UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 81585 / September 12, 2017

INVESTMENT ADVISERS ACT OF 1940
Release No. 4768 / September 12, 2017

INVESTMENT COMPANY ACT OF 1940
Release No. 32816 / September 12, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18172

In the Matter of **HOWARTH FINANCIAL SERVICES, LLC, and GARY S. HOWARTH,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(e), 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Howarth Financial Services, LLC ("HFS") and Gary S. Howarth ("Howarth").

II.

In anticipation of the institution of these proceedings, Respondents have each submitted an Offer of Settlement (collectively, the "Offers"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the

findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 21C of the Securities Exchange Act of 1934, Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds[1] that:

Summary

1. This proceeding arises out of a fraudulent "cherry-picking" scheme carried out by Howarth Financial Services, LLC ("HFS") and its principal, Gary S. Howarth ("Howarth") (collectively, "Respondents"). From March 2012 until July 2013, Howarth disproportionately allocated profitable trades from HFS's omnibus trading account to his personal accounts, while disproportionately allocating unprofitable or less profitable trades to HFS client accounts. Notably, in testimony, Howarth admitted he breached his fiduciary duties to his clients when he made preferential allocations of certain trades in March 2013.

Respondents

2. Howarth Financial Services, LLC (CRD# 132794) is an Oregon limited liability company with its principal place of business in Portland, Oregon. It has been registered as an investment adviser with the State of Oregon since 2008. During the period at issue, the firm had approximately $4.2 million in assets under management. HFS's fees were calculated as a percentage of each client's assets under management.

3. Gary Stanley Howarth (CRD# 2067166), 67 years old, is a resident of Portland, Oregon. He is the founder, principal, sole owner, and sole employee of HFS. Howarth has been associated with HFS since 2005, and was associated with other investment advisers between 2002 and 2005. He has no disciplinary history.

Facts

4. From March 28, 2012 to July 10, 2013, Howarth and his firm, HFS, engaged in a cherry-picking scheme in which Howarth allocated a disproportionate number of profitable trades to one or both of his personal account(s), while disproportionately allocating unprofitable or less profitable trades to various HFS client accounts. HFS had discretionary authority over the HFS

[1] The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

client accounts that were impacted by the cherry-picking scheme. Howarth, as HFS's principal, sole owner and only employee, was solely responsible for HFS's trades and allocations.

5. Howarth cherry-picked profitable trades for his personal accounts, to the detriment of HFS client accounts, in two ways.

6. First, he allocated favorable purchases to his personal accounts, while allocating losing trades to HFS client accounts. Typically, after purchasing a block of securities through HFS's omnibus account, Howarth delayed allocating the purchase until he had had an opportunity to observe the relevant security's intraday performance. In most cases, when the relevant security's price went up, Howarth sold the position, and allocated both trades (*i.e.*, the purchase and sale) to one or both of Howarth's personal accounts, thereby realizing a gain. Conversely, when the security's price went down over the course of the day, in most cases, Howarth did not sell, but instead allocated the purchase to HFS clients – effectively leaving those clients with unrealized first-day losses.

7. Second, Howarth used the omnibus account to first sell and then purchase shares of the same security, which he thereafter allocated to his personal accounts in reverse order to secure profits for himself. Generally, he did this by first using the omnibus account to sell securities that were held in HFS client accounts but that were not held in either of Howarth's personal accounts. Next, Howarth would wait to see if the price of the relevant security decreased or increased. If it dropped, he would purchase the same number of shares of the same security at the lower price. Then, after the purchase, Howarth would allocate the transactions to his personal accounts in reverse order, allocating the purchase first, and then the sale (even though the purchase took place after the sale), thereby taking a profitable pair of trades for himself. On the other hand, if the security's price did not go down, then he did not purchase that security, but instead would typically allocate the sale to his clients' accounts. The following example is representative of this type of transaction:

- On February 27, 2013, Howarth purchased 1,020 shares of ProShares UltraShort S&P500 ("SDS") at $47.7699 per share through HFS's omnibus account and allocated the securities *pro rata* to three client accounts.

- On March 1, 2013, at 8:33 a.m. ET, Howarth sold 1,020 shares of SDS at $47.92 per share through HFS's omnibus account. Howarth admitted that, in executing this particular trade, he was effectively selling his clients' SDS holdings. However, rather than allocating the sale to his clients' accounts and thereby finalizing the transaction, Howarth held the sale in HFS's omnibus account.

- Within the next couple of hours, the price of SDS dropped. So, at 9:57 a.m. ET, Howarth repurchased the same position (1,020 shares of SDS) at the lower price ($47.8799) through HFS's omnibus account.

- The same day, at 11:22 a.m. ET, Howarth allocated both March 1 transactions – the sale and repurchase – to his personal accounts in reverse order, taking the profitable pair of trades for himself.

On March 4, 15, and 18, 2013, Howarth repeated the pattern outlined above, allocating profitable pairs of trades to his personal accounts.

8. When Howarth was presented with these March 2013 trades during testimony, he admitted that he had misused the omnibus trading account, placed his interests ahead of his clients', and breached his fiduciary duty. Howarth made these admissions specifically as to the example referenced above. However, on at least 20 other trading days, Howarth executed a similar pattern of trades.

9. In sum, from March 28, 2012 through July 10, 2013, Howarth allocated a disproportionate number of profitable trades (*i.e.*, trades that had a positive first-day return) to his personal accounts, and a disproportionate number of unprofitable trades (*i.e.*, trades that had a negative first-day return) to HFS client accounts.

10. The difference between Howarth's first-day returns and those of his clients is highly statistically significant. The probability that the disproportionate allocation of favorable trades to Howarth's personal accounts was due to chance is less than one in a billion.

11. Not surprisingly, Howarth's success rate was also significantly better than that of his clients. From March 28, 2012 through July 10, 2013, Howarth's personal accounts were allocated a total of 623 day trades, of which 88.4% were profitable. By contrast, HFS client accounts were allocated just four day trades, of which only one was profitable. Over the same period, HFS client accounts were allocated 302 trades that remained open at the time of allocation ("unrealized trades"), of which 68.5% were losing trades. By contrast, Howarth's personal accounts were allocated just 19 unrealized trades, all of which were losing trades.

12. In June 2013, the brokerage firm through which HFS executed its trades reviewed Howarth's trading patterns and observed that Howarth had used his clients' holdings to allocate profitable trades to his personal accounts in reverse order. As a consequence, on July 10, 2013, the brokerage firm terminated its relationship with HFS.

13. For the period from June 6, 2012 through July 10, 2013, Respondents' ill-gotten gains from cherry-picking, including losses avoided, were $38,172.

Violations

14. As a result of the conduct described above, Respondents willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities, by knowingly or recklessly allocating profitable trades to Howarth's personal accounts at the expense of HFS clients.

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

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, and for the protection of investors to impose the sanctions agreed to in Respondents' Offers.

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

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

B. Respondent Howarth be, and hereby is:

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

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

C. Any reapplication for association by Respondent Howarth will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondents shall, within 14 days of the entry of this Order, pay, jointly and severally, disgorgement of $38,172.00 and prejudgment interest of $5,272.00 to the Securities and Exchange Commission. The Commission will hold funds paid pursuant to this paragraph in an

account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, transfer them to the general fund of the United States Treasury, subject to Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

E. Respondents shall, within 14 days of the entry of this Order, pay, jointly and severally, a civil money penalty in the amount of $160,000.00 to the Securities and Exchange Commission. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

(1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

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

Payments by check or money order must be accompanied by a cover letter identifying Howarth Financial Services, LLC and Gary S. Howarth as Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to John W. Berry, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 444 South Flower Street, Suite 900, Los Angeles, California 90071.

F. Regardless of whether the Commission in its discretion orders the creation of a Fair Fund for the penalties ordered in this proceeding, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all

purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

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

By the Commission.

Brent J. Fields
Secretary