the Board of Directors or the Executive Committee.

SECTION 5. Treasurer. The Treasurer shall have the custody of all the funds and securities of the Corporation. When necessary or proper the Treasurer shall endorse on behalf of the Corporation, for collection, checks, notes and other obligations and shall deposit the same to the credit of the Corporation in such bank, or banks, or depositories as may be designated by the Board of Directors, or by any officer acting under authority conferred by the Board of Directors. The Treasurer shall enter regularly in books to be kept for the purpose, a full and accurate account of all moneys received and paid by him or her on account of the Corporation. Whenever required by the Board of Directors, the Treasurer shall render an account of all his or her transactions as Treasurer and of the financial condition of the Corporation. The Treasurer shall at all reasonable times exhibit his or her books and accounts to any director of the Corporation upon application at the office of the Corporation during business hours and the Treasurer shall perform all things incident to the position of Treasurer, subject to the control of the Board of Directors. The Treasurer shall give bond for the faithful discharge of his or her duties if the Board of Directors so requires. The Treasurer may sign certificates representing stock of the Corporation authorized for issuance by the Board of Directors or the Executive Committee. The Treasurer shall perform, in general, all duties incident to the office of a treasurer of a corporation and such other duties as are given to him or her by these By-laws or as from time to time may be assigned to him or her by the Board of Directors, the Chief Executive Officer or the President.

SECTION 6. Assistant Treasurers. The Board of Directors may, from time to time, designate and elect one or more Assistant Treasurers who shall have such powers and perform such duties as may be assigned to them by the Board of Directors or the Treasurer. At the request or in the absence or disability of the Treasurer, the Assistant Treasurer (or, if there are two or more Assistant Treasurers, then the senior of the Assistant Treasurers present and able to act or such other Assistant Treasurer as may be designated by the Board of Directors) may perform all the duties of the Treasurer and, when so acting, shall have all the powers of and be subject to all the restrictions upon the Treasurer.

SECTION 7. Secretary. The Secretary shall attend to the giving and serving of all notices of the Corporation. The Secretary shall keep or cause to be kept a record of the proceedings of the meetings of the stockholders and of the Board of Directors in books kept for that purpose. The Secretary shall be the custodian of the seal of the Corporation, and cause such seal (or a facsimile thereof) to be affixed to all certificates representing the stock of the Corporation prior to the issuance thereof and to all instruments the execution of which on behalf of the Corporation under its seal shall have been duly authorized in accordance with these By-laws, and when so affixed the Secretary may attest the same. The Secretary shall have charge of the records of the Corporation, including the stock books and such other books, reports, statements and other documents as the Board of Directors may direct to be kept or as are required by law to be kept all of which shall at all reasonable times be open to inspection by any director. The Secretary shall sign certificates representing stock of the Corporation authorized for issuance by the Board of Directors or the Executive Committee. The Secretary shall perform all duties incident to the office of a secretary of a corporation and such other duties as are given to him or her by these By-laws or as from time to time may be assigned to him or her by the Board of Directors, the Chairman of the Board or the President.

SECTION 8. Assistant Secretaries. The Board of Directors may, from time to time, designate and elect one or more Assistant Secretaries who shall have such powers and perform such duties as may be assigned to them by the Board of Directors or the Secretary. At the request or in the absence of the Secretary, the Assistant Secretary (or, if there are two or more Assistant Secretaries, then the senior of the Assistant Secretaries present and able to act or such other Assistant Secretary as may be designated by the Board of Directors) may perform all the duties of the Secretary and, when so acting, shall have all the powers of and be subject to all the restrictions upon the Secretary.

SECTION 9. Delegation by Board of Directors. In the case of absence or inability to act of any officer of the Corporation and of any person herein authorized to act in his or her place, the Board of Directors may from time to time delegate the powers of such officer to any other officer or any director or any other person whom it may select.

ARTICLE VI

Capital Stock

SECTION 1. Certificates of Stock.

(a) The shares of the Corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of stock represented by certificates shall be entitled to have a certificate signed by or in the name of the Corporation by any two authorized officers of the Corporation (it being understood that each of the Chair of the Board of Directors, the Vice Chair of the Board of Directors, the Chief Executive Officer, the President, any Vice President, the Treasurer, any Assistant Treasurer, the Secretary and any Assistant Secretary shall be an authorized officer for such purpose), certifying the number of shares owned by him or her in the Corporation. The Board of Directors may determine that all classes or series of the Corporation's stock are to be uncertificated, whether upon original issuance, re-issuance or subsequent transfer.

(b) Certificates representing shares of stock of the Corporation shall be in such form as shall be approved by the Board of Directors.

(c) There shall be entered upon the stock books of the Corporation at the time of issuance of each share the number of the certificate issued, the name of the person owning the shares represented thereby, the number and class of such shares, and the date of issuance thereof. Every certificate exchanged or returned to the Corporation shall be marked "Cancelled", with the date of cancellation.

SECTION 2. Transfers of Stock. Subject to any restrictions on transfer and unless otherwise provided by the Board of Directors, shares of stock that are represented by a certificate may be transferred on the books of the Corporation by the surrender to the Corporation or its transfer agent of the certificate theretofore properly endorsed or accompanied by a written assignment or power of attorney properly executed, with transfer stamps (if necessary) affixed, and with such proof of the authenticity of signature as the Corporation or its transfer agent may reasonably require. Shares of stock that are not represented by a certificate may be transferred on the books of the Corporation by submitting to the Corporation or its transfer agent such evidence of transfer and following such other procedures as the Corporation or its transfer agent may require.

SECTION 3. Record Holders. Except as may otherwise be required by law, by the Certificate or by these By-laws, the Corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote with respect thereto, regardless of any transfer, pledge or other disposition of such stock, until the shares have been transferred on the books of the Corporation in accordance with the requirements of these By-laws.

SECTION 4. Record Date.

(a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall not be more than sixty (60) days prior to such action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

SECTION 5. Replacement of Certificates. In case of the alleged loss, destruction or mutilation of a certificate of stock of the Corporation, a duplicate certificate may be issued in place thereof, upon such terms as the Corporation may prescribe.

ARTICLE VII

Corporate Seal

The Corporate Seal of the Corporation shall be circular in form and shall bear the name of the Corporation, the year of incorporation and the words, "Corporate Seal" and "Delaware". The form of the seal shall be subject to alteration by the Board of Directors and the seal may be used by causing it or a facsimile to be impressed or affixed or printed or otherwise reproduced. Any officer or director of the Corporation shall have authority to affix the corporate seal of the Corporation to any document requiring the same, and to attest the same.

ARTICLE VIII

Indemnification and Insurance

SECTION 1. Definitions. For purposes of this Article

(a) "Corporate Status" describes the status of a person who is serving or has served (i) as a Director of the Corporation, (ii) as an Officer of the Corporation, (iii) as a Non-Officer Employee of the Corporation, or (iv) as a director, partner, trustee, officer, employee or agent of any other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan, foundation, association, organization or other legal entity which such person is or was serving at the request of the Corporation. For purposes of this Section 1(a) of Article VIII, a Director, Officer or Non-Officer Employee of the Corporation who is serving or has served as a director, partner, trustee, officer, employee or agent of a Subsidiary shall be deemed to be serving at the request of the Corporation. Notwithstanding the foregoing, "Corporate Status" shall not include the status of a person who is serving or has served as a director, officer, employee or agent of a constituent corporation absorbed in a merger or consolidation transaction with the Corporation with respect to such person's activities prior to said transaction, unless specifically authorized by the Board of Directors or the stockholders of the Corporation;

(b) "Director" means any person who serves or has served the Corporation as a director on the Board of Directors;

(c) "Disinterested Director" means, with respect to each Proceeding in respect of which indemnification is sought hereunder, a Director who is not and was not a party to such Proceeding;

(d) "Expenses" means all attorneys' fees, retainers, court costs, transcript costs, fees of expert witnesses, private investigators and professional advisors (including, without limitation, accountants and investment bankers), travel expenses, duplicating costs, printing and binding costs, costs of preparation of demonstrative evidence and other courtroom presentation aids and devices, costs incurred in connection with document review, organization, imaging and computerization, telephone charges, postage, delivery service fees, and all other disbursements, costs or expenses of the type customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, settling or otherwise participating in, a Proceeding;

(e) "Liabilities" means judgments, damages, liabilities, losses, penalties, excise taxes, fines and amounts paid in settlement;

(f) "Non-Officer Employee" means any person who serves or has served as an employee or agent of the Corporation, but who is not or was not a Director or Officer;

(g) "Officer" means any person who serves or has served the Corporation as an officer of the Corporation appointed by the Board of Directors;

(h) "Proceeding" means any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, inquiry, investigation, administrative hearing or other proceeding, whether civil, criminal, administrative, arbitratve or investigative; and

(i) "Subsidiary" means any corporation, partnership, limited liability company, joint venture, trust or other entity of which the Corporation owns (either directly or through or together with another Subsidiary of the Corporation) either (i) a general partner, managing member or other similar interest or (ii) (A) fifty percent (50%) or more of the voting power of the voting capital equity interests of such corporation, partnership, limited liability company, joint venture or other entity, or (B) fifty percent (50%) or more of the outstanding voting capital stock or other voting equity interests of such corporation, partnership, limited liability company, joint venture or other entity.

SECTION 2. Indemnification of Directors and Officers.

(a) Subject to the operation of Section 4 of this Article VIII of these By-laws, each Director and Officer shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended, and to the extent authorized in this Section 2.

(1) Actions, Suits and Proceedings Other than By or In the Right of the Corporation. Each Director and Officer shall be indemnified and held harmless by the Corporation against any and all Expenses and Liabilities that are incurred or paid by such Director or Officer or on such Director's or Officer's behalf in connection with any Proceeding or any claim, issue or matter therein (other than an action by or in the right of the Corporation), which such Director or Officer is, or is threatened to be made, a party to or participant in by reason of such Director's or Officer's Corporate Status, if such Director or Officer acted in good faith and in a manner such Director or Officer reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful.

(2) Actions, Suits and Proceedings By or In the Right of the Corporation. Each Director and Officer shall be indemnified and held harmless by the Corporation against any and all Expenses that are incurred by such Director or Officer or on such Director's or Officer's behalf in connection with any Proceeding or any claim, issue or matter therein by or in the right of the Corporation, which such Director or Officer is, or is threatened to be made, a party to or participant in by reason of such Director's or Officer's Corporate Status, if such Director or Officer acted in good faith and in a manner such Director or Officer reasonably believed to be in or not opposed to the best interests of the Corporation; provided, however, that no indemnification shall be made under this Section 2(a)(2) in respect of any claim, issue or matter as to which such Director or Officer shall have been finally adjudged by a court of competent jurisdiction to be liable to the Corporation, unless, and only to the extent that, the Court of Chancery of the State of Delaware or another court in which such Proceeding was brought shall determine upon application that, despite adjudication of liability, but in view of all the circumstances of the case, such Director or Officer is fairly and reasonably entitled to indemnification for such Expenses that such court deems proper.

(3) Survival of Rights. The rights of indemnification provided by this Section 2 shall continue as to a Director or Officer after he or she has ceased to be a Director or Officer and shall inure to the benefit of his or her heirs, executors, administrators and personal representatives.

(4) Actions by Directors or Officers. Notwithstanding the foregoing, the Corporation shall indemnify any Director or Officer seeking indemnification in connection with a Proceeding initiated by such Director or Officer only if such Proceeding (including any parts of such Proceeding not initiated by such Director or Officer) was authorized in advance by the Board of Directors, unless such Proceeding was brought to enforce such Officer's or Director's rights to indemnification or, in the case of Directors, advancement of Expenses under these By-laws in accordance with the provisions set forth herein.

SECTION 3. Indemnification of Non-Officer Employees. Subject to the operation of Section 4 of this Article VIII of these By-laws, each Non-Officer Employee may, in the discretion of the Board of Directors, be indemnified by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may

hereafter be amended, against any or all Expenses and Liabilities that are incurred by such Non-Officer Employee or on such Non-Officer Employee's behalf in connection with any threatened, pending or completed Proceeding, or any claim, issue or matter therein, which such Non-Officer Employee is, or is threatened to be made, a party to or participant in by reason of such Non-Officer Employee's Corporate Status, if such Non-Officer Employee acted in good faith and in a manner such Non-Officer Employee reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful. The rights of indemnification provided by this Section 3 shall exist as to a Non-Officer Employee after he or she has ceased to be a Non-Officer Employee and shall inure to the benefit of his or her heirs, personal representatives, executors and administrators. Notwithstanding the foregoing, the Corporation may indemnify any Non-Officer Employee seeking indemnification in connection with a Proceeding initiated by such Non-Officer Employee only if such Proceeding was authorized in advance by the Board of Directors.

SECTION 4. Determination. Unless ordered by a court, no indemnification shall be provided pursuant to this Article VIII to a Director, to an Officer or to a Non-Officer Employee unless a determination shall have been made that such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal Proceeding, such person had no reasonable cause to believe his or her conduct was unlawful. Such determination shall be made by (a) a majority vote of the Disinterested Directors, even though less than a quorum of the Board of Directors, (b) a committee comprised of Disinterested Directors, such committee having been designated by a majority vote of the Disinterested Directors (even though less than a quorum), (c) if there are no such Disinterested Directors, or if a majority of Disinterested Directors so directs, by independent legal counsel in a written opinion, or (d) by the stockholders of the Corporation.

SECTION 5. Advancement of Expenses to Directors Prior to Final Disposition

(a) The Corporation shall advance all Expenses incurred by or on behalf of any Director in connection with any Proceeding in which such Director is involved by reason of such Director's Corporate Status within thirty (30) days after the receipt by the Corporation of a written statement from such Director requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by such Director and shall be preceded or accompanied by an undertaking by or on behalf of such Director to repay any Expenses so advanced if it shall ultimately be determined that such Director is not entitled to be indemnified against such Expenses. Notwithstanding the foregoing, the Corporation shall advance all Expenses incurred by or on behalf of any Director seeking advancement of Expenses hereunder in connection with a Proceeding initiated by such Director only if such Proceeding (including any parts of such Proceeding not initiated by such Director) was (i) authorized by the Board of Directors, or (ii) brought to enforce such Director's rights to indemnification or advancement of Expenses under these By-laws.

(b) If a claim for advancement of Expenses hereunder by a Director is not paid in full by the Corporation within thirty (30) days after receipt by the Corporation of documentation of Expenses and the required undertaking, such Director may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and if successful in whole or in part, such Director shall also be entitled to be paid the Expenses of prosecuting such claim. The burden of proving that a Director is not entitled to an advancement of Expenses shall be on the Corporation.

(c) In any suit brought by the Corporation to recover an advancement of Expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such Expenses upon a final adjudication that the Director has not met any applicable standard for indemnification set forth in the DGCL.

SECTION 6. Advancement of Expenses to Officers and Non-Officer Employees Prior to Final Disposition.

(a) The Corporation may, at the discretion of the Board of Directors, advance any or all Expenses incurred by or on behalf of any Officer or any Non-Officer Employee in connection with any Proceeding in which such person is involved by reason of his or her Corporate Status as an Officer or Non-Officer Employee upon the receipt by the Corporation of a statement or statements from such Officer or Non-Officer Employee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by such Officer or Non-Officer Employee and shall be preceded or accompanied by an undertaking by or on behalf of such person to repay any Expenses so advanced if it shall ultimately be determined that such Officer or Non-Officer Employee is not entitled to be indemnified against such Expenses.

(b) In any suit brought by the Corporation to recover an advancement of Expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such Expenses upon a final adjudication that the Officer or Non-Officer Employee has not met any applicable standard for indemnification set forth in the DGCL.

SECTION 7. Contractual Nature of Rights.

(a) The provisions of this Article VIII shall be deemed to be a contract between the Corporation and each Director and Officer entitled to the benefits hereof at any time while this Article VIII is in effect, in consideration of such person's past or current and any future performance of services for the Corporation. Neither amendment, repeal or modification of any provision of this Article VIII nor the adoption of any provision of the Certificate inconsistent with this Article VIII shall eliminate or reduce any right conferred by this Article VIII in respect of any act or omission occurring, or any cause of action or claim that accrues or arises or any state of facts existing, at the time of or before such amendment, repeal, modification or adoption of an inconsistent provision (even in the case of a proceeding based on such a state of facts that is commenced after such time), and all rights to indemnification and advancement of Expenses granted herein or arising out of any act or omission shall vest at the time of the act or omission in question, regardless of when or if any proceeding with respect to such act or omission is commenced. The rights to indemnification and to advancement of Expenses provided by, or granted pursuant to, this Article VIII shall continue notwithstanding that the person has ceased to be a director or officer of the Corporation and shall inure to the benefit of the estate, heirs, executors, administrators, legatees and distributees of such person.

(b) If a claim for indemnification hereunder by a Director or Officer is not paid in full by the Corporation within sixty (60) days after receipt by the Corporation of a written claim for indemnification, such Director or Officer may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim, and if successful in whole or in part, such Director or Officer shall also be entitled to be paid the expenses of prosecuting such claim. The failure of the Corporation (including its Board of Directors or any committee thereof, independent legal counsel, or stockholders) to make a determination concerning the permissibility of such indemnification under this Article VIII shall not be a defense to an action brought by a Director or Officer for recovery of the unpaid amount of an indemnification claim and shall not create a presumption that such indemnification is not permissible. The burden of proving that a Director or Officer is not entitled to indemnification shall be on the Corporation.

(c) In any suit brought by a Director or Officer to enforce a right to indemnification hereunder, it shall be a defense that such Director or Officer has not met any applicable standard for indemnification set forth in the DGCL.

SECTION 8. Non-Exclusivity of Rights. The rights to indemnification and to advancement of Expenses set forth in this Article VIII shall not be exclusive of any other right which any Director, Officer, or Non-Officer Employee may have or hereafter acquire under any statute, provision of the Certificate or these By-laws, agreement, vote of stockholders or Disinterested Directors or otherwise.

SECTION 9. Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any Director, Officer or Non-Officer Employee against any liability of any character asserted against or incurred by the Corporation or any such Director, Officer or Non-Officer Employee, or arising out of any such person's Corporate Status, whether or not the Corporation would have the power to indemnify such person against such liability under the DGCL or the provisions of this Article VIII.

SECTION 10. Other Indemnification. The Corporation's obligation, if any, to indemnify or provide advancement of Expenses to any person under this Article VIII as a result of such person serving, at the request of the Corporation, as a director, partner, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall be reduced by any amount such person may collect as indemnification or advancement of Expenses from such other corporation, partnership, joint venture, trust, employee benefit plan or enterprise (the "Primary Indemnitor"). Any indemnification or advancement of Expenses under this Article VIII owed by the Corporation as a result of a person serving, at the request of the Corporation, as a director, partner, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall only be in excess of, and shall be secondary to, the indemnification or advancement of Expenses available from the applicable Primary Indemnitor(s) and any applicable insurance policies

ARTICLE IX

Amendments

SECTION 1. Amendment by Directors. Except as provided otherwise by law, these By-laws may be amended or repealed by the Board of Directors.

SECTION 2. Amendment by Stockholders. These By-laws may be amended or repealed by the stockholders at any Annual Meeting, or special meeting of stockholders called for such purpose in accordance with these By-laws, by the affirmative vote of at least seventy-five percent (75%) of the outstanding shares entitled to vote on such amendment or repeal, voting together as a single class; provided, however, that if the Board of Directors recommends that stockholders approve such amendment or repeal at such meeting of stockholders, such amendment or repeal shall only require the affirmative vote of the majority of the outstanding shares entitled to vote on such amendment or repeal, voting together as a single class.

ARTICLE X

Exclusive Jurisdiction of Delaware Courts or the United States Federal District Courts

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of, or a claim based on, a breach of a fiduciary duty owed by any current or former director, officer or other employee or stockholder of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL or the Certificate or these By-laws (including the interpretation, validity or enforceability thereof) or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware, or (iv) any action asserting a claim governed by the internal affairs doctrine; provided, however, that this sentence will not apply to any causes of action arising under the Securities Act of 1933, as amended, or the Exchange Act, or to any claim for which the federal courts have exclusive jurisdiction. Unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the sole and exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act of 1933, as amended, the Exchange Act, and the rules and regulations promulgated thereunder. To the fullest extent permitted by law, any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article X.

CERTIFICATION

I, Jonathan Steinberg, certify that:

1. I have reviewed this quarterly report on Form 10-Q of WisdomTree Investments, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

By: /s/ Jonathan Steinberg

Jonathan Steinberg
Chief Executive Officer
(Principal Executive Officer)

Date: August 5, 2022

CERTIFICATION

I, Bryan Edmiston, certify that:

1. I have reviewed this quarterly report on Form 10-Q of WisdomTree Investments, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

By: /s/ Bryan Edmiston

Bryan Edmiston
Chief Financial Officer
(Principal Financial Officer)

Date: August 5, 2022

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of WisdomTree Investments, Inc. (the "Company") on Form10-Q for the period ended June 30, 2022 as filed with the Securities and Exchange Commission (the "SEC") on the date hereof (the "Report"), we, Jonathan Steinberg, Chief Executive Officer of the Company, and Bryan Edmiston, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to our knowledge, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Exchange Act, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

This certification is being furnished and not filed, and shall not be incorporated into any documents for any purpose, under the Exchange Act, as amended. A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the SEC or its staff upon request.

By: /s/ Jonathan Steinberg
Jonathan Steinberg
Chief Executive Officer
(Principal Executive Officer)

By: /s/ Bryan Edmiston
Bryan Edmiston
Chief Financial Officer
(Principal Financial Officer)

Date: August 5, 2022