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8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

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12
13 SECURITIES AND EXCHANGE
COMMISSION,

14 Plaintiff,

15 vs.

16
17 RICHARD JAMES ROBERTS, TCFG
INVESTMENT ADVISORS, LLC,
18 and TCFG WEALTH
MANAGEMENT, LLC,

19 Defendants.
20

Case No. 21-cv-1615

COMPLAINT

21
22 Plaintiff Securities and Exchange Commission (“SEC”) alleges:

23 **JURISDICTION AND VENUE**

24 1. The Court has jurisdiction over this action pursuant to Sections 209(d),
25 209(e)(1) and 214 of the Investment Advisers Act of 1940 (“Advisers Act”), 15
26 U.S.C. §§ 80b-9(d), 80b-9(e)(1) & 90b-14.

27 2. Defendants have, directly or indirectly, made use of the means or
28

1 instrumentalities of interstate commerce, of the mails, or of the facilities of a national
2 securities exchange in connection with the transactions, acts, practices and courses of
3 business alleged in this complaint.

4 3. Venue is proper in this district pursuant to Section 22(a) of the Securities
5 Act, 15 U.S.C. § 77v(a), and Section 27(a) of the Exchange Act, 15 U.S.C. § 78aa(a),
6 because certain of the transactions, acts, practices and courses of conduct constituting
7 violations of the federal securities laws occurred within this district. In addition,
8 venue is proper in this district because Defendants Richard James Roberts, TCFG
9 Investment Advisors, LLC and TCFG Wealth Management, LLC reside in this
10 district, and defendants TCFG Investment Advisors, LLC and TCFG Wealth
11 Management, LLC have their principal places of business in this district.

12 **SUMMARY**

13 4. This civil enforcement action involves fraudulent misconduct and breach
14 of fiduciary duty by defendant Richard James Roberts and his investment advisory
15 firm, defendant TCFG Investment Advisor, LLC (“TCFG”). Roberts used his broker-
16 dealer firm, defendant TCFG Wealth Management, LLC (“TCFG Wealth
17 Management”), to aid and abet this misconduct.

18 5. Between in or about January 2014 and in or about April 2020, Roberts
19 and TCFG made materially false and misleading statements to TCFG’s advisory
20 clients (“TCFG clients”). The defendants defrauded the TCFG clients by falsely
21 disclosing that TCFG Wealth Management “may” receive portions of the fees
22 charged to TCFG accounts by its third party clearing and custody firm (“Clearing
23 Broker”) when, in fact, Roberts had directed Clearing Broker to charge TCFG clients
24 an additional fee markup that was paid to TCFG Wealth Management. Roberts and
25 TCFG further knew, or were reckless and negligent for not knowing, that the marked
26 up portion of the fee was passed on to TCFG’s clients approximately 60 percent of
27 the time. Roberts and TCFG made other materially false and misleading statements
28 to TCFG’s clients regarding the fee markups and failed to disclose adequately the

1 conflicts of interest they created for defendants.

2 6. Roberts used his positions as the chief operating officer, president,
3 managing member and, at times, chief compliance officer of TCFG Wealth
4 Management to substantially assist and further this fraudulent conduct and the
5 violations of the fiduciary duties he and TCFG owed to TCFG's clients.

6 7. Furthermore, as the chief compliance officer of TCFG, Roberts aided
7 and abetted TCFG's failure to implement the written policies and procedures that
8 were reasonably designed to prevent the sorts of disclosure and conflict of interest
9 violations that arose from TCFG Wealth Management charging and receiving these
10 fee markups from TCFG clients.

11 8. By engaging in this conduct: (1) defendants Roberts and TCFG violated
12 Sections 206(1) and 206(2) of the Advisers Act; (2) defendant TCFG violated Section
13 206(4) of the Advisers Act and Rule 206(4)-7 thereunder; (3) defendant Roberts,
14 pursuant to Section 209(f) of the Advisers Act, aided and abetted TCFG's violations
15 of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder; and (4) TCFG
16 Wealth Management, pursuant to Section 209(f) of the Advisers Act, aided and
17 abetted Roberts' and TCFG's violations of Sections 206(1) and 206(2) of the
18 Advisers Act.

19 9. The SEC seeks findings that the defendants committed these violations,
20 permanent injunctions against all defendants, disgorgement with prejudgment interest
21 against all defendants, and civil penalties against all defendants.

22 **THE DEFENDANTS**

23 10. Defendant Richard James Roberts, age 51 and a resident of Laguna
24 Niguel, California is the chief executive officer, president, chief compliance officer
25 and managing member of TCFG. Roberts owns the majority interest in Certus
26 Financial Corporation ("Certus"), a holding company that owns 100 percent of
27 TCFG. Roberts holds Series 7 (registered representative), 24 (principal), 53
28 (municipal securities supervisor) and 63 (state) licenses.

1 11. Defendant TCFG Investment Advisors, LLC is a Delaware corporation
2 with its principal place of business in Laguna Niguel, California. TCFG has been
3 registered with the SEC as an investment adviser since 2013. TCFG is wholly owned
4 by Certus, and, as of March 25, 2021, has approximately \$459 million in regulatory
5 assets under management on behalf of 3,090 accounts, all but \$28 million of which it
6 manages on a discretionary basis.

7 12. Defendant TCFG Wealth Management, LLC is a Delaware corporation
8 with its principal place of business co-located with TCFG in Laguna Niguel,
9 California. TCFG Wealth Management is also a wholly owned subsidiary of Certus
10 and Roberts serves as its chief executive officer, president, managing member and, up
11 until 2015, chief compliance officer. TCFG Wealth Management has been registered
12 with the SEC as a broker-dealer since 2012.

13 **RELEVANT ENTITIES**

14 13. Certus Financial Group, LLC is a Delaware corporation with its
15 principal place of business co-located with TCFG and TCFG Wealth Management in
16 Laguna Niguel, California. Certus is holding company with three wholly-owned
17 subsidiaries: TCFG, TCFG Wealth and TCFG Insurance Solutions, LLC, an
18 insurance agency. Roberts, who owns 60.65 percent of Certus, serves as its chief
19 executive officer, president and managing member.

20 14. “Clearing Broker” is a Delaware limited liability company with its
21 principal place of business in Boston, Massachusetts. Clearing Broker is a broker-
22 dealer and investment adviser that is dually-registered with the SEC. It acted as
23 TCFG’s clearing and custody firm by executing and clearing transactions, and
24 carrying the brokerage accounts of TCFG’s advisory clients until in or about
25 December 2020.

THE ALLEGATIONS

A. Roberts' Common Control Over Certus Financial, TCFG and TCFG Wealth Management

1. Roberts' Control of Certus Financial

15. On or about December 27, 2011, Roberts formed Certus as a limited liability company in Delaware. Roberts is the Managing Member of Certus and has been since its inception.

16. Roberts owns approximately 60.65 percent of Certus. There are approximately 18 other minority members of Certus. The minority members of Certus each separately own between one and four percent of the company.

17. According to the operating agreement for Certus, Roberts, as the Managing Member, has the power to do any and all acts necessary or convenient or for the furtherance of that company, and no other members of the company have the authority to bind or act for the company.

18. Roberts also serves as the chief operating officer and president of Certus and there are no other officers in the company.

19. The primary function of Certus is to serve as the holding company for three wholly owned independent subsidiaries: TCFG, TCFG Wealth Management and TCFG Insurance Solutions, LLC.

20. All three of these wholly-owned subsidiaries are co-located with Certus at the same address in Laguna Niguel, California.

2. Roberts' Control of TCFG Wealth Management

21. On or about April 10, 2012, Roberts formed TCFG Wealth Management as a limited liability company in Delaware. Roberts is the sole Managing Member of TCFG Wealth Management and has been since its inception.

22. According to the operating agreement for TCFG Wealth Management, as the Managing Member, Roberts has the power to do any and all acts necessary or convenient or for the furtherance of that company, and no other members of the

1 company have the authority to bind or act for the company.

2 23. TCFG Wealth Management is a registered broker-dealer. Roberts serves
3 as its chief executive officer and provides the strategic direction of the company,
4 including recruiting, vetting and hiring all of its registered representatives. Between
5 2012 and 2015, Roberts also served as the chief compliance officer of TCFG Wealth
6 Management.

7 **3. Roberts' Control of TCFG**

8 24. On or about December 3, 2012, Roberts formed TCFG as a limited
9 liability company in Delaware. Like TCFG Wealth Management, Roberts is the sole
10 Managing Member of TCFG and has been since its inception.

11 25. According to the operating agreement for TCFG, as its Managing
12 Member, Roberts has the power to do any and all acts necessary or convenient or for
13 the furtherance of that company, and no other members of the company have the
14 authority to bind or act for the company.

15 26. TCFG is a registered investment adviser. Roberts serves as TCFG's
16 chief executive officer, president and chief compliance officer. As of March 25,
17 2021, TCFG had 3,090 clients and approximately \$459,678,474 in regulatory assets
18 under managements.

19 **4. TCFG's Affiliation with TCFG Wealth Management**

20 27. TCFG is an affiliate of TCFG Wealth Management. TCFG has
21 approximately 30 employees providing investment advisory services to its
22 approximately 3,000 clients. Approximately 27 of TCFG's investment advisers are
23 also registered representatives of TCFG Wealth Management.

24 28. TCFG is also an affiliate of TCFG Wealth Management because Certus
25 and Roberts control both companies. As alleged above, Certus is the direct owner of
26 both TCFG and TCFG Wealth Management. Roberts is the chief executive officer
27 and managing member of both TCFG and TCFG Wealth Management, and is an
28 indirect owner of TCFG and TCFG through his 60.65 percent ownership stake in

1 Certus.

2 **B. Roberts and TCFG Both Owe TCFG Clients Fiduciary Duties**

3 29. Since 2013 and throughout the relevant period, TCFG has been a
4 registered investment adviser with the SEC.

5 30. Roberts has also been an investment adviser with the SEC during this
6 period under Section 202(a)(11) of the Advisers Act, 15 U.S.C. §80b-2(a)(11),
7 because he has been engaged in the business of providing investment advice as the
8 value of securities and as to the advisability of investing in, purchasing and selling
9 securities. Roberts also owns a majority interest in TCFG and has ultimate authority
10 over all aspects of TCFG's business.

11 31. As a registered investment adviser, Roberts and TCFG owe TCFG's
12 clients fiduciary duties. They owe TCFG clients an affirmative duty of utmost good
13 faith, are obligated to provide full and fair disclosure of all material facts, have an
14 affirmative duty to employ reasonable care to avoid misleading its clients, have a
15 duty to act in its clients' best interest, and a duty to seek the best execution of its
16 clients' transactions. The duty to disclose all material facts includes a duty to tell its
17 clients about all of its actual or potential conflicts of interest.

18 32. TCFG and Roberts knew of their fiduciary duties and often
19 acknowledged them in, among other places, TCFG's Firm Brochures and compliance
20 manuals. For instance, in TCFG's Firm Brochures, it acknowledged that Roberts and
21 other licenses registered representatives of TCFG Wealth Management could
22 implement transactions on behalf of TCFG's clients and, in doing so, they had to
23 endeavor at all times to put the interest of the clients first as part of TCFG's fiduciary
24 duty.

25 33. During the relevant period, TCFG's Firm Brochures also acknowledged
26 that many of TCFG's individual investment advisers were simultaneously acting as
27 registered representatives of TCFG Wealth Management, which meant any additional
28 compensation they received from TCFG Wealth Management created a conflict of

1 interest, and might affect the judgment of TCFG individual investment advisers when
2 making recommendations.

3 34. TCFG's Firm Brochures acknowledged that it had to disclose to clients
4 the existence of all material conflicts of interest, including the potential for TCFG and
5 its employees to earn compensation from advisory clients in addition to TCFG's
6 advisory fees.

7 35. TCFG's Firm Brochures acknowledged that it had to educate its
8 employees regarding their responsibilities as a fiduciary, including the need for
9 having a reasonable and independent basis for the investment advice they provided to
10 clients.

11 36. TCFG's Firm Brochures acknowledged that under its "Code of Ethics"
12 TCFG and its employees owed a duty of loyalty, fairness and good faith towards their
13 clients.

14 37. During the relevant period, TCFG's compliance manuals acknowledged
15 that as a fiduciary, TCFG owed its clients more than honesty and good faith alone.
16 TCFG had an affirmative duty to act solely in the best interest of its clients and to
17 make full and fair disclosure of all material facts, particularly where TCFG's interest
18 may conflict with those of its clients.

19 **C. The Fee Markups**

20 38. The clients that TCFG provided advisory services to were individuals,
21 high net worth individuals, profit sharing plans, charitable organizations, corporations
22 and other businesses.

23 39. The advisory services that TCFG provided its clients included financial
24 planning services and portfolio management services for individuals and small
25 businesses.

26 40. TCFG charged its advisory clients for providing advisory services,
27 including charging hourly rates and charging fixed fees. TCFG's compensation also
28 came in the form of a percentage of the assets it managed. TCFG typically charged

1 two percent of the assets, depending on the size of the account, and gave a portion of
2 the compensation it received from clients to Roberts, as the president and majority
3 owner of TCFG.

4 41. Since most of TCFG's investment advisers are also registered
5 representatives of its affiliated broker, TCFG Wealth Management, they often, acting
6 in their capacity as a registered representative of TCFG Wealth Management,
7 implement transactions on behalf of their TCFG advisory clients.

8 42. TCFG Wealth Management does not have actual or constructive custody
9 of accounts in which TCFG clients hold their securities and cash. Instead, TCFG
10 Wealth Management used Clearing Broker as its third party clearing and custody
11 firm. When TCFG investment advisers implemented transactions on behalf of their
12 TCFG advisory clients, they would use TCFG Wealth Management as the
13 introducing broker.

14 43. Roberts, on behalf of TCFG Wealth Management, entered into a clearing
15 agreement between TCFG Wealth Management and Clearing Broker, setting forth
16 how much Clearing Broker would charge TCFG Wealth Management when it
17 executed and cleared trades on behalf of TCFG's advisory clients.

18 44. In addition to Clearing Broker's standard fees and charges, the clearing
19 agreement allowed TCFG Wealth Management, as the introducing broker, to include
20 fee markups and to pass those additional fees on to TCFG's clients.

21 45. Under the terms of the clearing agreement, Clearing Broker would
22 collect these fee markups from TCFG's advisory clients on behalf of TCFG Wealth
23 Management and remit payment directly to TCFG Wealth Management.

24 46. The fee markups imposed on TCFG's advisory clients were for
25 transactions executed and cleared through Clearing Broker and for other non-
26 transaction related services, such as fees for account transfers, bounced checks, stop
27 payments, postage and custody.

28 47. Roberts created, and caused others to create, a fee schedule that

1 contained these fee markups and directed Clearing Broker to charge TCFG's clients
2 those fees whenever it executed trades for TCFG clients and TCFG Wealth
3 Management was the introducing broker. At times, the fee schedule directed
4 Clearing Broker to markup the fees that it charged TCFG's advisory clients for
5 executing transactions, up to 360 percent. For example, TCFG Wealth Management
6 marked up the clearing charges on common stocks up to 360 percent, on bonds up to
7 200 percent, and on mutual funds up to 250 percent.

8 48. Individual investment advisors at TCFG could elect not to charge these
9 fee markups to their TCFG advisory clients, or could elect to reduce the amount of
10 the fee markups charged to their TCFG clients.

11 49. Regardless of whether an individual investment advisor elected not
12 impose or to reduce the fee markups to their TCFG clients, Clearing Broker would
13 still charge the fee markups, except the individual investment advisor, as opposed to
14 the TCFG advisory clients, would pay the unpaid fee markups out of their own
15 compensation from TCFG.

16 50. According to trading records, between December 2015 and November
17 2020, TCFG's advisory clients (as opposed to their individual investment adviser)
18 paid fee markups on cleared and executed transactions (transaction fees) up to
19 approximately 60 percent of the time in connection with over approximately 10,000
20 executed transactions, resulting in TCFG Wealth Management receiving over
21 approximately \$300,000 in transaction fee markups.

22 **D. The Fraud**

23 51. As a registered investment adviser with the SEC, TCFG is required to
24 file and update, at least annually, disclosures in a uniform registration application
25 known as a Form ADV. As part of this application, TCFG is required to create an
26 SEC-mandated Form ADV Part 2A or what is commonly referred to as brochures
27 ("Firm Brochures"). The information that the SEC requires TCFG to include in its
28 Firm Brochures is designed to provide existing and potential advisory clients with a

1 clearly written, meaningful current disclosure of TCFG's business practices, conflicts
2 of interest, and background on TCFG and its employees who provide investment
3 advice. TCFG is also required to make available a copy of the Brochure to
4 investment advisory clients.

5 52. Between in or about January 2013 and in or about April 2020, Roberts,
6 as the chief executive officer and chief compliance officer of TCFG, signed and filed
7 approximately eight separate Forms ADV on behalf of TCFG and did so under
8 penalty of perjury. Each time, Roberts represented to the SEC and TCFG's clients
9 that the information contained in the ADV, including the Firm Brochure required in
10 Part 2A, was true and correct.

11 53. As alleged above, Roberts and TCFG were obligated to provide full and
12 fair disclosure of all material facts in the Firm Brochures and had an affirmative
13 obligation to employ reasonable care to avoid misleading TCFG's clients. This duty
14 to disclose all material facts included a duty to tell their clients about all of their
15 actual and potential conflicts of interest that might make them inclined to render
16 investment advice that was not disinterested.

17 54. Seven of the eight of the Firm Brochures that Roberts filed on behalf of
18 TCFG during this period made false and misleading statements about the fee markups
19 that Roberts and TCFG Wealth Management had directed Clearing Broker to charge
20 TCFG's clients and the conflicts of interest that it caused Roberts and TCFG.

21 55. The false and misleading statements and the failure to disclose the
22 conflict of interests in the Firm Brochures were material because of Roberts' and
23 TCFG's fiduciary duties to TCFG clients regarding what they were charged by TCFG
24 and what conflicts of interest TCFG would have in rendering investment services. By
25 making the false and misleading statements about the fee markups in its Firm
26 Brochures or otherwise, Roberts and TCFG violated the fiduciary duties they owed to
27 their TCFG clients.

28 56. Specifically, in the six Firm Brochures that Roberts submitted on behalf

1 of TCFG between in or about June 2014 and in or about April 2019, Roberts led
2 TCFG's clients to believe that any fees TCFG Wealth Management would receive as
3 additional compensation from Clearing Broker were uncertain and/or were nothing
4 more than a portion of the fees that Clearing Broker normally charged for its services.

5 57. For instance, when explaining what "Other Compensation" TCFG
6 received aside for its investment services, the Firm Brochures stated that TCFG
7 Wealth Management "may" receive portions of the fees charged to accounts of TCFG
8 clients. It further stated that these additional fees TCFG Wealth Management
9 received were "charged" by Clearing Broker, not TCFG Wealth Management, and
10 were for things like wire fees, postage fees, clearing fees and ticket charges, which
11 TCFG Wealth Management said it used to help pay for administrative support for its
12 various entities.

13 58. These statements were materially false and misleading. First, they said
14 TCFG Wealth Management "may" receive a portion of the fee markups when, in fact,
15 Roberts knew, or was reckless and negligent for not knowing, that TCFG Wealth
16 Management had directed Clearing Broker to charge all TCFG clients fee markups
17 and had done so for up to six years. Roberts further knew, or was reckless and
18 negligent for not knowing, that TCFG Wealth Management would pass the
19 transaction fees (or ticket charges) on to TCFG's clients approximately 60 percent of
20 the time.

21 59. Second, the Firm Brochures falsely made it appear to TCFG's clients
22 that the other compensation TCFG Wealth Management received came out of fees
23 charged by Clearing Broker, not TCFG Wealth Management, when, in fact, Roberts
24 knew, or was reckless and negligent for not knowing, that TCFG Wealth
25 Management had directed Clearing Broker to charge fee markups on all TCFG clients
26 and that they were in addition to Clearing Broker's standard charges.

27 60. Later, between in or about April 2019 and in or about April 2020, after
28 the SEC initiated a regulatory examination of TCFG, Roberts updated TCFG's Firm

1 Brochures (“the updated Firm Brochures”) to make it clear that TCFG Wealth
2 Management was the one charging TCFG advisory clients these fee markups, not
3 Clearing Broker.

4 61. The updated Firm Brochures, however, still failed to disclose adequately
5 the fee markups that Roberts and TCFG Wealth Management had directed Clearing
6 Broker to charge TCFG’s clients and the conflicts of interest that they caused.

7 62. As one example, the updated Firm Brochures made it appear to TCFG’s
8 clients that TCFG Wealth Management only charged these fee markups “in some
9 limited instances.” In reality, as alleged above, Roberts knew, or was reckless and
10 negligent for not knowing, that TCFG Wealth Management had directed Clearing
11 Broker to impose these fee markups on all TCFG client transactions. Furthermore,
12 TCFG Wealth Management would pass the transaction fees on to TCFG’s clients
13 approximately 60 percent of the time, not just in some limited instances.

14 63. The updated Firm Brochures were also misleadingly in that they lumped
15 together the transaction and non-transaction fees when discussing the fee markups
16 when, in fact, Roberts knew, or was reckless and negligent for not knowing, that the
17 frequency with which the transaction fees were passed on to TCFG clients was far
18 greater than for the non-transaction fees. This made it appear that transaction fees,
19 which apply to every transaction and are key in understanding an advisory firm’s
20 economic incentives and what might influence its decision-making on a client’s
21 behalf, as well as key in comparing a particular firm’s fees with other firms that the
22 client might consider, would rarely be charged to clients. In reality, as alleged above,
23 TCFG clients were being charged transaction fees approximately 60 percent of the
24 time.

25 64. The Firm Brochures and the updated Firm Broachers were also
26 materially false and misleading because they both failed to disclose adequately the
27 conflict of interest that the fee markups created for Roberts and TCFG.

28 65. The Form ADV and associated Firm Brochures are required to provide

1 adequate disclosure of conflicts to advisory clients so that they can understand what
2 economic incentives in the investment adviser's business model might influence their
3 decision-making on their client's behalf. The Form ADV also provides a basis for
4 the client to compare a particular firm's fees, compensation and other business
5 practices with other firms that the client might consider when selecting an investment
6 adviser.

7 66. However, the Firm Brochures that TCFG filed only generally warned
8 TCFG clients that the receipt of additional compensation would create a conflict of
9 interest for TCFG and for its individual investment advisor representatives, saying it
10 may impair their objectivity when making advisory recommendations to TCFG
11 clients.

12 67. Nothing in the Firm Brochures or elsewhere adequately disclosed to
13 TCFG clients that it had an actual conflict of interest because it charged and received
14 fee markups when its affiliate, TCFG Wealth Management, acted as the introducing
15 broker for TCFG clients. This additional compensation created a conflict of interest
16 for Roberts and TCFG, as affiliates of TCFG Wealth Management, because it would
17 influence their choice to use TCFG Wealth Management as the introducing broker
18 over another broker who did not provide TCFG Wealth Management with the same
19 additional compensation.

20 68. The only conflict of interest that the Firm Brochures and the updated
21 Firm Brochures specifically disclosed to TCFG's clients with respect to Clearing
22 Broker serving as its custodian was that TCFG may receive, without any cost to
23 TCFG, access to Clearing Broker's computer software and related systems support,
24 which, according to the Firm Brochures, allowed TCFG to better monitor client
25 accounts at Clearing Broker. The Firm Brochures and the updated Firm Brochures
26 should have further disclosed to TCFG's clients that TCFG Wealth Management was
27 charging and receiving fee markups for transactions Clearing Broker executed and
28 cleared on behalf of TCFG clients, creating an actual conflict of interest.

1 69. The statements in TCFG’s Firm Brochures and updated Firm Brochures
2 regarding the fee markups and the conflicts of interest were materially false and
3 misleading, violated the fiduciary duties that Roberts and TCFG owed to their
4 advisory clients, and did not comply with the standard of care they owed to their
5 advisory clients.

6 **E. Roberts’ and TCFG’s Scienter and Negligence**

7 70. During all relevant periods, Roberts and TCFG acted with scienter and
8 with negligence.

9 71. Roberts’s and TCFG’s scienter and negligence is demonstrated by the
10 fact that Roberts, whose conduct and state of mind is imputed to TCFG, knew, or
11 were reckless and negligent for not knowing, the following:

12 (a) As investment advisers, they owed TCFG clients fiduciary duties,
13 including an affirmative duty of utmost good faith, an obligation to provide full and
14 fair disclosure of all material facts, an affirmative duty to employ reasonable care so
15 as to avoid misleading their clients, and a duty to act in TCFG’s clients’ best interest.

16 (b) As investment advisers, they owed TCFG clients a fiduciary duty
17 to disclose all material facts, which includes a duty to tell clients about all of its
18 actual or potential conflicts of interest.

19 (c) Roberts, on behalf of TCFG Wealth Management, had entered
20 into a clearing agreement that directed Clearing Broker to charge TCFG’s clients fee
21 markups and to remit payment of those fees directly to TCFG Wealth Management.

22 (d) The Firm Brochures that Roberts signed and filed with the SEC,
23 including the updated Firm Brochure, all failed to disclose adequately the fee
24 markups that Roberts and TCFG Wealth Management had directed Clearing Broker
25 to charge TCFG’s clients and the conflicts of interest that they caused Roberts and
26 TCFG.

27 (e) The Firm Brochures that Roberts signed and filed with the SEC
28 between in or about June 2014 and in or about April 2019 led TCFG clients to believe

1 that TCFG Wealth Management “may” receive additional compensation from
2 Clearing Broker and that any compensation it did receive would only be a portion of
3 the fees that Clearing Broker normally charged for its services. In fact, TCFG
4 Wealth Management had directed Clearing Broker to impose transaction fees on all
5 TCFG client transactions, and TCFG Wealth Management would pass those
6 transactions fees on to TCFG’s clients approximately 60 percent of the time.

7 (f) The updated Firm Brochure led TCFG clients to believe that
8 TCFG Wealth Management received additional compensation from Clearing Broker
9 “in some limited circumstances.” In fact, TCFG Wealth Management had directed
10 Clearing Broker to impose these fee markups on all TCFG client transactions, and
11 TCFG Wealth Management would pass those fee markups on to TCFG’s clients
12 approximately 60 percent of the time.

13 **F. TCFG Wealth Management’s Substantial Assistance**

14 72. TCFG Wealth Management provided substantial assistance to Roberts
15 and TCFG in carrying out their fraud and in violating their fiduciary duties.

16 73. TCFG Wealth Management directed Clearing Broker, through its fee
17 schedule, to start charging the fee markups on TCFG’s clients and to pass those
18 additional charges – along with Clearing Broker’s standard charges – on to TCFG’s
19 clients.

20 74. Specifically, TCFG Wealth Management directed Clearing Broker to
21 charge TCFG’s clients fee markups on transactions executed and cleared through
22 Clearing Broker and on other non-transaction related services, such as fees for
23 account transfers, bounced checks, stop payments, postage and custody.

24 75. TCFG Wealth Management also directed Clearing Broker to collect the
25 fee markups from TCFG’s clients on behalf of TCFG Wealth Management and to
26 remit payment of the fee markups directly to TCFG Wealth Management.

27 76. TCFG Wealth Management directed Clearing Broker to do all of these
28 things with knowledge imputed to it through Roberts, its sole managing member,

1 chief executive officer and president, that, as alleged above, Roberts and TCFG had
2 failed to adequately disclose the fee markups to TCFG's clients in the Firm
3 Brochures or otherwise and in violation of their fiduciary duties.

4 **G. TCFG Failed to Implement Its Written Policies and Procedures Requiring**
5 **Disclosure of Material Facts and Conflicts of Interest**

6 77. TCFG maintained policies and procedures requiring the disclosure of
7 material facts and conflicts of interest, but TCFG failed to implement those policies
8 and procedures, and Roberts, as its chief compliance officer, aided and abetted in this
9 violation.

10 78. Between in or about July 2013 and in or about June 2016, TCFG's
11 compliance manual and Section 1.4 of that manual required that "every employee"
12 understand and comply with the rules and procedures set forth in the manual and to
13 annually affirm this in writing.

14 79. Section 1.5 of the manual stated that, as investment advisers, TCFG
15 owed a duty to its clients more than honesty and good faith. It had an affirmative
16 duty to act solely in the best interest of its clients and to make full and fair disclosure
17 of all material facts, particularly where TCFG's interest may conflict with those of its
18 clients.

19 80. Section 1.6 of the manual stated that each of TCFG's employees owed
20 TCFG's clients the same fiduciary responsibilities and set forth rules of conduct to be
21 followed by its employees to ensure they adhered to their fiduciary duties.

22 81. Section 2.1 of the manual gave Roberts, as the chief compliance officer,
23 the responsibility for the overall implementation and operation of the compliance
24 program of TCFG and the overall administration of the policies and procedures set
25 forth in the manual.

26 82. Section 5.4.2.4 of the manual stated that Roberts, as the chief
27 compliance officer, was responsible for making sure that all actual and potential
28 conflicts of interest were disclosed to the clients and investors who utilized TCFG for

1 investment management services. The potential conflicts and respective disclosures
2 included matters related to, among others, affiliated brokers and relationships and
3 additional compensation issues, if any.

4 83. Section 6.1.1 of the manual prohibited TCFG from engaging in any
5 fraudulent, deceptive or manipulative activities and prohibited TCFG and its
6 employees from publishing, circulating or distributing any advertisement that
7 contained any untrue statement of a material fact, or which was otherwise false or
8 misleading.

9 84. Section 9.1 of the manual required Roberts, as the chief compliance
10 officer, to update TCFG's Form ADV whenever any of the information contained
11 therein became inaccurate. It further required that TCFG provide written disclosures
12 to its clients and prospective clients in its Form ADV containing, among other things,
13 the fees charged by TCFG.

14 85. Section 9.4 of the manual required TCFG, pursuant to Section 206 of the
15 Advisers Act, to refrain from fraudulent conduct including an obligation to disclose
16 material facts to its clients whenever failure to do so would defraud any client or
17 prospective client. The manual stated that this duty to disclose material facts was
18 particularly pertinent whenever TCFG is in a situation involving a conflict, or
19 potential conflict, of interest with a client, so the client could make an informed
20 decision whether to enter into or continue an advisory relationship with TCFG or take
21 some action to protect himself against the specific conflict of interest involved.

22 86. Between in or about June 2016 and in or about April 2020, TCFG's
23 compliance manual stated in the "Introduction" that TCFG, as a registered adviser,
24 had a duty of loyalty to its clients to always act in the utmost good faith, place its
25 clients' interest first and foremost and to make full and fair disclosure of all material
26 facts and, in particular, information as to any potential and/or actual conflicts of
27 interest. It further stated that "all employees" were covered by this fiduciary duty and
28 that Roberts, as the chief compliance officer, was responsible for administering

1 TCFG's policies and procedures related to its fiduciary duties.

2 87. The "Advertising" section of the manual required any advertising and
3 marketing materials to be truthful and accurate, and prohibited any advertising or
4 marketing materials from being misleading, fraudulent, deceptive and/or
5 manipulative. It gave Roberts, as the chief compliance officer, the responsibility for
6 implementing and monitoring this policy and for reviewing any advertising and
7 marketing materials to make sure they were in accordance with them.

8 88. The "Disclosure Brochures" section of the manual required TCFG's
9 disclosure brochures be made on a current and accurate basis. It gave Roberts, as the
10 chief compliance officer, the responsibility to annually review TCFG's brochures to
11 ensure they were current and accurate, and consistent with, among other things,
12 TCFG's services, business practices, fees and conflicts of interest, and to make any
13 necessary changes or updates promptly.

14 89. The "Code of Ethics" section of the manual required TCFG to adopt a
15 written Code of Ethics designed to detect and prevent, among other things, conflicts
16 of interest and regulatory violations. It gave Roberts, as the chief compliance officer,
17 the responsibility for preparing and monitoring TCFG's Code of Ethics practices and
18 disclosures.

19 90. The "Regulatory Reporting" section of the manual required TCFG to
20 maintain its regulatory reporting requirements in a prompt and accurate manner. It
21 gave Roberts, as the chief compliance officer, the responsibility for implementing and
22 monitoring TCFG's regulatory reporting practices and disclosures.

23 91. The "Supervision and Internal Controls" section of the manual gave
24 every employee of TCFG the responsibility of knowing and following TCFG's
25 compliance policies and procedures, and to conduct themselves with the utmost
26 loyalty and integrity in their dealings with its clients.

27 92. The "Trading" section of the manual required TCFG, as an investment
28 adviser and a fiduciary to its clients, to always place its clients' interests first and

1 foremost, and seek to disclose and avoid any actual or potential conflicts of interests
2 or resolve such conflicts in the client's favor. It gave Roberts, as the chief
3 compliance officer, the responsibility for implementing and monitoring TCFG's
4 trading policies, practices, and disclosures.

5 93. During the relevant period, TCFG failed to implement each of these
6 written policies and procedures instructing them, in substance, to make full and fair
7 disclose of all material facts regarding fees and conflicts of interest, and to maintain
8 truthful, accurate and up-to-date Firm Brochures.

9 94. Roberts substantially assisted TCFG in this violation because, as
10 TCFG's chief compliance officer, he was responsible for reviewing the Firm
11 Brochures and for signing and filing them with the SEC. Roberts signed and filed
12 seven separate Firm Brochures with the SEC, even though he knew, or was negligent
13 for not knowing, they failed to disclose adequately the fee markups that he and TCFG
14 Wealth Management had directed Clearing Broker to charge TCFG's clients and the
15 conflicts of interest that the fee markups caused Roberts and TCFG.

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1 **FIRST CLAIM FOR RELIEF**

2 **Fraud by an Investment Adviser**

3 **Violations of Sections 206(1) and 206(2) of the Advisers Act**

4 **(against Defendants Roberts and TCFG)**

5 95. The SEC realleges and incorporates by reference paragraphs 1 through
6 94 above.

7 96. Defendants Roberts and TCFG, acting as investment advisers, breached
8 their fiduciary duty to and deceived TCFG's advisory clients by failing to disclose
9 adequately the fee markups that Roberts and TCFG Wealth Management had directed
10 Clearing Broker to charge TCFG's clients and the conflicts of interest that the fee
11 markups caused Roberts and TCFG. As alleged above, Roberts and TCFG made
12 several false and misleading statements in furtherance of the scheme, including
13 stating in the Firm Brochure that TCFG Wealth Management "may" receive
14 additional compensation from Clearing Broker when, in fact, Roberts and TCFG
15 knew, or were reckless and negligent for not knowing, that TCFG Wealth
16 Management had directed Clearing Broker to impose these fee markups on all TCFG
17 client transactions, and that TCFG Wealth Management would pass those fee
18 markups on to TCFG's clients approximately 60 percent of the time.

19 97. By engaging in the conduct described above, Defendants Roberts and
20 TCFG, each of them, directly or indirectly, by use of the mails or means and
21 instrumentalities of interstate commerce: (a) employed or are employing devices,
22 schemes or artifices to defraud clients or prospective clients; and engaged in or are
23 engaging in transactions, practices, or courses of business which operated as a fraud
24 or deceit upon clients or prospective clients.

25 98. By engaging in the conduct described above, Defendants Roberts and
26 TCFG have violated, and unless restrained and enjoined, are reasonably likely to
27 continue to violate, Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§
28 80b-6(1) & 80b-6(2).

1 **SECOND CLAIM FOR RELIEF**

2 **Aiding and Abetting Violations of**

3 **Section 206(1) and 206(2) of the Advisers Act**

4 **(against Defendant TCFG Wealth Management)**

5 99. The SEC realleges and incorporates by reference paragraphs 1 through
6 94 above.

7 100. As alleged above, by engaging in the conduct described above,
8 defendant TCFG has violated Sections 206(1) and (2) of the Advisers Act, 15 U.S.C.
9 §§ 80b-6(1) & 80b-6(2).

10 101. Defendant TCFG Wealth Management knowingly or recklessly provided
11 substantial assistance to, and thereby aided and abetted TCFG in its violations of
12 Sections 206(1) and (2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) & 80b-6(2).
13 TCFG Wealth Management, an affiliate of defendants Roberts and TCFG, entered
14 into the clearing agreement with Clearing Broker that directed Clearing Broker to
15 charge TCFG's advisory clients fee markups and to remit payment of those fees
16 directly to TCFG Wealth Management. At all relevant times, defendant Roberts
17 acted on behalf of and for the benefit of TCFG Wealth Management, which he
18 controlled, and his actions and state of mind are imputed to TCFG Wealth
19 Management.

20 102. By engaging in this conduct, Defendant TCFG Wealth Management,
21 pursuant to Section 209(f) of the Advisers Act, aided and abetted, and unless
22 restrained and enjoined will continue to aid and abet violations of Sections 206(1)
23 and (2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) & 80b-6(2).
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1 **THIRD CLAIM FOR RELIEF**

2 **Violations of Section 206(4) of the Advisers Act and Rule 206(4)-7**
3 **(against Defendant TCFG)**

4 103. The SEC realleges and incorporates by reference paragraphs 1 through
5 94 above.

6 104. Defendant TCFG, directly or indirectly, used the mails or means or
7 instrumentalities of interstate commerce, to engage in acts, practices, or courses of
8 business which were fraudulent, deceptive, or manipulative by providing investment
9 advice to clients and failing to adopt and implement written policies and procedures
10 reasonably designed to avoid misleading its clients and to make full and fair
11 disclosure of all material facts and conflicts of interest, as required by the Advisers
12 Act and the rules that the SEC has adopted under the Advisers Act.

13 105. By engaging in the conduct described above, Defendant TCFG has
14 violated, and unless restrained and enjoined, is reasonably likely to continue to
15 violate, Section 206(4) of the Advisers Act, 15 U.S.C. § 80b-6(4), and Rule 206(4)-7
16 thereunder, 17 C.F.R. § 275.206(4)-7.

1 **FOURTH CLAIM FOR RELIEF**

2 **Aiding and Abetting Violations of**

3 **Section 206(4) of the Advisers Act and Rule 206(4)-7**

4 **(against Defendant Roberts)**

5 106. The SEC realleges and incorporates by reference paragraphs 1 through
6 94 above.

7 107. As alleged above, by engaging in the conduct described above,
8 defendant TCFG has violated Section 206(4) of the Advisers Act, 15 U.S.C. § 80b-
9 6(4), and Rule 206(4)-7 thereunder, 17 C.F.R. § 275.206(4)-7.

10 108. Defendant Roberts knowingly or recklessly provided substantial
11 assistance to, and thereby aided and abetted TCFG in its violations of Section 206(4)
12 of the Advisers Act, 15 U.S.C. § 80b-6(4), and Rule 206(4)-7 thereunder, 17 C.F.R. §
13 275.206(4)-7. During the relevant period, Roberts, as TCFG's chief compliance
14 officer, reviewed seven TCFG Firm Brochures, and signed and filed them with the
15 SEC, knowing, or was reckless for not knowing, they failed to disclose adequately the
16 fee markups that he and TCFG Wealth Management had directed Clearing Broker to
17 charge TCFG's clients and the conflicts of interest that the fee markups caused
18 Roberts and TCFG.

19 109. By engaging in this conduct, Defendant Roberts, pursuant to Section
20 209(f) of the Advisers Act, aided and abetted, and unless restrained and enjoined will
21 continue to aid and abet violations Section 206(4) of the Advisers Act, 15 U.S.C. §
22 80b-6(4), and Rule 206(4)-7 thereunder, 17 C.F.R. § 275.206(4)-7.

PRAYER FOR RELIEF

WHEREFORE, the SEC respectfully requests that the Court:

I.

Issue findings of fact and conclusions of law that Defendants committed the alleged violations.

II.

Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently enjoining Defendants Roberts, TCFG, TCFG Wealth Management, and their officers, agents, servants, employees and attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the judgment by personal service or otherwise, and each of them, from violating Sections 206(1) and (2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) & 80b-6(2).

III.

Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently enjoining defendants Roberts and TCFG, and their officers, agents, servants, employees and attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the judgment by personal service or otherwise, and each of them, from violating Section 206(4) of the Advisers Act, 15 U.S.C. § 80b-6(4), and Rule 206(4)-7 thereunder, 17 C.F.R. § 275.206(4)-7.

IV.

Order Defendants to disgorge all funds received from their illegal conduct, together with prejudgment interest thereon, pursuant to Securities Exchange Act of 1934, Section 21(d)(5) and 21(d)(7) [15 U.S.C. §§ 78u(d)(5) and 78u(d)(7)].

V.

Order Defendants to pay civil penalties under Section 209(e) of the Advisers Act, 15 U.S.C. § 80b-9(e).

1 **VI.**

2 Retain jurisdiction of this action in accordance with the principles of equity and
3 the Federal Rules of Civil Procedure in order to implement and carry out the terms of
4 all orders and decrees that may be entered, or to entertain any suitable application or
5 motion for additional relief within the jurisdiction of this Court.

6 **VII.**

7 Grant such other and further relief as this Court may determine to be just and
8 necessary.

9 Dated: September 30, 2021

10 */s/ Douglas M. Miller*

11 DOUGLAS M. MILLER

12 DAVID M. ROSEN

13 Attorneys for Plaintiff

14 Securities and Exchange Commission
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Complaints and Other Initiating Documents

[8:21-cv-01615 Securities and Exchange Commission v. Roberts et al](#)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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Case Number: [8:21-cv-01615](#)

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Document Number: [1](#)

Docket Text:

COMPLAINT No Fee Required - US Government, filed by Plaintiff Securities and Exchange Commission. (Attorney Douglas M. Miller added to party Securities and Exchange Commission(pty:pla))(Miller, Douglas)

8:21-cv-01615 Notice has been electronically mailed to:

Douglas M. Miller millerdou@sec.gov, irwinma@sec.gov, kassabguir@sec.gov, larofiling@sec.gov, longoa@sec.gov

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Document description:Main Document

Original filename:C:\fakepath\TCFG Complaint.9.30.21.fnl (003).pdf

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[STAMP cacdStamp_ID=1020290914 [Date=9/30/2021] [FileNumber=32711484-0] [4278995474b088bd74643810de1e9c9d1f72505cc883ca95d4bbbd4601094dfdcae809f36ccc583efdb7b11ae3aeb7f68fd5cc7d95f7a1579269770889da972f]]