

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 6086 / August 10, 2022**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20955**

**In the Matter of**

**IFP Advisors, LLC,**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO SECTIONS 203(e) AND  
203(k) OF THE INVESTMENT ADVISERS  
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 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), against IFP Advisors, LLC (“Respondent” or “IFP”).

**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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-And-Desist Proceedings, Pursuant to Sections 203(e) and 203(k) of the Investment Advisers 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 finds<sup>1</sup> that:

#### Summary

These proceedings arise out of IFP's (a) failure to supervise Richard Keith Robertson, an investment adviser representative associated with IFP who engaged in a fraudulent trade allocation or "cherry-picking" scheme; (b) failure to implement policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules; and (c) false and misleading statements in its Forms ADV concerning supposed safeguards in place to prevent representatives from placing their own interests ahead of those of IFP's advisory clients. IFP is an investment adviser registered with the Commission. From January 2011 to at least December 2018, Robertson engaged in a cherry-picking scheme whereby he unfairly allocated purchases of securities between his personal and family accounts and his other IFP clients' accounts. Robertson disproportionately allocated profitable trades to his personal and family accounts and disproportionately allocated unprofitable trades to his other advisory clients. IFP failed to supervise Robertson, failed to implement policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules by its supervised persons, and made false and misleading statements in its Forms ADV concerning supposed safeguards it had to prevent investment adviser representatives from placing their own interests ahead of those of its advisory clients.

#### Respondent

1. **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 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.

#### Other Relevant Person

2. **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.

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<sup>1</sup> 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*

3. From January 2011 to at least December 2018, Robertson and his clients had their accounts in custody at the same broker-dealer, and Robertson had discretionary authority to place trades for these accounts. However, instead of trading directly in his or his clients' accounts, Robertson often executed trades in an omnibus account that allowed for block trading (that is, purchasing a large number of shares or options at the same time). After placing a trade in the omnibus account, Robertson would wait before instructing the brokerage firm to allocate the purchased securities among his and/or his clients' accounts. By allocating shares or options sometime later in the day, after he placed the trade, Robertson could watch the changes in price and then determine how to allocate the shares among his and his clients' accounts.

4. Although IFP had policies that stated "an adviser's allocation procedures must be fair and equitable to all clients with no particular group or client(s) being favored or disfavored over any other clients" and "[i]n the event transactions for an adviser . . . are aggregated with client transactions, conflicts arise and special policies and procedures must be adopted to disclose and address these conflicts," IFP did not actually implement any procedures reasonably designed to prevent unfair trade allocations.

5. Robertson exploited IFP's lack of oversight by allocating a greater proportion of profitable trades, e.g., trades of securities that increased in price from the time of purchase in the omnibus account to time of allocation later that day, to his personal and family accounts and a greater proportion of unprofitable trades, e.g., trades of securities that decreased in price from the time of purchase in the omnibus account to time of allocation later that day, to his other clients' 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. The difference between the allocations of profitable trades and unprofitable trades is statistically significant; the probability that such a disparate allocation of gains and losses occurred by chance is nearly zero.

### ***IFP's Failure to Implement Policies and Procedures Reasonably Designed to Prevent Unfair Trade Allocations and Failure to Supervise Robertson Reasonably***

6. While IFP's compliance manuals "prohibit[] any allocation of trades in a manner that Independent Financial Partners' proprietary accounts, affiliated accounts, or any particular client(s) or group of clients receive more favorable treatment than other client accounts," IFP failed to confirm that its investment adviser representatives fairly allocated trades among their clients' accounts.

7. Indeed, from 2017 to 2019, IFP ignored its compliance manual mandate to conduct “[p]eriodic branch office audits to assess and test trading procedures.” For these three years, IFP failed to conduct any branch office audits, and instead improperly relied upon audits performed by a broker-dealer, which were not designed to test compliance with IFP’s policies and procedures.

8. IFP also failed to conduct meaningful “trading reviews, [or] reconciliations of any and all securities transactions for advisory clients by each office,” as further required by its compliance manuals. IFP did not review the brokerage records received from its investment adviser representatives for evidence of unfair allocations, and the internal trade surveillance software utilized by IFP was not set up to detect this.

9. As for Robertson, not once during his eight years with IFP was he subject to a branch office audit by the firm. Rather, IFP’s limited supervision of Robertson consisted of accepting annual attestations from him and copies of his brokerage records, without actually reviewing his trading as required by the compliance manuals.

### ***IFP’s Materially Misleading Disclosures***

10. As an investment adviser registered with the Commission, IFP is required to file with the Commission a Form ADV. This form, which must be updated annually and made available as a public record, provides disclosures to advisory clients and includes information such as services provided and fees levied.

11. In Part 2A of the Form ADV dated March 29, 2016, IFP stated “[n]o supervised person of our firm may prefer his or her own interest to that of the advisory client” and “[w]e maintain a list of all securities holdings for our firm and anyone associated with this advisory practice with access to advisory recommendations,” adding “[t]hese holdings are reviewed on a regular basis by our compliance department.” While Robertson’s cherry-picking scheme rendered the first statement false and misleading, the latter two statements were also untrue because IFP neither maintained nor reviewed a list of all of the securities holdings of its investment adviser representatives.

12. Additionally, in Part 2A of the Forms ADV dated March 30, 2017 and March 2, 2018, IFP stated “[w]hen aggregating client orders, the allocation of securities among client accounts will be done on a fair and equitable basis.” Both Forms ADV further stated: “Certain affiliated accounts may trade in the same securities with client accounts on an aggregated basis . . . IFP will retain records of the trade order specifying each participating account and its allocation. Completed trade orders will be allocated according to the instructions from the initial trade order . . . Any exceptions will be explained on the trade order.” Not only did Robertson’s cherry-picking scheme render these statements false and misleading, but IFP also failed to require its investment adviser representatives to maintain trade order tickets showing pre-order allocations for aggregated trades.

### **Supervisory Failures and Violations**

13. As a result of the conduct described above, IFP failed reasonably to supervise Robertson within the meaning of Section 203(e)(6) of the Advisers Act, with a view to preventing his violations of 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, as described above.

14. As a result of the conduct described above, IFP willfully<sup>2</sup> 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.

15. As a result of the conduct described above, IFP willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require registered investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules promulgated thereunder.

### **IFP's Cooperation**

17. In determining to accept IFP's Offer, the Commission considered IFP's cooperation with the Commission staff in its investigation of this matter.

### **Undertakings**

18. Independent Compliance Consultant.

a. Within 90 days of the entry of this Order, Respondent shall retain the services of an independent compliance consultant ("Independent Consultant") not unacceptable to the Commission staff. Respondent shall require that the Independent Consultant conduct a comprehensive compliance review and assist Respondent in developing and implementing written compliance policies and procedures reasonably designed to promote Respondent's compliance with the Advisers Act with respect to trade allocation, monitoring, and recordkeeping.

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<sup>2</sup> "Willfully," for purposes of imposing relief under Section 203(e) of the Advisers Act, "means no more than that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

b. Respondent shall require the Independent Consultant to submit a written report to the Respondent and to Commission staff within 180 days of the entry of this Order (the “Report”). The Report shall describe in detail (1) the Independent Consultant’s review, findings, conclusions, and recommendations; (2) any proposals made by Respondent; and (3) a procedure for Respondent to adopt and implement the recommended changes in or improvements to its policies and procedures.

c. Within ninety (90) days of receipt of the Report, Respondent shall adopt and implement all recommendations contained in the report; provided, however, that within thirty (30) days of Respondent’s receipt of the Report, Respondent may, in writing, advise the Independent Consultant and the Commission staff of any recommendations that it considers unnecessary, unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, such parties shall attempt in good faith to reach an agreement within thirty (30) days after Respondent provides the alternative procedures described above. In the event that Respondent and the Independent Consultant are unable to agree on an alternative proposal, Respondent and the Independent Consultant shall jointly confer with the Commission staff to resolve the matter. In the event that, after conferring with the Commission staff, Respondent and the Independent Consultant are unable to agree on an alternative proposal, Respondent will abide by the recommendations of the Independent Consultant.

d. Within thirty (30) days of Respondent’s adoption of all of the recommendations in the Report, Respondent shall certify in writing to the Independent Consultant and the Commission staff that it has adopted and implemented all of the Independent Consultant’s recommendations in the Report. Unless otherwise directed by the Commission staff, all Reports, certifications and other documents required to be provided to the Commission staff shall be sent to Michele Perillo, Assistant Director, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 24th Floor, Boston, MA 02110, or such other address as the Commission’s staff may provide.

e. As part of its work with the Independent Consultant, Respondent shall cooperate fully and provide the Independent Consultant with access to files, books, records, and personnel as are reasonably requested by the Independent Consultant for review. The Respondent shall bear all of the Independent Consultant’s compensation and expenses.

f. Respondent shall require the Independent Consultant to enter into an agreement that provides that, for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney–client, auditing, or other professional relationship with Respondent, or any of its present or former affiliates, principals, directors, officers, employees, or agents. The agreement will also provide that the Independent Consultant

will require that any firm with which the Independent Consultant is affiliated or of which the Independent Consultant is a member, and any person engaged to assist the Independent Consultant in performance of the Independent Consultant's duties under this Order, shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, principals, directors, officers, employees, or agents for the period of the engagement and for a period of two years after the engagement.

g. The reports by the Independent Consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the reports could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) as otherwise required by law.

h. For good cause shown and upon timely application by Respondent, the Commission staff may extend any of the procedural dates set forth in this undertaking.

19. Respondent shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Michele Perillo, Assistant Director, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 24th Floor, Boston, MA 02110, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than 60 days from the date of the completion of the undertakings.

#### IV.

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

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent IFP shall cease and desist from committing or causing any violations and any future violations of Advisers Act Sections 206(2) and 206(4) and Rule 206(4)-7 promulgated thereunder.

B. Respondent IFP is censured.

C. Respondent IFP shall pay a civil money penalty in the amount of \$400,000 to the Securities and Exchange Commission. Payment shall be made in the following installments: \$100,000 within ten (10) days of the entry of the Order, \$100,000 within one hundred twenty (120) days of the entry of the Order, \$100,000 within two hundred forty (240) 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 31 U.S.C. § 3717. Prior to making the final payment set forth herein, Respondent IFP shall contact the staff of the Commission for the amount due. If Respondent IFP 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 IFP 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, 200 Vesey Street, Suite 400, New York, NY 10281.

D. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the disgorgement, prejudgment interest and penalties referenced in paragraph IV.C above. This Fair Fund is expected to include all funds collected from the Commission's related proceeding, *In the Matter of Richard Keith Robertson*. The Fair Fund will be distributed to harmed investors in accordance with a Commission-approved plan of distribution. 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, it shall not argue that it is



entitled to, nor shall it 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 it 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.

E. Respondent IFP shall comply with the undertakings enumerated in Section III paragraphs 18 and 19 above.

By the Commission.

Vanessa A. Countryman  
Secretary