

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 86761 / August 26, 2019

INVESTMENT ADVISERS ACT OF 1940
Release No. 5329 / August 26, 2019

INVESTMENT COMPANY ACT OF 1940
Release No. 33608 / August 26, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19377

In the Matter of

Joseph C. Buchanan,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 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 Section 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 Joseph C. Buchanan (“Respondent” or “Buchanan”).

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 Section 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

1. From at least March 2013 to June 2015, Joseph C. Buchanan engaged in undisclosed “cherry-picking,” a practice of fraudulently allocating profitable trades in an omnibus account to favored accounts, as an investment adviser representative of Laurel Wealth Advisors, Inc. (“LWA”), an investment adviser registered with the Commission and based in La Jolla, California. Buchanan placed orders in his omnibus account to buy securities for allocation to his client or personal accounts, but he delayed the allocation of securities until after the trades were executed, sometimes after the market closed or even the subsequent day. By the time Buchanan allocated trades from his omnibus account, share prices had either increased or decreased such that those trades had unrealized profits on the trade date. Buchanan allocated a disproportionate number of profitable trades to his personal accounts, while allocating a disproportionate number unprofitable trades to his clients’ accounts. As a result of his conduct, Buchanan received at least \$56,227 in ill-gotten gains.

Respondent

2. **Joseph C. Buchanan**, age 57, resides in Camarillo, California. Buchanan was an investment adviser representative with LWA from November 2011 until December 2015. From December 2013 to November 2015, FINRA suspended Buchanan for failure to satisfactorily respond to a request for information.

Other Relevant Entity

3. **Laurel Wealth Advisors, Inc.** is a California corporation with its principal place of business in La Jolla, California. LWA registered with the Commission as an investment adviser in May 2011 and had \$1.16 billion in assets under management as of June 2019.

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.

Facts

The Cherry-Picking Scheme

4. Buchanan joined LWA in 2011 and by May 2012, he began to use an omnibus account with LWA's brokerage provider to purchase a large number of shares in a "block" trade for subsequent allocation to his client and personal accounts. Buchanan's personal trading was predominately in the same securities that he traded for his clients.

5. Buchanan delayed the allocation of block trades from his omnibus account until after the trades were executed, sometimes after the market closed or even the subsequent day. Trades that became profitable later the same day because share prices had increased after a trade's execution were disproportionately allocated to Buchanan's personal accounts. On the other hand, Buchanan allocated to his clients' accounts a disproportionate number of trades that became unprofitable later the same day because share prices had decreased after a trade's execution.

6. Profitable trades based on same-day gains in Buchanan's omnibus account were sometimes sold on the same day, before or after allocation to his personal accounts, and thus amounted to realized day-trading profits. Trades that had unrealized same-day gains or losses could also be held after allocation by Buchanan or his clients as part of a short or long term investment strategy.

7. By at least February 2013, LWA's brokerage provider contacted Buchanan about his late allocations from his brokerage account and the need to complete allocations on the trade date. Buchanan continued to delay allocations from his omnibus account beyond one hour past the close of the trading day, which resulted in LWA's brokerage provider notifying LWA about Buchanan's conduct. Despite subsequent warnings and questions from LWA and its brokerage provider, Buchanan continued to allocate trades from his omnibus account past market close such that in February 2015, LWA's brokerage provider suspended his use of the omnibus account for one month. Buchanan, however, resumed his conduct of late allocations in March 2015 until LWA suspended his omnibus account access indefinitely in June 2015 and LWA's brokerage provider permanently suspended his access in August 2015. He resigned from LWA in December 2015.

8. From at least March 2013 to June 2015, Buchanan's allocations from his omnibus account to his personal account had same-day realized and unrealized gains of 0.89%, or \$56,075 in same-day profits, while allocations to Buchanan's client accounts had same-day realized and unrealized losses of -0.13%, or a combined same-day loss of -\$60,821. As a result of his conduct, Buchanan obtained ill-gotten gains of at least \$56,227, which represents the difference between the same-day realized and unrealized profits from allocations to Buchanan's personal accounts and his pro rata share of the cumulative loss on all trades in his omnibus account during the relevant time period.

9. The realized and unrealized gains for allocations to Buchanan's personal accounts are statistically significant in that the likelihood of these same-day profitable trades being randomly allocated to his personal accounts are less than one in one billion.

Violations

10. As a result of the conduct described above, Buchanan willfully violated Section 206(1) of the Advisers Act, which prohibits an investment adviser from employing “any device, scheme, or artifice to defraud any client or prospective client.”

11. As a result of the conduct described above, Buchanan willfully violated Section 206(2) of the Advisers Act, which prohibits an 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.” Proof of scienter is not required to establish a violation of Section 206(2) of the Advisers Act, but may rest on a finding of simple negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963)).

12. As a result of the conduct described above, Buchanan willfully violated Section 10(b) of the Exchange Act and Rules 10b-5(a) and 10b-5(c) thereunder. Section 10(b) of the Exchange Act makes it unlawful for any person to “use or employ, in connection with the purchase or sale of any security, . . . any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe.” Rule 10b-5 promulgated under the Exchange Act makes it unlawful for any person, directly or indirectly, (a) to “employ any device, scheme or artifice to defraud” and (c) to “engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.”

Disgorgement and Civil Penalties

Respondent has submitted a sworn Statement of Financial Condition dated May 30, 2019 and other evidence and has asserted his inability to pay full disgorgement plus prejudgment interest or to pay a civil penalty.

IV.

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

Accordingly, pursuant to Section 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 Buchanan cease and desist from committing or causing any violations and any future violations 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 Buchanan 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; and

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.

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 Buchanan shall, within 21 days of the entry of this Order, pay disgorgement of \$56,227.00 and prejudgment interest of \$15,284.03, but payment of such amount except for \$40,000 is waived based upon Respondent's sworn representations in his Statement of Financial Condition dated May 30, 2019 and other documents submitted to the Commission. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, transfer them to the general fund of the United States Treasury, subject to Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

E. Based on Respondent's sworn representations in his Statement of Financial Condition dated May 30, 2019 and other documents submitted to the Commission, the Commission is not imposing a penalty against Respondent.

F. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of disgorgement, pre-judgment interest, and the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of disgorgement, interest, and civil penalty should not be ordered; (3) contest the amount of disgorgement and interest to be ordered; (4) contest the imposition of the maximum penalty allowable under the law; or (5) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

Payment must be paid 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 Joseph C. Buchanan 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 Diana K. Tani, Assistant Regional Director, Securities and Exchange Commission, Los Angeles Regional Office, 444 South Flower Street, Suite 900, Los Angeles, CA 90071.

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