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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **-against-** **SCOTT ADAM BRANDER,** **Defendant.**	**<u>COMPLAINT</u>** **22 Civ. 5506** **JURY TRIAL DEMANDED**

Plaintiff Securities and Exchange Commission ("Commission"), 100 Pearl Street, Suite 20-100, New York, New York 10004, for its Complaint against Defendant Scott Adam Brander ("Brander"), whose last known address is Delray Beach, Florida, alleges as follows:

SUMMARY

1. From approximately January 2012 until June 2017 (the "Relevant Period"), Brander, an investment adviser representative of Buckman Advisory Group, LLC ("BAG"), engaged in a fraudulent "cherry-picking" scheme, disproportionately allocating profitable trades to himself and unprofitable trades to the accounts of certain of his clients (the "Disfavored Clients"), to enrich himself at the expense of his clients. Brander received ill-gotten gains of approximately $812,000 as a result of his fraudulent scheme.

2. In his cherry-picking scheme, Brander often traded shares of highly-leveraged exchange traded funds ("ETFs"), which often experienced large price moves over the course of the trading day. Even though prospectuses for these ETFs contained warnings about the risks of holding these investments, and even though all the Disfavored Clients stated in their account opening documents that they were seeking more conservative investments, Brander failed to perform any analysis to determine whether these ETFs were suitable for the Disfavored Clients' stated investment objectives and risk tolerance.

VIOLATIONS

3. By virtue of the foregoing conduct and as alleged further herein, Defendant Brander violated Section 17(a)(1) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)]; Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)], and Rules 10b-5(a) and (c) thereunder [17 C.F.R. §§ 240.10b-5(a) and (c)]; and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1) and (2)].

4. Unless Defendant is restrained and enjoined, he will engage in the acts, practices, transactions, and courses of business set forth in this Complaint or in acts, practices, transactions, and courses of business of similar type and object.

NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT

5. The Commission brings this action pursuant to the authority conferred upon it by Securities Act Sections 20(b) and 20(d) [15 U.S.C. §§ 77t(b) and 77t(d)], Exchange Act Section 21(d) [15 U.S.C. § 78u(d)], and Advisers Act Sections 209(d) and 209(e) [15 U.S.C. §§ 80b-9(d) and 80b-9(e)].

6. The Commission seeks a final judgment: (a) permanently enjoining Defendant from violating the federal securities laws and rules this Complaint alleges he has violated; (b) ordering Defendant to disgorge all ill-gotten gains he received as a result of the violations alleged here and to

pay prejudgment interest thereon, pursuant to Exchange Act Sections 21(d)(5) and 21(d)(7) [15 U.S.C. §§ 78u(d)(5) and 78u(d)(7)]; (c) ordering Defendant to pay civil money penalties pursuant to Securities Act Section 20(d) [15 U.S.C. § 77t(d)], Exchange Act Section 21(d)(3) [15 U.S.C. § 78u(d)(3)], and Advisers Act Section 209(e) [15 U.S.C. § 80b-9(e)]; and (d) ordering any other and further relief the Court may deem just and proper.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to Securities Act Section 22(a) [15 U.S.C. § 77v(a)], Exchange Act Section 27 [15 U.S.C. § 78aa], and Advisers Act Section 214 [15 U.S.C. § 80b-14].

8. Defendant, directly and indirectly, has made use of the means or instrumentalities of interstate commerce or of the mails in connection with the transactions, acts, practices, and courses of business alleged herein.

9. Venue lies in this District under Securities Act Section 22(a) [15 U.S.C. § 77v(a)], Exchange Act Section 27 [15 U.S.C. § 78aa], and Advisers Act Section 214 [15 U.S.C. § 80b-14]. Defendant transacted business in the District of New Jersey, and certain of the acts, practices, transactions, and courses of business alleged in this Complaint occurred within this District, including transactions that Brander caused to be executed by his employer BAG, an investment adviser with its principal place of business in New Jersey, and that adviser's affiliated broker-dealer, Buckman, Buckman, & Reid, LLC ("BBR"), which is also a New Jersey-based business. More specifically, Brander directed that these firms execute the securities trades and make the related trade allocations in the course of his fraudulent scheme.

DEFENDANT[1]

10. **Brander**, age 54, was an investment adviser representative with BAG from 2007 until 2021. He was also a registered representative with BAG's affiliated broker-dealer BBR from 2003 to 2021.

OTHER RELEVANT ENTITIES

11. **BAG** is a New Jersey limited liability corporation with its principal place of business in Little Silver, New Jersey. BAG has been registered with the Commission as an investment adviser since 2004.

12. **BBR** is a New Jersey limited liability corporation with its principal place of business in Little Silver, New Jersey. BBR is a broker-dealer registered with the Commission and an affiliate of BAG.

FACTS

I. BACKGROUND

13. "Cherry-picking" occurs when an investment adviser disproportionately allocates to favored accounts securities that have performed well, and/or disproportionately allocates to disfavored clients securities that have performed poorly.

14. Brander managed certain advisory client accounts at BAG, including accounts held by the Disfavored Clients, on a discretionary basis – that is, he had authorization to make trading decisions on behalf of those clients.

15. During the Relevant Period, Brander also maintained an account in his own name and an account jointly held with his wife at BAG (together, the "Brander Accounts").

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[1] Brander entered into a series of agreements beginning on July 15, 2020, which tolled the running of any statute of limitations applicable to any action brought by, or on behalf of, the Commission.

16. "Block" trades are used to aggregate purchases or sales of securities for multiple accounts into a single trade. Brander used an average-price account at BBR (the "Average Price Account") to place "block" trades on behalf of his clients' accounts, as well as the Brander Accounts, without specifying at the time of the purchase whether he was purchasing the security for himself or for one or more of the clients.

17. Brander often placed block trades in shares of highly-leveraged exchange traded funds ("ETFs") in the course his cherry-picking scheme. The price volatility of these leveraged ETF's presented higher risk to the holders of these securities.

18. Brander, as an investment adviser, was required to act in the best interest of his clients when selecting securities for their accounts. To act in the best interest of his clients, Brander was required to analyze whether his clients were willing to tolerate risks of the particular investments in the context of the clients' stated objectives and risk tolerances.

II. BRANDER'S CHERRY-PICKING SCHEME

19. From approximately January 2012 through June 2017, Brander used the Average Price Account to purchase securities in block trades on behalf of his advisory clients and the Brander Accounts.

20. Even though BAG's written compliance manual until December 2015 required that trade orders include instructions for how the shares in the block trade are to be allocated, Brander frequently failed to provide allocation instructions for some trades until after the block trade was executed. Typically, Brander did not provide allocation instructions until several hours after the trades were executed, and in some cases not until the following day.

21. For some trades, Brander often waited to provide allocation instructions until he observed whether the trades were profitable in the hours following execution. Brander then disproportionately allocated profitable trades to the Brander Accounts, and he disproportionately

allocated unprofitable trades to the Disfavored Clients. Often, Brander immediately realized profits from the profitable trades by selling shares soon after allocating them to the Brander Accounts.

22. Brander allocated 90% of trades with a positive performance between the time of execution and the time of allocation ("winning trades") to the Brander Accounts. He only allocated approximately 30% of trades with a negative performance between the time of execution and the time of allocation ("losing trades") to the Brander Accounts. In contrast, Brander allocated approximately 70% of the losing trades and only 10% of the winning trades to the Disfavored Clients.

23. Because of Brander's cherry-picking scheme, his allocations to the Brander Accounts were generally profitable in the short term, with first-day gains of 1.84%, while allocations to the Disfavored Clients were generally unprofitable in the short term, with first-day losses of –3.24%. The likelihood that Brander would have earned these returns for himself in the absence of cherry-picking, with trade allocations determined by chance, is less than one in a million.

24. As a result of this cherry-picking scheme, Brander obtained ill-gotten gains of approximately $812,876.

III. BRANDER PURCHASED SECURITIES FOR CLIENTS WITHOUT CONDUCTING SUITABILITY ANALYSIS

25. None of the Disfavored Clients had a high tolerance for risk; all of them indicated in account opening documents that they favored investments with moderate or conservative risk. Nor were any of the Disfavored Clients seeking speculative or aggressive growth in their portfolios. Each identified their investment objectives as either preserving capital or moderate capital appreciation.

26. Brander often used highly-leveraged ETFs in his cherry-picking scheme. As a result of their highly-leveraged nature, these ETFs often experienced large price moves over the course of the trading day.

27. The prospectuses for these ETFs contained warnings, often in bold typeface, stating that these products were, for example, much riskier than most exchange-traded funds and only suitable for knowledgeable investors who understood the risks associated with these products' use of leverage.

28. Nonetheless, Brander did not conduct any analysis to determine that these ETFs were in the best interests of the Disfavored Clients. Indeed, Brander repeatedly allocated highly-leveraged ETFs that had experienced first-day losses to the Disfavored Clients and in some circumstances also held them in the Disfavored Clients' accounts for as long as several days, without discussing the attendant risks of these ETFs and their holding periods with the Disfavored Clients.

FIRST CLAIM FOR RELIEF
Violations of Securities Act Section 17(a)(1)

29. The Commission re-alleges and incorporates by reference here the allegations in paragraphs 1 through 28.

30. Defendant, directly or indirectly, in the offer or sale of securities and by the use of the means or instruments of transportation or communication in interstate commerce or the mails, knowingly or recklessly has employed one or more devices, schemes or artifices to defraud.

31. By reason of the foregoing, Defendant, directly or indirectly, has violated and, unless enjoined, will again violate Securities Act Section 17(a)(1) [15 U.S.C. § 77q(a)(1)].

SECOND CLAIM FOR RELIEF
Violations of Exchange Act Section 10(b) and Rules 10b-5(a) and (c) Thereunder

32. The Commission re-alleges and incorporates by reference here the allegations in paragraphs 1 through 28.

33. Defendant, directly or indirectly, in connection with the purchase or sale of securities and by the use of means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange, knowingly or recklessly has (i) employed one or more devices,

schemes, or artifices to defraud, and/or (ii) engaged in one or more acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

34. By reason of the foregoing, Defendant, directly or indirectly, has violated and, unless enjoined, will again violate Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Rules 10b-5(a) and (c) thereunder [17 C.F.R. §§ 240.10b-5(a) and (c)].

THIRD CLAIM FOR RELIEF
Violations of Advisers Act Sections 206(1) and (2)

35. The Commission re-alleges and incorporates by reference here the allegations in paragraphs 1 through 28.

36. At all relevant times, Defendant was an investment adviser under Advisers Act Section 202(11) [15 U.S.C. § 80b-2(11)].

37. Defendant by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly has: (i) knowingly or recklessly employed one or more devices, schemes, or artifices to defraud any client or prospective client, and/or (ii) knowingly, recklessly, or negligently engaged in one or more transactions, practices, and courses of business which operated or would operate as a fraud or deceit upon any client or prospective client.

38. By reason of the foregoing, Defendant, directly or indirectly, has violated and, unless enjoined, will again violate Advisers Act Sections 206(1) and (2) [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court enter a Final Judgment:

I.

Permanently enjoining Defendant and his agents, servants, employees and attorneys and all persons in active concert or participation with any of them from violating, directly or indirectly, Securities Act Section 17(a) [15 U.S.C. § 77q(a)], Exchange Act Section 10(b) [15 U.S.C. § 78j(b)]

and Rule 10b-5(b) thereunder [17 C.F.R. § 240.10b-5(b)], and Advisers Act Sections 206(1) and 206(2) [15 U.S.C. §§ 80b-6(1) and (2)];

II.

Ordering Defendant to disgorge all ill-gotten gains he received directly or indirectly, with pre-judgment interest thereon, as a result of the alleged violations under Sections 21(d)(5) [15 U.S.C. § 78u(d)(5)] and 21(d)(7) [15 U.S.C. § 78u(d)(7)] of the Exchange Act;

IV.

Ordering Defendant to pay civil monetary penalties under Securities Act Section 20(d) [15 U.S.C. § 77t(d)], Exchange Act Section 21(d)(3) [15 U.S.C. § 78u(d)(3)], and Advisers Act Section 209(e) [15 U.S.C. § 80b(9)(e)];

V.

Granting any other and further relief this Court may deem just and proper.

Dated: New York, New York
September 12, 2022

s/Simona K. Suh

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* Not admitted in District of New Jersey

LOCAL RULE 11.2 CERTIFICATION

Pursuant to Local Rule 11.2, I certify that the matter in controversy alleged against the Defendant in the foregoing Complaint is not the subject of any other civil action pending in any court, or of any pending arbitration or administrative proceeding.

s/Simona K. Suh
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DESIGNATION OF AGENT FOR SERVICE

Pursuant to Local Civil Rule 101.1(f), the undersigned hereby designates the United States Attorney's Office for the District of New Jersey to receive service of all notices or papers in this action at the following address:

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