

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 88797 / May 1, 2020**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 5494 / May 1, 2020**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 33860 / May 1, 2020**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-19782**

**In the Matter of**

**WENDY LIEBERMAN  
KIRKLAND, DUANE  
DURWARD DAVIS, STEPHEN  
ALFRED SCHMIDT, GOLD  
KEY INVESTING, LLC,  
INVESTMENT SOFTWARE  
SYSTEMS, INC., TRADEWINS  
PUBLISHING CORP., AND  
UNIVERSAL FINANCIAL  
INDEPENDENCE, INC.**

**Respondents.**

**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 Wendy Lieberman Kirkland (“Kirkland”) and cease-and-desist proceedings pursuant to Section 21C of the Exchange Act against Duane Durward Davis (“Davis”), Stephen Alfred Schmidt (“Schmidt”), Gold Key Investing, LLC (“Gold Key”), Investment Software Systems, Inc. (“Investment

Software”), TradeWins Publishing Corp. (“TradeWins”), and Universal Financial Independence, Inc. (“Universal Financial”) (Kirkland, Davis, Schmidt, Gold Key, Investment Software, TradeWins, and Universal Financial hereinafter collectively, “Respondents”).

## II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (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 Respondents 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(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<sup>1</sup> that

### Summary

1. Kirkland, an investment adviser based in Marshall, North Carolina, misrepresented the profitability and historical performance results of various options-trading strategies that she marketed and sold primarily to retail investors through various subscription services. Specifically, Kirkland included misleading and inflated performance results (*e.g.*, “83% win-rate and 910% annual returns”) in her marketing materials, and the materials were also replete with false and misleading retiree testimonials. The materials also included the misrepresentation that Kirkland had personally made “\$1.96 million in 14 months” through options-trading.

2. Kirkland and Davis, who managed and fulfilled subscriptions, and Schmidt, a newsletter publisher who marketed her subscriptions, informed Kirkland’s subscribers that they could open accounts at unaffiliated broker-dealers and utilize Kirkland’s trade signals. Between 2015 and 2019, hundreds of subscribers (hereafter “auto-trading investors”), opened brokerage accounts with initial account values totaling approximately \$13.6 million.

3. The trading results across these accounts varied widely based on the particular underlying options-trading strategies elected by the auto-trading investor. However, none of the strategies generated the same level of results advertised. Kirkland and Davis received complaints from auto-trading investors who were disappointed in the performance of Kirkland’s strategies,

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<sup>1</sup> The findings herein are made pursuant to Respondents’ Offers and are not binding on any other person or entity in this or any other proceeding.

and Kirkland and Davis were aware of inaccuracies in the advertised historical performance results. While Schmidt did not have direct interaction with auto-trading investors, he acted recklessly by failing to verify the accuracy of certain information that was disseminated to the subscribers, and was informed that Kirkland's trading strategies were not performing as advertised.

### **Respondents**

4. **Wendy Lieberman Kirkland ("Kirkland")**, age 72, is a resident of Marshall, North Carolina. Kirkland is the founder and President of Universal Financial Independence, Inc., which is a company that she formed as a vehicle to sell her books and subscription services. Kirkland is not registered with either the Commission or any state securities regulator.

5. **Duane Durward Davis ("Davis")**, age 77, is a resident of Hot Springs, North Carolina. Davis is the founder and President of Investment Software Systems, Inc. and managing member of Gold Key Investing, LLC.

6. **Stephen Alfred Schmidt ("Schmidt")**, age 62, is a resident of St. James, New York. Schmidt is the founder and Chief Executive Officer of TradeWins Publishing Corp.

7. **Gold Key Investing LLC ("Gold Key")**, a sales call center for investment subscriptions, is an active North Carolina limited liability company with its principal place of business in Hot Springs, North Carolina.

8. **Investment Software Systems, Inc. ("Investment Software")**, a fulfillment services provider for authors and publishers in the investment industry, is an active North Carolina corporation with its principal place of business in Hot Springs, North Carolina.

9. **TradeWins Publishing Corp. ("TradeWins")**, an investment marketing and publishing company, is an active New York corporation with its principal place of business in St. James, New York.

10. **Universal Financial Independence, Inc. ("Universal Financial")**, is an active North Carolina corporation with its principal place of business in Marshall, North Carolina. Kirkland sells books and subscription services through this company.

### **Kirkland's Options-Trading Strategies and Trade Signal Services**

11. Kirkland's trading strategies typically involved detailed analysis of two competing momentum indicators tied to the price movement of certain NYSE-listed stocks. Specifically, Kirkland directed the purchase of options on modestly priced NYSE-listed stocks for which the corresponding Price Percentage Oscillator (which generally decreases when a stock's share price is declining) and Average Directional Movement Index (which generally increases when a stock price is declining) simultaneously changed directions. Such coordinated movement of the momentum indicators signaled a time-limited "squeeze," or change in the direction of the underlying stock's price movement, thus signaling an opportunity to purchase either call or put

options based on the anticipated direction of the stock's share price movement. Moreover, Kirkland's trading strategies did not involve high frequency trading. She identified trade signals per her trading strategies at a sporadic rate, at times with only a few trades a month.

12. Kirkland entered into agreements with Schmidt and Davis through their respective entities to sell subscriptions regarding her trading strategies, which included a mix of books, DVDs, newsletters, trade alerts, and a chatroom. The most costly subscriptions included "trade alerts," which gave Kirkland's trade signals in real time ("trade signal services"). Subscribers could self-execute trades or enroll through an unaffiliated broker dealer in auto-trading.

13. Any subscriber who desired to enroll in auto-trading using the trade signals generated by Kirkland's trade signal services was required to open an account with a broker dealer. Once an account was opened through an unaffiliated broker dealer, the investor instructed the broker dealer through a letter of direction to execute all trade signals for the subscription purchased that were emailed from Kirkland's trade signal services. Davis created and managed a software program which generated the trade signals per Kirkland's strategies and market conditions.

### **Roles and Compensation Regarding Trade Signal Services**

14. Kirkland, Davis, and Schmidt each discharged critical roles in providing these trade signal services, and received a percentage of the net profits derived from the subscriptions. Some subscribers utilizing the trade signal services enrolled in auto-trading through an unaffiliated broker dealer that would automatically execute the trade signals generated by Kirkland's trade signal services. Neither Kirkland, Davis, nor Schmidt were compensated by the unaffiliated broker dealer for trades that were executed utilizing Kirkland's trade signal services.

### ***Kirkland Served as an Investment Adviser***

15. Kirkland served as an investment adviser to her subscribers through her trade signal services as she explained how they could benefit from her trade signal services. From time to time, she gave tailored advice to individual subscribers, including by recommending which of her trade signal services would be the best fit for a subscriber and the amount to invest in relation to the subscriber's total assets. Kirkland also addressed complaints regarding trade performance. Kirkland also agreed to verify the marketing materials for accuracy before they were circulated.

### ***Davis Managed, Fulfilled, and Sold Subscriptions***

16. Davis managed all aspects of the trade signal services through his company, Investment Software, which essentially fulfilled and administered the subscriptions ranging from order intake to customer complaints. Separately, Davis ran a call center through his other company Gold Key, which marketed and sold the trade signal services as add-on services to existing subscribers. Davis also generated the trade signals, and created performance track records of Kirkland's trading strategies with Kirkland's input, which were used to market and sell the trade signal services.

### ***Schmidt Marketed and Sold Subscriptions***

17. Schmidt provided the platform to market and sell subscriptions through his established investment marketing and publishing company, TradeWins. He was removed from the details and underlying content, as he neither interfaced with investors nor created the performance track records used to promote Kirkland's subscriptions. However, TradeWins' marketing materials and TradeWins' website were critical to marketing and selling the trade signal services. For instance, TradeWins' website featured Kirkland and branded her as the "Renowned Grandma Trader" who held the "Holy Grail" to income and retirement.

18. Kirkland, Davis, and Schmidt carried out their respective roles through their respective entities, Universal Financial, Gold Key, Investment Software, and TradeWins.

19. Per agreements that they entered into on behalf of their respective entities, Kirkland, Davis, and Schmidt agreed to distribute the net profits from the subscription services between them. Schmidt received 50% of the profits, and Kirkland and Davis divided up the rest of the profits evenly initially, but changed it to 30% for Kirkland and 20% for Davis starting in 2017. Davis also received 40% of any add-on services sold through Gold Key.

### **False and Misleading Representations Regarding Trade Signal Services**

20. Marketing materials highlighted the profitability of Kirkland's trading strategies, Kirkland's personal wealth from ongoing options-trading, and positive testimonials. As a result, hundreds of automated trading brokerage accounts were opened by investors located throughout the United States, and invested approximately \$13.6 million in such accounts.

21. As detailed below, these representations were false and misleading. Kirkland's trade signal services did not generate the same level of results as advertised, Kirkland did not personally trade according to her trade signal services, and auto-trading investors were dissatisfied with the trade signal services

### ***Kirkland's Trading Performance Results***

22. Marketing brochures emphasized the historical success of Kirkland's trades, and implied that investors could realize similar profits with the trade signal services. For example, a brochure stated that Kirkland made "win-rates" of 83% and annual returns of 910%.

23. The actual performance of Kirkland's trade signal services did not support these claims of high return and win-rates. Auto-trading investors experienced overall returns that were substantially lower than the percentages advertised. Accordingly, Kirkland and Davis received complaints that their subscriptions failed to produce the profits as advertised and promised.

24. Kirkland and Davis used performance track records to market Kirkland's trade signal services as profitable. These track records detailed all individual trades and a summary of the "winning" and "losing" trades. Davis and Kirkland created these track records based on hypothetical data selected in hindsight. Without verifying their accuracy, Schmidt then incorporated these performance track records in marketing materials.

25. The basis and methodology in generating the detailed performance track records were not adequately disclosed to investors. Notwithstanding fine-print disclaimers, the brochures implied that the results reflected real trades. To illustrate, one brochure - circulated before offering a subscription - presented the results as the “the entire one year track record – just so you see everything I’m telling you in this report is real.”

26. Each of Kirkland’s trade signal services also had a dedicated website which posted performance trade results based on actual trading data. Yet, some of these results were outdated for years, and merely reflected a summary of the profits, which concealed individual trade losses.

27. A broker who executed Kirkland’s trade signals for auto-trading investors complained to Kirkland regarding the lack of transparency in the use of summary trade results instead of detailed track records. The broker explained that it was important that Kirkland be fully transparent and disclose all individual trades, including those which had losses.

28. Based on the above material and false or misleading information regarding the profitability of the trade signal services, hundreds of investors enrolled in auto-trading services through unaffiliated broker dealers.

29. Kirkland and Davis knew, or were reckless in not knowing, the above representations regarding Kirkland’s trading performance in the marketing materials were false or misleading due to investors’ complaints that their accounts produced profits substantially lower than the overall success rates advertised. They also knew that the advertised track records were misleading because they produced artificially strong track records by relying on hypothetical data and signal parameters selected in hindsight. Yet, they were marketed as “entire” historical records. Similarly, Kirkland and Davis posted summary charts on websites in lieu of complete trade lists which had the effect of disguising individual trade losses and making the results more appealing to investors. They were put on notice that such tactics could be misleading when a broker emailed Kirkland that a summary improperly concealed losing trades. Moreover, they failed to update the trading summaries for several years, even though they were presented as if they were current.

30. Kirkland informed Schmidt that auto-trading investors were dissatisfied with the performance of the trade signal services, and that a broker raised concerns regarding the use of summary charts to display performance results.

31. Schmidt incorporated the performance track records in the marketing materials without verifying their accuracy. He knew or was reckless in not knowing that the manner of presenting performance results may be false or misleading when he received indications that the trade signal services were under-performing and that a broker complained of misleading trade results through communications with Kirkland.

32. Even after Kirkland, Davis, and Schmidt received notice of complaints and concerns, the marketing materials continued to make similar representations regarding the performance of Kirkland’s trade signal services.

### ***Kirkland's Personal Options-Trading Success***

33. Investors were also misled to believe that Kirkland personally traded according to her strategies, and that she was wealthy as a result. For instance, one brochure stated that her trading “... *allowed my husband Jack and I to turn \$6,000 per trade into \$1.96 million in just 14 months!*” (emphasis in original). In effect, investors had the false impression that Kirkland was successful, that they could expect the same results, and that she was assuming the same risks that they were taking through her trade signal services.

34. Many investors enrolled in trade signal services due to these representations regarding Kirkland's personal success with options-trading, and desired to achieve the same high profits that Kirkland purportedly earned through her options-trading strategies.

35. In reality, Kirkland stopped trading in options-trading in or around 2012, and never made millions through options-trading.

36. Certain auto-trading investors relayed their disappointment to Kirkland when their trade signal services did not produce the wealth and success that Kirkland had achieved according to the advertisements.

37. Kirkland knew or was reckless in not knowing that the representations regarding her personal success with options-trading were false and misleading as she personally knew when she stopped options-trading, and that she never made millions through options-trading.

### ***Investor Testimonials***

38. Marketing materials contained outdated and effusive testimonials from investors regarding their profits and satisfaction with particular trade signal services.

39. Investors enrolled in trade signal services due, in part, to the positive claims of profitability and success conveyed in the testimonials.

40. Testimonials were falsely presented as related to the subscription under promotion when, in fact, they were routinely cut and pasted from testimonials shared regarding different subscriptions offered in the past. Thus, investors had the false impression that testimonials included in a particular marketing brochure were both timely and related to the subscription under promotion.

41. At the same time that marketing materials were incorporating these positive testimonials, auto-trading investors complained to Kirkland and Davis regarding their dissatisfaction with the trade signal services and the performance of their auto-trading accounts. Kirkland also informed Schmidt that the trade signal services were failing to meet auto-trading investors' expectations.

42. In 2016, a couple which previously submitted a positive testimonial emailed Kirkland that they felt uncomfortable with her continued use of their testimonial to promote her

services given their trading losses. Kirkland did not update or remove their testimonial, and it was circulated for years thereafter.

43. Kirkland knew or was reckless in not knowing that the manner in which the testimonials was being used in the marketing materials were false and misleading. Notwithstanding complaints from trade signal investors regarding their disappointment with the trade signal services, she did not take any steps to correct, update, or remove any of the testimonials.

44. Schmidt knew or was reckless in not knowing that the testimonials in the marketing materials may be false or misleading. Schmidt incorporated the testimonials into the marketing materials without ensuring that they were current and accurate, even after he received indications that auto-trading investors were dissatisfied. Schmidt also knew or was reckless in not knowing that mixing outdated testimonials related to one subscription service into an advertisement related to another subscription service is misleading.

### **Violations**

45. As a result of the conduct described above, Davis, Gold Key, Investment Software, and Universal Financial committed violations of 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.

46. As a result of the conduct described above, Kirkland willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser.

47. As a result of the conduct described above, Schmidt and TradeWins caused Kirkland's, Davis's, Gold Key's, Investment Software's, and Universal Financial's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

### **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 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. Kirkland 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. Davis, Schmidt, Gold Key, Investment Software, TradeWins, and Universal Financial 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.

C. Kirkland 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.

D. Any reapplication for association by Kirkland will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, compliance with the Commission's order and payment of any or all of the following: (a) any disgorgement or civil penalties ordered by a Court against the Respondent in any action brought by the Commission; (b) any disgorgement amounts ordered against the Respondent for which the Commission waived payment; (c) any arbitration award related to the conduct that served as the basis for the Commission order; (d) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (e) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

E. Kirkland, Davis, and Schmidt shall, within 10 days of the entry of this Order, each pay a civil money penalty in the amount of \$40,000 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) Kirkland, Davis, and Schmidt may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Kirkland, Davis, and Schmidt 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) Kirkland, Davis, and Schmidt 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 Kirkland, Davis, and Schmidt 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 Justin C. Jeffries, Division of Enforcement, Securities and Exchange Commission, 950 East Paces Ferry Road N.E., Suite 900, Atlanta, GA 30326.

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

By the Commission.

Vanessa A. Countryman  
Secretary