

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 83382 / June 5, 2018**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 4935 / June 5, 2018**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 33116 / June 5, 2018**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-18532**

**In the Matter of**

**GARY W. FREEMAN**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO SECTION 21C OF THE  
SECURITIES EXCHANGE ACT OF 1934,  
SECTIONS 203(f) AND 203(k) OF THE  
INVESTMENT ADVISERS ACT OF 1940,  
AND SECTION 9(b) OF THE INVESTMENT  
COMPANY ACT OF 1940, MAKING  
FINDINGS, AND IMPOSING REMEDIAL  
SANCTIONS AND A CEASE-AND-DESIST  
ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Gary W. Freeman (“Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to

Section 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

### **III.**

On the basis of this Order and Respondent’s Offer, the Commission finds<sup>1</sup> that

#### **Summary**

This proceeding arises from Freeman’s “cherry-picking” of profitable trades to benefit himself. From at least July 17, 2012, through mid-September 2013 (the “relevant period”), Freeman disproportionately allocated profitable trades to himself, his wife, or his mother and disproportionately allocated unprofitable trades to his clients. As a result, Respondent received at least \$53,379 in ill-gotten gains.

#### **Respondent**

1. Gary W. Freeman, age 66, is a resident of Tomball, Texas, and is currently unemployed. During the relevant period, Respondent was affiliated with Oak River Financial Group, Inc. (the “Adviser”), an investment adviser registered with the State of Texas, as a vice president and the chief investment officer. Prior to the relevant period, Respondent was affiliated with various broker-dealers and investment advisers for approximately 30 years.

#### **Facts**

2. During the relevant period, the Adviser had from \$21.4 million to \$27.8 million in assets under management and just over 100 clients, most of whom were not high net worth individuals. The Adviser managed all client accounts on a discretionary basis, except for one client account with about \$2.5 million in assets. The Adviser charged clients an advisory fee based on their assets under management.

3. Freeman, as chief investment officer of the Adviser, was responsible for managing all the securities trading in the Adviser’s client accounts. In exchange, Freeman received all of the advisory fees paid by the clients he had retained and a portion of the fee paid by the clients whom others had retained.

4. During the relevant period, a registered broker-dealer (the “Broker-Dealer”) was the custodian for the client accounts managed by Freeman. He conducted all the securities trading through the Broker-Dealer. In trading a particular security for multiple clients, Freeman could either place separate trades directly in each client’s individual account or place a single trade in the

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Adviser's omnibus trading account and then allocate that block trade to each client's individual account. He placed the vast majority of trades through the Adviser's omnibus trading account.

5. Freeman engaged in the cherry-picking of trades through the Adviser's omnibus trading account by disproportionately allocating profitable trades to his personal accounts and unprofitable trades to client accounts. He was able to allocate trades by buying a stock in the omnibus trading account in the morning and allocating the stock purchase later in the day, generally just before or after the market close. Freeman used the time between the stock purchase and the allocation to see if the price of the stock went up or down. If the stock price went up during the day, he generally allocated the trade to one of his personal accounts. In many instances where the intra-day stock price increased, Freeman sold the stock near the close of trading out of the omnibus account, and then allocated both the stock purchase and stock sale, and the profit on that trade, to one of his personal accounts. If, on the other hand, the stock price went down, Freeman generally allocated the trade to client accounts.

6. In January 2013, the Broker-Dealer's surveillance of the Adviser accounts found that Freeman was using the omnibus trading account to trade stocks for his accounts. The Broker-Dealer found that in January 2013, he had executed 17 day-trades through the omnibus trading account and that all of these trades were profitable and had been allocated to one or more of his personal accounts. The Broker-Dealer concluded that Freeman's profit on the trades was \$7,124.40. On or about January 25, 2013, the Broker-Dealer called him to warn him against using the omnibus account in this way and to stress that the omnibus trading account was to be used to allocate trades to multiple client accounts and not to allocate to one of his accounts.

7. After this call, Freeman continued to cherry-pick profitable trades in ways to avoid detection by the Broker-Dealer. First, instead of day-trading through the omnibus account and then allocating both the purchase and the sale to one of his personal accounts, he placed the initial trade in the omnibus account, the second trade through one of his personal accounts, and allocated the initial trade to that personal account. Second, when Freeman allocated profitable trades to one of his personal accounts, he allocated a small portion of the profitable trade to a client account, while allocating the rest of the profit to a personal account.

8. In August and September 2013, the Broker-Dealer inquired about Freeman's trading from May through August 2013. The Broker-Dealer found one of the day trades that he had split between the omnibus trading account and one of his personal accounts. The Broker-Dealer also found that Freeman appeared to have a pattern of allocating trades based on the intra-day performance of the stock, with most losing trades being allocated to clients and all profitable trades being allocated to one of Respondent's personal accounts with a small portion of the trade being allocated to a client.

9. In mid-September 2013, the Broker-Dealer informed Freeman that it was terminating its relationship with the Adviser because it had found improprieties in how he was using the omnibus trading account. At that point, Freeman's cherry-picking of trades stopped.

10. Freeman's cherry-picking of profitable trades financially benefitted him and disadvantaged his clients. During the relevant period, his total realized and unrealized profits on the days he cherry-picked was \$53,379. During that time, he earned a positive 0.555% return on the trades allocated to his personal accounts, while his clients earned a negative -0.405% return on the trades allocated to their accounts.

11. The difference between Freeman's returns and the clients' returns is statistically significant. The probability that the disproportionate allocation of profitable trades to Respondent's personal accounts was due to random chance was less than one in a billion.

### **Violations**

12. As a result of the conduct described above, Respondent willfully violated Section 10(b) of the Exchange Act and Rules 10b-5(a) and 10b-5(c) thereunder, which prohibit, respectively, any person from (1) employing any deceptive device, scheme, or artifice to defraud; or (2) engaging in any manipulative or deceptive act, practice, or course of business that operates as a fraud on any person in connection with the purchase or sale of any security.

13. As a result of the conduct described above, Respondent willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit, respectively, an investment adviser from (1) employing any device, scheme, or artifice to defraud clients or prospective clients; or (2) engaging in any transaction, practice, or course of business that operates as a fraud or deceit upon any clients or prospective clients.

### **IV.**

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

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

A. Respondent Freeman 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 Freeman be, and hereby is:

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

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal

underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

C. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, 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. Respondent shall, within 14 days of the entry of this Order, pay disgorgement of \$53,379 and prejudgment interest of \$6,271.82 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

E. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$53,379 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). 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) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

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

Payments by check or money order must be accompanied by a cover letter identifying Freeman as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to John W. Berry, Associate Regional

Director, Division of Enforcement, Securities and Exchange Commission, 444 S. Flower St., Suite 900, Los Angeles, California 90071.

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

V.

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

By the Commission.

Brent J. Fields  
Secretary