

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11338 / December 12, 2024

INVESTMENT ADVISERS ACT OF 1940
Release No. 6788

ADMINISTRATIVE PROCEEDING
File No. 3-22346

In the Matter of

**SEACREST WEALTH
MANAGEMENT, LLC**

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933 AND
SECTIONS 203(e) AND 203(k) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against SeaCrest Wealth Management, LLC (“SeaCrest” or “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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933 and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-And-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

SeaCrest is a New York-based investment adviser registered with the Commission. From at least June 2019 to August 2022 (the "Relevant Period"), Eric Cobb, an investment adviser representative associated with SeaCrest, engaged in a fraudulent "cherry-picking" scheme, in which he disproportionately allocated profitable trades to certain personal and family accounts he controlled, and disproportionately allocated unprofitable trades to the accounts of unrelated advisory clients. He executed his scheme by buying the securities in an omnibus or "block" account, waiting to allocate those trades to his client accounts until the following day, at which time he would see whether the price of the traded securities had increased or decreased. In addition, Cobb routinely placed certain of his clients in unsuitable, highly volatile and highly risky securities that were contrary to their indicated risk tolerances.

SeaCrest failed to implement policies and procedures reasonably designed to prevent violations of the federal securities laws, and it failed reasonably to supervise Cobb. In addition, SeaCrest's Form ADV brochures negligently included statements about its practices and procedures that were false or misleading in light of SeaCrest's compliance and supervision failures.

Respondent

1. **SeaCrest** is a Delaware limited liability company with its principal place of business in Purchase, New York. SeaCrest has been registered as an investment adviser with the Commission since May 12, 2008. While its compliance was centralized under its Chief Compliance Officer ("CCO") in New York, SeaCrest has a decentralized business model, and most recently has 26 offices around the country where it conducts investment advisory business. SeaCrest currently provides services to over 3,500 accounts with approximately \$1.2 billion in assets under management on a discretionary basis and 324 accounts with approximately \$80 million in assets under management on a non-discretionary basis.

¹ 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.

Other Relevant Individual

2. **Cobb** (CRD # 2623064), age 52, resides in Spartanburg, South Carolina. He was associated with SeaCrest from approximately March 2016 through August 1, 2022. Cobb has been employed at various securities firms since 1996 until he was terminated by SeaCrest in or around August 1, 2022. He previously held series 7, 63, and 65 securities licenses, which have expired.

Background

Cobb's Cherry-Picking Scheme

3. From at least June 2019 to August 2022 (the "Relevant Period"), Cobb managed advisory client accounts on a discretionary basis. Cobb's client accounts consisted of accounts that he controlled and that were held in his own name, jointly with his wife, and in the names of certain family members (together, the "Favored Accounts"), as well as client accounts unrelated to him (the "Disfavored Accounts"). Cobb used an omnibus or master account ("Master Account") to place aggregated securities transactions, or "block" trades, on behalf of the accounts he managed. During the Relevant Period, Cobb used the Master Account to purchase securities in block trades on behalf of both the Favored and Disfavored Accounts. Most of the transactions entered by Cobb were entered as block trades and subsequently allocated to client accounts (approximately \$43 million) while only a minority of the money was used in non-block trades to purchase securities directly into client accounts (approximately \$9 million).

4. Cobb reviewed and agreed to SeaCrest's policies and procedures during the Relevant Period. The policies and procedures required that block trades be allocated in a fair and equitable manner, including that investment adviser representatives not favor certain accounts over other accounts, and that investment adviser representatives must give individual investment advice to each participating account. The compliance manual further required the allocation method be specified in writing before entering an aggregated order.

5. During the Relevant Period, Cobb routinely waited until the day following his entry of block trades (or later) to allocate those trades to client accounts, at which time Cobb was able to see whether the prices of the securities he traded the day before had gone up or gone down. Cobb then disproportionately assigned "winning trades" (*i.e.*, trades where the price of the securities increased as of the time of allocation) to the Favored Accounts, while disproportionately assigning "losing trades" (*i.e.*, trades where the price of the securities decreased as of the time of allocation) to the Disfavored Accounts. Specifically, during the Relevant Period, Cobb allocated block trades for particular securities to the Favored Accounts on 286 occasions, with a dollar-weighted win rate of approximately 75%.² But during that same period, Cobb allocated block trades for particular securities to the Disfavored Accounts on 742 occasions, with a dollar-weighted win rate of

² A dollar-weighted win or loss rate takes into consideration the amount of the investment. The calculation is: total money invested in winning trades/total money invested.

approximately only 47%. Prior to receiving a warning from SeaCrest in May 2020, nearly all of Cobb's block trades—well over 90%—were allocated the following day. After receiving the warning, Cobb continued to allocate some of his block trades the following day, although more allocations were done on the same day as the trades were executed.

6. These disproportionate allocations were not random, but rather reflected Cobb's knowing or reckless favoritism: The average return measured at time of allocation for the Favored Accounts based on the foregoing was approximately 4.7%, while the average return at time of allocation for the Disfavored Accounts was approximately 0.1%. The likelihood that Cobb would have earned these returns for the Favored Accounts in the absence of cherry-picking, with trade allocations determined by chance, is less than 1%.

7. As a result of this cherry-picking scheme, Cobb directed ill-gotten gains of at least \$130,129 to the Favored Accounts, including approximately \$108,604 directly to Cobb. This sum represents the difference in unrealized profits received by the Favored Accounts at the time of allocation, and the unrealized profits the Favored Accounts would have received if Cobb had not favored them over the Disfavored Accounts.

Cobb's Unsuitable Trading

8. During the Relevant Period, Cobb also engaged in a pattern of unsuitable trading in at least four client accounts. These clients identified their investment objectives to Cobb as either preserving capital or moderate capital appreciation. Despite this, Cobb, who had discretionary trading authority over his client's accounts, routinely placed these clients in highly speculative and risky securities designed for day trading.

9. For instance, Cobb regularly placed these clients in highly-leveraged exchange traded funds ("ETFs").³ As a result of their highly-leveraged nature, these ETFs often experience larger price moves over the course of the trading day. The prospectuses for these ETFs contained numerous warnings, including in bold typeface, highlighting their volatility and investment risks. For instance, one ETF prospectus warned that its "ETFs are not suitable for all investors and should be utilized only by sophisticated investors who understand leverage risk and the consequences of seeking daily leveraged investment results and intend to actively monitor and manage their investment."

10. At least 10 of these leveraged ETFs 'reset' daily, meaning that they were designed to achieve their stated objectives on a daily basis. Due to the effect of compounding, their performance over longer periods of time can differ significantly from the performance (or inverse

³ Leveraged ETFs are riskier than traditional ETFs in that they seek to deliver multiples of the short-term performance (*e.g.*, daily) of the index or benchmark they track. FINRA Regulatory Notice 09-31, published in June 2009, warned that leveraged ETFs "are highly complex financial instruments that are typically designed to achieve their stated objectives on a daily basis" and that they "are typically unsuitable for retail investors who plan to hold them for longer than one trading session, particularly in volatile markets."

of the performance) of their underlying index or benchmark during the same period of time. As many of their notices cautioned, leveraged ETFs typically are not suitable for retail clients who plan to hold them for more than one trading session, particularly in volatile markets. A number of the leveraged ETFs Cobb placed his clients in—including the two he most frequently placed his clients in—had daily reset periods and Cobb often held the ETFs for periods much longer than a single day.

11. During the Relevant Period, Cobb traded extensively in these risky ETFs. At least 80% of the purchases made in Cobb’s block account —\$34 million—were in these risky leveraged ETFs, with many of these purchases made in accounts for the four clients.

12. At the outset of any client relationships, Cobb, who had discretionary authority over his clients’ accounts, had a duty to conduct a suitability analysis and provide suitable investment advice for each client based on each clients’ investment profile. Cobb, however, did not conduct sufficient, if any, analysis to determine that these leveraged ETF investments were in the best interest of his advisory clients, nor did he conduct sufficient, if any, periodic or ongoing analysis to make sure the recommendations were consistent with clients’ current objectives. In addition, while he did not discuss the risks of these leveraged ETFs and, with regard to the leveraged ETFs, their holding periods with those clients, he kept his clients invested in these products on a long-term basis, while the prospectuses recognized they were mainly for short term use.

SeaCrest Failed to Implement Its Policies and Procedures

13. Registered investment advisers are required to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules adopted by the Commission under the Act. During the Relevant Period, SeaCrest’s compliance manual included a policy for “Trade Aggregation and Allocation.” This policy required aggregated securities transactions in participating client accounts be “allocated in a fair and equitable manner.” SeaCrest’s compliance manual further specified the conditions upon which an investment adviser representative may combine purchase and sale orders, including: “not favor[ing] any advisory Account over any other managed Account;” and “the relevant allocation methods are specified in writing before entering an aggregated order.” SeaCrest’s policies and procedures further specifically required that the compliance department ensure that investment adviser representatives did not engage in any unfair trading practices, such as “favor[ing] any advisory Account over any other managed Account.” Further, SeaCrest’s policies and procedures required its CCO to review the adequacy of SeaCrest’s trading practices, including asset allocation strategies and trade allocations.

14. In addition, during the Relevant Period, SeaCrest’s compliance manual included a policy entitled “Suitability.” This policy stated that SeaCrest “has a fiduciary duty to provide investment advice to each Client that is suitable to that particular Client” and is responsible for making “a reasonable inquiry into the Client’s investment objectives, financial situation, investment experience, and tolerance for risk.” The compliance manual further required investment adviser representatives to ensure that suitability determinations remained current to the clients’ current needs and objectives and that trades were placed consistent with those objectives.

The compliance manual required the compliance department to review these suitability decisions made by investment adviser representatives.

15. SeaCrest failed reasonably to implement its written policies and procedures described above with regard to allocation of trades. Despite SeaCrest's policies requiring that block order allocations be done via a "fair and equitable" method, during the Relevant Period, Cobb waited to allocate shares of the same stock, purchased via block trading, until the following day, once the price of the stock moved up or down, to the advantage of the Favored Accounts and to the disadvantage of the Disfavored Accounts that he managed on a discretionary basis, as described above. Further, despite SeaCrest requiring the specific allocation method be specified in writing prior to entering the allocation order, there is no record of Cobb's written allocation method. Cobb's allocations were not reviewed by the CCO or a designee, as required by SeaCrest's policies and procedures.

16. In addition, during the Relevant Period, SeaCrest's custodian sent SeaCrest at least twelve alerts about possible unallocated block trading by Cobb. The employee receiving the alerts never elevated the issue to the firm's CCO. Further, SeaCrest never conducted its own independent compliance review of Cobb's trade allocations, as required by SeaCrest's policies and procedures, until after SeaCrest's custodian brought the issue of potential cherry-picking directly to SeaCrest's CCO in May 2020.

17. SeaCrest also failed to implement its policies and procedures related to suitability. As described above, at the time that Cobb made the unsuitable recommendations, he failed to take into consideration his clients' age, investment objectives, risk tolerance, investment time horizons, financial needs, and financial condition. At no time during the Relevant Period did SeaCrest conduct reviews to identify trades in products inconsistent with the clients' stated risk tolerance and investment objectives, as required by SeaCrest's policies and procedures.

SeaCrest Made Misleading Statements

18. As an investment adviser registered with the Commission, SeaCrest is required to file a Form ADV with the Commission and to update it at least annually. Form ADV filings include Part 2A, which provides information to clients and prospective clients about investment advisers. Registered investment advisers are required to deliver Part 2A to their clients at the beginning of the advisory relationship and to provide clients with an updated Part 2A whenever material changes are made.

19. During the Relevant Period, SeaCrest filed amendments to its Form ADV brochure at least annually with the Commission which contained an Item 12.B entitled "Aggregating and Allocating Trades" which said that trades would be allocated by the close of each business day in an equitable manner:

SeaCrest will execute its transactions through the Custodian as authorized by the Client. SeaCrest may aggregate orders in a block trade or trades when securities are purchased or sold through Custodian for

multiple (discretionary) accounts. If a block trade cannot be executed in full at the same price or time, the securities actually purchased or sold by the close of each business day must be allocated in a manner that is consistent with the initial pre-allocation or other written statement. This must be done in a way that does not consistently advantage or disadvantage particular Clients' accounts.

20. The Form ADV brochures also discussed the advisers' fiduciary requirement to "act in the best interest of its Clients" which "can be violated if personal trades are made with more advantageous terms than client trades." And, while allowing [investment adviser representatives] to purchase or sell the same securities at the same time as their clients, "[a]t no time will SeaCrest, or any [investment adviser representative], transact in any security to the detriment of the Client."

21. In addition, SeaCrest's Form ADV brochures during the Relevant Period also discussed suitability. With regard to suitability the firm's Form ADV brochures stated that: "[investment adviser representatives] will work with each client to determine their tolerance for risk as part of the portfolio construction process" and further highlighted the risks associated with investing in leveraged ETFs.

22. Contrary to statements in its Form ADV brochures, SeaCrest failed to ensure trade day allocations, or confirm that the initial pre-trade allocation designation was consistent with allocations executed by Cobb or ensure that Cobb properly determined his client's risk profiles and tolerance for investing in securities, such as leveraged ETFs.

Violations

23. As a result of the conduct described above, SeaCrest willfully violated Section 17(a)(2) of the Securities Act, which prohibits fraudulent conduct in the offer or sale of securities.

24. As a result of the conduct described above, SeaCrest willfully violated Sections 206(2) and 206(4) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser, and Rule 206(4)-7 promulgated thereunder, which requires advisers to adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and the rules that the Commission has adopted under the Act.

25. As a result of the conduct described above, SeaCrest failed reasonably to supervise Cobb within the meaning of Section 203(e)(6) of the Advisers Act.

SeaCrest's Remedial Efforts And Cooperation

26. In determining to accept SeaCrest's Offer, the Commission considered the voluntary remedial acts undertaken by SeaCrest and SeaCrest's voluntary cooperation with the Commission staff in its investigation of this matter.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act and Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent SeaCrest cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act, and Sections 206(2), and 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

B. Respondent SeaCrest is censured.

C. Respondent SeaCrest shall pay civil penalties of \$375,000 to the Securities and Exchange Commission. Payment shall be made in the following installments: \$93,750 within 10 days of the entry of this Order; \$93,750 within 120 days of the entry of this Order; \$93,750 within 240 days of the entry of this Order; and any remaining amount outstanding within 360 days of the entry of this Order. Payments shall be applied first to post order interest, which accrues pursuant to 31 U.S.C. § 3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

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

Payments by check or money order must be accompanied by a cover letter identifying SeaCrest 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 Sheldon L. Pollock, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, New York 10004-2616.

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

By the Commission.

Vanessa A. Countryman
Secretary