UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File Nos. 3-20248; 3-20249

In the Matter of **WESLEY KYLE PERKINS and WORLD TREE FINANCIAL, LLC,** **Respondents.**	**MOTION BY DIVISION OF ENFORCEMENT FOR SUMMARY DISPOSITION AGAINST RESPONDENT WESLEY KYLE PERKINS AND WORLD TREE FINANCIAL, LLC PURSUANT TO COMMISSION RULE OF PRACTICE 250**

OS Received 08/19/2022

I. INTRODUCTION

The Division of Enforcement ("Division") moves pursuant to Rule 250 of the Securities and Exchange Commission's ("SEC" or "Commission") Rules of Practice for summary disposition in this follow-on proceeding against Wesley Kyle Perkins ("Perkins") and World Tree Financial LLC ("World Tree") (collectively "Respondents").

There is no genuine issue of material fact that would preclude summary disposition. Respondents have been enjoined from violating the antifraud provisions of the federal securities laws, and it is in the public interest to bar them. The Division requests an order barring Respondents from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, and nationally recognized statistical rating organization, and, as to Perkins, from participating in any offering of penny stock.

This motion is supported by the Statement of Material Facts in Support of Division of Enforcement's Motion for Summary Disposition ("SMF"), and the Declaration of Lynn M. Dean ("Dean Decl.").

II. PROCEDURAL BACKGROUND

On September 18, 2018, the Commission filed a Complaint in the case captioned *SEC v. World Tree Financial, LLC, et al.* ("*SEC v. WTF*"), Case No. 6:18-cv-01229 (W.D. La.). SMF No. 1; Dean Decl. Ex. 1. On December 12, 2018, Defendants in *SEC v. WTF* filed an answer in which they admitted being investment advisers, but denied all allegations of cherry-picking, and denied making false statements to their advisory clients. SMF No. 2; Dean Decl. Ex. 2.

On January 15, 2021, after a four day bench trial, the district court made extensive factual findings regarding both Respondents. *See* SMF No. 3; Dean Decl. Ex. 3. That same day, the court permanently enjoined both Respondents from future violations of the antifraud provisions of

Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Section 17(a) the Securities Act of 1933 ("Securities Act"), and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940. SMF No. 4; Dean Decl. Ex. 4.

Perkins and World Tree appealed the district court's orders in *SEC v. WTF* to the Fifth Circuit. SMF No. 11; Dean Decl. Ex. 12. In their appeal, Respondents "challenge[d] the district court's findings that Perkins and World Tree engaged in fraudulent cherry-picking and that Defendants misrepresented World Tree's allocation and trading practices. They also challenge the disgorgement assessment." SMF No. 11; Dean Decl. Ex. 12 at p. 9.

The Commission instituted this consolidated follow-on proceeding on March 22, 2021, with an Order Instituting Proceedings ("OIP") against Perkins pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"), and an OIP against World Tree pursuant to Section 203(f) of the Advisers Act. SMF No. 5; Dean Decl. Exs. 5, 6. Both OIPs were based on the district court's findings and injunction in *SEC v. World Tree Financial, LLC, et al.*, Civil Action Number 6:18-cv-01229-MJJ-CBW (W.D. LA). *Id.*

On May 28, 2021, Respondents served their Answers to the OIPs. SMF No. 6; Dean Decl. Exs. 7, 8. In their Answers, Respondents again denied all wrong-doing. *Id.* On April 14, 2022, the parties filed joint prehearing conference statements. SMF No. 7; Dean Decl. Exs. 9, 10. On April 20, 2022, the Division filed briefs stating that the Perkins and World Tree proceedings should be consolidated. *SMF No. 8;* Dean Decl. Ex. 11 at p. 2. On May 20, 2022, Respondents filed briefs opposing consolidation, and also separately filed motions to stay these proceedings

pending the outcome of their appeals of the district court judgment in the United States Court of Appeals for the Fifth Circuit.[1] *Id.* The Division opposed the stay requests. *Id.*

On July 22, 2022, the Commission consolidated the two proceedings, denied the motions to stay, and set a briefing schedule for motions for summary disposition. *Id.*

III. FACTUAL FINDINGS

The district court made extensive factual findings in *SEC v. World Tree*. *See* SMF No. 3; Dean Dec. Ex. 3. Those findings were affirmed by the Fifth Circuit Court of Appeals on August 4, 2022. SMF No. 12; Dean Decl. Ex. 12.

Specifically, the district court found that World Tree is a Louisiana corporation with its principal place of business in Lafayette, Louisiana. SMF No. 2; Dean Decl. Ex. 3, p. 3, ¶ 2. World Tree was an SEC-registered investment adviser until June 15, 2012, when it was required to withdraw its SEC registration due to a change in the registration provisions of the Advisers Act. *Id.* World Tree was registered as an investment adviser with the State of Louisiana at the time the district court lawsuit was filed. *Id.* Perkins co-founded World Tree with Priscilla Perkins in 2009. *Id.* p. 3, ¶ 3. At all relevant times, Wesley Perkins was the firm's 60% owner, chief executive officer, and chief investment officer. *Id.* Wesley Perkins held Series 6, 7, and 66 securities

[1] On August 4, 2022, the Fifth Circuit Court of Appeals affirmed the underlying district court findings and judgments. *SEC v. World Tree Financial*, *LLC*, *et al.*, __ F.4th __, 2022 WL 3098058 (5th Cir. 2022) ("After a bench trial, the district court found that Perkins and World Tree engaged in a fraudulent 'cherry-picking' scheme, in which they allocated favorable trades to themselves and favored clients and unfavorable trades to disfavored clients. It also found that all three Defendants made false and misleading statements about the firm's allocation and trading practices. The court entered permanent injunctions against Perkins and World Tree, ordered them to disgorge ill-gotten gains, and imposed civil penalties on each Defendant. We AFFIRM."). SMF No. 12; Dean Decl. Ex. 12, pp. 1-2.

licenses at the time this lawsuit was filed. *Id.* As World Tree's chief investment officer, Wesley Perkins was responsible for conducting trades on behalf of clients. *Id.* p. 4, ¶ 6.

The district court found that World Tree and Wesley Perkins managed most of their clients' assets on a discretionary basis, meaning they had authorization to trade securities on behalf of most of their clients. *Id.* p. 4, ¶ 7. In order to conduct trading, Wesley Perkins used a block trade account (also referred to as a master account or omnibus account) registered to World Tree. *Id.* p. 4, ¶ 8. A block trade account allows a n investment adviser to instruct a broker to execute a single large trade in its own name for the benefit of its clients and then allocate portions of that trade to particular client accounts. *Id.*

The district court found that by using the block trading account registered to World Tree, Perkins intentionally cherry-picked favorable trades for himself, his family, and certain Favored-Client accounts, and intentionally allocated unfavorable trades to accounts held by Matthew and Melanie LeBlanc and Mr. LeBlanc's business Delcambre Cellular, LLC. *Id.* pp. 4-5, 12, ¶¶ 8, 9, 22. Matthew LeBlanc and his wife Melanie LeBlanc became investment advisory clients of World Tree after meeting Wesley Perkins while he was a personal banker for Chase. *Id.* p. 9, ¶ 17. Mr. LeBlanc owns a business named Delcambre Cellular, LLC, in whose name one of the relevant accounts was held. *Id.* The LeBlancs and Delcambre Cellular were World Tree's largest clients and had between $10 and $20 million in assets under management at various points during the time period at issue. *Id.* The Court found that Mr. LeBlanc was a credible witness and credited his testimony that he did not want to lose money with his World Tree investments, either for tax purposes or any other reason, and that he never directed, authorized, or expected Wesley Perkins to disproportionately allocate losses to his accounts. *Id.*

Thus, the District Court found that Perkins and World Tree intentionally engaged in a cherry-picking scheme and intentionally allocated unfavorable trades to the LeBlancs. *Id.* p. 12, ¶ 22.

As a matter of law, the district court held that "[b]y its very nature, cherry-picking cannot be the result of mere negligence or ordinary recklessness; rather, it necessarily involves knowing and intentional conduct, and "the facts of this case provide strong evidence of scienter on the part of Wesley Perkins." *Id.* p. 18, ¶¶ 9-10. Thus, the district court found that Perkins acted with scienter, and because he controlled World Tree as its officer, co-owner, and founder, his scienter can and should be imputed to World Tree. *Id.* p. 18-19, ¶¶ 11-12.

In fact, the district court expressly found that Perkins' "cherry-picking scheme and misrepresentation of [trade] allocation practices were particularly egregious and harmful to clients who trusted him with their investment decisions;" that "his conduct involved systematic practices over a three-year period;" and "he was fully aware of the wrongful and deceitful nature of his actions even as he was taking them." Dean Decl. Ex. 3, p. 32, ¶ 65.

Thus, the District Court found that Perkins and World Tree intentionally engaged in a cherry-picking scheme with scienter, in violation of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and (2) of the Advisers Act, and issued permanent injunctions against Perkins and World Tree. *Id.* p. 32, ¶¶ 66-68.

The district court found that Defendants received excess first-day profits of $347,947 from the cherry-picked trades, and that amount was s a reasonable estimate of the net benefit the Defendants received from the cherry-picking scheme. *Id.* p. 15, ¶ 30.

The district court also found that in the Forms ADV provided to clients, Perkins and World Tree told clients they would not trade in the same securities as their clients. *Id*. pp. 12-14, ¶¶ 23-

27. World Tree's Compliance Manual contained the same prohibition. *Id.* The Court also found that Perkins was aware that he had told his clients that he and his wife "would not trade in the same securities as their clients, and yet they did exactly that." *Id.* p. 14, ¶ 27. The district judge found that these misrepresentations were material and that Perkins and World Tree knowingly misled their advisory clients. *Id.* at p. 26, ¶¶ 41-42. Accordingly, the district judge determined that Perkins and World Tree violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and (2) of the Advisers Act on this additional ground. *Id.* at pp. 25-28, ¶¶ 39-51.

IV. LEGAL ARGUMENT

A. Summary Disposition is Appropriate Based on the District Court's Findings

Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250, provides that a party may move for summary disposition of any or all allegations of the OIP, after a respondent's answer has been filed and documents have been made available to the respondent for inspection and copying. A hearing officer may grant the motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law. Rule of Practice 250(b).

Summary disposition is appropriate here because the facts have been litigated and determined in an earlier judicial proceeding, permanent injunctions have been entered by the district court, and the sole remaining determination concerns the appropriate sanction.[2]

[2] *See, e.g. Omar Ali Rizvi*, Initial Dec. Rel. No. 479 (Jan. 7, 2013), 2013 WL 64626 ("Commission has repeatedly upheld use of summary disposition in cases where the respondent has been enjoined and the sole determination concerns the appropriate sanction."), *notice of finality*, Release No. 69019, 2013 WL 772514 (Mar. 1, 2013).

B. There Is No Genuine Issue With Regard To Any Material Fact

To prevail on this motion for summary disposition, the Division must establish that: (1) Respondents have been enjoined from violating the federal securities laws, and (2) it is in the public interest to impose a bar against each of them.

1. Respondents have been permanently enjoined

On January 15, 2021, the district court permanently enjoined Respondents from violations of the antifraud provisions of the federal securities laws – Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 17(a) of the Securities Act and Sections 206(1) and 206(2) of the Advisers Act. SMF Nos. 4, 5; Dean Decl. Exs. 4, 5, 6. These injunctions provide the statutory basis for this consolidated administrative proceeding.[3]

An antifraud injunction is considered to be particularly serious. *See Marshall E. Melton*, 56 S.E.C. 695, 710, 713 (2003). The public interest requires a severe sanction when a respondent's past misconduct involves fraud, because opportunities for dishonesty recur constantly in the securities business. *See Richard C. Spangler, Inc.*, 46 S.E.C. 238,252 (1976).

2. The public interest factors support permanent bars

The criteria for assessing the public interest are found in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *Jason A. Halek*, Release No. 1376, 2019 WL 2071396, at *3 (May 9, 2019). The public interest factors include:

> The egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.

[3] *See, e.g.*, *Douglas G. Frederick*, Initial Dec. Rel. No. 356 (Sept. 9, 2008), 94 S.E.C. Docket 212, 2008 WL 4146090, *notice of finality*, 94 S.E.C. Docket 977, 2008 WL 4500336 (Oct. 8, 2008).

Id. "The existence of an injunction can, in the first instance, indicate the appropriateness in the public interest of a suspension or bar from participation in the securities industry." *Michael V. Lipkin*, *supra*, 2006 WL 2422652 at *4.

a. Respondents' violations of the antifraud provisions were egregious, recurrent, and involved a high level of scienter

The first three *Steadman* factors are established by the court's extensive findings in *SEC v. World Tree*. SMF No. 3; Dean Dec. Ex. 3. World Tree was an SEC-registered investment adviser until June 15, 2012, when it was required to withdraw its SEC registration due to a change in the registration provisions of the Advisers Act. *Id.* p. 3, ¶ 2. World Tree was registered as an investment adviser with the State of Louisiana at the time the district court lawsuit was filed. *Id.*. At all relevant times, Wesley Perkins was the firm's 60% owner, chief executive officer, and chief investment officer. Wesley Perkins held Series 6, 7, and 66 securities licenses at the time this lawsuit was filed. *Id.*, p. 3, ¶ 3.

By using the block trading account World Tree, Perkins intentionally cherry-picked favorable trades for himself, his family, and certain Favored-Client accounts, and intentionally allocated unfavorable trades to the LeBlanc client accounts. *Id.*, pp. 4-5, 12, ¶¶ 8, 9, 22. In the Forms ADV provided to clients, Perkins and World Tree falsely told clients they would not trade in the same securities as their clients. *Id.*, pp. 12-14, ¶ 23-27. World Tree's Compliance Manual contained the same prohibition. *Id.* Perkins was aware that Forms ADV and the Compliance Manual stated that he and his wife "would not trade in the same securities as their clients, and yet they did exactly that." *Id*. As a result of their conduct, Perkins and Word Tree received $347,947 in profits they were not entitled to. *Id.*, p. 15, ¶ 30.

Perkins acted with scienter, and because he controlled World Tree as its officer, co-owner, and founder, his scienter can and should be imputed to World Tree. SMF No. 3; Dean Decl. Ex. 3, pp. 18-19, ¶¶ 11-12. *See Southland Securities Corp. v. INSpire Ins. Solutions*, *Inc.*, 365 F.3d 353, 365-66 (5th Cir. 2004). The district court expressly found that Perkins' "cherry-picking scheme and misrepresentation of allocation practices were particularly egregious and harmful to clients who trusted him with their investment decisions;" that "his conduct involved systematic practices over a three-year period;" and "he was fully aware of the wrongful and deceitful nature of his actions even as he was taking them." SMF No. 3; Dean Decl. Ex. 3, p. 32, ¶ 65. Thus, the first three *Steadman* factors weigh in favor of a bar.

b. Respondents have neither recognized the wrongful nature of their conduct, nor provided credible assurances against future violations

To date, Respondents have failed to recognize that they did anything wrong, although the district court made explicit findings which were affirmed in all respects by the Fifth Circuit. SMF Nos. 3, 12; Dean Decl. Exs. 3, 12. Indeed, the district court found that Perkins "refused to acknowledge any wrongdoing." SMF No. 3; Ex. 3, p. 32, ¶ 65. By their denials in the district court action, their appeal of the district court judgment and in their answers in this proceeding, Perkins and World Tree have continued to maintain that they did not engage in any wrongdoing and there is no basis to require them to disgorge the $347,947 they obtained from the cherry-picked trades. SMF Nos. 2, 6, 11, Dean Decl. Ex. 2, ¶¶ 13-17, 25-62, 63-90, 91-95; Exs. 7, 8, Ex. 12 at p. 9.

Respondents' continued arguments that their conduct did not amount to violations of the securities laws demonstrates that they have not meaningfully recognized the wrongful nature of their conduct, and they have not provided any assurances against future misconduct. *See Peter*

Siris, S.E.C. Release No. 71068, 2013 WL 6528874, at *7 (Dec. 12, 2013), *pet. for review denied*, *Siris v. SEC*, 773 F.3d 89 (D.C. Cir. 2015); *Jose P. Zollino*, Release No. 2579, 2007 WL 98919, at *6 (Jan. 16, 2007).

c. Likelihood of future violations

In issuing its injunction, the district court found that Perkins "expressed his intention to work in the securities industry." SMF No. 3; *see also* Dean Decl. Ex. 3, p.32, ¶ 65. As discussed above, Perkins actions and his scienter are attributable to World Tree. Respondents' failure to acknowledge guilt or show remorse demonstrates there is a significant risk, given the opportunity, that they would commit future misconduct. Absent a bar, Respondents could seek to defraud clients in the future. *See, e.g., Peter Siris*, 2013 WL 6528874, at *7 (remaining in the securities industry "presents continual opportunities for dishonesty and abuse and depends heavily on the integrity of its participants and on investors' confidence."

V. CONCLUSION

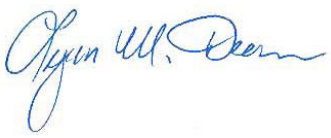
Based on the undisputed facts, it is in the public interest to bar Respondents from the securities industry. Respondent has been enjoined and there is no genuine issue with regard to any material fact. Respondents' conduct was egregious, recurrent, and involved a high degree of scienter. Respondents have not acknowledged their wrongdoing nor provided assurances against future violations, and their occupations presents opportunities for future violations. Accordingly,

OS Received 08/19/2022

the Division's motion for summary disposition should be granted, and Perkins and World Tree should be barred from the securities industry.

Dated: August 19, 2022

Respectfully submitted,



Lynn M. Dean
Senior Trial Counsel
Division of Enforcement
Los Angeles Regional Office
Securities and Exchange Commission
444 S. Flower Street, 9th Floor
Los Angeles, CA 90071
(323) 965-3245 (telephone)
Email: deanl@sec.gov

CERTIFICATE OF SERVICE
SERVICE LIST

Pursuant to Commission Rule of Practice 151 (17 C.F.R. § 201.151), I certify that the:

MOTION BY DIVISION OF ENFORCEMENT FOR SUMMARY DISPOSITION AGAINST RESPONDENT WESLEY KYLE PERKINS AND WORLD TREE FINANCIAL, LLC PURSUANT TO COMMISSION RULE OF PRACTICE 250

was served on August 19, 2022 upon the following parties as follows:

By eFAP
Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F. Street, N.E., Mail Stop 1090
Washington, DC 20549-1090
Facsimile: (703) 813-9793
Email: apfilings@sec.gov

By Email
Lauren Ashley Noel
Durio, McGoffin, Stagg & Ackermann
220 Heymann Boulevard
Lafayette, LA 70503
Email: lauren@dmsfirm.com
Counsel for Respondent World Tree Financial, LLC

Dated: August 19, 2022

Lynn M. Dean

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File Nos. 3-20248; 3-20249

In the Matter of **WESLEY KYLE PERKINS and WORLD TREE FINANCIAL, LLC,** **Respondents.**	**STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE IN SUPPORT OF DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION**

OS Received 08/19/2022

No.	Fact	Supporting Evidence
1	On September 18, 2018, the Securities and Exchange Commission ("Commission" or "SEC") filed a Complaint in the case captioned *SEC v. World Tree Financial, LLC, et al.* ("*SEC v. WTF*"), Case No. 6:18-cv-01229 (W.D. La.)	Declaration of Lynn M. Dean ("Dean Decl.") at ¶ 2, Ex. 1.
2	On December 12, 2018, Defendants in *SEC v. WTF* filed an answer in which they admitted being investment advisers, but denied all allegations of cherry-picking, and denied making false statements to their advisory clients.	Dean Decl. Ex. 2; ¶¶ 13-17; 25-62; 63-90; 91-95.
3	After a bench trial in *SEC v. WTF*, in Findings of Fact and Conclusions of Law dated January 15, 2021 and reported at 2021 WL 391345, Case No. 6:18-CV-01229 (W.D. La. Jan 15, 2021), the district court made the following findings: • World Tree is a Louisiana corporation with its principal place of business in Lafayette, Louisiana. Dean Decl. Ex. 3, p. 3, ¶ 2. • World Tree was an SEC-registered investment adviser until June 15, 2012, when it was required to withdraw its SEC registration due to a change in the registration provisions of the Advisers Act. *Id.* • World Tree was registered as an investment adviser with the State of Louisiana at the time the district court lawsuit was filed. *Id.* • Perkins co-founded World Tree with Priscilla Perkins in 2009. *Id.* p. 3, ¶ 3. • At all relevant times, Wesley Perkins was the firm's 60% owner, chief executive officer, and chief investment officer. *Id.* • Wesley Perkins held Series 6, 7, and 66 securities licenses at the time this lawsuit was filed. *Id.* • As World Tree's chief investment officer, Wesley Perkins was responsible for conducting trades on behalf of clients. *Id.* p. 4, ¶ 6. • World Tree and Wesley Perkins managed most of their clients' assets on a discretionary basis, meaning they had authorization to trade securities on behalf of most of their clients. *Id.* p. 4, ¶ 7. • In order to conduct trading, Wesley Perkins used a block trade account (also referred to as a master account or omnibus account) registered to World Tree. *Id.* p. 4, ¶ 8.	Dean Decl. Ex. 3.

	A block trade account allows Adviser to place a single large trade in its own name for the benefit of multiple clients and then allocate portions of that trade to particular client accounts. *Id.* • By using the block trading account registered to World Tree, Perkins intentionally cherry-picked favorable trades for himself, his family, and certain Favored-Client accounts, and intentionally allocated unfavorable trades to accounts held by Matthew and Melanie LeBlanc and Mr. LeBlanc's business Delcambre Cellular, LLC. *Id.* pp. 4-5, 12, ¶¶ 8, 9, 22. • Matthew LeBlanc and his wife Melanie LeBlanc became investment advisory clients of World Tree after meeting Wesley Perkins while he was a personal banker for Chase. *Id.* p. 9, ¶ 17. • Mr. LeBlanc owns a business named Delcambre Cellular, LLC, in whose name one of the relevant accounts was held. *Id.* • The LeBlancs and Delcambre Cellular were World Tree's largest clients and had between $10 and $20 million in assets under management at various points during the time period at issue. *Id.* • Mr. LeBlanc was a credible witness and the district court credited his testimony that he did not want to lose money with his World Tree investments, either for tax purposes or any other reason, and that he never directed, authorized, or expected Wesley Perkins to disproportionately allocate losses to his accounts. *Id.* • Thus, the District Court found that Perkins and World Tree intentionally engaged in a cherry-picking scheme and intentionally allocated unfavorable trades to the LeBlancs. *Id.* p. 12, ¶ 22. • As a matter of law, the district court held that "[b]y its very nature, cherry-picking cannot be the result of mere negligence or ordinary recklessness; rather, it necessarily involves knowing and intentional conduct." *Id.* p. 18, ¶ 9. • The district court also found that "the facts of this case provide strong evidence of scienter on the part of Wesley Perkins." *Id.* p. 18, ¶ 10. • Perkins acted with scienter, and because he controlled World Tree as its officer, co-owner, and founder, his scienter can and should be imputed to World Tree. *Id.* pp. 18-19, ¶¶ 11-12.	

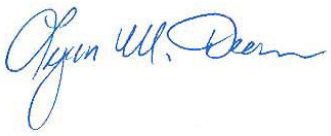
	• The district court expressly found that Perkins' "cherry-picking scheme and misrepresentation of [trade] allocation practices were particularly egregious and harmful to clients who trusted him with their investment decisions;" that "his conduct involved systematic practices over a three-year period;" and "he was fully aware of the wrongful and deceitful nature of his actions even as he was taking them." Dean Decl. Ex. 3, p. 32, ¶ 65. • Finding that Perkins and World Tree intentionally engaged in a cherry-picking scheme with scienter, in violation of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and (2) of the Advisers Act, and Court issued permanent injunctions against Perkins and World Tree. *Id.* p. 32, ¶¶ 66-68. • Defendants received excess first-day profits of $347,947 from the cherry-picked trades, and that amount was s a reasonable estimate of the net benefit the Defendants received from the cherry-picking scheme. *Id.* p. 15, ¶ 30. • The district court also found that in the Forms ADV provided to clients, Perkins and World Tree told clients they would not trade in the same securities as their clients. *Id*. pp. 12-14, ¶¶ 23-27. • World Tree's Compliance Manual contained the same prohibition. *Id.* • The Court also found that Perkins was aware that he had told his clients that he and his wife "would not trade in the same securities as their clients, and yet they did exactly that." *Id.* p. 14, ¶ 27. • The district judge found that these misrepresentations were material and that Perkins and World Tree knowingly misled their advisory clients. *Id.* p. 26, ¶¶ 41-42. • Accordingly, the district judge determined that Perkins and World Tree violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and (2) of the Advisers Act on this additional ground. *Id.* at pp. 25-28, ¶¶ 39-51.	
4	On January 15, 2021, the district court permanently enjoined both Respondents from future violations of the antifraud provisions of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and	Dean Decl. Ex 4.

	Section 17(a) the Securities Act of 1933 ("Securities Act"), and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940.	
5	The Division instituted this consolidated follow-on proceeding on March 22, 2021, with an Order Instituting Proceedings ("OIP") against Perkins pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"), and an OIP against World Tree pursuant to Section 203(f) of the Advisers Act. Both OIPs were based on the district court's findings and injunction in *SEC v. World Tree Financial, LLC, et al.*, Civil Action Number 6:18-cv-01229-MJJ-CBW (W.D. LA).	Dean Decl. Exs. 5, 6.
6	On May 28, 2021, Respondents served their Answers to the OIPs. In their Answers, Respondents again denied all wrong-doing.	Dean Decl. Exs. 7, 8.
7	On April 14, 2022, the parties filed joint prehearing conference statements.	Dean Decl. Exs. 9, 10.
8	On April 20, 2022, the Division filed briefs stating that the Perkins and World Tree proceedings should be consolidated.	Dean Decl. Ex. 11 at p. 2.
9	On May 20, 2022, Respondents filed briefs opposing consolidation, and also separately filed motions to stay these proceedings pending the outcome of their appeals of the district court judgment in the United States Court of Appeals for the Fifth Circuit. The Division opposed the stay requests.	Dean Decl. Ex. 11 at p. 2.
10	On July 22, 2022, the Commission consolidated the two proceedings, denied the motions to stay, and set a briefing schedule for motions for summary disposition.	Dean Decl. Ex. 11 at p. 2.
11	Perkins and World Tree appealed the district court's Judgment in *SEC v. WTF* to the Fifth Circuit. In their appeal, Respondents "challenge[d] the district court's findings that Perkins and World Tree engaged in fraudulent cherry-picking and that Defendants misrepresented World Tree's allocation and trading practices. They also challenge the disgorgement assessment."	Dean Decl. Ex 12 at p. 9.
12	On August 4, 2022, the Fifth Circuit affirmed the district court's decisions in all respects. *SEC v. World Tree Financial*, *LLC*, *et al.*, __ F.4th __, 2022 WL 3098058 (5th Cir. 2022) ("After a bench trial, the district court found that Perkins and World Tree engaged in a fraudulent 'cherry-picking' scheme, in which they allocated favorable trades to themselves and favored clients and unfavorable trades to disfavored clients. It also found that all	Dean Decl. Ex 12.

	three Defendants made false and misleading statements about the firm's allocation and trading practices. The court entered permanent injunctions against Perkins and World Tree, ordered them to disgorge ill-gotten gains, and imposed civil penalties on each Defendant. We AFFIRM.").	

Dated: August 19, 2022

Respectfully submitted,



Lynn M. Dean
Senior Trial Counsel
Division of Enforcement
Los Angeles Regional Office
Securities and Exchange Commission
444 S. Flower Street, 9th Floor
Los Angeles, CA 90071
(323) 965-3245 (telephone)
Email: deanl@sec.gov

OS Received 08/19/2022

CERTIFICATE OF SERVICE
SERVICE LIST

Pursuant to Commission Rule of Practice 151 (17 C.F.R. § 201.151), I certify that the:

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE IN SUPPORT OF DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION

was served on August 19, 2022 upon the following parties as follows:

By eFAP
Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F. Street, N.E., Mail Stop 1090
Washington, DC 20549-1090
Facsimile: (703) 813-9793
Email: apfilings@sec.gov

By Email
Lauren Ashley Noel
Durio, McGoffin, Stagg & Ackermann
220 Heymann Boulevard
Lafayette, LA 70503
Email: lauren@dmsfirm.com
Counsel for Respondent World Tree Financial, LLC

Dated: August 19, 2022

Lynn M. Dean

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File Nos. 3-20248 and 3-20249

In the Matter of **WESLEY PERKINS AND WORLD TREE FINANCIAL, LLC** **Respondent.**	**DECLARATION OF LYNN M. DEAN IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENTS WESLEY PERKINS AND WORLD TREE FINANCIAL, LLC PURSUANT TO COMMISSION RULE OF PRACTICE 250**

OS Received 08/19/2022

I, Lynn M. Dean, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am one of the attorneys representing the Division of Enforcement in this action. I have personal knowledge of the following facts and, if called as a witness, would testify competently thereto.

2. Attached as Exhibit 1 is a true and correct copy of the Complaint filed by the Securities and Exchange Commission on September 18, 2018, in *SEC v. World Tree Financial, LLC, et al.*, Civil Action Number 6:18-cv-01229-MJJ-CBW (W.D. LA).

3. Attached as Exhibit 2 is a true and correct copy of Respondents' Answer to the Complaint in *SEC v. World Tree Financial, LLC, et al.*, Civil Action Number 6:18-cv-01229-MJJ-CBW (W.D. LA), dated December 10, 2018.

4. Attached as Exhibit 3 is a true and correct copy of the January 15, 2021 Findings of Fact and Conclusions of Law in *SEC v. World Tree Financial, LLC, et al.*, Civil Action Number 6:18-cv-01229-MJJ-CBW (W.D. LA).

5. Attached as Exhibit 4 is a true and correct copy of the Judgment entered on January 15, 2021 in *SEC v. World Tree Financial, LLC, et al.*, Civil Action Number 6:18-cv-01229-MJJ-CBW (W.D. LA).

6. Attached as Exhibit 5 is a true and correct copy of the March 22, 2021 Order Instituting Proceedings ("OIP") against Wesley Kyle Perkins ("Perkins") pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act").

7. Attached as Exhibit 6 is a true and correct copy of the OIP against World Tree pursuant to Section 203(f) of the Advisers Act.

8. Attached as Exhibit 7 is a true and correct copy of Perkins' May 28, 2021 Answer to the OIP.

9. Attached as Exhibit 8 is a true and correct copy of World Tree's May 28, 2021 Answer to the OIP.

10. Attached as Exhibit 9 is a true and correct copy of the Division of Enforcement and Perkins' April 14, 2022 joint prehearing conference statement.

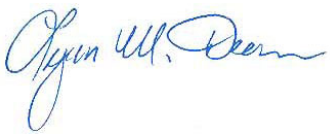
11. Attached as Exhibit 10 is a true and correct copy of the Division of Enforcement and World Tree's April 14, 2022 joint prehearing conference statement.

12. Attached as Exhibit 11 is a true and correct copy of the July 22, 2022 Order Commission consolidating the Perkins and World Tree proceedings, denying Respondents' motions to stay, and setting a briefing schedule for motions for summary disposition.

13. Attached as Exhibit 12 is a true and correct copy of the August 4, 2022, decision by the Fifth Circuit Court of Appeals, reported at *SEC v. World Tree Financial*, *LLC*, *et al.*, __ F.4th __, 2022 WL 3098058 (5th Cir. 2022).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 19, 2022, in Los Angeles, California.



Lynn M. Dean

EXHIBIT 1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. WORLD TREE FINANCIAL, LLC, WESLEY KYLE PERKINS, and PRISCILLA GILMORE PERKINS, Defendants.	Case No. 18-cv-1229 JUDGE MAGISTRATE JUDGE **COMPLAINT**

Plaintiff Securities and Exchange Commission ("SEC") alleges:

SUMMARY OF THE ACTION

1. This case is about a "cherry-picking" scheme carried out by an investment adviser and its owner. Investment advisers often trade stocks and other securities for their clients on a daily basis, and "cherry-picking" happens when the adviser gives himself or his favored clients the winning trades for that day, and allocates the losing trades to other clients (the "disfavored" clients). That is what defendant World Tree Financial LLC ("World Tree"), and one of its owners, defendant Wesley Kyle Perkins ("Perkins"), did. They allocated "cherry-picked" winning trades to Perkins' accounts and to accounts held by some clients, while allocating losing trades to the accounts held by a disfavored client. In doing so, they breached the fiduciary duties they owed their clients – Perkins took profits for himself and others, while at the same time causing substantial losses for the disfavored client. Through this scheme, World Tree and Perkins misled the clients

who received the better trades into thinking World Tree and Perkins were better at managing their money than they really were.

2. Perkins was World Tree's chief executive officer and chief investment officer, and was responsible for all of the firm's trading. In those roles, he was able to disproportionately allocate profitable securities trades to accounts that he and defendant Priscilla Gilmore Perkins ("Gilmore") owned and controlled, and to other accounts. Gilmore is Perkins' wife and World Tree's chief compliance officer. At the same time, Perkins saddled two disfavored accounts, held by one client, with a disproportionate share of the firm's unprofitable trades. The brokerage firm handling the trading for World Tree terminated its relationship with World Tree because it suspected the firm was engaging in cherry-picking.

3. The defendants also misrepresented how World Tree was trading securities for its clients. The firm's brochures and other disclosures claimed the trades were being fairly and equitably allocated among the client accounts. The firm also claimed that Perkins and Gilmore were not trading in the same securities as World Tree's clients. These claims were false —Perkins was cherry-picking trades, and he and Gilmore were trading in the same securities as their clients.

4. By engaging in this cherry-picking scheme, and through their misrepresentations to their advisory clients, defendants World Tree and Perkins violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5(a) and (c) thereunder; Section 17(a)(1) of the Securities Act of 1933 ("Securities Act"); and Sections 206(1) and (2) of the Investment Advisers Act of 1940 ("Advisers Act"). Also, defendants World Tree, Perkins and Gilmore violated Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder and Section 17(a)(2) of the Securities Act; and defendant Gilmore aided and abetted defendant World Tree's violations of the Advisers Act. The SEC seeks permanent injunctions, disgorgement with prejudgment interest, and civil penalties against all three defendants.

JURISDICTION AND VENUE

5. The Court has jurisdiction over this action pursuant to Sections 20(b), 20(d)(1) and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77t(b), 77t(d)(1) & 77v(a), Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27(a) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78u(d)(1), 78u(d)(3)(A), 78u(e) & 78aa(a), and Sections 209(d), 209 (e)(1) and 214 of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. §§ 80b-9(d), 80b-9(3)(1) & 90b-14.

6. Defendants have, directly or indirectly, made use of the means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the transactions, acts, practices and courses of business alleged in this complaint.

7. Venue is proper in this district pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), and Section 27(a) of the Exchange Act, 15 U.S.C. § 78aa(a) because certain of the transactions, acts, practices and courses of conduct constituting violations of the federal securities laws occurred within this district. In addition, venue is proper in this district because defendants Perkins and Gilmore reside in this judicial district, and defendant World Tree has its principal place of business in this judicial district.

DEFENDANTS

8. Defendant World Tree Financial, LLC is a Louisiana corporation with its principal place of business in Lafayette, Louisiana. World Tree was an SEC-registered investment adviser until June 15, 2012, when it withdrew its SEC registration. World Tree is currently registered as an investment adviser with the State of Louisiana.

9. As of March 2018, World Tree had assets under management of over $54 million and 161 advisory clients, all of whom are individuals.

10. Defendant Wesley Kyle Perkins is a resident of Lafayette, Louisiana.

He co-founded World Tree in 2009, and has been the firm's 60% owner, chief executive officer, and chief investment officer since World Tree's inception. Perkins holds Series 6, 7, and 66 securities licenses. Perkins married co-defendant Priscilla Gilmore Perkins in 2017.

11. Defendant Priscilla Gilmore Perkins is a resident of Lafayette, Louisiana. After co-founding World Tree with Perkins in 2009, Gilmore has been the firm's 40% owner, chief financial officer, chief compliance officer, and chief operating officer. Gilmore holds Series 6, 7 and 66 securities licenses.

FACTS

A. World Tree's Formation and Operation

12. In 2009, Perkins and Gilmore left a subsidiary of a global financial services firm, where they had both worked as financial advisers, and co-founded World Tree.

13. At all relevant times, Perkins has owned 60% of World Tree and Gilmore has owned the remaining 40% of the firm.

14. World Tree's advisory clients are individual retail investors.

15. The majority of World Tree's advisory clients are not high net worth individuals.

16. For its investment advice, World Tree charges clients an advisory fee that ranges between 0.5% to 1.5% of the client's assets under management.

17. From March 2011 through September 2015, World Tree managed between approximately $40 million and $70 million in client assets.

18. World Tree assigned each of its clients one of five "investment models" based on the size of the client's account.

19. Most of World Tree's clients bought from among the same group of individual securities, and held between two and ten different stocks in their respective accounts at one time, depending on the size of their account.

20. Approximately 93% of World Tree's clients' investments involved the

same securities between March 2011 and September 2015.

21. Notwithstanding World Tree's five "investment models," it utilized the same basic trading strategy across the majority of its client accounts.

22. At all relevant times, Perkins and Gilmore have jointly controlled World Tree.

23. As World Tree's chief investment officer, Perkins was solely responsible for managing all the securities trading, including allocating trades placed through the firm's omnibus account to clients.

24. As World Tree's chief compliance officer, chief financial officer and chief operating officer, Gilmore ran World Tree's back office operations and supervised all aspects of the firm's compliance program.

B. Perkins' and World Tree's Fraudulent Cherry-Picking Scheme

1. Trading in Client Accounts

25. World Tree manages all of its clients' assets on a discretionary basis, meaning it has authorization to trade securities on behalf of its clients.

26. Perkins was the only person at World Tree with the authority to make trades and determine allocations.

27. From December 2009 to October 2015, World Tree traded through the brokerage platform of a registered broker-dealer ("Broker"). This Broker also acted as the custodian for World Tree's client accounts, meaning that a third-party held the securities on the clients' behalf.

28. World Tree generally traded for its clients through an omnibus trading account held at the Broker and later allocated the purchases to its individual clients' accounts, generally after the market closed.

29. In general, an omnibus trading account allows an investment adviser to buy and sell securities on behalf of multiple clients simultaneously, without identifying to the broker in advance the specific accounts for which a trade is intended.

30. As an example, if an adviser separately purchases the same security for several clients on the same day, the adviser might obtain different prices on each transaction as a result of normal market fluctuation. Rather than placing individual orders in each client account, the adviser can place an aggregated order, or "block trade," in the omnibus account and subsequently allocate the trade among multiple accounts using an average price. When used properly, an adviser will fairly and equitably allocate the block trade among client accounts, ensuring that no account receives preferential treatment over another.

2. The Cherry-Picking

31. From at least March 2011 through September 2015, when World Tree traded through the Broker's platform, World Tree and Perkins misused the omnibus account to engage in a fraudulent scheme to defraud clients by cherry-picking.

32. In fact, in April 2015, the Broker internally determined, based on a sampling analysis, that when trading in the same security, accounts held by World Tree, Perkins and Gilmore performed substantially better than their clients' accounts.

33. The Broker then requested that World Tree provide materials showing how the firm was allocating trades to client accounts and World Tree and its principals' accounts. Because World Tree did not produce the requested materials, the Broker terminated its relationship with World Tree based on its suspicions of cherry-picking in September 2015.

34. From March 2011 to September 2015, World Tree traded equities for about 277 client accounts and accounts held by Perkins, Gilmore and/or entities they owned or controlled.

35. During this period, World Tree and Perkins allocated favorable trades to nine accounts held by Perkins, Gilmore and/or entities they owned or controlled, and to a lesser degree, the World Tree client accounts (collectively, the "Favored Accounts") – except, however, for two client accounts that did not receive an equitable allocation of favorable trades.

36. At the same time, World Tree and Perkins allocated unfavorable trades to those two remaining client accounts (the "Disfavored Client Accounts"), which were owned by one client, his wife, and the client's business entity (the "Disfavored Client").

37. Specifically, from March 2011 to September 2015, Perkins allocated: (i) a disproportionately high number of profitable trades to the nine favored Perkins accounts; (ii) a disproportionately high number of the most unprofitable trades to the Disfavored Client Accounts; (iii) a disproportionately low number of the most unprofitable trades to the Perkins accounts; and (iv) a disproportionately low number of the profitable trades to the Disfavored Client Accounts.

38. The Disfavored Client Accounts were World Tree's largest accounts between 2011 and 2015, totaling up to $20 million in assets at various points in time.

39. World Tree's cherry-picking was enabled by the fact that the Disfavored Client Accounts were large enough to absorb incremental, though steady, trading losses without arousing client suspicion that the losses were due to fraud.

40. Perkins executed the cherry-picking scheme by trading in the firm's omnibus account and then delaying allocation of trades to a specific account until he had an opportunity to observe the security's intra-day performance.

41. Typically, after purchasing a block of securities through World Tree's omnibus trading account, Perkins delayed allocating the purchase until after the market closed.

42. If the relevant security's price closed higher, Perkins generally allocated the trade to the Favored Accounts, thereby receiving an unrealized gain.

43. Conversely, when the security's price went down over the course of the day, Perkins generally allocated the purchase to the Disfavored Accounts, leaving those accounts with unrealized first-day losses.

44. In some instances, Perkins purchased and sold the securities on the same day, thus locking in a realized gain or loss, and then disproportionately allocated

favorable trades to the Favored Accounts, and unfavorable trades to the Disfavored Accounts.

45. Perkins also cherry-picked when World Tree bought and sold securities around corporate earnings announcements.

46. To illustrate, from March 2011 through September 2015, about 17% of World Tree's trade allocations occurred on the same day that the companies whose securities were being allocated had issued, after market close, earnings announcements.

47. On those days, Perkins often waited until after the release of a company's post-close earnings report before allocating trades in that company's securities.

48. By delaying allocations, Perkins could take into account after-hours price movements relating to the earnings announcement.

49. On repeated instances, when an earnings announcement had a negative post-market close impact on the price of the company's securities, Perkins allocated the entire block of unprofitable trades to the Disfavored Client Accounts, even though the Disfavored Client Accounts and many other client accounts who did not receive any of the unprofitable trades had been assigned the same investment model (called the "Large Cap" strategy) by World Tree and Perkins.

50. The cherry-picking benefitted Perkins and Gilmore because Perkins cherry-picked the favorable trades for the accounts they held and controlled.

51. In addition, the cherry-picking not only harmed the Disfavored Client, whose two accounts received the poor trades, but also made it appear to the other clients as if World Tree and Perkins were better at trading securities than they really were.

52. From March 2011 through September 2015, Perkins allocated about 1,865 trades to the nine favored accounts held by the Perkins, Gilmore or their businesses. Those trades earned a positive return of about 2.2% – as measured by

actual returns in the case of day trades, and for other trades, the first-day returns showing the loss or gain between trade price and the closing share price, and where Perkins and World Tree traded around earnings announcements, the opening price on the following trading day – on about $16.1 million in notional value invested.

53. During that same period, Perkins allocated about 22,220 trades to client accounts that were not the two Disfavored Client Accounts. Those trades earned a positive return of about 1.0% during that time, as measured by actual returns in the case of day trades, and for other trades, the first-day returns showing the loss or gain between trade price and the closing share price, and for trades around earnings announcements, the opening price on the following trading day.

54. In contrast, during that same period, the trades allocated to the Disfavored Client Accounts had negative returns. Perkins allocated about 2,239 trades to these accounts during this time. Those trades earned a negative return of about -1.05% on the approximately $424 million in notional value invested, as measured by actual returns in the case of day trades, and for other trades, the first-day returns showing the loss or gain between trade price and the closing share price, and for trades around earnings announcements, the opening price on the following trading day. These trades resulted in first day losses and realized (in the case of a few day trades) losses of approximately $4.46 million.

55. From March 2011 through September 2015, trading in all accounts generated an average return of negative return of about -0.23% on an approximately $695 million in notional value invested, as measured by actual returns in the case of day trades, and for other trades, the first-day returns showing the loss or gain between trade price and the closing share price, and for trades around earnings announcements, the opening price on the following trading day.

56. According to a statistical analysis of these different returns, there is a less than 1 in a million chance that the disparate returns between the Favored Principal Accounts and Disfavored Accounts – an approximate difference of about

3.25% – are the product of mere random chance.

57. According to a statistical analysis of these different returns, there is a less than 1 in a million chance that the disparate returns between the Disfavored Accounts and the other client accounts – an approximate difference of about 2.0% – are the product of mere random chance.

58. In addition, during this same period from March 2011 to September 2015, Perkins allocated 48 of World Tree's 50 worst performing trades (as measured by first-day returns) to the Disfavored Client Accounts. Those accounts, in turn, sustained about 92% of the losses associated with those 50 worst-performing trades.

59. Similarly, Perkins allowed the Favored Accounts to participate in all of World Tree's 50 best performing trades (as measured by first-day returns) during that same period March 2011 to September 2015. In contrast, Perkins allocated only six of those trades to the Disfavored Client Accounts during that time.

60. As one example, in or about February 2014, Perkins allocated a poor-performing trade in a social media company to one of the two Disfavored Client Accounts. The trade was allocated to the Disfavored Client Account as follows:

(a) At 12:28 p.m. on February 5, 2014, Perkins, on behalf of World Tree, purchased 5,000 shares of the social media company in the omnibus account at $66.39 per share.

(b) At 4:29 p.m., in a press release after the market closed, the social media company announced lower than expected financial results.

(c) Shortly thereafter at 5:40 p.m., Perkins allocated all of these shares to the Disfavored Client Account at $66.39 per share.

(d) The Disfavored Client Account was invested in the Large Cap strategy.

(e) No shares were allocated to any other clients who were also invested in the Large Cap strategy.

(f) The next day, the stock price for the social media company

opened at $50.61, a 24% decrease from the allocation price from the previous day.

61. As another example, in or about July 2014, Perkins allocated a positively performing trade in the same social media company to the Favored Accounts:

(a) At 3:48 p.m. on July 29, 2014, Perkins, on behalf of World Tree, purchased 3,000 shares of the social media company in the omnibus account at $38.569 per share.

(b) At 4:15 p.m., in a press release after the market closed, the social media company announced higher than expected financial results.

(c) Shortly thereafter, at 6:15 p.m., Perkins allocated the purchased shares at $38.569 per share to approximately 23 Favored Accounts, including the Favored Principal Accounts.

(d) The next day, the social media company opened at $47.01, a 22% increase from the allocation price.

(e) None of these shares were allocated to the Disfavored Client Accounts.

62. It would have been important to World Tree's advisory clients' decisions on whether to place their assets under World Tree's management to know that trades were not being allocated fairly and equitably.

C. World Tree, Gilmore and Perkins Made False and Misleading Statements to Clients in the Firm's Brochures

63. Between March 2011 and February 2015, World Tree made false and misleading statements in its Forms ADV, Part 2A.

64. A Form ADV is a document that is filed with the SEC by investment advisers registered with the SEC. The filing consists of two parts—Part 1 contains "check-the-box" information about the firm, and Part 2 is a brochure, in narrative form, which describes key information about the firm, including the types of services the firm provides. An investment adviser's Form ADV must be updated annually, and made available to firm clients.

65. While it was registered with the SEC, World Tree was required to deliver its Form ADV, Part 2A brochure to clients at the time it entered into an advisory contract with them, and to provide clients annually with World Tree's current brochure or a summary of any material changes to its existing brochure.

66. While it was registered with the SEC, World Tree's Forms ADV, Part 2A were available online through the SEC's website.

67. Once World Tree became a Louisiana state-registered investment adviser in June 2012, it filed its Forms ADV annually with the Investment Adviser Registration Depository; those filings were publicly available on the internet.

68. Since founding the firm, Perkins and Gilmore each personally provided World Tree's Form ADV brochure to their advisory clients on regular occasions.

69. Before providing them to World Tree's clients, Gilmore and Perkins both reviewed drafts of the Forms ADV, made changes when necessary, and authorized the final version for filing and distribution to World Tree's clients.

70. Either Perkins or Gilmore signed every World Tree Form ADV from 2011 to 2015. Each had ultimate control and authority over the contents of the form.

71. World Tree's Forms ADV filed on March 15, 2011, February 7, 2012, June 5, 2012, March 25, 2013, March 18, 2014, February 9, 2015, August 7, 2015, and September 29, 2015 stated that: (i) "World Tree allocates investment opportunities among its clients on a fair and equitable basis"; (ii) "World Tree may … combine or 'batch' such orders … to allocate equitably among World Tree's clients"; and (iii) "To the extent that World Tree determines to aggregate client orders … World Tree shall generally do so in accordance with applicable rules promulgated under the Advisers Act and non-action guidance provided by the staff of the U.S. Securities and Exchange Commission."

72. Given the cherry-picking scheme alleged above, each of these statements was false. By cherry-picking winning trades to the Favored Accounts and losing trades to the Disfavored Client Accounts, World Tree did not allocate trades fairly or

equitably, and did not do so in accordance with the Advisers Act or guidance provided by the SEC.

73. It would have been important to World Tree's advisory clients to know that, contrary to the representations made to clients, World Tree was not allocating trades fairly or equitably, or in a way that was consistent with the law.

74. World Tree's Forms ADV filed on March 15, 2011, February 7, 2012, June 5, 2012, March 25, 2013, March 18, 2014, and February 9, 2015 also stated that: (i) "none of World Tree's Access Persons [Perkins and Gilmore] may effect for themselves or for their immediate family (i.e., spouse, minor children, and adults living in the same household as the Access Person) any transactions in a security which is being actively purchased or sold, or is being considered for the purchase or sale, on behalf of World Tree's clients"; and (ii) "no Access Person may purchase or sell … any Securities … if the Access Person knows or reasonably should know that the Security, at the time of purchase or sale (i) is becoming considered for purchase or sale on behalf of any client Account, or (ii) is being actively purchased or sold on behalf of any Client Account."

75. These representations were false as well. Between March 2011 and September 2015, Perkins allocated approximately 1,801 securities to accounts under Perkins' and Gilmore's ownership and/or control, while Perkins was buying those same securities for other World Tree clients through the omnibus account.

76. It would have been important to World Tree's advisory clients to know that, contrary to the representations made to clients, World Tree's principals' accounts were trading in the same securities as their clients' accounts, in prohibited transactions.

D. World Tree, Perkins and Gilmore Acted Unreasonably and With Fraudulent Intent

77. Perkins knowingly or recklessly engaged in a fraudulent scheme to cherry-pick securities trades for the benefit of accounts held by his family and his

clients, to the detriment of the Disfavored Client. He further acted unreasonably when carrying out the cherry-picking scheme.

78. Perkins also knew, or was reckless in not knowing that World Tree's Forms ADV were false and misleading when they claimed that the trading of securities would be allocated fairly and equitably among client accounts. He further acted unreasonably when making those misstatements to clients and circulating those false and misleading Forms ADV.

79. Because he is a co-owner and principal of the firm, his scienter and negligence in carrying out the cherry-picking scheme and defrauding clients in the Forms ADV are imputed to World Tree about the allocation practices.

80. World Tree maintained a compliance manual, and Perkins certified that he had read and understood the manual. In addition, Perkins and Gilmore held annual compliance meetings.

81. World Tree's compliance manual states that the firm "maintains strict compliance with all applicable laws, rules and regulations," and identifies trade allocation as an area of potential conflict of interest that required additional monitoring by the firm's chief compliance officer.

82. Annual compliance audit reports, which Perkins reviewed and approved, stressed the importance of fair and equitable trade allocations and stated that "[i]t is the Firm's policy, when placing aggregated client orders of securities simultaneously for more than one client (block trades) to allocate orders in a fair and equitable manner."

83. In addition, Perkins and Gilmore each knew, or was reckless in not knowing, that they were prohibited from trading in the same securities as clients in their personal accounts, and that World Tree and Perkins's violation of that prohibition rendered World Tree's Forms ADV false and misleading. Perkins and Gilmore further acted unreasonably when they issued Forms ADV to clients that falsely claimed they were not engaging in prohibited personal securities transactions.

84. Because Perkins and Gilmore are co-owners and principals of the firm, their scienter and negligence in defrauding clients in the Forms ADV about the prohibited securities transactions are imputed to World Tree.

85. Perkins and Gilmore have each admitted that they were aware of the prohibition and that in retrospect, their trading in the same securities as their clients violated the prohibition.

86. Perkins and Gilmore each signed an annual acknowledgment that they had read and understood the compliance manual that contained a Code of Ethics, which explicitly described the prohibition against trading in securities also under consideration for investment by clients.

87. In addition, among Gilmore's daily responsibilities as World Tree's chief compliance officer, Gilmore was responsible for verifying that Perkins's trade allocations had been correctly carried out by the Broker.

88. Gilmore would verify on the following day that trades from the day before had been allocated as Perkins directed.

89. World Tree's compliance manual stated that the chief compliance officer, Gilmore, was responsible for determining whether trade allocations were fair and equitable.

90. Gilmore failed to take any steps to determine whether trade allocations were fair and equitable.

E. World Tree's and Perkins' Role as Investment Advisers

91. During all relevant times, World Tree and Perkins acted as investment advisers.

92. World Tree provided investment advice to clients in exchange for a percentage of assets under management.

93. World Tree was an SEC-registered investment adviser through June 2012, and is currently a Louisiana state-registered investment adviser.

94. Perkins made all of the investment decisions for the securities trading in

World Tree accounts.

95. Perkins, as World Tree's 60% owner, chief executive officer and chief investment officer, was compensated for managing World Tree client accounts and directly benefitted from the advisory fees World Tree earned.

F. Tolling of the Statute of Limitations

96. Pursuant to tolling agreements between defendants and the SEC, the statute of limitations applicable to the SEC's claims against defendants World Tree, Perkins, and Gilmore was tolled and suspended for the period beginning on August 1, 2017 through September 30, 2018.

FIRST CLAIM FOR RELIEF

Fraud in Connection with the Purchase or Sale of Securities

Violations of Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c)

(against Defendants World Tree and Perkins)

97. The SEC realleges and incorporates by reference paragraphs 1 through 96 above.

98. As alleged above, defendants World Tree and Perkins engaged in a scheme to defraud clients, and engaged in acts, practices or courses of business that operated as a fraud upon clients, by cherry-picking favorable trades for the Favored Accounts and allocating poor trades to the Disfavored Client Account, which sustained substantial losses as a result.

99. By engaging in the conduct described above, defendants World Tree and Perkins, and each of them, directly or indirectly, in connection with the purchase or sale of a security, and by the use of means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange: (a) employed devices, schemes, or artifices to defraud; and (b) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

100. Defendants World Tree and Perkins, with scienter, employed devices,

schemes and artifices to defraud; and engaged in acts, practices or courses of conduct that operated as a fraud on the investing public by the conduct described in detail above.

101. By engaging in the conduct described above, defendants World Tree and Perkins violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rules 10b-5(a) and 10b-5(c) thereunder, 17 C.F.R. §§ 240.10b-5(a) & 240.10b-5(c).

SECOND CLAIM FOR RELIEF

Fraud in the Connection with the Purchase and Sale of Securities

Violations of Section 10(b) of the Exchange Act and Rule 10b-5(b)

(against Defendants World Tree, Perkins and Gilmore)

102. The SEC realleges and incorporates by reference paragraphs 1 through 96 above.

103. As alleged above, defendants World Tree, Perkins and Gilmore made untrue statements of material fact in World Tree's Forms ADV concerning their securities trading and trade allocations. Specifically, World Tree and Perkins made false and misleading statements in the Forms ADV about the firm's trade allocation practices; World Tree, Perkins and Gilmore made false and misleading statements in the Forms ADV about whether or not Perkins and Gilmore traded in the same securities as their clients.

104. By engaging in the conduct described above, defendants World Tree, Perkins and Gilmore, and each of them, directly or indirectly, in connection with the purchase or sale of a security, by the use of means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

105. By engaging in the conduct described above, defendants World Tree,

Perkins and Gilmore violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5(b) thereunder, 17 C.F.R. § 240.10b-5(b).

THIRD CLAIM FOR RELIEF

Fraud in the Offer or Sale of Securities

Violations of Sections 17(a)(1) of the Securities Act

(against Defendants World Tree and Perkins)

106. The SEC realleges and incorporates by reference paragraphs 1 through 96 above.

107. As alleged above, defendants World Tree and Perkins engaged in a scheme to defraud clients, and engaged in acts, practices or courses of business that operated as a fraud upon clients, by cherry-picking favorable trades for the Favored Accounts and allocating poor trades to the Disfavored Client Account, which sustained substantial losses as a result.

108. By engaging in the conduct described above, defendants World Tree and Perkins, and each of them, directly or indirectly, in the offer or sale of securities, and by the use of means or instruments of transportation or communication in interstate commerce or by use of the mails directly or indirectly employed devices, schemes, or artifices to defraud.

109. Defendants World Tree and Perkins, with scienter, employed devices, schemes and artifices to defraud.

110. By engaging in the conduct described above, defendants World Tree and Perkins violated, and unless restrained and enjoined will continue to violate, Section 17(a)(1) of the Securities Act, 15 U.S.C. §§ 77q(a)(1) & 77q(a)(3).

FOURTH CLAIM FOR RELIEF

Fraud in the Offer or Sale of Securities

Violations of Section 17(a)(2) of the Securities Act

(against Defendants World Tree, Perkins and Gilmore)

111. The SEC realleges and incorporates by reference paragraphs 1 through 96 above.

112. As alleged above, defendants World Tree, Perkins and Gilmore obtained money by means of untrue statements of material fact in World Tree's Forms ADV concerning their securities trading and trade allocations. Specifically, the Forms ADV contained false statements about the firm's trade allocation practices and about whether or not Perkins and Gilmore traded in the same securities as their clients.

113. By engaging in the conduct described above, defendants World Tree, Perkins and Gilmore, and each of them, directly or indirectly, in the offer or sale of securities, and by the use of means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly obtained money or property by means of untrue statements of a material fact or by omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

114. Defendants World Tree, Perkins and Gilmore, with scienter or negligence, obtained money or property by means of untrue statements of a material fact or by omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

115. By engaging in the conduct described above, defendants World Tree, Perkins and Gilmore violated, and unless restrained and enjoined will continue to violate, Section 17(a)(2) of the Securities Act, 15 U.S.C. § 77q(a)(2).

FIFTH CLAIM FOR RELIEF

Fraud by an Investment Adviser

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

(against Defendants World Tree and Perkins)

116. The SEC realleges and incorporates by reference paragraphs 1 through 96 above.

117. As alleged above, defendants World Tree and Perkins each had an adviser-client relationship with, and therefore owed a fiduciary duty to, each of World Tree's clients. World Tree and Perkins both breached their fiduciary duty by carrying out the cherry-picking scheme and by falsely representing in World Tree's Firm Brochures that the firm had equitably and fairly allocated transactions among its clients, and that World Tree's principals had not engaged in prohibited transactions. At all relevant times, defendant Perkins acted knowingly or recklessly when carrying out this fraud, and his state of mind is imputed to World Tree, which he controlled.

118. By engaging in the conduct described above, defendants World Tree and Perkins, and each of them, directly or indirectly, by use of the mails or means of instrumentalities of interstate commerce: (a) employed devices, schemes or artifices to defraud clients or prospective clients, and (b) engaged in transactions, practices, or courses of business which operated as a fraud or deceit upon clients or prospective clients.

119. By engaging in the conduct described above, defendants World Tree and Perkins, and each of them, violated, and unless restrained and enjoined will continue to violate, Sections 206(1) and (2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) & 80b-6(2).

SIXTH CLAIM FOR RELIEF

Aiding and Abetting

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

(against Defendant Gilmore)

120. The SEC realleges and incorporates by reference paragraphs 1 through 96 above.

121. Gilmore knew or was reckless in not knowing that the representations in World Tree's Forms ADV concerning prohibited transactions were false. She reviewed the ADVs; she signed acknowledgements that she had read World Tree's compliance manual; and she knew or was reckless in not knowing, as she verified trade allocations, that accounts under her and Perkins' ownership and control were trading in the same securities as World Tree's clients' accounts, in prohibited transactions.

122. By engaging in the conduct described above, defendant World Tree and Perkins violated Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) & 80b-6(2).

123. By engaging in the conduct described above, defendant Gilmore knowingly or recklessly provided substantial assistance to, and thereby aided and abetted World Tree and Perkins in its violations of Sections 206(1) and 206(2) of the Advisers Act. At all relevant times, defendant Gilmore acted knowingly or recklessly in aiding and abetting World Tree's and Perkins' Advisers Act violations.

124. By engaging in the conduct described above, defendant Gilmore aided and abetted, and unless restrained and enjoined, will continue to aid and abet violations of Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) & 80b-6(2), as prohibited by Section 209(f) of the Advisers Act, 15 U.S.C. § 80b-9(f).

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, temporarily, preliminarily, and permanently enjoining defendants World Tree and Perkins, 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 17(a) of the Securities Act [15 U.S.C. §77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. §§ 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and Sections 206(1) and 206(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, temporarily, preliminarily, and permanently enjoining defendant Gilmore, and her 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 17(a) of the Securities Act [15 U.S.C. §77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. §§ 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and from aiding and abetting any violation of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§80b-6(1) & 80b-6(2)].

IV.

Order Defendants World Tree and Perkins to jointly and severally disgorge all funds received from their illegal conduct; and order Defendants World Tree, Perkins and Gilmore to jointly and severally disgorge all funds received from their illegal conduct; together with prejudgment interest thereon.

V.

Order Defendants to pay civil penalties under Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

VI.

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

VII.

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

Respectfully submitted,

GARY Y. LEUNG
California Bar No. 302928
DAVID M. ROSEN
California Bar No. 150800
SECURITIES AND EXCHANGE COMMISSION
444 S. Flower Street, 9th Flr.
Los Angeles, CA 90071
(323) 965-3213
(213) 443-1904 (facsimile)
leungg@sec.gov
rosend@sec.gov

COUNSEL FOR PLAINTIFF
SECURITIES AND EXCHANGE COMMISSION

DAVID C. JOSEPH
United States Attorney

By: /s/ Karen J. King

KAREN J. KING (#23508)
U.S. ATTORNEY'S OFFICE
WESTERN DISTRICT OF LOUISIANA
800 Lafayette Street, Suite 2200
Lafayette, Louisiana 70501-6832
(337) 262-6618
(337) 262-6693 (facsimile)
karen.king@usdoj.gov
Local Counsel

DATED: September 18, 2018

EXHIBIT 2

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUSIANA
LAFAYETTE DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, Vs. WORLD TREE FINANCIAL, LLC, WESLEY KYLE PERKINS, and PRISCILLA GILMORE PERKINS, Defendants	Case No.: 18-cv-1229 UNASSIGNED JUDGE MAGISTRATE JUDGE WHITEHURST JURY DEMAND **ANSWER**

Defendants, WORLD TREE FINANCIAL, LLC, ("World Tree") WESLEY KYLE PERKINS ("Perkins"), and PRISCILLA GILMORE PERKINS ("Gilmore") (collectively, "Defendants"), by counsel, state as follows for their Answer to the Complaint of Plaintiff Securities and Exchange Commission ("SEC" or "Plaintiff"):

SUMMARY OF THE ACTION

1. Defendants deny the allegations of paragraph 1 of the Complaint.

2. Defendants admit that Perkins was World Tree's chief executive officer and chief investment officer, and was responsible for all the firm's trading. Defendants further admit that Gilmore is Perkins' wife and World Tree's chief compliance officer. Defendants deny knowledge or information as to the basis for the brokerage firm handling the trading for World Tree terminating

its relationship with World Tree, and defendants deny the remaining allegations of paragraph 2 of the Complaint.

3. Defendants admit the firm represented that trades were fairly and equitably allocated among client accounts. Defendants deny the remaining allegations of paragraph 3 of the Complaint.

4. Defendants deny the allegations of paragraph 4 of the Complaint.

JURISDICTION AND VENUE

5. Defendants admit this court has jurisdiction pursuant to the Sections of law alleged but denies that the defendants violated any of the Sections referred to in paragraph 5 of the Complaint.

6. Defendants deny the allegations of paragraph 6 of the Complaint.

7. Defendants admit that Perkins and Gilmore reside in this judicial district, and that defendant World Tree has its principle place of business in this judicial district. Defendants deny the remaining allegations set forth in paragraph 7 of the Complaint.

8. Defendants admit the allegations in paragraph 8 of the Complaint.

9. Defendants admit the allegations of paragraph 9 in the Complaint.

10. Defendants admit the allegations of paragraph 10 of the Complaint.

11. Defendants admit the allegations of paragraph 11 of the Complaint.

FACTS

A. World Tree's Formation and Operation

12. Defendants admit in 2009 Perkins and Gilmore resigned from their then current same employer, where, at the time they resigned they were financial advisors, and co-founded World Tree. Defendants deny knowledge or information as to the remaining allegations of paragraph 12 of the Complaint.

13. Defendants admit the allegations of paragraph 13 of the Complaint.

14. Defendants admit World Tree's advisory clients are individuals, but deny knowledge or information as to the remaining allegations of paragraph 14 of the Complaint.

15. Defendants admit the allegations in paragraph 15 of the Complaint.

16. Defendants admit the allegations of paragraph 16 of the Complaint.

17. Defendants admit the amount of client assets under management during the period March 2011 through September 2015 varied, and at times was between $40 Million and $70 Million, but deny the remaining allegations set forth in paragraph 17 of the Complaint.

18. Defendants deny the allegations of paragraph 18 of the Complaint.

19. Defendants deny the allegations of paragraph 19 of the Complaint.

20. Defendants deny the allegations of paragraph 20 of the Complaint.

21. Defendants deny the allegations of paragraph 21 of the Complaint.

22. Defendants admit Perkins and Gilmore co-founded World Tree and own the firm 60-40 but deny the remaining allegations contained in paragraph 22 of the Complaint.

23. Defendants admit the allegations of paragraph 23 of the Complaint.

24. Defendants admit that Gilmore was World Tree's chief operating officer, chief compliance officer, chief financial officer and supervised the firm's compliance program, but deny the remaining allegations of paragraph 24 of the Complaint.

B. Perkins' and World Tree's Fraudulent Cherry- Picking Scheme

1. Trading in Client Accounts

25. Defendants deny the allegations of paragraph 25 of the Complaint.

26. Defendants deny the allegations of paragraph 26 of the Complaint.

27. Defendants admit the allegations of paragraph 27 of the Complaint.

28. Defendants deny the allegations of paragraph 28 of the Complaint.

29. Defendants deny the allegations of paragraph 29 of the Complaint.

30. Defendants admit the allegations of paragraph 30 of the Complaint.

2. The Cherry-Picking

31. Defendants deny the allegations of paragraph 31 of the Complaint.

32. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations as to internal determinations of a third party, and deny the remaining allegations of paragraph 32 of the Complaint.

33. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations as to the suspicions of a third party or basis of the Broker termination of its relationship with World Tree; admit the Broker terminated its relationship with World Tree; and deny the remaining allegations of paragraph 33 of the Complaint.

34. Defendants deny the allegations of paragraph 34 of the Complaint.

35. Defendants deny the allegations of paragraph 35 of the Complaint.

36. Defendants deny the allegations of paragraph 36 of the Complaint.

37. Defendants deny the allegations of paragraph 37 of the Complaint.

38. Defendants deny the allegations of paragraph 38 of the Complaint.

39. Defendants deny the allegations of paragraph 39 of the Complaint.

40. Defendants deny the allegations of paragraph 40 of the Complaint.

41. Defendants admit Perkins used World Tree's omnibus trading account, but deny the remaining allegations of paragraph 41 of the Complaint.

42. Defendants deny the allegations of paragraph 42 of the Complaint.

43. Defendants deny the allegations of paragraph 43 of the Complaint.

44. Defendants deny the allegations of paragraph 44 of the Complaint.

45. Defendants deny the allegations of paragraph 45 of the Complaint.

46. Defendants admit that World Tree's investment strategy included reliance upon earnings announcements, but deny knowledge or information sufficient to form a belief as to the truth of the matter asserted in paragraph 46 of the complaint, and deny the implication of the allegations set forth in paragraph 46 of the Complaint.

47. Defendants deny the allegations of paragraph 47 of the Complaint.

48. Defendants deny the allegations of paragraph 48 of the Complaint.

49. Defendants deny the allegations of paragraph 49 of the Complaint.

50. Defendants deny the allegations of paragraph 50 of the Complaint.

51. Defendants deny the allegations of paragraph 51 of the Complaint.

52. Defendants admit that from March 2011 through September 2015, Perkins allocated trades to its clients in accordance with allocations determined by Perkins prior to placement of the block trades; deny knowledge or information sufficient to form a belief as to the truth of the statistical allegations set forth in paragraph 52 of the Complaint, and deny the remaining allegations of paragraph 52 of the Complaint.

53. Defendants admit that from March 2011 through September 2015, Perkins allocated trades to its clients in accordance with allocations determined by Perkins prior to placement of the block trades; deny knowledge or information sufficient to form a belief as to the truth of the statistical allegations set forth in paragraph 53 of the Complaint, and deny the remaining allegations of paragraph 53 of the Complaint.

54. Defendants admit that from March 2011 through September 2015, Perkins allocated trades to its clients in accordance with allocations determined by Perkins prior to placement of the block trades; deny knowledge or information sufficient to form a belief as to the truth of the statistical allegations set forth in paragraph 54 of the Complaint, and deny the remaining allegations of paragraph 54 of the Complaint.

55. Defendants admit that from March 2011 through September 2015, Perkins allocated trades to its clients in accordance with allocations determined by Perkins prior to placement of the block trades; deny knowledge or information sufficient to form a belief as to the truth of the statistical allegations set forth in paragraph 55 of the Complaint, and deny the inferences of the remaining allegations of paragraph 55 of the Complaint.

56. Defendants admit that from March 2011 through September 2015, Perkins allocated trades to its clients in accordance with allocations determined by Perkins prior to placement of the block trades; deny knowledge or information sufficient to form a belief as to the truth of the statistical allegations set forth in paragraph 56 of the Complaint, and deny the inferences of the remaining allegations of paragraph 56 of the Complaint.

57. Defendants admit that from March 2011 through September 2015, Perkins allocated trades to its clients in accordance with allocations determined by Perkins prior to placement of the block trades; deny knowledge or information sufficient to form a belief as to the truth of the statistical allegations set forth in paragraph 57 of the Complaint, and deny the inferences of the remaining allegations of paragraph 57 of the Complaint.

58. Defendants admit that from March 2011 through September 2015, Perkins allocated trades to its clients in accordance with allocations determined by Perkins prior to placement of the block trades; deny knowledge or information sufficient to form a belief as to the truth of the statistical allegations set forth in paragraph 58 of the Complaint, and deny the remaining allegations of paragraph 58 of the Complaint.

59. Defendants admit that from March 2011 through September 2015, Perkins allocated trades to its clients in accordance with allocations determined by Perkins prior to placement of the block trades; deny knowledge or information sufficient to form a belief as to the truth of the

statistical allegations set forth in paragraph 59 of the Complaint, and deny the remaining allegations of paragraph 59 of the Complaint.

60. Defendants admit that from March 2011 through September 2015, Perkins allocated trades to its clients in accordance with allocations determined by Perkins prior to placement of the block trades; and deny the remaining allegations of paragraph 54 of the Complaint.

61. Defendants admit that from March 2011 through September 2015, Perkins allocated trades to its clients in accordance with allocations determined by Perkins prior to placement of the block trades; and deny the remaining allegations of paragraph 54 of the Complaint.

62. Defendants deny the allegations of paragraph 62 in the form alleged as World Tree's trades were being allocated in a fair and equitable manner.

C. **World Tree, Gilmore and Perkins Made False and Misleading Statements to Clients in the Firm's Brochures**

63. Defendants deny the allegations of paragraph 63 of the Complaint.

64. Defendants admit that the allegations of paragraph 64 of the Complaint are consistent with their understanding of the requirements alleged therein.

65. Defendants admit that World Tree advised their clients annually regarding obtaining a copy of their most recent disclosure but deny the remaining allegations set forth in paragraph 65 of the Complaint.

66. Defendants admit the allegations of paragraph 66 of the Complaint, but deny knowledge or information as to the truth of the matters asserted regarding operational availability of the SEC's website at any time.

67. Defendants admit the allegations of paragraph 67 of the Complaint.

68. Defendants admit that since inception World Tree has delivered its Form ADV brochure to its clients in accordance with its regulatory obligations, but deny the allegations of paragraph 68 of the Complaint that they each personally provided each one.

69. Defendants admit the allegations of paragraph 69 of the Complaint.

70. Defendants admit the allegations of paragraph 70 of the Complaint.

71. Defendants admit that World Tree's Forms ADV were filed on or about the dates alleged, and that they contain, in part, the quoted passages, but refer the Court to the full and complete disclosures distributed to clients of World Tree, which speak for themselves. Defendants deny the allegations and inferences of the allegations of paragraph 71 of the Complaint, as inconsistent with World Tree's disclosures.

72. Defendants deny the allegations of paragraph 72 of the Complaint.

73. Defendants deny the allegations of paragraph 73 of the Complaint.

74. Defendants admit that World Tree's Forms ADV were filed on or about the dates alleged, and that they contain, in part, the quoted passages, but refer the Court to the full and complete disclosures distributed to clients of World Tree, which speak for themselves. Defendants deny the allegations and inferences of the allegations of paragraph 74 of the Complaint, as inconsistent with World Tree's disclosures.

75. Defendants deny the allegations of paragraph 75 of the Complaint.

76. Defendants deny the allegations of paragraph 76 of the Complaint.

D. **World Tree, Perkins and Gilmore Acted Unreasonably and With Fraudulent Intent**

77. Defendants deny the allegations of paragraph 77 of the Complaint.

78. Defendants deny the allegations of paragraph 78 of the Complaint.

79. Defendants deny the allegations of paragraph 79 of the Complaint.

80. Defendants admit the allegations of paragraph 80 of the Complaint.

81. Defendants admit that World Tree's Compliance Manual contains, in part, the quoted passage, but refer the Court to the full and complete Compliance Manual and Code of Ethics, which speak for themselves, and deny the allegations and inferences of the allegations of paragraph 81 of the Complaint that are inconsistent with those documents.

82. Defendants admit it is World Tree's policy, when placing aggregated client orders of securities simultaneously for more than one client (block trades) to allocate orders in a fair and equitable manner; defendants state that World Tree's annual compliance audit reports speak for themselves. Defendants deny the remaining allegations of paragraph 82 of the Complaint.

83. Defendants deny the allegations of paragraph 83 of the Complaint.

84. Defendants deny the allegations of paragraph 84 of the Complaint.

85. Defendants deny the allegations of paragraph 85 of the Complaint.

86. Defendants admit that Perkins and Gilmore each signed an annual acknowledgment that they read and understood the compliance manual that contained, among other things, a Code of Ethics, but deny the remaining allegations of paragraph 86 of the Complaint.

87. Defendants admit the allegations in paragraph 87 of the Complaint.

88. Defendants admit the allegations in paragraph 88 of the Complaint.

89. Defendants admit the Compliance Manual provides the chief compliance officer is responsible for "ensuring that block trades…are allocated in a fair and equitable manner", and refer the Court to the full and complete Compliance Manual, the contents of which speaks for itself.

90. Defendants deny the allegations of paragraph 90 of the Complaint.

E. World Tree's and Perkins' Role as Investment Advisers

91. Defendants admit the allegations of paragraph 91 of the Complaint.

92. Defendants admit World Tree provided investment advice to clients in exchange for a fee calculated as a percentage of assets under management. Defendants deny the remaining allegations of paragraph 92 of the Complaint.

93. Defendants deny the allegations of paragraph 93 in the form alleged except admit World Tree was an SEC-registered investment advisor until 2012 and at the time of commencement of this action was a Louisiana registered investment adviser.

94. Defendants admit the allegations of paragraph 94 of the Complaint.

95. Defendants admit Perkins was World Tree's 60% owner, chief executive officer and chief investment officer during the relevant time, and was compensated for executing all of his duties in those capacities, and that World Tree was aligned with its clients in striving to achieve successful performance in the investment portfolios managed for its clients. Defendants deny the remaining allegations and inferences of paragraph 95 of the Complaint.

F. Tolling of the Statute of Limitations

96. Defendants state that the tolling agreements referenced in paragraph 96 of the Complaint speak for themselves and deny any inconsistent allegations.

FIRST CLAIM FOR RELIEF

Fraud in Connection with the Purchase or Sale of Securities Violations of Section 10 (b) of the Exchange Act and Rule 10 B-5(a) and (c) (against Defendants World Tree and Perkins)

97. Defendants incorporate by reference and restate their responses as if fully stated herein to the allegations set forth in paragraphs 1 through 96 of the Complaint.

98. Defendants deny the allegations of paragraph 98 of the Complaint.

99. Defendants deny the allegations of paragraph 99 of the Complaint.

100. Defendants deny the allegations of paragraph 100 of the Complaint.

101. Defendants deny the allegations of paragraph 101 of the Complaint.

SECOND CLAIM FOR RELIEF

Fraud in the Connection with the Purchase and Sale of Securities

Violations of Section 10(b) of the Exchange Act and Rule 10b-5(b)

(against Defendants World Tree, Perkins and Gilmore)

102. Defendants incorporate by reference and restate their responses as if fully stated herein to the allegations of paragraphs 1 through 96 the Complaint.

103. Defendants deny the allegations of paragraph 103 of the Complaint.

104. Defendants deny the allegations of paragraph 104 of the Complaint.

105. Defendants deny the allegations of paragraph 105 of the Complaint.

THIRD CLAIM FOR RELIEF

Fraud in the Offer or Sale of Securities

Violations of Section 17(a)(1) of the Securities Act

(against Defendants World Tree and Perkins)

106. Defendants incorporate by reference and restate their responses as if fully stated herein to the allegations of paragraphs 1 through 96 the Complaint.

107. Defendants deny the allegations of paragraph 107 of the Complaint.

108. Defendants deny the allegations of paragraph 108 of the Complaint.

109. Defendants deny the allegations of paragraph 109 of the Complaint.

110. Defendants deny the allegations of paragraph 110 of the Complaint.

FOURTH CLAIM FOR RELIEF

Fraud in the Offer or Sale of Securities

Violations of Section 17(a)(2) of the Securities Act

(against Defendants World Tree, Perkins and Gilmore)

111. Defendants incorporate by reference and restate their responses as if fully stated herein to the allegations of paragraphs 1 through 96 the Complaint.

112. Defendants deny the allegations of paragraph 112 of the Complaint.

113. Defendants deny the allegations of paragraph 113 of the Complaint.

114. Defendants deny the allegations of paragraph 114 of the Complaint.

115. Defendants deny the allegations of paragraph 115 of the Complaint.

FIFTH CLAIM FOR RELIEF

Fraud by an Investment Advisor

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

(against Defendants World Tree and Perkins)

116. Defendants incorporate by reference and restate their responses as if fully stated herein to the allegations of paragraphs 1 through 96 the Complaint.

117. Defendants deny the allegations of paragraph 117 of the Complaint.

118. Defendants deny the allegations of paragraph 118 of the Complaint.

119. Defendants deny the allegations of paragraph 119 of the Complaint.

SIXTH CLAIM FOR RELIEF

Aiding and Abetting

Violations of Section 206(1) and 206(2) of the Advisers Act

(against Defendant Gilmore)

120. Defendants incorporate by reference and restate their responses as if fully stated herein to the allegations of paragraphs 1 through 96 the Complaint.

121. Defendants deny the allegations of paragraph 121 of the Complaint.

122. Defendants deny the allegations of paragraph 122 of the Complaint.

123. Defendants deny the allegations of paragraph 123 of the Complaint.

124. Defendants deny the allegations of paragraph 124 of the Complaint.

GENERAL DENIAL

Except as otherwise expressly stated in paragraphs 1 -124 above, Defendants deny each and every allegation of the Complaint, including without limitation, all headings and subheadings and specifically deny that Plaintiff is entitled to any relief requested in the Complaint. Defendants also deny any remaining allegations in the Complaint not expressly admitted herein.

AFFIRMATIVE DEFENSES

Defendants state the following affirmative defenses, without assuming the burden of proof as to any such defenses that would otherwise rest with Plaintiff.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

The Complaint, and each count thereof, fails to state a claim or claims upon which relief can be granted against Defendants.

SECOND AFFIRMATIVE DEFENSE

(Failure to Plead with Particularity)

The Complaint fails to plead fraud with particularity, as required by Rule 9(b) of the Federal Rules of Civil Procedure.

THIRD AFFIRMATIVE DEFENSE

(No Misstatements or Omissions)

The Complaint fails to identify the existence of any false or misleading statements or omissions.

FOURTH AFFIRMATIVE DEFENSE

(Lack of Materiality)

Plaintiffs' claims are barred in whole or in part because the information Plaintiff claims Defendants failed to disclose was not material.

FIFTH AFFIRMATIVE DEFENSE

(Good Faith)

The Complaint, and each cause of action, are barred, in whole or in part, because the Defendants, at all relevant times, have acted in good faith.

SIXTH AFFIRMATIVE DEFENSE

(No Causation)

The Complaint, and each cause of action, is barred, in whole or in part, because Defendants did not directly or indirectly induce the act or acts constituting the alleged violations and causes of action outlined in this Complaint.

SEVENTH AFFIRMATIVE DEFENSE

(No Scienter)

The Complaint is barred, in whole or in part, because Defendants did not act with scienter.

EIGTH AFFIRMATIVE DEFENSE

(Waiver)

The Complaint, and each cause of action, is barred, in whole or in part, by the doctrine of waiver.

NINTH AFFIRMATIVE DEFENSE

(Laches)

The Complaint, and each cause of action, is barred, in whole or in part, by the doctrine of laches.

TENTH AFFIRMATIVE DEFENSE

(No Damages)

Plaintiff is barred from recovery because Plaintiff did not suffer damages as a result of any alleged act committed by Defendants or purportedly chargeable to Defendants.

ELEVENTH AFFIRMATIVE DEFENSE

(Relief Exceeds Lawful Authority)

The relief sought by the SEC in whole or in part exceeds its lawful authority.

RESERVATION OF RIGHTS

Because discovery has not yet occurred in this action, Defendants reserve the right to assert other and further defenses as may later become known to counsel in a manner consistent with the Federal Rules of Civil Procedure and the Local Rules of this Court.

PRAYER FOR RELIEF

WHEREFORE, Defendants pray for judgment as follows:

1. That Plaintiff take nothing by its Complaint;
2. That Plaintiff's Complaint be dismissed in its entirety with prejudice;
3. That Defendants be awarded their costs, including attorney's fees; and
4. That this Court award such other and different relief as it deems just and proper.

DEMAND FOR JURY TRIAL

Defendants demand a jury trial on all counts.

Dated: December 10, 2018

Respectfully submitted,

By: /s/ Sharron E. Ash
Sharron E. Ash, *pro hac vice*
Hamburger Law Firm, LLC
61 West Palisade Avenue
Englewood, NJ 07630
Tel: 201-705-1200
Fax: 201-705-1201
E-mail: sash@hamburgerlaw.com

By: /s/ Travis J. Broussard
Steven G. Durio (#05230)
Travis J Broussard (#33036)
Durio, McGoffin, Stagg & Ackermann
220 Heymann Boulevard
Post Office Box 51308
Lafayette, LA 70505-1308
Phone: (337) 233-0300
Fax: (337) 233 0694
Email: Durio@dmsfirm.com
Email: Travis@dmsfirm.com

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this **Answer to Complaint** was electronically filed with the Clerk of the Court using the CM/ECF system which sent a notice of electronic filing to counsel as indicated by the Court.

Lafayette, Louisiana, this 10th day of December, 2018.

/s/ Travis J. Broussard
TRAVIS J. BROUSSARD

EXHIBIT 3

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

SECURITIES & EXCHANGE COMMISSION	CIVIL ACTION NO. 6:18-CV-01229
VERSUS	JUDGE JUNEAU
WORLD TREE FINANCIAL L L C ET AL	MAGISTRATE JUDGE WHITEHURST

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This litigation arises out of a civil action in which the Securities and Exchange Commission ("SEC") seeks permanent injunctions, disgorgement with prejudgment interest, and civil penalties against World Tree Financial, LLC ("World Tree"), Wesley Perkins, and Priscilla Perkins.

The SEC alleged:

1. that by engaging in a cherry-picking scheme, World Tree and Wesley Perkins violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") along with Rule 10b-5(a) and (c) thereunder; and Section 17(a)(1) of the Securities Act of 1933 ("Securities Act"),
2. that by making false and misleading statements about their allocation practices, World Tree and Wesley Perkins violated Section 10(b) of the Exchange Act along with Rule 10b-5(b) thereunder; and Section 17(a)(2) of the Securities Act,

OS Received 08/19/2022

3. that by making false and misleading statements about their trading practices, World Tree, Wesley Perkins, and Priscilla Perkins violated Section 10(b) of the Exchange along with Act Rule 10b-5(b) thereunder; and Section 17(a)(2) of the Securities Act, and
4. that through their misrepresentations to their advisory clients, World Tree and Wesley Perkins violated Sections 206(1) and (2) of the Investment Advisers Act of 1940 ("Advisers Act"), and that Priscilla Perkins aided and abetted World Tree and Wesley Perkins in violating the Advisers Act.

The Court, sitting without a jury, tried this case from November 2 – 5, 2020. Having considered the testimony and evidence at trial, the arguments of counsel, and the applicable law, the Court now enters the following Findings of Fact and Conclusions of Law in accordance with Federal Rule of Civil Procedure 52(a). To the extent that any finding of fact may be construed as a conclusion of law, the Court hereby adopts it as such. To the extent that any conclusion of law constitutes a finding of fact, the Court adopts it as such.

I. FINDINGS OF FACT

1. Defendants have, directly or indirectly, made use of the means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the transactions, acts, practices, and courses of business at issue. The conduct at issue took place between July 2012 and July

2015. *Rec. Doc. 70, Stipulations of Fact ("Stip.") 51.*

2. World Tree is a Louisiana corporation with its principal place of business in Lafayette, Louisiana. World Tree was an SEC-registered investment adviser until June 15, 2012, when it was required to withdraw its SEC registration due to a change in the registration provisions of the Advisers Act. World Tree was registered as an investment adviser with the State of Louisiana at the time this lawsuit was filed. *Rec. Doc. 70, Stip. 1 – 3.*

3. Wesley Perkins is a resident of Lafayette, Louisiana and co-founded World Tree with Priscilla Perkins in 2009. At all relevant times, Wesley Perkins was the firm's 60% owner, chief executive officer, and chief investment officer. Wesley Perkins held Series 6, 7, and 66 securities licenses at the time this lawsuit was filed. Wesley and Priscilla Perkins married each other in 2017. *Rec. Doc. 70, Stip. 5 - 8.*

4. Priscilla Gilmore Perkins is a resident of Lafayette, Louisiana. At all relevant times, Priscilla Perkins was the firm's 40% owner, chief financial officer, chief compliance officer, and chief operating officer. Priscilla Perkins held Series 6, 7, and 66 securities licenses at the time this lawsuit was filed. *Rec. Doc. 70, Stip. 9 – 11.*

5. For its investment advice, World Tree charged clients an advisory fee that ranged between 0.5% to 1.5% of the client's assets under management. From March 2011 through September 2015, the assets under management at World Tree varied,

and at times were between approximately $40 million and $70 million. *Rec. Doc. 70, Stip. 14 – 15.*

6. At all relevant times, Wesley and Priscilla Perkins jointly controlled World Tree. As World Tree's chief investment officer, Wesley Perkins was responsible for conducting trades on behalf of clients. As World Tree's chief compliance officer, chief financial officer, and chief operating officer, Priscilla Perkins supervised the firm's compliance program. *Rec. Doc. 70, Stip. 17 – 19.*

7. World Tree and Wesley Perkins managed most of their clients' assets on a discretionary basis, meaning they had authorization to trade securities on behalf of most of their clients. From December 2009 to October 2015, World Tree traded securities through the brokerage platform of registered broker-dealer Charles Schwab ("Schwab"). Schwab also acted as the custodian for World Tree's client accounts, meaning that Schwab held the securities on the clients' behalf. *Rec. Doc. 70, Stip. 20 – 22, Moore trial testimony ("test."), Wesley Perkins test.*

8. In order to conduct trading, Wesley Perkins used a block trade account (also referred to as a master account or omnibus account) registered to World Tree. A block trade account allows a broker to execute a single large trade in its own name for the benefit of its clients and then allocate portions of that trade to particular client accounts. These accounts typically generate clear benefits for both brokers and clients, as stated in World Tree's Compliance Manual: "Block trades may result in

lower commissions and better prices for clients than if the Firm placed multiple single orders. Block trades may also provide the Firm with operational efficiencies." *Plaintiff's Trial Exhibit ("Pl. Ex.") 14.*

9. Though a common practice in the securities industry, the use of block trades carries some risk. Specifically, because client allocations occur after an initial larger trade, an unscrupulous broker could manipulate those allocations based on whether the asset(s) involved in the block trade increased or decreased in value in the period of time between the initial transaction and the allocations. Such manipulation is known in the industry colloquially as "cherry-picking." Aware of the risk of cherry-picking inherent in the use of block trades, trading firms and brokers typically adopt procedures to prevent it and monitoring practices to detect it. *Moore test., Niden test.*

10. On paper, World Tree purported to adopt such procedures. World Tree's Compliance Manual specifically addressed cherry-picking, stating "[w]hen the Firm places block trades or must allocate limited investment opportunities among its clients, important issues arise concerning the equitable distribution of such securities" and assured its clients that its policy was to "allocate such orders and opportunities in a fair and equitable manner." The manual states (in pertinent part):

> **PROCEDURES**
>
> The Firm, in advance of placing a block trade will:
>
> …Ensure that each client will be treated fairly and will not favor any client over another; and

> Ensure that the decision to aggregate a trade for a client is based on individual advice to that client.

Once the foregoing prerequisites have been performed, the Firm will either:

> Designate on the trade order memorandum, the number of shares of the block trade to be allocated to each specific account prior to placing the order; or
> Make a pro rata allocation of the shares to each account based upon size of the client's account.

Throughout the block trade, the Firm shall continue to:

> Seek best execution on such trades;…

Timing

The Firm will use its best efforts to make allocations on the same day. However, under no circumstances will the Firm delay allocation so that it can allocate the more favorable prices received during the day to one account and the less favorable prices to another account.

Review

The Chief Investment Officer will review all allocations of trades and limited investment opportunities to ensure that the Firm's policies and procedures were followed and verify that no client account was systematically disadvantaged by the allocation.

BOOKS AND RECORDS

In its books and records, the Firm will maintain all documents that relate to allocation of block trades and limited investment opportunities.
Pl. Ex. 14 at 53-55.

11. Similarly, Schwab set up monitoring systems to detect cherry-picking. In 2015, Schwab's automatic system detected anomalous allocations from the World Tree omnibus account. As a result, Schwab opened an investigation and assigned it

to Grant Moore ("Moore"), a senior advisor services compliance manager. *Moore test.*

12. Moore began the investigation by reviewing Schwab's reports and World Tree's registration documents. Moore then called Wesley and Priscilla Perkins[1] to ask questions regarding their allocation process. The Perkinses told Moore that they reviewed each account daily to see how much cash was in the account and that the amount of cash available determined whether World Tree would allocate a trade to it. The Perkinses also told Moore that they did not keep documentation to show how they processed trades on a particular day. In response, Moore asked them to send any reports to verify that they were allocating their block trades fairly and equitably. Moore testified that he expect to receive something like a spreadsheet indicating client balances, data which he then could compare to Wesley Perkins's individual allocation decisions to determine whether his stated rationales for those decisions were true. *Moore test.*

13. However, in response to Moore's inquiry, Priscilla Perkins sent an email with attachments containing only cryptic columns of numbers and letters, devoid of context or explanation. For Moore, the highly irregular submission only aroused further suspicion. He asked again for any documentation regarding the amount of cash in a client's account and how allocation decisions were made, and the Perkinses

[1] Wesley and Priscilla Perkins were not yet married.

insisted that no further documentation was available due to their practice of deleting the requested information every day after the allocation process was complete. Moore was wholly dissatisfied with their response, and Schwab sent World Tree a letter on September 15, 2015 terminating World Tree's ability to make block trades immediately and terminating World Tree as a client altogether on December 15, 2015. The Court finds that Mr. Moore was a credible witness and that his concerns regarding the Perkins' allocation practices and their response to his investigation were reasonable and well-founded. *Pl. Ex. 56, 87, Moore test.*

14. The SEC opened a formal investigation of World Tree, Wesley Perkins, and Priscilla Perkins on November 22, 2016 and filed suit against them on September 18, 2018. As part of their investigation, the SEC hired Dr. Cathy Niden to assess economic evidence regarding whether Wesley Perkins and World Tree engaged in cherry-picking. Dr. Niden has a PhD in Finance and Economics from the University of Chicago, and the Court accepted her as an expert witness. The Court finds that she was a credible witness and concludes that her testimony was both thorough and compelling. *Rec. Doc. 70, Stip. 53, 55, Niden test., Pl. Ex. 88, 89.*

15. To conduct her analysis, Dr. Niden relied on data produced by Schwab, which she supplemented with market quotation data from the New York Stock Exchange's Trade and Quote system ("TAQ data"). The SEC obtained this TAQ data from a commercial service commonly used in the securities industry, and the Court finds

that Dr. Niden's analysis reflected the use of sound methods and reliable information. *Niden test., Valerie Bell test. – Schwab Document Custodian.*

16. In reviewing World Tree's allocation data, Dr. Niden divided the firm's individual client accounts into three categories: those owned directly by Wesley Perkins, Priscilla Perkins, or World Tree (termed "Favored-Perkins accounts"), those owned by all of the firm's other clients except for Matthew and Melanie LeBlanc and Delcambre Cellular (termed "Favored-Client accounts"), and the two accounts owned by the LeBlancs and Delcambre Cellular (termed "Disfavored accounts"). *Niden test.*

17. Matthew LeBlanc and his wife Melanie LeBlanc became investment advisory clients of World Tree after meeting Wesley Perkins while he was a personal banker for Chase. Mr. LeBlanc owns a business named Delcambre Cellular, LLC, in whose name one of the relevant accounts was held. The LeBlancs and Delcambre Cellular were World Tree's largest clients and had between $10 and $20 million in assets under management at various points during the time period at issue. The Court finds that Mr. LeBlanc was a credible witness and credits his testimony that LeBlanc did not want to lose money with his World Tree investments, either for tax purposes or any other reason, and that he never directed, authorized, or expected Wesley Perkins to disproportionately allocate losses to his accounts. *LeBlanc test., Wesley Perkins test.*

18. After collecting and analyzing the data regarding World Tree's most and least favorable trades, Dr. Niden found that Wesley Perkins consistently allocated the largest favorable trades—whether calculated by rate of return or dollar profits—to the Favored-Perkins and Favored-Client accounts. At the same time, Perkins consistently allocated the largest unfavorable trades to the Disfavored accounts. Based on those findings, Dr. Niden concluded "that the patterns [she] observed in the allocations strongly supported the SEC's allegations of cherry-picking." *Niden test.*

19. Dr. Niden tested her conclusion by analyzing the data in a variety of ways. She examined Quarterly First-Day Returns, Master Account Order v. Allocation Times, Profitability of Allocations by Account Type and Day/Multi-Day Trades, Best 50 First-Day Returns, Worst 50 First-Day Returns, Apple Intra-Day Stock Price on January 27, 2014, Profitability of Allocations on Earnings Announcement Days, First Day Profit Summary, and First-Day Returns of Stocks with Greatest Dollar Amount Allocated. All of these measures consistently indicated that Wesley Perkins allocated an overwhelming proportion of positive trades to Favored-Perkins and Favored-Client accounts and an overwhelming proportion of negative trades to the Disfavored accounts. The Court credits Dr. Niden's testimony that such disparate results could not have happened by chance, nor could they reflect any plausible economic reasoning or legitimate investment strategy. Accordingly, the Court finds

that Dr. Niden's analysis is compelling proof of intentional cherry-picking, as there is simply no other plausible explanation for the patterns in the data. *Pl. Ex. 88, 89, 117, 120 – 133, Niden test.*

20. Despite Wesley Perkins's attempting to provide a number of explanations, insisting all the while that he made all allocation decisions before the initial block trade, the Court finds that he was not a credible witness. His purported explanations appeared implausible or largely beside the point, and his demeanor appeared alternatively evasive or defensively argumentative. While the Court believed Wesley Perkins when he testified that he understood what cherry-picking was and that it was wrong, the Court did not believe him when he claimed that he did not engage in cherry-picking. *Perkins test.*

21. Defendants' expert Dr. Charles Theriot offered some clarifications regarding Dr. Niden's data analysis and conclusions. The Court accepted him as an expert and finds him to be a credible witness. While Dr. Theriot rightly observed that the disproportionate size of the Disfavored accounts could explain *some* of the disproportionate results and that some of the losing trades allocated to the Disfavored accounts eventually made a profit, the Court finds that these observations do not speak to why the price of the same stocks tended to go always up on the days that they were purchased for the Favored-Perkins or Favored-Client accounts but tended to go always down on the days that they were purchased for the Disfavored accounts.

In short, Dr. Theriot's testimony did not alter the Court's conclusion that the only plausible explanation for the disproportional losses in the Disfavored accounts and gains in the Favored accounts is cherry-picking. *Theriot test.*

22. Accordingly, the Court finds by a preponderance of the evidence that Wesley Perkins intentionally cherry-picked favorable trades for the Favored-Perkins and Favored-Client accounts, and intentionally allocated unfavorable trades to the Disfavored client accounts.

23. Form ADV is a two-part document that investment advisors are required to file and/or update annually. Part 1 contains "check-the-box" information about the firm, and Part 2 is a brochure, in narrative form, which describes key information about the firm, including the types of services the firm provides. World Tree, through Wesley Perkins or Priscilla Perkins, delivered its Form ADV, Part 2A brochure to clients at the time it entered into an advisory contract with them, and made it available to clients annually. *Rec. Doc. 70, Stip. 25 – 30.*

24. Before providing them to World Tree's clients, Wesley and Priscilla Perkins reviewed drafts of the Forms ADV and authorized the final versions for filing and distribution to World Tree's clients. Wesley Perkins and/or Priscilla Perkins signed every World Tree Form ADV from 2011 to 2015. Wesley and Priscilla Perkins had ultimate control and authority over the contents of the Forms ADV. *Rec. Doc. 70, Stip. 31 – 34.*

25. Item 11 of World Tree's Forms ADV Part 2A, filed on March 15, 2011; February 7, 2012; June 5, 2012; March 25, 2013; March 18, 2014; and, February 9, 2015 stated that:

> (i) "none of World Tree's Access Persons [Wesley and Priscilla Perkins] may effect for themselves or for their immediate family (i.e., spouse, minor children, and adults living in the same household as the Access Person) any transactions in a security which is being actively purchased or sold, or is being considered for the purchase or sale, on behalf of World Tree's clients," and
> (ii) "no Access Person may purchase or sell … any Securities … if the Access Person knows or reasonably should know that the Security, at the time of purchase or sale (i) is becoming considered for purchase or sale on behalf of any client Account, or (ii) is being actively purchased or sold on behalf of any Client Account."

Item 12 of World Tree's Forms ADV Part 2A, filed on March 15, 2011; February 7, 2012; June 5, 2012; March 25, 2013; March 18, 2014; February 9, 2015; and, August 7, 2015 stated that:

> To the extent that World Tree determines to aggregate client orders for the purchase or sale of securities, including securities in which World Tree's *Supervised Persons* may invest, World Tree shall generally do so in accordance with applicable rules promulgated under the Advisers Act and no action guidance provided by the staff of the U.S. Securities and Exchange Commission.
>
> *Rec. Doc. 70, Stip. 35, 36.*

26. Wesley Perkins and Priscilla Perkins each signed an acknowledgment that they had read and understood the World Tree Compliance Manual. The Compliance Manual explicitly described the prohibition against trading in securities also under consideration for investment by clients. In August 2015, World Tree amended Part

2A of its Form ADV to state that they could trade in the same securities as World Tree's clients using the omnibus account. Both Wesley Perkins and Priscilla Perkins testified before the SEC in 2017 that they were aware of the prohibition in the World Tree Compliance Manual and Forms ADV against trading the same securities that World Tree and Perkins were trading for clients. *Rec. Doc. 70, Stip. 37 – 41.*

27. As discussed above, the data reviewed by Dr. Niden indicated that Wesley and Priscilla Perkins' own accounts (termed "Perkins-Favored") received allocations from block trades involving the same securities that they were trading for their clients. At trial, Wesley Perkins and Priscilla Perkins claimed that they had merely misunderstood the language of the Compliance Manual, but the Court does not find their testimony credible. Instead, the Court finds that Wesley Perkins and Priscilla Perkins were aware that they had told their clients that they would not trade in the same securities as their clients, and yet they did exactly that. *Wesley Perkins test., Priscilla Perkins test.*

28. During all relevant times, World Tree and Wesley Perkins acted as investment advisers. World Tree provided investment advice to clients in exchange for a fee calculated as a percentage of assets under management. World Tree was an SEC-registered investment adviser through June 2012 and was a Louisiana state-registered investment adviser at the time this action was commenced. Wesley Perkins made the investment decisions for the securities trading in World Tree

accounts. Wesley Perkins was compensated from the advisory fees World Tree earned in the form of salary, bonuses, and benefits. *Rec. Doc. 70, Stip. 45 – 49.*

29. Dr. Niden quantified a reasonable estimate of the economic harm that Perkins caused the LeBlancs through his fraudulent cherry-picking scheme, and she also estimated the benefit received by the Defendants. To make this estimation, Dr. Niden determined the overall first-day profits and first-day rates of return for all trades in the omnibus account, and then hypothetically apportioned them in a fair manner (pro rata) among the different account types. She then calculated the difference between what each group would have received in the hypothetical fair allocation and the actual performance of each group. The Court finds that Dr. Niden's method was a reasonable one for estimating the harm to the LeBlancs and the benefit to the Defendants from the cherry-picking scheme. *Niden test.*

30. Dr. Niden's analysis also showed that the Defendants received excess first-day profits of $347,947. The Court finds that $347,947 is a reasonable estimate of the net benefit the Defendants received from the cherry-picking scheme. The Court finds that prejudgment interest, at the statutory rate for unpaid debts to the government, beginning as of the date the Complaint was filed through the time of trial is $36,335.98 on a $347,947 disgorgement amount. The SEC has represented that it intends to distribute any disgorgement that it collects from the Defendants to the LeBlancs. *Niden test., Pl. Ex. 133, 150.*

II. Conclusions of Law

Based on the foregoing facts, the Court reaches the following Conclusions of Law:

1. The Court has jurisdiction over the claims asserted in this action pursuant to the following statutes:

   a. the Securities Exchange Act of 1934 ("Exchange Act"), Sections 21(d)1, 21(d)(3)(A), 21(e), and 27(a), *15 U.S.C. §§ 78u(d)(1), 78u(d)(3)(A), 78u(e), 78aa(a)*;

   b. the Securities Act of 1933 ("Securities Act"), Sections 20(b), 20(d)(1), and 22(a), *15 U.S.C. §§ 77t(b), 77t(d)(1), 77t(a)*;

   c. the Investment Advisers Act of 1940 ("Advisers Act"), Sections 209(d), 209(e)(1), and 214, *15 U.S.C. §§ 80b-9(d), 80b-9(e)(1), 80b-14(a)*.

2. The Court has jurisdiction over the defendants in this action pursuant to Fed. R. of Civ. P. 4(k)1(A) and Louisiana Code of Civil Procedure Art. 6(A)(1).

3. The Western District of Louisiana is a proper venue for this action pursuant to 28 U.S.C. § 1391(b).

4. The conduct at issue in this action involved use of the means or instruments of communication in interstate commerce or use of the mails. *15 U.S.C. §§ 77q(a); 78j; 80b-6*.

Cherry-Picking

5. The SEC alleged that defendants Wesley Perkins and World Tree engaged in a cherry-picking scheme that violated three statutes: Section 10(b) of the Exchange Act, and associated Rules 10b-5(a) and 10b-5(c), *15 U.S.C. § 78j(b); 17 C.F.R. §§ 240.10b-5(a) and 240.10b-5(c)*; Section 17(a)(1) of the Securities Act, *15 U.S.C. § 77q(a)(1)*; and, Sections 206(1) and 206(2) of the Advisers Act, *15 U.S.C. §§ 80b-6(1), (2)*.

6. To establish a violation of Section 10(b) and/or Rule 10b-5 of the Exchange Act, the SEC must prove each of the following by a preponderance of the evidence:

a. That a defendant, directly or indirectly, did any one or more of the following acts:

i. Employed a device, scheme, or artifice to defraud; and/or

ii. Made an untrue statement of a material fact, or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or

iii. Engaged in an act, practice, or course of business which operated as a fraud or deceit upon any person.

b. That the defendant's conduct was in connection with the purchase or sale of a security.

c. That the defendant acted with scienter, meaning knowingly or with severe recklessness.

See Aaron v. Sec. & Exch. Comm'n, 446 U.S. 680, 695 (1980).

7. Cherry-picking represents a device, scheme, or artifice to defraud, one that operates as a fraud upon any client to whom unfavorable trades are allocated or from whom favorable trades are withheld.

8. Cherry-picking is in connection with the purchase or sale of a security because there is a nexus between the fraudulent trade allocation and the underlying securities transaction. *Cf. S.E.C. v. Zandford*, 535 U.S. 813, 825 (2002).

9. By its very nature, cherry-picking cannot be the result of mere negligence or ordinary recklessness; rather, it necessarily involves knowing and intentional conduct. This was also confirmed by the testimony of Wesley Perkins.

10. Even if the intentional act of cherry-picking could somehow fail to establish a defendant's knowing intent to deceive or defraud, the facts of this case provide strong evidence of scienter on the part of Wesley Perkins.

11. The SEC has shown by a preponderance of the evidence that Wesley Perkins engaged in a cherry-picking scheme with scienter. Therefore, Wesley Perkins is liable for violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and judgment will be entered accordingly.

12. As Wesley Perkins controlled World Tree as its officer, co-owner, and

founder, his scienter can and should be imputed to World Tree. *See Southland Securities Corp. v. INSpire Ins. Solutions, Inc.*, 365 F.3d 353, 365-66 (5th Cir. 2004) (holding that executive actions made pursuant to positions of authority were attributable to company).

13. The SEC has shown by a preponderance of the evidence that World Tree engaged in a cherry-picking scheme with scienter. Therefore, World Tree is liable for violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and judgment will be entered accordingly.

14. To establish a violation of Section 17(a)(1) of the Securities Act, the SEC must prove each of the following by a preponderance of the evidence:

a. That a defendant directly or indirectly employed a device, scheme, or artifice to defraud.

b. That the defendant's conduct was in the offer or sale of a security.

c. That the defendant acted knowingly or with severe recklessness.

See Steadman v. Sec. & Exch. Comm'n, 603 F.2d 1126, 1131, 1133 (5th Cir. 1979).

15. The elements required to establish a violation of Section 17(a)(1) of the Securities Act are largely identical to those required to establish the Section 10(b) violation discussed above; the primary difference between the two statutes is that Section 17(a)(1) applies only to conduct "in the offer or sale of a security," i.e., to

sales transactions only, while Section 10(b) applies more broadly to conduct "in connection with the purchase or sale of a security," i.e., to buyers and sellers alike. *Aaron*, 446 U.S. at 687. *See also Lorenzo v. Sec. & Exch. Comm'n*, 139 S. Ct. 1094, 1102 (2019) (noting that considerable overlap in securities laws does not suggest the provisions were intended to be mutually exclusive).

16. Wesley Perkins's conduct was "in the offer or sale of a security" because he either personally directed sales transactions or solicited others to act to produce a sale while motivated in part by his own financial benefit. *Meadows v. Sec. & Exch. Comm'n*, 119 F.3d 1219, 1225-26 (5th Cir. 1997).

17. As stated above, Wesley Perkins's conduct and scienter can and should be imputed to World Tree.

18. As stated above, the SEC has shown by a preponderance of the evidence that Wesley Perkins and World Tree engaged in a cherry-picking scheme with scienter. Accordingly, they are liable for violating Section 17(a)(1) of the Securities Act, and judgment will be entered accordingly.

19. To establish a violation of Section 206(1) of the Advisers Act, the SEC must prove each of the following by a preponderance of the evidence:

a. That the defendant was an investment adviser.

b. That the defendant directly or indirectly employed a device, scheme, or artifice to defraud any client or prospective client.

c. That the defendant engaged in that conduct acted knowingly or with severe recklessness.

20. Section 206(2) of the Advisers Act is similar to, but broader than, Section 206(1). Section 206(2) imposes liability on an investment adviser who

a. Directly or indirectly engaged in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client; and,

b. Acted at least negligently in doing so.

See Steadman, 603 F.2d at 1134.

21. During all relevant times, Wesley Perkins and World Tree were acting as investment advisers.

22. Negligence is a failure to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances. Negligence represents a lesser degree of culpable intent than scienter.

23. As stated above, the SEC has shown by a preponderance of the evidence that Wesley Perkins and World Tree engaged in a cherry-picking scheme with scienter. Accordingly, they are liable for violating Sections 206(1) and 206(2) of the Advisers Act, and judgment will be entered accordingly.

Misrepresentation of Allocation Practices

24. The SEC alleged that Wesley Perkins and World Tree made false and misleading statements in their Forms ADV about the firm's allocation practices and thereby violated three statutes: Section 10(b) of the Exchange Act, along with associated Rule 10b-5(b), *15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5(b)*; Section 17(a)(2) of the Securities Act, *15 U.S.C. § 77q(a)(2)*; and Sections 206(1) and 206(2) of the Advisers Act, *15 U.S.C. §§ 80b-6(1), (2)*.

25. The elements of a violation of Section 10(b) of the Exchange Act appear above; at issue here is the provision that imposes liability on a defendant who "made an untrue statement of a material fact, or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading." *Aaron*, 446 U.S. at 695.

26. A fact is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. The question of materiality is an objective one, involving the significance of an omitted or misrepresented fact to a reasonable investor. *See TSC Indus v. Northway*, 426 U.S. 438, 449 (1976); *Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 568 U.S. 455, 457 (2013) (quotation marks and citations omitted).

27. Whether Wesley Perkins and World Tree allocated block trades fairly and equitably, as represented by their Forms ADV, or selectively cherry-picked block

trade allocations to favor certain clients over others, as was their actual practice, constitutes a material fact. A reasonable investor would likely consider such knowledge important in determining whether to do business with the Defendants.

28. Because Wesley Perkins and World Tree engaged in a cherry-picking scheme with scienter, all while knowingly telling clients in their Forms ADV that they were allocating block trades fairly and equitably, their representations were untrue statements of material fact.

29. Thus, the SEC has shown by a preponderance of the evidence that, by misrepresenting their allocation practices, Wesley Perkins and World Tree violated Section 10(b) of the Exchange Act and associated Rule 10b-5(b), and judgment will be entered accordingly.

30. To establish a violation of Section 17(a)(2) of the Securities Act, the SEC must prove the following by a preponderance of the evidence:

a. That the defendant directly or indirectly obtained money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

b. That the defendant's conduct was in connection with the offer or sale of a security.

c. That the defendant, while engaging in that conduct, acted at least negligently.

See Aaron, 446 U.S. at 695-96.

31. For present purposes, Section 17(a)(2) of the Securities Act differs from Section 10(b) of the Exchange Act in that Section 17(a)(2) concerns only the offer or sale of securities, requires a lower showing of culpable intent (negligence instead of scienter), and adds the requirement that a defendant directly or indirectly obtain money or property by means of the misrepresentation.

32. As discussed above, Wesley Perkins and World Tree knowingly misrepresented their allocation practices in connection with the offer or sale of securities.

33. Wesley Perkins and World Tree obtained money by means of their untrue statements regarding their allocation practices because they received compensation in the form of advisory fees collected from World Tree's clients.

34. Accordingly, the SEC has shown by a preponderance of the evidence that, by misrepresenting their allocation practices, Wesley Perkins and World Tree violated Section 17(a)(2) of the Securities Act, and judgment will be entered accordingly.

35. The elements of a violation of Section 206(1) and/or Section 206(2) of the Advisers Act are recounted above.

36. As discussed above, Wesley Perkins and World Tree were acting as

investment advisers when they knowingly misrepresented their allocation practices.

37. As noted above, the practice of cherry-picking operates as a device to defraud. Wesley Perkins and World Tree intended to conceal their use of that device by misrepresenting their allocation practices. Thus, the misrepresentation itself represents an artifice or scheme to defraud clients or prospective clients.

38. Accordingly, the SEC has shown by a preponderance of the evidence that, by misrepresenting their allocation practices, Wesley Perkins and World Tree are liable for violating Sections 206(1) and 206(2) of the Advisers Act, and judgment will be entered accordingly.

Misrepresentation of Trading Practices

39. The SEC alleged that Wesley Perkins, Priscilla Perkins, and World Tree made false and misleading statements in their Forms ADV about whether they would trade in the same securities as their clients, statements that also violated Section 10(b) of the Exchange Act, along with associated Rule 10b-5(b), *15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5(b)*; and, Section 17(a)(2) of the Securities Act, *15 U.S.C. § 77q(a)(2)*. The SEC further alleged that the false and misleading statements by Wesley Perkins and World Tree violated Sections 206(1) and 206(2) of the Advisers Act. The elements of the claimed violations are recounted above.

40. Wesley Perkins, Priscilla Perkins, and World Tree's statements regarding their own trading practices in their Form ADV filings occurred in connection with

the purchase or sale of securities because the filings contained key information and disclosures about the firm which clients and potential clients could use to decide whether to obtain various investment and advisory services from the firm.

41. Whether the Defendants did not trade in the same securities as their clients, as stated in their Forms ADV, or did engage in such transactions, as was their actual practice, constitutes a material fact. A reasonable investor would likely consider such knowledge important in determining whether to do business with the Defendants.

42. Because Wesley Perkins, Priscilla Perkins, and World Tree knowingly represented to clients in their Forms ADV that they would not trade in the same securities as their clients while intentionally engaging in such transactions, their representations were untrue statements of material fact.

43. Thus, the SEC has shown by a preponderance of the evidence that Wesley Perkins, Priscilla Perkins, and World Tree violated Section 10(b) of the Exchange Act and associated Rule 10b-5(b) by misrepresenting their trading practices. Judgment will be entered accordingly.

44. Wesley Perkins and World Tree's misrepresentations regarding their trading practices were in connection with the offer or sale of securities as discussed above.

45. Priscilla Perkins's misrepresentations were also in connection with the offer or sale of securities because her false statements regarding the firm's compliance

practices and safeguards constituted client solicitations that persuaded customers to engage in sales transactions with Wesley Perkins and World Tree. *See, Meadows*, 119 F.3d at 1225 (holding that investment solicitation is sufficient to make one a "seller" for purposes of Section 17(a) liability, noting that "[p]ersuasion can take many forms").

46. Wesley Perkins, Priscilla Perkins, and World Tree obtained money by means of their untrue statements regarding their trading practices because they received compensation in the form of advisory fees collected from World Tree's clients.

47. Accordingly, the SEC has shown by a preponderance of the evidence that by misrepresenting their trading practices, Wesley Perkins, Priscilla Perkins, and World Tree violated Section 17(a)(2) of the Securities Act, and judgment will be entered accordingly.

48. As discussed above, Wesley Perkins and World Tree were acting as investment advisers when they knowingly misrepresented their trading practices.

49. Section 206(1) of the Advisers Act proscribes only conduct employed to "defraud" clients or prospective clients. Black's Law Dictionary (11th ed. 2019) defines "defraud" as "to cause injury or loss to (a person or organization) by deceit; to trick (a person or organization) in order to get money." Because the Defendants' trade practices represent a material fact (as noted above), Wesley Perkins and World Tree's misrepresentation of those practices caused an injury to current and

prospective clients, namely the loss of the opportunity to make an informed choice as to whether to entrust one's investment decisions to a non-neutral adviser. As noted above, their actions resulted in their financial gain in the form of advisory fees from clients, at least some of whom may not have done business with the Defendants absent their deception.

50. As noted above, Section 206(2) of the Advisers Act is broader, imposing liability on conduct which operates as a fraud *or* deceit, and in which the investment adviser acted at least negligently.

51. Accordingly, the SEC has shown by a preponderance of the evidence that Wesley Perkins and World Tree violated Sections 206(1) and 206(2) of the Advisers Act when they misrepresented their trading practices.

Aiding and Abetting Advisors' Act Violations

52. The SEC alleged that Priscilla Perkins aided and abetted Wesley Perkins and World Tree when they violated the Advisers Act by misrepresenting their trading practices, as discussed above.

53. Section 20(e) of the Exchange Act permits the SEC to bring an action against "any person that knowingly provides substantial assistance" to a primary violation of the securities laws. *15 U.S.C. § 78(t)(e)*.

54. To establish aiding and abetting liability in this context, the SEC must prove by a preponderance of the evidence:

a. A primary violation of the securities laws;

b. That the aider and abettor had knowledge of this violation and of his or her role in furthering it; and

c. That the aider and abettor knowingly provided substantial assistance in the commission of the primary violation.

See Securities & Exch. Comm'n v. Life Partners Holding, Inc., 854 F.3d 765, 778 (5th Cir. 2017) (citing *Abbott v. Equity Group, Inc.*, 2 F.3d 613, 621 (5th Cir. 1993)).

55. As discussed above, Wesley Perkins and World Tree are liable for primary violations of the securities laws, namely Sections 206(1) and 206(2) of the Advisers Act.

56. The misleading statements in World Tree's Forms ADV were made and controlled by Wesley Perkins and Priscilla Perkins. *Cf. Janus Capital Group, Inc. v. First Derivative Traders*, 564 U.S. 135, 142-43 (2011) ("The maker of a statement is the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it.").

57. As chief compliance officer of World Tree, Priscilla Perkins's misrepresentations of the firm's trade practices are attributable to the company. *See Southland*, 365 F.3d at 384.

58. As Priscilla Perkins's statements represent, at least in part, the basis of World

Tree's primary liability for violations of the Advisers Act, she cannot be liable for aiding and abetting that same primary violation. Put differently, she did not provide substantial assistance to World Tree's untrue statements; rather, she made them on World Tree's behalf.

59. Similarly, Priscilla Perkins did not provide substantial assistance to Wesley Perkins's untrue statements regarding the firm's trade practices; rather, she directly joined him in making those statements. The mere fact that Wesley Perkins is subject to additional liability for those joint statements under Sections 206(1) and Sections 206(2) of the Advisers Act based on his status as an investment adviser does not prove that Priscilla Perkins knowingly provided substantial assistance to his untrue statements. In short, one party to a joint statement does not substantially assist the other party in making the same statement.

60. Accordingly, the SEC has not shown that Priscilla Perkins aided and abetted Wesley Perkins and World Tree when they violated the Advisers Act. Therefore, she is not liable under Section 20(e) of the Exchange Act, and judgment will be entered accordingly.

III. Remedies

In light of the foregoing violations, the Court must consider appropriate remedies.

Injunctions

61. As to Wesley Perkins and World Tree, the SEC sought permanent injunctions

ordering them to refrain from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Section 17(a) of the Securities Act, and Sections 206(1) and 206(2) of the Advisers Act.

62. As to Priscilla Perkins, the SEC sought permanent injunctions ordering her to refrain from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, as well as Section 17(a)(2) of the Securities Act.

63. Each of these statutes authorizes the entry of permanent injunctions when the evidence establishes a reasonable likelihood of a future violation of the securities laws by a particular defendant. *See 15 U.S.C. §§ 78u(d)(1); 77t(b); and 80b-9(d).*

64. In deciding whether there is a reasonable likelihood of future violations, the Court considers the following factors:

a. The egregiousness of the defendant's conduct

b. The isolated or recurrent nature of the violation(s)

c. The degree of scienter involved

d. The presence and sincerity of the defendant's recognition of the transgression

e. The likelihood of the defendant's job providing opportunities for future violations.

See Life Partners Holdings, 854 F.3d at 784 (citing *SEC v. Zale Corp*, 650 F.2d 718, 720 (5th Cir. 1981)).

65. As applied to the conduct of Wesley Perkins, all five of these factors suggest that there is a reasonable likelihood that he will engage in future violations:

a. His cherry-picking scheme and misrepresentation of allocation practices were particularly egregious and harmful to clients who trusted him with their investment decisions.

b. His conduct involved systematic practices over a three-year period.

c. He was fully aware of the wrongful and deceitful nature of his actions even as he was taking them.

d. He refused to acknowledge any wrongdoing.

e. He expressed his intention to work in the securities industry.

66. Accordingly, pursuant to the applicable statutes and Fed. R. Civ. P. 65(d), the Court will issue a judgment permanently enjoining Wesley Perkins from violating 10(b) of the Exchange Act and Rule 10b-5 thereunder, Section 17(a) of the Securities Act, and Sections 206(1) and 206(2) of the Advisers Act.

67. As discussed above, Wesley Perkins's actions, along with his scienter, are imputable to World Tree; thus, the first four prongs of the above reasonable likelihood analysis are equally applicable to World Tree.

68. Accordingly, the Court will also permanently enjoin World Tree from violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Section 17(a) of the Securities Act, and Sections 206(1) and 206(2) of the Advisers Act.

69. As applied to the conduct of Priscilla Perkins, the results of the reasonable likelihood analysis are more mixed:

a. Her misrepresentations of the firm's trading practices are not egregious. Though her untrue statements in the Forms ADV violated the law, they did not function to conceal inherently illegal conduct, as there is no outright prohibition on an investment adviser or firm trading in the same securities as their clients. While Priscilla Perkins's misrepresentation arguably facilitated the more serious cherry-picking violations of the other Defendants, the SEC did not prove that she knew of those more serious violations, let alone knowingly provided substantial assistance to them.

b. Her misrepresentations occurred over a course of years; however, unlike the other Defendants, her violations did not involve highly frequent and/or daily decisions.

c. She was fully aware of the wrongful and deceitful nature of her actions even as she was taking them.

d. She refused to acknowledge any wrongdoing, though she did act to remove the misleading language when confronted.

e. It is unclear whether Priscilla Perkins intends to work in the securities industry.

70. Viewed together, these factors do not satisfy the Court that there is a reasonable likelihood that Priscilla Perkins will engage in future violations of the securities laws. Accordingly, the Court declines to grant the SEC's request for permanent injunctions against her.

Disgorgement

71. The SEC asked the Court to impose joint and several liability against all three defendants for the disgorgement of their profits from the cherry-picking scheme, plus prejudgment interest. The SEC further stated its intent to return those funds to the LeBlancs.

72. The Court has authority to order disgorgement in exercise of its traditional equitable powers pursuant to Section 21(d)(5) of the Exchange Act, *15 U.S.C. § 78u(d)(5)*, and to order prejudgment interest pursuant to 28 U.S.C. § 1961.

73. The Supreme Court recently discussed limits on the power of a district court to order disgorgement in *Liu v. Sec. & Exch. Comm'n*. 140 S.Ct. 1936 (2020). Though the Court specifically authorized disgorgement orders that do not exceed a wrongdoer's net profits where the funds will be awarded to victims, its decision emphasized that such equitable awards could not function as a penalty. *Id.*, at 1949. The Court noted that joint and several liability awards were disfavored at common law and thus permitted only in circumstances where "partners engaged in concerted wrongdoing." *Id*.

74. As discussed above, Wesley Perkins and World Tree engaged in concerted wrongdoing in the form of a cherry-picking scheme. Thus, the Court concludes that they should be jointly and severally liable to disgorge the wrongful profits of that scheme, plus prejudgment interest.

75. As discussed above, the SEC did not establish that Priscilla Perkins participated in the cherry-picking scheme. Moreover, while joint and several liability may be appropriate for some married defendants, *see Liu*, 140 S.Ct. at 1949, Wesley Perkins and Priscilla Perkins did not marry until 2017, two years after the period of misconduct at issue here. As no wrongful profits resulted directly from Priscilla Perkins's violations, she is not personally nor jointly and severally liable for disgorgement.

76. The SEC established that Wesley Perkins and World Tree received gains of $347,947 as a result of their wrongful conduct. The applicable prejudgment interest on those gains is $36,335.98.

77. Accordingly, the Court will issue a judgment holding Wesley Perkins and World Tree jointly and severally liable for the amount of $384,282.98.

Civil Penalties

78. The SEC sought civil penalties against all three defendants pursuant to Section 21(d)(3) of the Exchange Act, *15 U.S.C. § 78(u)(d)(3)*, and Section 20(d) of the Securities Act, *15 U.S.C. § 77t(d)*.

79. Under both statutes, courts assess penalties "in light of the facts and circumstances" and in accordance with a three-tiered system, with amounts adjusted for inflation. *Id.; see also, 17 C.F.R. § 201.1003*.

80. The SEC asserted that the violations here warrant second-tier penalties because they "involved fraud, deceit, manipulation, or reckless disregard of a regulatory requirement." *15 U.S.C. §§ 78(u)(d)(3)(B)(ii); 77t(d)(2)(B)*.

81. The maximum penalty for each second-tier violation is the greater of: $80,000 for natural persons and $400,000 for entities; or the gross amount of pecuniary gain to a defendant as a result of the violation. *Id.; see also, 17 C.F.R. § 201.1003*.

82. The Court agrees with the SEC's tier analysis, and concludes that, for present purposes, the cherry-picking scheme represents one violation, while the misleading Forms ADV, taken together, represents a second violation.

83. Accordingly, the Court will issue a judgment imposing a $160,000 civil penalty on Wesley Perkins, a $300,000 civil penalty on World Tree, and an $80,000 civil penalty on Priscilla Perkins.

A separate final judgment will follow.

THUS DONE AND SIGNED in Lafayette, Louisiana, on this 15th day of January, 2021.

MICHAEL J. JUNEAU
UNITED STATES DISTRICT JUDGE

EXHIBIT 4

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

SECURITIES & EXCHANGE COMMISSION	**CIVIL ACTION NO. 6:18-CV-01229**
VERSUS	**JUDGE JUNEAU**
WORLD TREE FINANCIAL, LLC, ET AL.	**MAGISTRATE JUDGE WHITEHURST**

FINAL JUDGMENT

The Court, sitting without a jury, tried this matter on November 2–5, 2020. Pursuant to the Court's previously entered Findings of Fact and Conclusions of Law and for the reasons contained therein,

IT IS ORDERED, ADJUDGED, AND DECREED that Defendant World Tree Financial, LLC be and hereby is held liable for violating 15 U.S.C. § 78j(b) and associated rules 17 C.F.R. §§ 240.10b-5(a), (b), and (c); 15 U.S.C. § 77q(a)(1) and (2); and 15 U.S.C. §§ 80b-6(1) and (2).

IT IS FURTHER ORDERED that Defendant Wesley Perkins be and hereby is held liable for violating 15 U.S.C. § 78j(b) and associated rules 17 C.F.R. §§ 240.10b-5(a), (b), and (c); 15 U.S.C. § 77q(a)(1) and (2); and 15 U.S.C. §§ 80b-6(1) and (2).

IT IS FURTHER ORDERED that Defendant Priscilla Perkins be and hereby is held liable for violating 15 U.S.C. § 78j(b) and associated rule 17 C.F.R. §

240.10b-5(b), as well as 15 U.S.C. § 77q(a)(2). She is not liable for aiding and abetting violations of 15 U.S.C. §§ 80b-6(1) and (2), and the SEC's claim to the contrary is **DENIED and DISMISSED WITH PREJUDICE**.

In light of these violations,

IT IS ORDERED that Defendant World Tree Financial, LLC and Defendant Wesley Perkins, along with their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, be and hereby are **PERMANENTLY ENJOINED** from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 and Rules 10b-5(a) and (c) thereunder; Section 17(a)(1) of the Securities Act of 1933; or Sections 206 (1) and (2) of the Investment Advisers Act of 1940, by engaging in a cherry-picking scheme or otherwise failing to allocate block trades in a fair and equitable manner.

IT IS FURTHER ORDERED that Defendant World Tree Financial, LLC and Defendant Wesley Perkins, along with their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, be and hereby are **PERMANENTLY ENJOINED** from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5(b) thereunder; Section 17(a)(2) of the Securities Act of 1933; or Sections 206(1) and (2) of the Investment

Advisers Act of 1940, by making false and misleading statements to their clients about their block trade allocation practices.

IT IS FURTHER ORDERED that Defendant World Tree Financial, LLC and Defendant Wesley Perkins **DISGORGE**, jointly and severally, $347,947 plus $36,335.98 prejudgment interest. Defendants shall satisfy this obligation by transmitting a total payment of $384,282.98 to the Securities and Exchange Commission within 30 days of entry of this Final Judgment.

IT IS FURTHER ORDERED that Defendant World Tree Financial, LLC pay a civil penalty of $300,000. The Defendant shall satisfy this obligation by transmitting payment to the Securities and Exchange Commission within 30 days of entry of this Final Judgment.

IT IS FURTHER ORDERED that Defendant Wesley Perkins pay a civil penalty of $160,000. The Defendant shall satisfy this obligation by transmitting payment to the Securities and Exchange Commission within 30 days of entry of this Final Judgment.

IT IS FURTHER ORDERED that Defendant Priscilla Perkins pay a civil penalty of $80,000. The Defendant shall satisfy this obligation by transmitting payment to the Securities and Exchange Commission within 30 days of entry of this Final Judgment.

IT IS FURTHER ORDERED that all requested relief not expressly granted herein is hereby **DENIED**.

The Clerk of Court is directed to close this case.

THUS DONE AND SIGNED in Lafayette, Louisiana, on this 15th day of January, 2021.

MICHAEL J. JUNEAU
UNITED STATES DISTRICT JUDGE

EXHIBIT 5

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 91378 / March 22, 2021

INVESTMENT ADVISERS ACT OF 1940
Release No. 5701 / March 22, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20248

In the Matter of **WESLEY KYLE PERKINS,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940 AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Wesley Kyle Perkins ("Respondent" or "Perkins").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. From 2009 through May 2016, Respondent was the 60% owner, chief executive officer and chief investment officer of World Tree Financial, LLC, an investment adviser registered with the Commission from 2009 until June 15, 2012 and with the State of Louisiana

from 2012 to at least September 2016. From 2009 until 2016, Perkins was associated with a registered broker-dealer. Respondent, 37 years old, is a resident of Lafayette, Louisiana.

B. ENTRY OF THE INJUNCTION

2. On January 15, 2021, a final judgment was entered against Perkins, permanently enjoining him from future violations of Sections 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, in the civil action entitled Securities and Exchange Commission v. World Tree Financial, LLC, et al., Civil Action Number 6:18-cv-01229-MJJ-CBW, in the United States District Court for the Western District of Louisiana.

3. The Commission's complaint alleged that, from March 2011 through September 2015, Perkins, who determined trades and allocations at World Tree, disproportionately allocated unfavorable trades to two large accounts owned by a single client, while allocating favorable trades to accounts owned by him, his wife, and other World Tree clients. Accounts held by or associated with Perkins and his wife received ill-gotten gains of $354,232 during the course of the scheme. In addition to cherry-picking, World Tree and Perkins made material misrepresentations in World Tree's Forms ADV, Part 2A. They misrepresented World Tree's allocation practices by concealing their cherry-picking, and falsely claimed that World Tree's principals and their families were prohibited from trading in the same securities as their clients.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act; and

C. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing before the Commission for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed by further order of the Commission, pursuant to Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

OS Received 08/19/2022

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.220(b).

IT IS FURTHER ORDERED that the Division of Enforcement and Respondent shall conduct a prehearing conference pursuant to Rule 221 of the Commission's Rules of Practice, 17 C.F.R. § 201.221, within fourteen (14) days of service of the Answer. The parties may meet in person or participate by telephone or other remote means; following the conference, they shall file a statement with the Office of the Secretary advising the Commission of any agreements reached at said conference. If a prehearing conference was not held, a statement shall be filed with the Office of the Secretary advising the Commission of that fact and of the efforts made to meet and confer.

If Respondent fails to file the directed Answer, or fails to appear at a hearing or conference after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310.

This Order shall be served forthwith upon Respondent by any means permitted by the Commission's Rules of Practice.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that notwithstanding any contrary reference in the Rules of Practice to service of paper copies, service to the Division of Enforcement of all opinions, orders, and decisions described in Rule 141, 17 C.F.R. § 201.141, and all papers described in Rule 150(a), 17 C.F.R. § 201.150(a), in these proceedings shall be by email to the attorneys who enter an appearance on behalf of the Division, and not by paper service.

Attention is called to Rule 151(b) and (c) of the Commission's Rules of Practice, 17 C.F.R. § 201.151(b) and (c), providing that when, as here, a proceeding is set before the Commission, all papers (including those listed in the following paragraph) shall be filed with the Office of the Secretary and all motions, objections, or applications will be decided by the Commission. The Commission requests that an electronic courtesy copy of each filing should be emailed to APFilings@sec.gov in PDF text-searchable format. Any exhibits should be sent as separate attachments, not a combined PDF.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that notwithstanding any contrary reference in the Rules of Practice to filing with or disposition by a hearing officer, all filings, including those under Rules 210, 221, 222, 230, 231, 232, 233, and 250 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.210, 221, 222, 230, 231, 232, 233, and 250, shall be directed to and, as appropriate, decided by the Commission. This proceeding shall be deemed to be one under the 75-day timeframe specified in Rule of Practice

OS Received 08/19/2022

360(a)(2)(i), 17 C.F.R. § 201.360(a)(2)(i), for the purposes of applying Rules of Practice 233 and 250, 17 C.F.R. §§ 201.233 and 250.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that the Commission shall issue a decision on the basis of the record in this proceeding, which shall consist of the items listed at Rule 350(a) of the Commission's Rules of Practice, 17 C.F.R. § 201.350(a), and any other document or item filed with the Office of the Secretary and accepted into the record by the Commission. The provisions of Rule 351 of the Commission's Rules of Practice, 17 C.F.R. § 201.351, relating to preparation and certification of a record index by the Office of the Secretary or the hearing officer are not applicable to this proceeding.

The Commission will issue a final order resolving the proceeding after one of the following: (A) The completion of post-hearing briefing in a proceeding where the public hearing has been completed; (B) The completion of briefing on a motion for a ruling on the pleadings or a motion for summary disposition pursuant to Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250, where the Commission has determined that no public hearing is necessary; or (C) The determination that a party is deemed to be in default under Rule 155 of the Commission's Rules of Practice, 17 C.F.R. § 201.155, and no public hearing is necessary.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

For the Commission, by its Secretary, pursuant to delegated authority.

Vanessa A. Countryman
Secretary

OS Received 08/19/2022

EXHIBIT 6

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 91379 / March 22, 2021

INVESTMENT ADVISERS ACT OF 1940
Release No. 5702 / March 22, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20249

In the Matter of **WORLD TREE FINANCIAL, LLC,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940 AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against World Tree Financial, LLC ("Respondent" or "World Tree").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. World Tree Financial, LLC is a Louisiana corporation with its principal place of business in Lafayette, Louisiana. World Tree was a Commission-registered investment adviser (File No. 801-70736) until June 15, 2012, when it withdrew its registration because its

assets under management ("AUM") fell below $100 million. At the time the Commission's complaint was filed, World Tree was registered with Louisiana, and had over $54 million in AUM and 161 clients who were all individuals.

B. ENTRY OF THE INJUNCTION

2. On January 15, 2021, a final judgment was entered against World Tree, permanently enjoining it from future violations of Sections 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, in the civil action entitled Securities and Exchange Commission v. World Tree Financial, LLC, et al., Civil Action Number 6:18-cv-01229-MJJ-CBW, in the United States District Court for the Western District of Louisiana.

3. The Commission's complaint alleged that, from March 2011 through September 2015, World Tree, through its principal Wesley Kyle Perkins, disproportionately allocated unfavorable trades to two large accounts owned by a single client, while allocating favorable trades to accounts owned by Perkins, his wife, and other World Tree clients. Accounts held by or associated with Perkins and his wife received ill-gotten gains of $354,232 during the course of the scheme. In addition to cherry-picking, World Tree and Perkins made material misrepresentations in World Tree's Forms ADV, Part 2A. They misrepresented World Tree's allocation practices by concealing their cherry-picking, and falsely claimed that World Tree's principals and their families were prohibited from trading in the same securities as their clients.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing before the Commission for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed by further order of the Commission, pursuant to Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.220(b).

OS Received 08/19/2022

IT IS FURTHER ORDERED that the Division of Enforcement and Respondent shall conduct a prehearing conference pursuant to Rule 221 of the Commission's Rules of Practice, 17 C.F.R. § 201.221, within fourteen (14) days of service of the Answer. The parties may meet in person or participate by telephone or other remote means; following the conference, they shall file a statement with the Office of the Secretary advising the Commission of any agreements reached at said conference. If a prehearing conference was not held, a statement shall be filed with the Office of the Secretary advising the Commission of that fact and of the efforts made to meet and confer.

If Respondent fails to file the directed Answer, or fails to appear at a hearing or conference after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310.

This Order shall be served forthwith upon Respondent by any means permitted by the Commission's Rules of Practice.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that notwithstanding any contrary reference in the Rules of Practice to service of paper copies, service to the Division of Enforcement of all opinions, orders, and decisions described in Rule 141, 17 C.F.R. § 201.141, and all papers described in Rule 150(a), 17 C.F.R. § 201.150(a), in these proceedings shall be by email to the attorneys who enter an appearance on behalf of the Division, and not by paper service.

Attention is called to Rule 151(b) and (c) of the Commission's Rules of Practice, 17 C.F.R. § 201.151(b) and (c), providing that when, as here, a proceeding is set before the Commission, all papers (including those listed in the following paragraph) shall be filed with the Office of the Secretary and all motions, objections, or applications will be decided by the Commission. The Commission requests that an electronic courtesy copy of each filing should be emailed to APFilings@sec.gov in PDF text-searchable format. Any exhibits should be sent as separate attachments, not a combined PDF.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that notwithstanding any contrary reference in the Rules of Practice to filing with or disposition by a hearing officer, all filings, including those under Rules 210, 221, 222, 230, 231, 232, 233, and 250 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.210, 221, 222, 230, 231, 232, 233, and 250, shall be directed to and, as appropriate, decided by the Commission. This proceeding shall be deemed to be one under the 75-day timeframe specified in Rule of Practice 360(a)(2)(i), 17 C.F.R. § 201.360(a)(2)(i), for the purposes of applying Rules of Practice 233 and 250, 17 C.F.R. §§ 201.233 and 250.

OS Received 08/19/2022

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that the Commission shall issue a decision on the basis of the record in this proceeding, which shall consist of the items listed at Rule 350(a) of the Commission's Rules of Practice, 17 C.F.R. § 201.350(a), and any other document or item filed with the Office of the Secretary and accepted into the record by the Commission. The provisions of Rule 351 of the Commission's Rules of Practice, 17 C.F.R. § 201.351, relating to preparation and certification of a record index by the Office of the Secretary or the hearing officer are not applicable to this proceeding.

The Commission will issue a final order resolving the proceeding after one of the following: (A) The completion of post-hearing briefing in a proceeding where the public hearing has been completed; (B) The completion of briefing on a motion for a ruling on the pleadings or a motion for summary disposition pursuant to Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250, where the Commission has determined that no public hearing is necessary; or (C) The determination that a party is deemed to be in default under Rule 155 of the Commission's Rules of Practice, 17 C.F.R. § 201.155, and no public hearing is necessary.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

For the Commission, by its Secretary, pursuant to delegated authority.

Vanessa A. Countryman
Secretary

OS Received 08/19/2022

EXHIBIT 7

Steven G. Durio
Gary McGoffin
William W. Stagg*
Jeffrey Ackermann
James R. Shelton
Randy M. Guidry
Travis J. Broussard

DMSA
DURIO | MCGOFFIN
STAGG | ACKERMANN
Attorneys and Counselors at Law
Professional Corporations

Of Counsel:
D. Patrick Keating
Lauren N. Maurer
Morgan Calhoon
Paralegal

lauren@dmsfirm.com

May 28, 2021

Lynn Dean
Los Angeles Regional Office
Securities and Exchange Commission
444 S Flower Street, 9th Floor
Los Angeles, CA 900071

CERTIFIED MAIL:7019 1640 0000 9281 9081

Re: SEC v. Wesley Kyle Perkins
Administrative Proceeding File No. 3-20248

Dear Lynn:

Enclosed please find an Original copy of Wesley Perkins Answer in the captioned matter.

Should you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,

Lauren Noel Maurer

LNM/ cnm
cc: Steven G. Durio (*via email only*: durio@dmsfirm.com)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of **WESLEY KYLE PERKINS** **Respondent.**	**ADMINISTRATIVE PROCEEDING** **File No. 3-20248**

ANSWER OF WESLEY KYLE PERKINS

COMES NOW Respondent Wesley Kyle Perkins ("Respondent" or "Perkins"), and files this Answer of Respondent Wesley Kyle Perkins to the Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940 and Notice of Hearing ("OIP") and pursuant to 17 C.F.R. § 201.220 answers as follows:

1.

Section I of the OIP contains legal conclusions, orders, and/or instructions to which no responsive pleading is required. Alternatively, should a response be required, Respondent denies the allegations.

2.

Respondent admits the allegations contained in Section II(A)(1) of the OIP.

3.

Respondent denies the allegations contained in Section II(B)(2) of the OIP. On February 2, 2021, Perkins suspensively appealed the January 15, 2021 judgment. Perkins' appeal is currently pending before the United States Fifth Circuit Court of Appeals and its original appellate brief is due June 25, 2021. As such, the January 15, 2021 judgment is not final.

Respondent admits that the allegations contained in Section II(B)(2) of the OIP to the extent those allegations are a recitation of the judgment. To the extent that any of the allegation in Section II(B)(2) of the OIP are claiming those allegations to be true or the statements in the judgment to be correct, then the allegations in Section II(B)(2) of the OIP contain legal conclusions to which no responsive pleading is required. Alternatively, should a response be required, Respondent denies the allegations in Section II(B)(2) of the OIP.

4.

Respondent admits the allegations contained in Section II(B)(3) to the extent those allegations are a recitation of the allegations contained in the SEC's Complaint(s). To the extent that any of the allegations in Section II(B)(3) of the OIP are claiming those allegations to be true, then the allegations in Section II(B)(3) of the OIP contain legal conclusion to which no responsive pleading is required. Alternatively, should a response be required, Respondent denies the allegations in Section II(B)(3) of the OIP.

5.

Section III, Section III(A), and Section(B) of the OIP contain conclusions by the SEC to which no responsive pleading is required. Alternatively, the allegations contained in Section III, Section III(A), and Section(B) of the OIP contain legal conclusions to which no responsive pleading is required. Alternatively, should a response be required, Respondent denies the allegations in Section III, Section III(A), and Section(B) of the OIP.

6.

Section IV of the OIP contains conclusions, orders, and/or instructions by the SEC to which no responsive pleading is required. Alternatively, the allegations contained in Section IV of the OIP contain legal conclusions to which no responsive pleading is required. Alternatively, should a response be required, Respondent denies the allegations in Section IV of the OIP.

7.

Respondent requests that the Securities and Exchange Commission's request for public administrative proceedings be denied.

8.

Except as otherwise expressly stated in paragraphs 1-7 above, Respondent denies each and every allegation, including without limitation, all headings and subheadings and specifically deny that SEC is entitled to any relief requested. Respondent also denies any remaining allegations not expressly admitted herein.

9.

Respondent avers and raises as a defense that the allegations fail to state a claim upon which the SEC is entitled to relief can be granted against Defendants.

10.

Respondent avers and raises as a defense that the Department of Enforcement has failed to allege fraud with particularity.

11.

Respondent avers and raises as a defense that the Department of Enforcement has failed to identify the existence of any false or misleading statements or omissions by Respondent.

12.

Respondent avers and raises as a defense that the Department of Enforcement's allegations are barred in whole or in part, because the information that Respondent allegedly failed to disclose was immaterial.

13.

Respondent avers and raises as a defense that each allegation by the Department of Enforcement is barred, in whole or in part, because Respondent, at all relevant times, has acted in good faith.

14.

Respondent avers and raises as a defense that each allegation by the Department of Enforcement is barred, in whole or in part, because Respondent did not directly or indirectly induce the act or acts constituting the alleged violations and causes of action outlined in the allegations.

15.

Respondent avers and raises as a defense that each allegation by the Department of Enforcement is barred, in whole or in part, because Respondent did not act with scienter.

16.

Respondent avers and raises as a defense that each allegation by the Department of Enforcement is barred, in whole or in part, by the doctrine of waiver.

17.

Respondent avers and raises as a defense that each allegation by the Department of Enforcement is barred, in whole or in part, by the doctrine of laches.

18.

Respondent avers and raises as a defense that each allegation by the Department of Enforcement is barred from recovery because the SEC did not suffer damages because of any alleged act committed by Respondent or purportedly chargeable to Respondent.

19.

The relief sought by the Department of Enforcement and the SEC in whole or in part exceeds its lawful authority.

20.

Because prehearing submissions and disclosures have not yet occurred in this proceeding, Respondent reserves the right to assert other and further defenses as may later become known to counsel in a manner consistent with the Code of Federal Regulations.

Signed this 28th day of May 2021.

Respectfully submitted,

/s/ Lauren Noel Maurer
STEVEN G. DURIO (#05230)
LAUREN NOEL MAURER (#37243)
Durio, McGoffin, Stagg & Ackermann
220 Heymann Boulevard (70503)
Post Office Box 51308
Lafayette, LA 70505-1308
Phone: (337) 233-0300
Fax: (337) 233-0694
Email: durio@dmsfirm.com
lauren@dmsfirm.com
ATTORNEYS FOR WESLEY KYLE PERKINS

CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2021, a true and correct copy of the foregoing was sent in the manner indicated below upon the following:

Via FedEx
Vanessa Countryman, Secretary
Office of the Secretary, SEC
100 F Street, NE
Washington, DC 20549

Via Certified Mail, Return Receipt
Requested No. 7019 1640 0000 9281 9081
and via email: deanl@sec.gov and apfilings@sec.gov

Lynn Dean
Los Angeles Regional Office
Securities and Exchange Commission
444 S Flower Street, 9th Floor
Los Angeles, CA 90071
(323) 965-3245

/s/ Lauren Noel Maurer
LAUREN NOEL MAURER

7019 1640 0000 9281 9081

US POSTAGE
$01.20⁰
First-Class
Mailed From 70503
05/28/2021
032A 0061828644

Durio, McGoffin, Stagg & Ackermann
Attorneys at Law
220 Heymann Boulevard
Post Office Box 51308
Lafayette, LA 70505-1308

TO: Lynn Dean
Los Angeles Regional Office
Securities and Exchange Commission
444 S Flower Street, 9th Floor
Los Angeles, CA ~~900071~~
90071

EXHIBIT 8

STEVEN G. DURIO
GARY MCGOFFIN
WILLIAM W. STAGG*
JEFFREY ACKERMANN
JAMES R. SHELTON
RANDY M. GUIDRY
TRAVIS J. BROUSSARD

DMSA
DURIO | MCGOFFIN
STAGG | ACKERMANN
ATTORNEYS AND COUNSELORS AT LAW
PROFESSIONAL CORPORATIONS

OF COUNSEL:
D. PATRICK KEATING
LAUREN N. MAURER
MORGAN CALHOON
PARALEGAL

lauren@dmsfirm.com

May 28, 2021

Lynn Dean
Los Angeles Regional Office
Securities and Exchange Commission
444 S Flower Street, 9th Floor
Los Angeles, CA 900071

Certified Mail: 7019 1640 0000 9281 9098

Re: SEC v. On behalf of World Tree Financial, etc
Administrative Proceeding File No. 3-20249

Dear Lynn:

Enclosed please find an Original copy of an World Tree Financials' Answer in the captioned matter.

Should you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,

Lauren Noel Maurer

LNM/ cnm
cc: Steven G. Durio (*via email only*: durio@dmsfirm.com)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of **WORLD TREE FINANCIAL, LLC** **Respondent.**	**ADMINISTRATIVE PROCEEDING** **File No. 3-20249**

ANSWER OF WORLD TREE FINANCIAL, LLC

COMES NOW Respondent World Tree Financial, LLC ("Respondent" or "World Tree"), and files this Answer of Respondent World Tree to the Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940 and Notice of Hearing ("OIP") and pursuant to 17 C.F.R. § 201.220 answers as follows:

1.

Section I of the OIP contains legal conclusions, orders, and/or instructions to which no responsive pleading is required. Alternatively, should a response be required, Respondent denies the allegations.

2.

Respondent admits the allegations contained in Section II(A)(1) of the OIP.

3.

Respondent denies the allegations contained in Section II(B)(2) of the OIP. On February 2, 2021, World Tree suspensively appealed the January 15, 2021 judgment. World Tree's appeal is currently pending before the United States Fifth Circuit Court of Appeals and its original appellate brief is due June 25, 2021. As such, the January 15, 2021 judgment is not final.

OS Received 08/19/2022

Respondent admits that the allegations contained in Section II(B)(2) of the OIP to the extent those allegations are a recitation of the judgment. To the extent that any of the allegation in Section II(B)(2) of the OIP are claiming those allegations to be true or the statements in the judgment to be correct, then the allegations in Section II(B)(2) of the OIP contain legal conclusions to which no responsive pleading is required. Alternatively, should a response be required, Respondent denies the allegations in Section II(B)(2) of the OIP.

4.

Respondent admits the allegations contained in Section II(B)(3) to the extent those allegations are a recitation of the allegations contained in the SEC's Complaint(s). To the extent that any of the allegations in Section II(B)(3) of the OIP are claiming those allegations to be true, then the allegations in Section II(B)(3) of the OIP contain legal conclusion to which no responsive pleading is required. Alternatively, should a response be required, Respondent denies the allegations in Section II(B)(3) of the OIP.

5.

Section III, Section III(A), and Section(B) of the OIP contain conclusions by the SEC to which no responsive pleading is required. Alternatively, the allegations contained in Section III, Section III(A), and Section(B) of the OIP contain legal conclusions to which no responsive pleading is required. Alternatively, should a response be required, Respondent denies the allegations in Section III, Section III(A), and Section(B) of the OIP.

6.

Section IV of the OIP contains conclusions, orders, and/or instructions by the SEC to which no responsive pleading is required. Alternatively, the allegations contained in Section IV of the OIP contain legal conclusions to which no responsive pleading is required. Alternatively, should a response be required, Respondent denies the allegations in Section IV of the OIP.

7.

Respondent requests that the Securities and Exchange Commission's request for public administrative proceedings be denied.

8.

Except as otherwise expressly stated in paragraphs 1-7 above, Respondent denies each and every allegation, including without limitation, all headings and subheadings and specifically deny that SEC is entitled to any relief requested. Respondent also denies any remaining allegations not expressly admitted herein.

9.

Respondent avers and raises as a defense that the allegations fail to state a claim upon which the SEC is entitled to relief can be granted against Defendants.

10.

Respondent avers and raises as a defense that the Department of Enforcement has failed to allege fraud with particularity.

11.

Respondent avers and raises as a defense that the Department of Enforcement has failed to identify the existence of any false or misleading statements or omissions by Respondent.

12.

Respondent avers and raises as a defense that the Department of Enforcement's allegations are barred in whole or in part, because the information that Respondent allegedly failed to disclose was immaterial.

13.

Respondent avers and raises as a defense that each allegation by the Department of Enforcement is barred, in whole or in part, because Respondent, at all relevant times, has acted in good faith.

14.

Respondent avers and raises as a defense that each allegation by the Department of Enforcement is barred, in whole or in part, because Respondent did not directly or indirectly induce the act or acts constituting the alleged violations and causes of action outlined in the allegations.

15.

Respondent avers and raises as a defense that each allegation by the Department of Enforcement is barred, in whole or in part, because Respondent did not act with scienter.

16.

Respondent avers and raises as a defense that each allegation by the Department of Enforcement is barred, in whole or in part, by the doctrine of waiver.

17.

Respondent avers and raises as a defense that each allegation by the Department of Enforcement is barred, in whole or in part, by the doctrine of laches.

18.

Respondent avers and raises as a defense that each allegation by the Department of Enforcement is barred from recovery because the SEC did not suffer damages because of any alleged act committed by Respondent or purportedly chargeable to Respondent.

19.

The relief sought by the Department of Enforcement and the SEC in whole or in part exceeds its lawful authority.

20.

Because prehearing submissions and disclosures have not yet occurred in this proceeding, Respondent reserves the right to assert other and further defenses as may later become known to counsel in a manner consistent with the Code of Federal Regulations.

Signed this 28th day of May 2021.

Respectfully submitted,

/s/ Lauren Noel Maurer
STEVEN G. DURIO (#05230)
LAUREN NOEL MAURER (#37243)
Durio, McGoffin, Stagg & Ackermann
220 Heymann Boulevard (70503)
Post Office Box 51308
Lafayette, LA 70505-1308
Phone: (337) 233-0300
Fax: (337) 233-0694
Email: durio@dmsfirm.com
lauren@dmsfirm.com
ATTORNEYS FOR WORLD TREE FINANCIAL

CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2021, a true and correct copy of the foregoing was sent in the manner indicated below upon the following:

Via FedEx
Vanessa Countryman, Secretary
Office of the Secretary, SEC
100 F Street, NE
Washington, DC 20549

Via Certified Mail, Return Receipt
Requested No. 7019 1640 0000 9281 9098
and via email: deanl@sec.gov and apfilings@sec.gov

Lynn Dean
Los Angeles Regional Office
Securities and Exchange Commission
444 S Flower Street, 9th Floor
Los Angeles, CA 90071
(323) 965-3245

/s/ Lauren Noel Maurer

LAUREN NOEL MAURER

Durio, McGoffin, Stagg & Ackermann
Attorneys at Law
220 Heymann Boulevard
Post Office Box 51308
Lafayette, LA 70505-1308

TO: Lynn Dean
Los Angeles Regional Office
Securities and Exchange Commission
444 S Flower Street, 9th Floor
Los Angeles, CA ~~90007~~1 90071

EXHIBIT 9

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20248

In the Matter of **WESLEY KYLE PERKINS,** **Respondent.**	**JOINT PREHEARING CONFERENCE STATEMENT**

The Division of Enforcement ("Division") and Respondent Wesley Kyle Perkins ("Respondent") (collectively, "the Parties"), having telephonically met and conferred, hereby submit the following joint prehearing conference statement.

Rule 221(c) Matters

The Parties, having discussed each numbered item in Rule 221(c), have reached the following stipulations of fact:

1. From 2009 through May 2016, Respondent was the 60% owner, chief executive officer and chief investment officer of World Tree Financial, LLC, an investment adviser registered with the Commission from 2009 until June 15, 2012 and with the State of Louisiana from 2012 to at least September 2016.

2. From 2009 until 2016, Perkins was associated with a registered broker-dealer.

3. Respondent, 38 years old, is a resident of Lafayette, Louisiana.

4. On January 15, 2021, a judgment was entered against Respondent, permanently enjoining him from future violations of Sections 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, in the civil action entitled Securities and Exchange Commission v. World Tree Financial, LLC, et al., Civil Action Number 6:18-cv-01229-MJJ-CBW, in the United States District Court for the Western District of Louisiana.

5. On February 2, 2021, Respondent appealed the January 15, 2021 Judgment. The appeal has been briefed and argued and is currently under submission in the Fifth Circuit Court of Appeals.

Pre-Hearing Schedule:

Exchange of Witness and Exhibit Lists:	August 2, 2022
Objections to Exhibits:[1]	August 9, 2022
Pre-hearing briefs:	August 16, 2022
Final pre-hearing telephonic conference:	August 23, 2022
Hearing:[2]	August 30, 2022

The Parties further agreed to use electronic mail (e-mail) as the method of service for papers other than Commission orders.

The Parties do not anticipate, at this time, any amendments to the Order Instituting Proceedings or to the Answer. However, neither party waives or abandons any rights to file motions or amendments in the future.

Production of documents set forth in Rule 230 is complete.

The Parties will engage in settlement discussions and will promptly advise the

[1] The parties have agreed that exhibits not objected to will be deemed admitted at the beginning of the hearing.

[2] The parties both request that the hearing take place in Lafayette, Louisiana. The parties expect the hearing will take 1 day.

Commission if a tentative settlement, subject to Commission approval, is reached.

The Parties Disagree Regarding Summary Disposition

Division's Position

The Division believes the matter is appropriate for summary disposition and has agreed to the above proposed pre-hearing schedule in order to build in time for such a motion. The Division proposes the following summary disposition schedule.

Summary Disposition Motion	May 10, 2022
Opposition to Summary Disposition	May 24, 2022
Reply to Summary Disposition	May 31, 2022

Respondent's Position

Respondent does not believe the matter is appropriate for summary disposition, because the judgment against Respondent is not final. The judgment below is the predicate for the Division pursuing this administrative proceeding, a judgment that has been appealed and argued before the Fifth Circuit Court of Appeals. Respondent takes the position that the Fifth Circuit is likely to take adverse action against the current judgment as written, up to and including potential reverse and remand. Such action by the Appellate Court would dissolve any and all basis for the instant administrative hearing.

Respectfully submitted,

Dated: April 14, 2022

DIVISION OF ENFORCEMENT

LYNN M. DEAN
Securities and Exchange Commission
444 South Flower Street, Suite 900
Los Angeles, CA 90071
(323) 965-3574 (*direct dial*)
(213) 443-1904 (*facsimile*)
Email: deanl@sec.gov

Dated: April 14, 2022

LAUREN ASHLEY NOEL
Durio, McGoffin, Stagg, Shelton, Guidry
220 Heymann Boulevard (70503)
Post Office Box 51308
Lafayette, LA 70505-1308
Office: (337) 233-0300
Fax: (337) 233-0694
Email: lauren@dmsfirm.com

CERTIFICATE OF SERVICE
SERVICE LIST

Pursuant to Commission Rule of Practice 151 (17 C.F.R. § 201.151), I certify that the:

JOINT PREHEARING CONFERENCE STATEMENT

was served on April 14, 2022 upon the following parties as follows:

By eFAP and Email
Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F. Street, N.E., Mail Stop 1090
Washington, DC 20549-1090
Facsimile: (703) 813-9793
Email: apfilings@sec.gov

By Email
Lauren Ashley Noel
Durio, McGoffin, Stagg & Ackermann
220 Heymann Boulevard
Lafayette, LA 70503
Email: lauren@dmsfirm.com
Counsel for Respondent Wesley Kyle Perkins

Dated: April 14, 2022

Lynn M. Dean

EXHIBIT 10

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20249

In the Matter of **WORLD TREE FINANCIAL, LLC,** **Respondent.**	**JOINT PREHEARING CONFERENCE STATEMENT**

The Division of Enforcement ("Division") and Respondent World Tree Financial LLC ("World Tree") (collectively, "the Parties"), having telephonically met and conferred, hereby submit the following joint prehearing conference statement.

Rule 221(c) Matters

Stipulation of Facts

The Parties have reached the following stipulations of fact:

1. World Tree Financial, LLC is a Louisiana corporation with its principal place of business in Lafayette, Louisiana.

2. World Tree was a Commission-registered investment adviser (File No. 801-70736) until June 15, 2012, when it withdrew its registration, as required by the Dodd-Frank Act and amended Investment Advisers Act of 1940, because its assets under management ("AUM") fell below $100 million.

3. In September 2018, when the underlying SEC complaint was filed, World Tree was registered with Louisiana, and had over $54 million in AUM and 161 clients who were all individuals.

4. On January 15, 2021, a judgment was entered against Respondent, permanently enjoining it from future violations of Sections 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, in the civil action entitled Securities and Exchange Commission v. World Tree Financial, LLC, et al., Civil Action Number 6:18-cv-01229-MJJ-CBW, in the United States District Court for the Western District of Louisiana.

5. On February 2, 2021, Respondent appealed the January 15, 2021, Judgment. The appeal has been briefed and argued and is currently under submission in the Fifth Circuit Court of Appeals.

Pre-Hearing Schedule:

Exchange of Witness and Exhibit Lists:	August 2, 2022
Objections to Exhibits:[1]	August 9, 2022
Pre-hearing briefs:	August 16, 2022
Final pre-hearing telephonic conference:	August 23, 2022
Hearing:[2]	August 30, 2022

Other Matters

The Parties further agreed to use electronic mail (e-mail) as the method of service for papers other than Commission orders.

[1] The parties have agreed that exhibits not objected to will be deemed admitted at the beginning of the hearing.

[2] The parties both request that the hearing take place in Lafayette, Louisiana. The parties expect the hearing will take 1 day.

The Parties do not anticipate, at this time, any amendments to the Order Instituting Proceedings or to the Answer. However, neither party waives or abandons any rights to file motions or amendments in the future.

Production of documents set forth in Rule 230 is complete.

The Parties will engage in settlement discussions and will promptly advise the Commission if a tentative settlement, subject to Commission approval, is reached.

The Parties Disagree Regarding Summary Disposition

Division's Position

The Division believes the matter is appropriate for summary disposition and has agreed to the above proposed pre-hearing schedule in order to build in time for such a motion. The Division proposes the following summary disposition schedule.

Summary Disposition Motion	May 10, 2022
Opposition to Summary Disposition	May 24, 2022
Reply to Summary Disposition	May 31, 2022

Respondent's Position

Respondent does not believe the matter is appropriate for summary disposition, because the judgment against Respondent is not final. The judgment below is the predicate for the Division pursuing this administrative proceeding, a judgment that has been appealed and argued before the Fifth Circuit Court of Appeals. Respondent takes the position that the Fifth Circuit is likely to take adverse action against the current judgment as written, up to and including potential reverse and remand. Such action by the Appellate Court would dissolve any and all basis for the instant administrative hearing.

Respectfully submitted,

Dated: April 14, 2022

DIVISION OF ENFORCEMENT

LYNN M. DEAN
Securities and Exchange Commission
444 South Flower Street, Suite 900
Los Angeles, CA 90071
(323) 965-3574 (*direct dial*)
(213) 443-1904 (*facsimile*)
Email: deanl@sec.gov

Dated: April 14, 2022

LAUREN ASHLEY NOEL
Durio, McGoffin, Stagg, Shelton, Guidry
220 Heymann Boulevard
Lafayette, LA 70503
Office: (337) 233-0300
Fax: (337) 233-0694
Email: lauren@dmsfirm.com

Respectfully submitted,

Dated: April 14, 2022

DIVISION OF ENFORCEMENT

LYNN M. DEAN
Securities and Exchange Commission
444 South Flower Street, Suite 900
Los Angeles, CA 90071
(323) 965-3574 (*direct dial*)
(213) 443-1904 (*facsimile*)
Email: deanl@sec.gov

Dated: April 14, 2022

LAUREN ASHLEY NOEL
Durio, McGoffin, Stagg, Shelton, Guidry
220 Heymann Boulevard
Lafayette, LA 70503
Office: (337) 233-0300
Fax: (337) 233-0694
Email: lauren@dmsfirm.com

CERTIFICATE OF SERVICE
SERVICE LIST

Pursuant to Commission Rule of Practice 151 (17 C.F.R. § 201.151), I certify that the:

JOINT PREHEARING CONFERENCE STATEMENT

was served on April 14, 2022 upon the following parties as follows:

By eFAP and Email
Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F. Street, N.E., Mail Stop 1090
Washington, DC 20549-1090
Facsimile: (703) 813-9793
Email: apfilings@sec.gov

By Email
Lauren Ashley Noel
Durio, McGoffin, Stagg, Shelton & Guidry
220 Heymann Boulevard
Lafayette, LA 70503
Email: lauren@dmsfirm.com
Counsel for Respondent World Tree Financial

Dated: April 14, 2022

Lynn M. Dean

EXHIBIT 11

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95353 / July 22, 2022

INVESTMENT ADVISERS ACT OF 1940
Release No. 6071 / July 22, 2022

Admin. Proc. File Nos. 3-20248; 3-20249

In the Matters of

WESLEY KYLE PERKINS
and
WORLD TREE FINANCIAL, LLC

ORDER CONSOLIDATING PROCEEDINGS, DENYING MOTIONS TO STAY, AND SCHEDULING BRIEFS

On March 22, 2021, the Securities and Exchange Commission ("Commission") issued an Order Instituting Proceedings ("OIP") pursuant to Section 15(b) of the Securities Exchange Act of 1934, and Section 203(f) of the Investment Advisers Act of 1940, against Wesley Kyle Perkins.[1] That same day, the Commission issued an OIP pursuant to Advisers Act Section 203(f) against World Tree Financial, LLC ("World Tree"), a registered investment adviser.[2] The OIPs alleged that Perkins was the principal of World Tree, and that in a civil action in federal district court Perkins and World Tree ("Respondents") had been enjoined from violating antifraud provisions of the securities laws—Section 17(a) of the Securities Act of 1933, Exchange Act Section 10(b) and Rule 10b-5, and Advisers Act Sections 206(1) and 206(2). The OIPs instituted proceedings before the Commission to determine whether the allegations of the OIPs were true and if so what, if any, remedial action against Respondents is appropriate in the public interest.

1 *Wesley Kyle Perkins*, Exchange Act Release No. 91378, 2021 WL 1168555 (Mar. 22, 2021).

2 *World Tree Fin., LLC*, Advisers Act Release No. 5702, 2021 WL 1168567 (Mar. 22, 2021).

OS Received 08/19/2022

On May 28, 2021, Respondents, represented by common counsel, filed answers to the OIPs. The Commission then ordered that the parties in both proceedings file prehearing conference statements as well as briefs concerning whether to consolidate the proceedings.[3]

On April 14, 2022, the parties filed joint prehearing conference statements. The statements included the Division's proposed schedule for summary disposition briefing and Respondents' position that the proceedings are not "appropriate for summary disposition."

On April 20, 2022, the Division filed a brief in each proceeding stating that consolidation is appropriate because the proceedings share common questions of law and fact and because consolidation would "promote efficiencies." The Division stated that it had already made identical filings in both proceedings, and that "consolidation would prevent duplicative briefing" on summary disposition and "prevent duplicative argument and evidence" if hearings are held. On May 20, 2022, Respondents filed briefs opposing consolidation, contending that the need for "independent testimony and evidence" arising from their "distinguishable" actions would, if the proceedings were consolidated, result in "unnecessary cost" and undue complication.

On May 20, 2022, Respondents filed motions to stay the proceedings pending the outcome of their appeals of the district court action to the United States Court of Appeals for the Fifth Circuit. On June 2, 2022, the Division filed oppositions to the stay requests.

We now consolidate the proceedings, deny a stay, and issue a briefing schedule.

I. Consolidation

Rule of Practice 201(a) provides that the Commission may consolidate "proceedings involving a common question of law or fact . . . as it deems appropriate to avoid unnecessary cost or delay."[4] The proceedings here involve common questions of law and fact. Both OIPs allege that Respondents were enjoined in the same civil action from violating the same provisions of the securities laws. According to the OIPs, the complaint in that civil action alleged the same misconduct—that from March 2011 through September 2015:

> [Respondents] disproportionately allocated unfavorable trades to two large accounts owned by a single client, while allocating favorable trades to accounts owned by [Perkins], his wife, and other World Tree clients. Accounts held by or associated with Perkins and his wife received ill-gotten gains of $354,232 during the course of the scheme. In addition to cherry-picking, World Tree and Perkins

---

[3] *Wesley Kyle Perkins*, Exchange Act Release No. 94619, 2022 WL 1032830 (Apr. 6, 2022); *World Tree Fin., LLC*, Exchange Act Release No. 94618, 2022 WL 1032828 (Apr. 6, 2022). *Wesley Kyle Perkins*, Exchange Act Release No. 94572, 2022 WL 990130 (Mar. 31, 2022); *World Tree Fin., LLC*, Advisers Act Release No. 5991, 2022 WL 990131 (Mar. 31, 2022).

[4] 17 C.F.R. §201.201(a).

made material misrepresentations in World Tree's Forms ADV, Part 2A. They misrepresented World Tree's allocation practices by concealing their cherrypicking, and falsely claimed that World Tree's principals and their families were prohibited from trading in the same securities as their clients.[5]

The OIPs instituted proceedings to determine whether remedial action against Respondents is in the public interest. Because of these common questions of law and fact, consolidation would avoid unnecessary cost or delay. For example, consolidation would reduce duplication in briefing by the Division and Respondents, and in orders and opinions issued by the Commission. Accordingly, we find it appropriate to consolidate the proceedings.[6]

II. The Stay Motions

Respondents request to stay the proceedings under Rule of Practice 401, but we instead consider their request under Rule of Practice 161. Rule 401(c) authorizes a motion for a stay of a Commission order "by any person aggrieved thereby who would be entitled to review in a federal court of appeals."[7] But the Commission has not yet entered a reviewable final order.[8]

Rule 161 authorizes us to order adjournments and postponements for "good cause shown."[9] The movant must make "a strong showing that the denial of the request or motion would substantially prejudice their case."[10] Respondents have failed to make such a showing.

Respondents seek to stay the proceeding pending their appeal to the Fifth Circuit. They argue that "there is a significant chance the Fifth Circuit will reverse" the district court's judgment and that moving forward with this proceeding thus "would be a waste of" resources.

---

5 *Perkins*, 2021 WL 1168555, at *1; *World Tree Fin., LLC*, 2021 WL 1168567, at *1.

6 *See, e.g., Jocelyn Murphy*, Exchange Act Release No. 91797, 2021 WL 1835414, at *1 (May 7, 2021) (order consolidating follow-on proceedings "predicated on final judgments" in the same underlying proceeding and "based on similar underlying misconduct").

7 17 C.F.R. § 201.401(c).

8 *See Shreyans Desai*, Exchange Act Release No. 80129, 2017 WL 782152, at *6 n.42 (Mar. 1, 2017) ("Consistent with our practice, we treat this request [to stay a follow-on proceeding pending an appeal of the underlying suit] as a motion for a postponement or adjournment under Commission Rule of Practice 161, but not for a stay under Rule 401.").

9 17 C.F.R. § 201.161(a).

10 *Id.* § 201.161(b)(1). The Commission's order that "all reasonable requests for extensions of time will not be disfavored" with respect to the filing and service of papers, *In re: Pending Administrative Proceedings*, Exchange Act Release No. 88415, 2020 WL 1322001 (Mar. 18, 2020), "does not apply to [a] request to adjourn or postpone the proceeding itself pending an appeal of the underlying suit." *Donald J. Fowler*, Exchange Act Release No. 89226, 2020 WL 3791560, at *1 n.10 (July 6, 2020).

OS Received 08/19/2022

But we have repeatedly held that "the pendency of an appeal of a civil or criminal proceeding does not justify any delay in related 'follow-on' administrative proceedings."[11] Although Respondents argue that an adjournment "will cause no prejudice or harm" to the Commission or the public because they do not intend to work in the securities industry "absent a successful appeal," they do not explain why denying an adjournment would prejudice their case.[12] Indeed, Respondents have failed to show any prejudice because, if the Fifth Circuit reverses the district court's judgment, Respondents "may seek to vacate any action based upon that judgment."[13]

III. Summary Disposition Briefing

Rule of Practice 250 provides that summary disposition is appropriate if "there is no genuine issue with regard to any material fact and . . . the movant is entitled to summary disposition as a matter of law."[14] Motions for summary disposition may be made by any party after a respondent's answer has been filed and documents have been made available for inspection and copying pursuant to Rule of Practice 230.[15] The joint prehearing conference statements recite that "[p]roduction of documents set forth in Rule 230 is complete."[16]

It appears appropriate for both parties to have the opportunity to file motions for summary disposition.[17] Although Respondents contend that this matter is not "appropriate for summary disposition" because they have appealed the district court's judgment, that appeal is irrelevant to whether this matter may be resolved without an in-person evidentiary hearing.

---

11 *Thomas D. Melvin, CPA*, Exchange Act Release No. 75844, 2015 WL 5172974, at *7 n.52 (Sept. 4, 2015) (citing cases).

12 *Cf. Ralph Calabro*, Exchange Act Release No. 75076, 2015 WL 3439152, at *41 (May 29, 2015) (rejecting argument that a bar was unnecessary since respondent had "left the industry" because "[a]bsent a bar, nothing would prevent [respondent] from reentering the industry").

13 *Conrad P. Seghers*, Advisers Act Release No. 2656, 2007 WL 2790633, at *3 (Sept. 26, 2007), *pet. denied*, 548 F.3d 129 (D.C. Cir. 2008).

14 17 C.F.R. § 201.250(b).

15 *Id.*; 17 C.F.R. § 201.230.

16 The joint prehearing conference statements also included agreements reached regarding other prehearing filings and deadlines, including witness and exhibit lists and a proposed hearing date. We will refrain from ruling on those matters until after ruling on any summary disposition motion. A hearing will not be held if the Commission determines that there are no genuine issues of material fact necessitating a hearing and that the matter can be resolved on the papers.

17 *See, e.g., Peter Siris*, Exchange Act Release No. 71068, 2013 WL 6528874, at *11 & n.68 (Dec. 12, 2013) (discussing appropriateness of summary disposition in follow-on proceedings and providing citations), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014); *Seghers*, 2007 WL 2790633, at *4-6 (discussing unsuccessful attempt to oppose summary disposition).

Summary disposition briefs should include references to relevant undisputed pleaded facts along with facts eligible to be officially noted pursuant to Rule of Practice 323,[18] and should include, as attachments, relevant declarations, affidavits, and other supporting documentation. To the extent either party opposes summary disposition, it should precisely specify the basis for that opposition in its responsive briefing, identify with particularity the material factual issues in dispute, and address relevant Commission precedent.

* * *

Accordingly, IT IS ORDERED that the Respondents' proceedings are consolidated; it is further ORDERED that Respondents' motions to stay, postpone, or adjourn the proceeding are denied; and it is further ORDERED that briefs in support of motions for summary disposition shall be filed by August 19, 2022, opposition briefs shall be filed by September 16, 2022, and reply briefs shall be filed by September 30, 2022.[19] Pursuant to Rule of Practice 180(c), a party's failure to file a brief or comply with this order may result in the Commission's determination of the matter at issue against that party, entry of default, dismissal of the proceeding, or the prohibition of the introduction of evidence or the exclusion of testimony regarding the matter at issue.[20]

The parties' attention is directed to the most recent amendments to the Commission's Rules of Practice, which took effect on April 12, 2021, and which include new e-filing requirements.[21]

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Vanessa A. Countryman
Secretary

By: Jill M. Peterson
Assistant Secretary

---

[18] 17 C.F.R. § 201.323.

[19] Attention is called to Rules of Practice 150-153, 17 C.F.R. §§ 201.150-153, with respect to form and service, and Rule of Practice 250(b), (e), and (f), 17 C.F.R. § 201.250(b), (e), and (f), with respect to motion requirements and length limitations.

[20] 17 C.F.R. § 201.180(c).

[21] *Amendments to the Commission's Rules of Practice*, Exchange Act Release No. 90442, 2020 WL 7013370 (Nov. 17, 2020), 85 Fed. Reg. 86,464, 86,474 (Dec. 30, 2020), https://www.sec.gov/rules/final/2020/34-90442a.pdf; *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, https://www.sec.gov/efapdocs/instructions.pdf. The amendments impose other obligations such as a new redaction and omission of sensitive personal information requirement. *Amendments to the Commission's Rules of Practice*, 85 Fed. Reg. at 86,465-81.

OS Received 08/19/2022

EXHIBIT 12

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
August 4, 2022
Lyle W. Cayce
Clerk

No. 21-30063

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff—Appellee,

versus

WORLD TREE FINANCIAL, L.L.C.; WESLEY KYLE PERKINS; PRISCILLA GILMORE PERKINS,

Defendants—Appellants.

Appeal from the United States District Court
for the Western District of Louisiana
USDC 6:18-CV-1229

Before JONES, HIGGINSON and DUNCAN, *Circuit Judges*.

STEPHEN A. HIGGINSON, *Circuit Judge*:

This appeal arises from an enforcement action brought by the Securities and Exchange Commission (SEC) against Appellants-Defendants World Tree Financial, L.L.C. (World Tree) and its principals Wesley Perkins (Perkins) and Priscilla Gilmore Perkins (Gilmore). After a bench trial, the district court found that Perkins and World Tree engaged in a fraudulent "cherry-picking" scheme, in which they allocated favorable trades to themselves and favored clients and unfavorable trades to disfavored clients. It also found that all three Defendants made false and misleading statements

about the firm's allocation and trading practices. The court entered permanent injunctions against Perkins and World Tree, ordered them to disgorge ill-gotten gains, and imposed civil penalties on each Defendant. We AFFIRM.

I.

A.

In 2009, Perkins and Gilmore founded World Tree, a Louisiana-based investment adviser. Perkins served as chief executive officer and chief investment officer, and Gilmore served as chief financial officer, chief compliance officer, and chief operating officer. Perkins and Gilmore, who married in 2017, owned 60% and 40% of World Tree, respectively.

As of March 2018, World Tree managed over $54 million in assets and had 161 advisory clients, most of whom were individual investors. World Tree charged its clients an advisory fee that ranged between 0.5% and 1.5% of the client's assets under management. Because World Tree managed its clients' assets on a "discretionary basis," it had authorization to trade securities on their behalf. From December 2009 to October 2015, World Tree traded through Charles Schwab, which doubled as custodian for World Tree's client accounts.

World Tree traded through a "block trade" account, sometimes known as an "omnibus" account. A block trade, as defined by the district court, "allows a broker to execute a single large trade in its own name for the benefit of its clients and then allocate portions of that trade to particular client accounts." As chief investment officer, Perkins was responsible for trading decisions for World Tree accounts and allocating trades made through the omnibus account. He transmitted trades to Schwab by entering them in an online trading template or calling them in.

OS Received 08/19/2022

Two of World Tree's documents, its compliance manual and its Form ADV, contain important language outlining its block trade practices. In its compliance manual, World Tree recognized that block trading raises "important issues . . . concerning the equitable distribution of such securities." It announced that its policy was "to allocate [block trade] orders and opportunities in a fair and equitable manner." The manual charged Perkins, as chief investment officer, with ensuring adherence to the policy and "verify[ing] that no client account was systematically disadvantaged by the allocation."

World Tree's compliance manual also set out specific procedures for block trades. In advance of placing block trades, World Tree was to:

- Disclose its aggregation policies in its Form ADV;

  . . .

- Ensure that each client will be treated fairly and will not favor any client over another; and
- Ensure that the decision to aggregate a trade for a client is based on individual advice to that client.

When placing block trades, World Tree was to "[d]esignate on the trade order memorandum, the number of shares of the block trade to be allocated to each specific account prior to placing the order" or to "[m]ake a *pro rata* allocation of the shares to each account based upon size of the client's account." It was to maintain, in its "books and records . . . all documents that relate to allocation of block trades."

In addition, the manual prohibited Perkins and Gilmore from trading in securities that World Tree was trading or considering trading on behalf of clients. Perkins and Gilmore read and understood the compliance manual.

World Tree's Forms ADV also addressed allocation and trading procedures. A Form ADV is an annual registration form that must be filed

with the SEC with information about the firm and its services. Perkins and Gilmore had ultimate control over the Forms ADV: they reviewed drafts, signed them, and authorized their filing and distribution. Defendants provided Part 2A of the Forms ADV to clients when they entered a contract with World Tree and annually thereafter.

From 2011 to 2015, the Forms ADV, Part 2A, Item 11 represented that Access Persons, including Perkins and Gilmore, would not personally trade in the same securities concomitantly with their clients:

> Unless specifically permitted in World Tree's *Code of Ethics*, none of World Tree's *Access Persons* may effect for themselves or for their immediate family (i.e., spouse, minor children, and adults living in the same household as the *Access Person*) any transactions in a security which is being actively purchased or sold, or is being considered for purchase or sale, on behalf of any of World Tree's clients.
>
> When World Tree is purchasing or considering for purchase any security on behalf of a client, no *Access Person* may effect a transaction in that security prior to the completion of the purchase or until a decision has been made not to purchase such security. Similarly, when World Tree is selling or considering the sale of any security on behalf of a client, no *Access Person* may effect a transaction in that security prior to the completion of the sale or until a decision has been made not to sell such security.

In August 2015, World Tree amended Item 11 to reflect that Perkins and Gilmore could trade in the same securities as World Tree's clients through the omnibus account.

The Forms ADV, part 2A, Items 8 and 12 provided that World Tree "allocates investment opportunities among its clients on a fair and equitable basis" and may "combine or 'batch'" orders. Item 12 further provided that if World Tree "aggregate[s] client orders for the purchase or sale of

securities, including securities in which World Tree's *Supervised Persons* may invest, World Tree shall generally do so in accordance with applicable rules promulgated under the Advisers Act and no-action guidance provided by the staff of the [SEC]."

In mid-2015, Charles Schwab began investigating World Tree after its surveillance team detected allocations indicative of cherry-picking.[1] Schwab's investigator, Grant Moore, inquired about World Tree's "allocation process," "why [certain trades] were allocated the way they were," and "whether [World Tree] followed [its] ADV on how [it] allocated." Perkins and Gilmore explained that they surveyed clients' accounts "to see who had cash available," assessed "client objectives," and determined "whether [clients] would be able to participate or not in the day trades."

Moore requested documentation from World Tree to verify that allocations were made as outlined in the Forms ADV. Gilmore sent Moore an e-mail with documents containing incomprehensible numbers, which "made no sense" to Moore and did not show "anything about how and why they did the trade allocations the way they did." When asked for additional records, Perkins and Gilmore said they did not have any because they did not retain documentation upon completing allocations. Schwab suspended World Tree's ability to block trade and subsequently terminated its relationship with World Tree. The SEC began investigating Defendants in November 2016.

[1] As explained in detail below, cherry-picking involves using the block trade method to make an initial trade, and then allocating individual trades to specific accounts *after* observing how the transaction performed. Advisers can take advantage of this practice to allocate more profitable trades to favored accounts.

B.

The SEC commenced this action in September 2018. It alleged three types of fraud claims. First, it alleged that Perkins and World Tree carried out a fraudulent cherry-picking scheme, in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b); Rules 10b-5(a) and (c) thereunder, 17 C.F.R. § 240.10b-5(a), (c); Section 17(a)(1) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a)(1), (3); and Sections 206(1) and (2) of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. § 80b-6(1), (2). Second, the SEC alleged that Gilmore aided and abetted the fraudulent cherry-picking, in violation of Section 209(f) of the Advisers Act, 15 U.S.C. § 80b-9(f). Finally, the SEC claimed that Defendants made material misrepresentations about their allocation and trading practices, in violation of Section 10(b), 15 U.S.C. § 78j(b); Rule 10b-5(b) thereunder, 17 C.F.R. § 240.10b-5(b); Section 17(a)(2), 15 U.S.C. § 77q(a)(2); and, with respect to Perkins and World Tree only, Sections 206(1) and (2), 15 U.S.C. § 80b-6. The SEC sought injunctive relief, disgorgement of all ill-gotten gains, and civil penalties.

The district court held a four-day bench trial in November 2020. It received over 150 exhibits and heard testimony from Perkins, Gilmore, and two expert witnesses—Dr. Cathy Niden for the SEC and Dr. Charles Theriot for Defendants—as well as other witnesses.

In making its case, the SEC relied heavily on statistical data. The timing of the allocations was critical to the SEC's argument that Perkins would have known how the trades had performed that day by the time he allocated them. The SEC presented evidence that Perkins transmitted most trades to Schwab during the trading day, but that 90% of the time he waited until the markets closed to allocate the trades.

To analyze World Tree's allocation data, Niden divided the client accounts into three categories: (1) accounts controlled by Perkins, Gilmore, or both ("Favored-Perkins accounts"); (2) accounts owned by World Tree clients other than Matthew LeBlanc and his business Delcambre Cellular ("Favored-Client accounts"); and (3) accounts owned by LeBlanc and Delcambre ("Disfavored accounts"). She then measured several performance measures and subsets of trades: most and least profitable trades, day trades, average first-day returns, earnings-day trades, overlapping stocks, and trades after LeBlanc complained to Perkins about his accounts' poor performance. According to her analysis, from July 2012 to July 2015, Perkins methodically allocated trades with favorable first-day returns to the Favored-Perkins and Favored-Client accounts, while allocating trades with unfavorable first-day returns to the Disfavored accounts.

Niden opined that the "evidence overwhelmingly indicates that Perkins engaged in cherry-picking." Though she acknowledged at trial that the data reflected only a pattern and that she did not "have the ability to identify individual trades that may or may not be improper," the data in the aggregate showed a "one in one million chance that these patterns could have occurred if allocations were being made without regard to first-day return." The district court found Niden credible and her testimony to be "thorough and compelling."

Theriot opined that Niden incorrectly interpreted the "incomplete and fragmented data" she utilized. Theriot took issue with her use of "real monetized gains for day trades and unrealized 'First-Day Profits' for stocks not sold on the date purchased as the sole indicator of whether cherry-picking occurred." Theriot claimed Niden's report reflected (1) "flawed assumptions," including that "all World Tree clients are identical and should receive identical returns"; (2) "a measurement methodology that is inconsistent with the reality of the investment returns actually realized"; (3)

"errors in interpreting and using the data available"; and (4) "an apparent lack of independence and objectivity," because Niden is employed by the SEC. Theriot opined that no cherry-picking occurred.

Perkins testified to the allocations and tried to explain the data patterns. For example, he claimed the Disfavored accounts solely experienced certain losses because they had "more money" and "a lot more trades as a result." He insisted trades were made on behalf of specific clients at specific times in furtherance of individual clients' financial and investment goals. Perkins also testified that he knew what cherry-picking was, he acknowledged that it was wrong, and he denied doing it. The court found him not credible, as his explanations "appeared implausible or largely beside the point" and his demeanor appeared "evasive or defensively argumentative."

The district court found Defendants liable on all claims except the aiding and abetting claim against Gilmore. It considered Niden's analysis "compelling proof of intentional cherry-picking, as there is simply no other plausible explanation for the patterns in the data." While Theriot "could explain *some* of the disproportionate results," his observations did not speak to the clear pattern indicative of cherry-picking. The court "did not believe" Perkins when he claimed he did not cherry-pick. As to the misrepresentations, the court found that Perkins and Gilmore told their clients they would not trade in the same securities as them but did so anyway.

The court permanently enjoined World Tree and Perkins from further violating federal securities laws through cherry-picking. It ordered that Perkins and World Tree, jointly and severally, disgorge $347,947 plus $36,335.98 in prejudgment interest. The court also ordered civil penalties of $160,000 on Perkins, $300,000 on World Tree, and $80,000 on Gilmore. Defendants timely appealed.

II.

On appeal from a bench trial, we review findings of fact for clear error and questions of law *de novo*. *Am. Guar. & Liab. Ins. Co. v. ACE Am. Ins. Co.*, 990 F.3d 842, 846 (5th Cir. 2021). We will disturb a factual finding "only if we are 'left with the definite and firm conviction that a mistake has been committed.'" *Deloach Marine Servs., L.L.C. v. Marquette Transp. Co.*, 974 F.3d 601, 606-07 (5th Cir. 2020) (citation omitted). The clear-error standard "following a bench trial requires even 'greater deference to the trial court's findings when they are based on determinations of credibility.'" *Luwisch v. Am. Marine Corp.*, 956 F.3d 320, 326 (5th Cir. 2020) (quoting *Guzman v. Hacienda Records & Recording Studio, Inc.*, 80 F.3d 1031, 1036 (5th Cir. 2015)). We employ "a strong presumption that the court's findings must be sustained even though this court might have weighed the evidence differently." *Id.* We review disgorgement and civil penalty orders for abuse of discretion. *SEC v. Kahlon*, 873 F.3d 500, 504 (5th Cir. 2017) (per curiam) (collecting cases).

III.

Defendants challenge the district court's findings that Perkins and World Tree engaged in fraudulent cherry-picking and that Defendants misrepresented World Tree's allocation and trading practices. They also challenge the disgorgement assessment.

Section 10(b) of the Exchange Act makes it unlawful for a person "[t]o use or employ, in connection with the purchase or sale of any security . . . any manipulative or deceptive device or contrivance" in violation of SEC rules. 15 U.S.C. § 78j(b). Rule 10b-5 makes it unlawful, "in connection with the purchase or sale of any security," to "employ any device, scheme, or artifice to defraud"; "make any untrue statement of a material fact"; or "engage in

any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person." 17 C.F.R. § 240.10b-5.

To prevail on a claim under Section 10(b) and Rule 10b-5, the SEC must prove, by a preponderance of the evidence, that the defendant "(1) made a misstatement or omission (2) of material fact (3) in connection with the purchase or sale of securities (4) with *scienter*." *SEC v. Gann*, 565 F.3d 932, 936 (5th Cir. 2009). A statement is "'material' if there is a substantial likelihood that a reasonable investor would consider the information important in making a decision to invest." *ABC Arbitrage Plaintiffs Grp. v. Tchuruk*, 291 F.3d 336, 359 (5th Cir. 2002) (quoting *R&W Tech. Servs. Ltd. v. CFTC*, 205 F.3d 165, 169 (5th Cir. 2000)). To satisfy the in-connection-with element, the fraudulent scheme and sale of securities need only "coincide." *SEC v. Zandford*, 535 U.S. 813, 822 (2002).

Scienter is a "mental state embracing intent to deceive, manipulate, or defraud." *Abrams v. Baker Hughes Inc.*, 292 F.3d 424, 430 (5th Cir. 2002) (quoting *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976)); *see also Southland Sec. Corp. v. INSpire Ins. Sols., Inc.*, 365 F.3d 353, 366 (5th Cir. 2004). Scienter is satisfied by a showing of "severe recklessness," *i.e.*, "an extreme departure from the standards of ordinary care." *Alaska Elec. Pension Fund v. Flotek Indus., Inc.*, 915 F.3d 975, 981 (5th Cir. 2019) (quoting *Rosenzweig v. Azurix Corp.*, 332 F.3d 854, 866 (5th Cir. 2003)).

Section 17(a) of the Securities Act outlaws "substantially the same" conduct as Section 10(b) and Rule 10b-5, *SEC v. Spence & Green Chem. Co.*, 612 F.2d 896, 903 (5th Cir. 1980), but covers acts committed "in the offer or sale of any securities," 15 U.S.C. § 77q(a).[2] Subsection (a)(1) requires

[2] *Compare id.* ("It shall be unlawful for any person in the offer or sale of any securities . . . (1) to employ any device, scheme, or artifice to defraud, or (2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a

scienter, while subsections (a)(2) and (a)(3) require only negligence. *Aaron v. SEC*, 446 U.S. 680, 697 (1980).

Section 206 of the Advisers Act makes it "unlawful for any investment adviser"[3] "(1) to employ any device, scheme, or artifice to defraud any client or prospective client" or "(2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." 15 U.S.C. § 80b-6. Subsection (1) requires scienter, while subsection (2) requires only negligence. *Steadman v. SEC*, 603 F.2d 1126, 1134 (5th Cir. 1979); *see also SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992).

A.

The district court found Perkins and World Tree engaged in a fraudulent cherry-picking scheme in violation of Section 10(b), Rule 10b-5, Section 17(a)(1), and Sections 206(1) and (2). The district court defined cherry-picking as a manipulation associated with block trades wherein "because client allocations occur after an initial larger trade, an unscrupulous broker could manipulate those allocations based on whether the asset(s) involved in the block trade increased or decreased in value in the period of time between the initial transaction and the allocations."[4] Perkins and World

---

material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser."), *with id.* § 78j(b), *and* 17 C.F.R. § 240.10b-5.

[3] It is undisputed that Perkins and World Tree were investment advisers.

[4] Similarly, the SEC has described cherry-picking as: "a practice in which securities professionals allocate profitable trades to a preferred account (like their own) and less profitable or unprofitable trades to a non-preferred account (like a customer's). To cherry pick a trade, a securities professional typically originates the trade in an omnibus firm account, without identifying the underlying . . . account for which the trade was placed, and

Tree dispute the finding of cherry-picking on appeal, arguing that: (1) the "in-the-offer-or-sale" element of Section 17(a)(1) was not satisfied; (2) the SEC did not prove its claims by a preponderance of evidence because it relied exclusively on statistics and introduced no direct evidence of cherry-picking, and, in addition, Niden's statistical analysis was flawed; and (3) similarly, the SEC could not prove scienter without direct evidence of cherry-picking. We affirm the district court's factual findings and legal conclusions.

1.

Though we have not yet addressed a cherry-picking fraud theory, several courts (and the SEC) have found that cherry-picking can be a violation of Section 10(b), Rule 10b-5, Section 17(a)(1), and Sections 206(1) and (2).[5] The failure to disclose cherry-picking constitutes material misrepresentations or omissions because there is "a substantial likelihood that a reasonable investor would consider the information important in making a decision to invest." *ABC Arbitrage*, 291 F.3d at 359 (internal quotation marks omitted). Because cherry-picking involves allocating more

---

then allocates the trade to an account after observing how that transaction performed." *The Dratel Grp., Inc.*, Exchange Act Release No. 77396, 2016 WL 1071560, at *1 (Mar. 17, 2016).

[5] *See SEC v. RRBB Asset Mgmt., LLC*, No. 20-12523, 2021 WL 3047081, at *3 (D.N.J. July 20, 2021) (Section 10(b), Rule 10b-5, Section 17(a)(1) and (2), and Sections 206(1)-(2)); *SEC v. Strong Inv. Mgmt.*, No. 18-cv-00293, 2018 WL 8731559, at *4-6 (C.D. Cal. Aug. 9, 2018) (same); *SEC v. K.W. Brown & Co.*, 555 F. Supp. 2d 1275, 1302-09 (S.D. Fla. 2007) (same); *see also SEC v. Aletheia Research & Mgmt. Inc.*, No. CV 12-10692, 2015 WL 13404306, at *2 (C.D. Cal. May 11, 2015) (Section 10(b), Rule 10b-5, and Sections 206(1)-(2)); *see also Joseph C. Buchanan*, Exchange Act Release No. 5329, 2019 WL 4033999, at *1-3 (Aug. 26, 2019) (Section 10(b), Rule 10b-5, and Sections 206(1)-(2)); *Fin. Sherpa, Inc.*, Exchange Act Release No. 5324, 2019 WL 3933686, at *1, *4 (Aug. 20, 2019) (same); *J.S. Oliver Cap. Mgmt., L.P.*, Securities Act Release No. 5236, 2019 WL 2160136, at *7 (May 16, 2019) (Section 10(b) and Rule 10b-5); *Welhouse & Assocs., Inc.*, Exchange Act Release No. 4132, 2015 WL 3941618, at *1, *5-6 (June 29, 2015) (Section 10(b), Rule 10b-5, and Sections 206(1)-(2)); *cf. Moross Ltd. P'ship v. Fleckenstein Cap., Inc.*, 466 F.3d 508, 515-17 (6th Cir. 2006) (state securities-fraud statutes).

profitable trades to certain accounts, an adviser is "stealing from one customer to enrich himself," *Dratel*, 2016 WL 1071560 at *1, and thus the practice implicates a conflict of interest. *See Laird v. Integrated Res., Inc.*, 897 F.2d 826, 835 (5th Cir. 1990) ("[W]e hold that for the purpose of rule 10(b)-5, an investment adviser is a fiduciary and therefore has an affirmative duty of utmost good faith to avoid misleading clients. This duty includes disclosure of all material facts and all possible conflicts of interest.").

Furthermore, cherry-picking occurs "in connection with the purchase or sale of any security" (Rule 10b-5) and "in the offer or sale of any securities" (Section 17(a)). It is not necessary for a specific trade or a specific purchaser or seller to be identified to satisfy the in-connection-with element. *See Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 85 (2006) (explaining the broad interpretation of the "in connection with" phrase, and holding that "it is enough that the fraud alleged 'coincide' with a securities transaction—whether by the plaintiff or by someone else"). Moreover, placing trades with a broker satisfies the in-the-offer-or-sale element because the terms cover "the entire selling process, including the seller/agent transaction." *United States v. Naftalin*, 441 U.S. 768, 772-73 (1979).[6]

2.

Nor are we persuaded by the argument that the SEC needed to introduce direct evidence of cherry-picking to prove its claims, rather than relying on statistical evidence. Statistical evidence, like all evidence, "is a

[6] Though Perkins and World Tree argue before us that the in-the-offer-or-sale element of Section 17(a)(1) is not met because "the SEC excluded all sales transactions from [its] analysis and relied exclusively on unrealized gains and losses, which is inherently ***before*** a sale occurs," they do not point to where they raised this argument before the district court. Accordingly, the argument is waived and we do not address it. *See In re Deepwater Horizon*, 857 F.3d 246, 250-51 (5th Cir. 2017).

means to establish or defend against liability" and "[i]ts permissibility turns not on the form a proceeding takes—be it a class or individual action—but on the degree to which the evidence is reliable in proving or disproving the elements of the relevant cause of action." *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 454-55 (2016). District courts have "considerable leeway in deciding in a particular case how to go about determining whether particular expert testimony is reliable." *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152 (1999). Statistical evidence can be useful in securities cases, and its admission is no novelty.[7]

Because cherry-picking is "difficult to detect," determining whether it has occurred "often requires drawing inferences from a pattern of behavior, irregularities, and trading data." *Dratel,* 2016 WL 1071560, at *2. Here, Niden opined that there was "less than a one in one million chance" that the patterns could have occurred if the allocations were made without regard to first-day return.[8]

---

[7] *See, e.g.*, *United States v. Khalupsky*, 5 F.4th 279, 294 (2d Cir. 2021) (noting in a criminal securities-fraud case, the "government's pretrial disclosures of exhibits about the trades it intended to rely upon and of the vast data set underlying its statistical analysis of his trading activity"); *In re BP P.L.C. Sec. Litig.*, No. 10-md-2185, 2013 WL 6388408, at *15 (S.D. Tex. Dec. 6, 2013) (noting "statistical regression analys[e]s that examine[] the effect of an event on a dependent variable, such as a corporation's stock price," are "commonly used in securities fraud class actions" (citations omitted)); *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 586 F. Supp. 2d 732, 798-801 (S.D. Tex. 2008) (assessing statistics on "class action settlements involving 'mega fund' recoveries" to determine fee award); *In re Cendant Corp. Sec. Litig.*, 109 F. Supp. 2d 225, 229 (D.N.J. 2000) (holding statistical evidence created fact question on negative causation defense); *Schindler v. Stockley*, No. 83 Civ. 2186, 1985 WL 2338, at *4-5 (S.D.N.Y. Aug. 16, 1985) (holding, after bench trial in churning case, that "the overwhelming objective statistics outweigh[ed]" defendant's explanations for overtrading); 7 ALAN R. BROMBERG ET AL., BROMBERG & LOWENFELS ON SECURITIES FRAUD § 13:114 (2d ed.), Westlaw (database updated May 2022).

[8] *See K.W. Brown*, 555 F. Supp. 2d at 1304 (finding it "more likely than not" that defendants engaged in cherry-picking because "market forces" could not explain their

Of course, "a statistical analysis is only as reliable as the assumptions beneath it." *Nat'l Ass'n of Gov't Emps. v. City of San Antonio*, 35 F.3d 560, 1994 WL 499782, at *5 (5th Cir. 1994) (per curiam). Perkins and World Tree challenge Niden's analyses on several grounds: she used "unrealized 'first day results,' which show only unrealized gains and losses"; she did not use a "comparator"; she disregarded differences between Favored and Disfavored accounts; she employed a result-driven approach; and she did not use all available information. These arguments, however, revisit Theriot's trial critique of Niden's analyses. Defendants do not assert that their expert's testimony was improperly restricted in any way. Instead, the district court considered each expert's account and found that Theriot failed to rebut key points of Niden's analyses. The district court found that Niden's analyses showed Perkins "allocated an overwhelming proportion of positive trades to Favored-Perkins and Favored-Client accounts and an overwhelming proportion of negative trades to the Disfavored accounts." While Theriot's testimony "explain[ed] *some* of the disproportionate results," it "did not alter the Court's conclusion that the only plausible explanation for the disproportional losses in the Disfavored accounts and gains in the Favored accounts is cherry-picking." Importantly also, the court heard Perkins' explanations for the allocation patterns firsthand, yet found them "implausible or largely beside the point." It "did not believe him when he claimed that he did not engage in cherry-picking."[9]

---

receipt of "more than 90% of the winners while investors received nearly 90% of the losers"); *Fin. Sherpa, Inc.*, 2019 WL 3933686, at *2 (finding "difference in the returns [to be] statistically significant"); *Joseph C. Buchanan*, 2019 WL 4033999, at *3 (finding trade data "statistically significant in that the likelihood of these same-day profitable trades being randomly allocated . . . are less than one in one billion").

[9] In addition to close credibility assessment of all parties' experts and Perkins himself, we note that the district court made further supportive findings which did not rest on expert statistical analysis: (1) the court heard testimony from Moore describing the

We "may not second-guess the district court's resolution of conflicting testimony or its choice of which expert[] to believe." *Grilletta v. Lexington Ins. Co.*, 558 F.3d 359, 365 (5th Cir. 2009); *see Luwisch*, 956 F.3d at 329. Perkins and World Tree have not convinced us that there is error, clear or otherwise, in the district court's reasoning or fact-finding.[10] Where, as here, "there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *Guzman*, 808 F.3d at 1036 (quoting *In re Luhr Bros., Inc.*, 157 F.3d 333, 338 (5th Cir. 1998)).

3.

Finally, as other courts have pointed out, cherry-picking can satisfy the scienter element because it involves the knowing conduct of picking certain accounts over others. *RRBB*, 2021 WL 3047081, at *3. The "scheme

---

cryptic documentation of allocations and the response he received that the information about allocations was deleted every day after the allocation process was complete; the court found that Moore's "concerns regarding the Perkins' allocations practices and their response to his investigation were reasonable and well-founded"; and (2) the court observed Matthew LeBlanc and credited his testimony that he "did not want to lose money with his World Tree investments, either for tax purposes or any other reason, and that he never directed, authorized, or expected Wesley Perkins to disproportionately allocate losses to his accounts."

[10] Perkins and World Tree cite to *SEC v. Slocum, Gordon & Co.*, 334 F. Supp. 2d 144 (D.R.I. 2004), a case in which the district court held that the SEC failed to show cherry-picking through statistical evidence. In that case, however, the court *credited* the defendants' testimony that trades represented legitimate client strategies. *Id.* at 172-73 (observing that the SEC's statistics showed defendants' "trading strategy in operation"). The court also *credited* the testimony of a nonparty employee who "was involved with processing the paperwork on virtually every trade" and concluded "no cherry picking scheme could have taken place . . . without her knowledge." *Id.* at 175-76. Here, conversely, the district court found Perkins *not* credible and his allocation explanations "implausible." And where the evidence is in "equipoise, making critical the question of credibility," and the district court adopts one party's version of the facts based on a credibility determination, we defer to its factual finding. *Gann*, 565 F.3d at 939; *see also Guzman*, 808 F.3d at 1036 (noting factual findings based on credibility determinations "can virtually never be clear error" (quoting *Anderson v. Bessemer City*, 470 U.S. 564, 575 (1985))).

require[s] specific preparation and the deliberate allocation of a disproportionate number of profitable trades." *Id.* (quoting *James C. Dawson*, Advisers Act Release No. 3057, 2010 WL 2886183, at *5 (July 23, 2010)); *K.W. Brown*, 555 F. Supp. 2d at 1305 (finding scienter in cherry-picking where trader "knowingly . . . allocate[d] profitable day trades to an account in which [accomplice] had a personal financial interest"); *see also Dratel*, 2016 WL 1071560, at *11 (finding scienter where broker "controlled all of the trading and allocation decisions [and] therefore knew that he was trading in the same securities as his customers and . . . favoring his own account over theirs").

Perkins and World Tree argue that, without direct evidence of cherry-picked allocations, the SEC cannot show scienter. However, it is well settled that "scienter may be established by circumstantial evidence." *SEC v. Fox*, 855 F.2d 247, 253 (5th Cir. 1988) (first citing *Dirks v. SEC*, 463 U.S. 646, 663 (1983); and then citing *Herman & MacLean v. Huddleston*, 459 U.S. 375, 390 n.30 (1983)); *United States v. Ruggiero*, 56 F.3d 647, 655 (5th Cir. 1995) (noting that "in proving scienter in fraud cases, 'circumstantial evidence can be more than sufficient'" (quoting *Huddleston*, 459 U.S. at 390 n.30)). Here, the district court (1) observed that cherry-picking "necessarily involves knowing and intentional conduct," (2) found that scienter was "confirmed by the testimony of Wesley Perkins," and highlighted other facts, such as the daily deletion of allocation documentation, and (3) further found that "the facts of this case provide strong evidence of scienter on the part of Wesley Perkins." We hold that this constituted adequate circumstantial evidence to find that Perkins engaged in cherry-picking and acted with scienter.

Accordingly, there being no clear error in the district court's finding that Perkins and World Tree engaged in fraudulent cherry-picking, we affirm their liability under Section 10(b), Rule 10b-5, Section 17(a)(1), and Sections 206(1) and (2).

OS Received 08/19/2022

B.

The district court also found that Defendants misrepresented their trading practices by trading in the same securities as their clients despite stating in their Forms ADV that they did not, in violation of Section 10(b), Rule 10b-5(b), Section 17(a)(2), and, with respect to Perkins and World Tree only, Sections 206(1) and (2).[11] Defendants dispute this finding on appeal, arguing that the Forms ADV allowed them to trade in the same securities as their clients—thus, according to Defendants, they made no misleading or material statements with scienter.

Defendants find no support in the record. The Forms ADV, Part 2A, Item 11 specifically represented that "Access Persons," *i.e.*, Perkins and Gilmore, would *not* personally trade in the same securities at the same time as their clients. World Tree's compliance manual, or code of ethics, contained a similar restriction. Moreover, it is undisputed that Perkins allocated to his and Gilmore's personal accounts the same securities from the block trades in which their clients participated. The only qualifier to this language[12] came in August 2015—after Schwab began its investigation. At

[11] The district court also found that Perkins and World Tree misrepresented their allocation practices by telling clients they were allocating block trades fairly and equitably, in violation of Section 10(b), Rule 10b-5(b), Section 17(a)(2), and Sections 206(1) and (2). Perkins and World Tree have waived any challenge to this finding by failing to brief it. *Tenny v. Dretke*, 416 F.3d 404, 407 (5th Cir. 2005).

[12] Though Defendants argue that the Forms ADV expressly permitted them to trade in the same securities as their clients, they do not cite to any language giving them such permission. They point instead to the firm's Discretionary Investment Management Agreement with clients, but that document only notes, broadly and in passing, that "[t]o the extent that we aggregate client orders for the purchase or sale of securities, including securities in which our Advisory Affiliates may invest . . . ." Defendants also argue that the prohibitory language in Item 11 of the Forms ADV includes a qualifier: "Unless specifically permitted in World Tree's *Code of Ethics*." But this qualifier does not help Defendants where they cannot, and do not, point to any language in the code of ethics permitting such trading. In fact, the code of ethics restricted such trading. Defendants also point to Item 11,

that point, World Tree changed its Form ADV to allow concomitant trading, amending Item 11 to provide: "the Firm's Supervised Persons are permitted to buy or sell securities that it also recommends to clients if done in a fair and equitable manner that is consistent with the Firm's policies and procedures." Until this language was added, Perkins and Gilmore were restricted from trading concomitantly with their clients—a restriction that Defendants defied.

Defendants' misrepresentations were material. Materiality is a "fact-specific inquiry," *Basic Inc. v. Levinson*, 485 U.S. 224, 240 (1988), and assessing "the significance of the inferences a reasonable investor would draw from a given set of facts is peculiarly within the competence of the trier of fact," *Steadman*, 603 F.2d at 1130. Here, the district court found that a reasonable investor would consider important whether Defendants traded in the same securities as their clients. This is logical: an adviser who participates in block trades with his clients has a greater incentive to place his interests ahead of theirs. *See, e.g.*, *Capital Gains*, 375 U.S. at 196 (explaining an investor is entitled to evaluate "overlapping motivations, through appropriate disclosure, in deciding whether an adviser is serving two masters or only one, especially if one of the masters happens to be economic self-interest" (cleaned up)); *Vernazza*, 327 F.3d at 858-59 ("We have no trouble concluding that the petitioners made materially false statements when they claimed not to recommend securities in which they had an ownership or sales interest, not to receive economic benefits in connection with giving advice to clients, and not to recommend securities in which they had a financial

---

which provides that "World Tree and persons associated with World Tree ('Associated Persons') are permitted to buy or sell securities that it also recommends to clients consistent with World Tree's policies and procedures." Again, however, World Tree's policies and procedures restricted personal trades in the same securities at the same time for access persons.

interest. It is undisputable that potential conflicts of interest are 'material' facts with respect to clients and the Commission."). Defendants argue that LeBlanc did not care if they invested in the same securities as him. However, the standard for materiality is objective and the SEC was not required to prove that any investor actually relied on Defendants' misrepresentations. *SEC v. Life Partners Holdings, Inc.*, 854 F.3d 765, 779 (5th Cir. 2017); *SEC v. Blatt*, 583 F.2d 1325, 1331-32 (5th Cir. 1978). Regardless, LeBlanc testified that he would have wanted to know that his investment advisers were block trading in the same securities.

Finally, Defendants argue that the district court erred in finding that they misrepresented their trading practices with scienter. However, this claim was premised on their argument that they were permitted to trade in securities concomitantly with clients, which, as discussed above, is not true. In any event, the district court did not err; Perkins and Gilmore reviewed, understood, and authorized the Forms ADV and World Tree's compliance manual. They were aware of the prohibition in these documents against trading the same securities that Perkins and World Tree were trading for clients. Furthermore, they knew Perkins was doing just that. We hold that the record supports the district court's finding of scienter. *See SEC v. Sethi*, 910 F.3d 198, 206-08 (5th Cir. 2018) (affirming district court's finding of material misstatements where there was evidence the defendant knew he did not have relationships with major oil companies but repeatedly represented such relationships to entice investors).

C.

The district court ordered that Perkins and World Tree, jointly and severally, disgorge $347,947 in ill-gotten gains, as well as $36,355.98 in

prejudgment interest.[13] Perkins and World Tree raise several objections to the disgorgement award. Disgorgement "is an equitable remedy meant to prevent the wrongdoer from enriching himself by his wrongs." *Allstate Ins. Co. v. Receivable Fin. Co.*, 501 F.3d 398, 413 (5th Cir. 2007) (quoting *SEC v. Huffman*, 996 F.2d 800, 802 (5th Cir. 1993)). District courts ordinarily have "broad discretion" in determining a disgorgement award. *Huffman*, 996 F.2d at 803 (citing *CFTC v. Am. Metals Exch. Corp.*, 991 F.2d 71, 76 (3d Cir. 1993)); *see also SEC v. AMX, Int'l, Inc.*, 7 F.3d 71, 73 (5th Cir. 1993).

Here, the SEC approximated Perkins and World Tree's profits with Niden's analysis. The district court summarized Niden's analysis in its opinion, writing that Niden "determined the overall first-day profits and first-day rates of return for all trades in the omnibus account, and then hypothetically apportioned them in a fair manner (pro rata) among the different account types." Niden "then calculated the difference between what each group would have received in the hypothetical fair allocation and the actual performance of each group." The district court found reasonable Niden's method and estimation of the excess first-day profits Perkins and World Tree derived from the cherry-picking scheme.

Perkins and World Tree argue to this Court that the disgorgement amount is improperly based on the Disfavored accounts' unrealized first-day losses and thus the amount is larger than actual net profits from wrongdoing and amounts to unjust equitable relief to the victim; they also claim that the disgorgement award improperly includes Schwab's commission fee. Perkins and World Tree base their arguments on *Liu v. SEC*, 140 S. Ct. 1936, 1940 (2020), a case in which the Supreme Court held that "a disgorgement award

[13] Though the district court also imposed civil penalties against each Defendant, Defendants do not brief any challenges to the civil penalties and thus waive any related issues. *See, e.g.*, *United States v. Scroggins*, 599 F.3d 433, 446-47 (5th Cir. 2010).

that does not exceed a wrongdoer's net profits and is awarded for victims is equitable relief permissible under [15 U.S.C.] § 78u(d)(5)." *Liu* additionally held that "courts must deduct legitimate expenses before ordering disgorgement under § 78u(d)(5)" to "ensure that any disgorgement award falls within the limits of equity practice while preventing defendants from profiting from their own wrong." *Id.* at 1950. *Liu* is a seminal case that has, and will continue to, shape disgorgement awards. *See also SEC v. Blackburn*, 15 F.4th 676, 681-82 (5th Cir. 2021) (assessing challenge to a disgorgement remedy post-*Liu*); *SEC v. Hallam*, No. 21-10222, 2022 WL 2817119, at *15 (5th Cir. July 19, 2022) (laying out the question of whether *Liu* requires the SEC to "satisfy the requirements of a traditional equitable remedy" when successfully requesting a disgorgement remedy, or whether the only limitations on disgorgement remedies are those explicitly set out in the *Liu* opinion itself).

In this case, however, Perkins and World Tree did not challenge the SEC's proposed disgorgement amount in their pretrial or posttrial submissions—instead, they argued only that there was no "basis for disgorgement."[14] Nor did Perkins and World Tree propose specific deduction amounts, either before the district court or to this court. *See SEC v. Fowler*, 6 F.4th 255, 267 (2d Cir. 2021) ("Fowler failed to identify any additional 'legitimate' business expenses that, consistent with *Liu*, should have been deducted from an otherwise reasonable disgorgement amount. Yet it was his burden to do so. We therefore decline to remand to the District

[14] A legitimate business expense deduction argument was available at the time. *Liu* was decided on June 22, 2020, and the district court's opinion in this case came down January 15, 2021. Additionally, the Tenth Circuit has observed that even before *Liu* was decided, "an argument by defendants to secure a deduction of business expenses from a disgorgement amount, *was* available," and, indeed, was "hardly novel." *SEC v. GenAudio Inc.*, 32 F.4th 902, 949-50 (10th Cir. 2022).

Court on this issue."). *Liu* does not require the district court to conduct its own search for business deductions that defendants have not identified. Accordingly, we hold that the district court did not abuse its discretion in ordering disgorgement.[15]

IV.

For the foregoing reasons, we AFFIRM the judgment of the district court.

[15] Perkins and World Tree also challenge the imposition of joint and several liability under *Liu*. However, *Liu* allows for such liability where "partners engaged in concerted wrongdoing"—exactly the situation here. *See Liu*, 140 S. Ct. at 1949 ("The common law did, however, permit liability for partners engaged in concerted wrongdoing. The historic profits remedy thus allows some flexibility to impose collective liability." (internal citation omitted)). Of note, the district court here carefully determined that "the SEC did not establish that [Gilmore] participated in the cherry-picking scheme" and thus concluded that, where Gilmore and Wesley Perkins did not marry until years after the period of misconduct, and where "no wrongful profits resulted directly from [Gilmore]'s violations," she was *not* personally nor jointly and severally liable for the disgorgement.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

August 04, 2022

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Banc

No. 21-30063 SEC v. World Tree
USDC No. 6:18-CV-1229

Enclosed is a copy of the court's decision. The court has entered judgment under FED. R. APP. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FED. R. APP. P. 39 through 41, and 5TH CIR. R. 35, 39, and 41 govern costs, rehearings, and mandates. **5TH CIR. R. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following FED. R. APP. P. 40 and 5TH CIR. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. 5TH CIR. R. 41 provides that a motion for a stay of mandate under FED. R. APP. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under FED. R. APP. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari**. Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

OS Received 08/19/2022

The judgment entered provides that Appellants pay to Appellee the costs on appeal. A bill of cost form is available on the court's website www.ca5.uscourts.gov.

Sincerely,

LYLE W. CAYCE, Clerk

Laney Lampard

By:_____
Laney L. Lampard, Deputy Clerk

Enclosure(s)

Mr. Steven G. Durio
Mr. Daniel Matro
Mrs. Lauren Noel Maurer

CERTIFICATE OF SERVICE
SERVICE LIST

Pursuant to Commission Rule of Practice 151 (17 C.F.R. § 201.151), I certify that the:

DECLARATION OF LYNN M. DEAN IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENTS WESLEY PERKINS AND WORLD TREE FINANCIAL, LLC PURSUANT TO COMMISSION RULE OF PRACTICE 250

was served on August 19, 2022 upon the following parties as follows:

By eFAP
Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F. Street, N.E., Mail Stop 1090
Washington, DC 20549-1090
Facsimile: (703) 813-9793
Email: apfilings@sec.gov

By Email
Lauren Ashley Noel
Durio, McGoffin, Stagg & Ackermann
220 Heymann Boulevard
Lafayette, LA 70503
Email: lauren@dmsfirm.com
Counsel for Respondent World Tree Financial, LLC

Dated: August 19, 2022

Lynn M. Dean