

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95462 / August 10, 2022

INVESTMENT ADVISERS ACT OF 1940
Release No. 6085 / August 10, 2022

INVESTMENT COMPANY ACT OF 1940
Release No. 34669 / August 10, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20954

In the Matter of

RICHARD KEITH ROBERTSON,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Richard Keith Robertson (“Respondent” or “Robertson”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these

proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Administrative and Cease-And-Desist Proceedings, Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-And-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that:

Summary

From January 2011 to October 2020, investment adviser representative Richard Keith Robertson engaged in undisclosed “cherry-picking,” a practice of fraudulently allocating profitable trades to favored accounts at the expense of his advisory clients. During this period, Robertson allocated a disproportionate number of trades with positive first-day returns to his personal and family accounts, while allocating a disproportionate number of trades with negative first-day returns to certain client accounts. Robertson was able to do this by buying securities in an omnibus account and then waiting until later in the day to allocate the securities to his or his clients’ accounts. By virtue of his conduct, Robertson willfully violated Section 10(b) of the Exchange Act and Rules 10b-5(a) and 10b-5(c) thereunder and Sections 206(1) and 206(2) of the Advisers Act.

Respondent

1. **Richard Keith Robertson**, age 56, presently resides in Del Mar, California and serves as the president, chief executive officer, and managing member of a California-registered investment adviser. Robertson has been associated with a number of registered broker-dealers and/or investment advisers since 1992. From October 2010 to December 2018, Robertson was associated as an investment adviser representative with IFP Advisors, LLC, and from November 2010 to December 2018, he was also a registered representative at a dually registered broker-dealer and investment adviser. From December 2018 through May 2021, Robertson was associated as an investment adviser representative with another investment adviser registered with the Commission, and from January 2019 to January 2021, he also was a registered representative at a different broker-dealer registered with the Commission.

Other Relevant Entity

2. **IFP Advisors, LLC** is a Florida limited liability company headquartered in Tampa, Florida that does business as Independent Financial Partners. IFP has been registered with the

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

Commission as an investment adviser since September 2008, and, according to its most recent Form ADV filed in May 2022, IFP has more than \$10 billion in assets under management.

Facts

3. From January 2011 to October 2020 (the “relevant period”), Robertson and his clients had their accounts in custody at the same broker-dealer. While at times Robertson placed trades directly in his or his clients’ accounts, at other times Robertson employed an omnibus account that allowed him to trade shares or options of a security earlier in the day and allocate the shares or options to his or his clients’ accounts later in the day. Because allocations from the omnibus account occurred later in the day, Robertson could observe intraday price movements of the securities purchased before determining the accounts to which he would allocate the shares or options.

4. Robertson allocated a disproportionate number of trades with positive first-day returns (e.g., trades that increased in price from the time of purchase in the omnibus account to the time of allocation later that day) to his personal and family accounts and a disproportionate number of trades with negative first-day returns (e.g., trades that decreased in price from the time of purchase in the omnibus account to the time of allocation later that day) to certain other client accounts. Specifically, Robertson’s personal and family accounts obtained average first-day returns of approximately 1.72% on allocated equity trades, while Robertson’s client accounts obtained average first-day returns of approximately -0.21% on allocated equity trades. Further, Robertson’s personal and family accounts obtained average first-day returns of approximately 4.17% on allocated options trades, while Robertson’s client accounts obtained average first-day returns of approximately -2.69% on allocated options trades.

5. The disparity between the first-day returns on trades allocated to Robertson and his family accounts as compared to trades allocated to other client accounts is statistically significant; the probability that such an uneven allocation of first-day gains and losses occurred by chance is nearly zero.

6. As a result of his cherry-picking scheme, Robertson obtained ill-gotten gains of at least \$592,437.

Violations

7. As a result of the conduct described above, Robertson willfully violated Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c) thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

8. As a result of the conduct described above, Robertson willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit, respectively, (1) any investment adviser from employing any device, scheme, or artifice to defraud any client or prospective client, and (2) any investment adviser from engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

Disgorgement

9. The disgorgement and prejudgment interest referenced in paragraph IV.D is consistent with equitable principles and does not exceed Respondent's net profits from his violations, and will be distributed to harmed investors to the extent feasible. The Commission will hold funds paid pursuant to paragraph IV.D in an account at the United States Treasury pending distribution. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Robertson's Offer.

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

A. Respondent Robertson cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Sections 206(1) and 206(2) of the Advisers Act.

B. Respondent Robertson be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

C. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, compliance with the Commission's order and payment of any or all of the following: (a) any disgorgement or civil penalties ordered by a Court against the Respondent in any action brought by the Commission; (b) any disgorgement

amounts ordered against the Respondent for which the Commission waived payment; (c) any arbitration award related to the conduct that served as the basis for the Commission order; (d) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (e) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondent shall pay disgorgement of \$592,437, prejudgment interest of \$28,173.12, and a civil money penalty of \$300,000, to the Securities and Exchange Commission. Payment shall be made in the following installments: \$620,610.12 within thirty (30) days of the entry of the Order, \$50,000 within one hundred twenty (120) days of the entry of the Order, \$50,000 within two hundred ten (210) days of the entry of the Order, and the remaining amount within three hundred sixty (360) days of the entry of the Order. Payments shall be applied first to post order interest, which accrues pursuant to SEC Rule of Practice 600 for disgorgement and pursuant to 31 U.S.C. §3717 for penalty. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

Payment must be made in one of the following ways:

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

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

Payments by check or money order must be accompanied by a cover letter identifying Richard Keith Robertson as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Joseph Sansone, Chief, Market Abuse Unit, Division of Enforcement, Securities and Exchange Commission, 100 Pearl St., Suite 20-100, New York, NY 10004-2616.

E. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the disgorgement, prejudgment interest and penalties referenced in paragraph IV.D above. This Fair Fund may be combined with any other monies paid in a parallel proceeding arising out of the same facts that are the basis for the violations in this matter, including any monies paid in the case entitled, *In the Matter of IFP Advisors, LLC*. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

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

By the Commission.

Vanessa A. Countryman
Secretary