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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **-against-** **DOUGLAS MACWRIGHT and HIGHLANDER CAPITAL MANAGEMENT, LLC** **Defendants.**	**COMPLAINT** **23-cv-20609** **JURY TRIAL DEMANDED**

Plaintiff Securities and Exchange Commission ("Commission"), 1961 Stout Street, Suite 1700, Denver, CO 80294-1961, for its Complaint against Defendants Douglas MacWright ("MacWright"), of Short Hills, NJ, and Highlander Capital Management, LLC ("HCM"), 533 Milburn Avenue, Short Hills, NJ 07078, alleges as follows:

SUMMARY

1. Defendant MacWright, through SEC-registered investment adviser HCM and an affiliated broker-dealer (the "Broker"), both owned and controlled by MacWright at the time of the alleged wrongdoing, engaged in a long-running fraudulent trade allocation scheme – commonly referred to as "cherry-picking." In carrying out this scheme, MacWright disproportionately allocated trades that had increased in value during the day, collectively worth

more than $1 million, to a preferred account in the name of an entity that he and his family members controlled (the "Preferred Account").

2. MacWright traded through a so-called average price account used by HCM and the Broker to purchase securities on behalf of numerous client and customer accounts (the "Average Price Account"). To carry out the cherry-picking, MacWright would open a securities position in the Average Price Account. If the position increased in value during the day, MacWright generally closed out the position, thereby locking in the same-day profit, and allocated the trades and the resulting profits to the Preferred Account; but if the position decreased in value during the day, MacWright generally allocated the trades to one or more accounts held by other HCM clients or Broker customers, including accounts owned by MacWright, MacWright's family members, or entities he partially owned (the "Non-Preferred Accounts").

3. HCM's written policies and procedures prohibited trade allocations that favored certain accounts and, prior to the entry of an order that was to be allocated to more than one account, required written order tickets to be completed that identified for which accounts the order was being placed and the proposed allocation of the order. MacWright was able to engage in the cherry-picking scheme because he failed to comply with these policies and procedures.

4. Between April 22, 2015 and June 30, 2022 (the "Relevant Period"), the Preferred Account received over $1 million in illicit profits through the scheme.

VIOLATIONS

5. By virtue of the foregoing conduct and as alleged further herein, Defendants MacWright and HCM violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)], 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)]. In addition, Defendant HCM violated, and MacWright aided and abetted HCM's violation of, Section 206(4) of the Advisers Act [15 U.S.C. §§ 80b-6(4)] and Rule 206(4)-7 thereunder [17 CFR § 275.206(4)-7].

6. Unless Defendants are restrained and enjoined, they 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

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

8. The Commission seeks a final judgment: (a) permanently enjoining Defendants from violating the federal securities laws and rules this Complaint alleges they violated, pursuant to Sections 21(d)(1) and (d)(5) of the Exchange Act [15 U.S.C. §§ 78u(d)(1), 78u(d)(5)] and Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)]; (b) ordering Defendant MacWright to disgorge all ill-gotten gains received as a result of the violations alleged herein and to pay prejudgment interest thereon, pursuant to Sections 21(d)(3), 21(d)(5), and 21(d)(7) of the Exchange Act [15 U.S.C. §§ 78u(d)(3), 78u(d)(5), and 78u(d)(7)]; (c) ordering Defendants to pay civil money penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 209(e) of the Advisers Act [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

9. This Court has jurisdiction over this action pursuant to Section 27 of the

Exchange Act [15 U.S.C. § 78aa] and Section 214 of the Advisers Act [15 U.S.C. § 80b-14].

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

11. Venue lies in this District under Section 27 of the Exchange Act [15 U.S.C. § 78aa], and Section 214 of the Advisers Act [15 U.S.C. § 80b-14]. Defendants are found in, inhabit, and transact 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 the securities trades and related trade allocations MacWright directed HCM and the Broker to execute in the course of his fraudulent scheme.

DEFENDANTS

12. **MacWright**, age 67, was, during the Relevant Period, an investment adviser representative at, and owner of, HCM. He was also, during the Relevant Period, a registered representative at, and owner of, the Broker.

13. **HCM** is a New Jersey limited liability corporation with its principal place of business in Short Hills, New Jersey. HCM has been registered with the Commission as an investment adviser since 1996.

FACTS

I. BACKGROUND

14. "Cherry-picking" occurs when an investment adviser disproportionately allocates to one or more preferred accounts securities that have performed well, and/or disproportionately allocates to one or more non-preferred accounts securities that have performed poorly.

15. "Block" trades placed in "average price accounts" are used to aggregate purchases or sales of securities for multiple accounts into a single trade. If used properly, block trades allow

investment advisers to give all clients who are purchasing or selling securities the same average price. For example, if an investment adviser places a large order, this order may be executed at several different prices. An average price account, which is an account maintained by a broker-dealer for placing block or aggregated trades, allows the investment adviser to aggregate the executions into a single average price, ensuring the same execution price for all clients receiving a portion of the order.

II. THE CHERRY-PICKING SCHEME

A. The Preferred and Non-Preferred Accounts

16. The Preferred Account is held at the Broker and MacWright had discretionary trading authority over the Account. The entity that owned the Preferred Account, and therefore received the profits from the scheme, was owned by MacWright, other entities controlled by MacWright, and family members of MacWright. During the Relevant Period, MacWright indirectly received, through the Broker, commissions from the owner of the Preferred Account in connection with the trading.

17. The Non-Preferred Accounts were accounts held by individuals and entities for which MacWright served as an investment adviser. During the Relevant Period, MacWright managed certain advisory client accounts at HCM and acted as an investment adviser for certain entities that held accounts at the Broker. MacWright had authorization to make trading decisions on behalf of these clients who owned the Non-Preferred Accounts, and he was entitled to receive and/or did receive compensation from the clients for serving as an investment adviser. The Non-Preferred Accounts were harmed by the scheme.

B. The Mechanics of the Cherry-Picking Scheme

18. During the Relevant Period, MacWright used the Average Price Account to trade securities, such as stocks, often as block trades, and those trades were later allocated to the

Preferred Account or later allocated to the Non-Preferred Accounts.

19. During that time, MacWright repeatedly opened a securities position in the Average Price Account and waited to provide allocation instructions until he observed whether the trade was profitable in the time following execution. MacWright disproportionately allocated profitable trades to the Preferred Account, and he disproportionately allocated unprofitable trades to the Non-Preferred Accounts. Specifically, for profitable trades, MacWright regularly closed the trading position, thereby realizing a same-day profit, and then allocated the trades and the profits to the Preferred Account. If the price decreased in value during that day, MacWright generally caused the position to be allocated to one or more Non-Preferred Accounts.

20. HCM's written policies and procedures required that written order tickets include instructions for how the shares in a block trade were to be allocated before the order was entered into the trading system. MacWright did not follow this requirement and provided allocation instructions for these trades only after the trades were executed.

21. During the Relevant Period, the trades that MacWright allocated to the Preferred Account increased in value 98.6% of the time on the trade day. In contrast, the trades that MacWright allocated to the Non-Preferred Accounts increased in value only 19.2% of the time on the trade day.

22. Because of MacWright's cherry-picking scheme, his allocations to the Preferred Account were almost always profitable in the short term, with first-day returns of 0.83%, while allocations to the Non-Preferred Accounts were generally unprofitable in the short term, with first-day returns of negative 1.03%. The likelihood that MacWright 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 billion.

C. The Cherry-Picking was Profitable to the Preferred Account, and Harmed the Non-Preferred Accounts.

23. Because of MacWright's cherry-picking scheme, the Preferred Account obtained illicit profits of more than $1 million (after accounting for the relatively small losses associated with the positions allocated to the Non-Preferred accounts owned by MacWright and MacWright's family members, as well as MacWright's ownership interests in the Non-Preferred accounts of entities he partially owned) and thereby harmed the Non-Preferred Accounts, which disproportionately received trades that had declined in value on the first day of trading.

D. The Defendants' Cherry-Picking Scheme Breached the Fiduciary Duties Owed to Advisory Clients.

24. As investment advisers, Defendants owed a fiduciary duty to their clients. By carrying out the cherry-picking scheme, the Defendants breached their fiduciary duties and failed to act in their clients' best interests.

E. The Defendants Acted with Scienter and Negligently.

25. Throughout the Relevant Period, MacWright was responsible for the trading in the Average Price Account that was part of the scheme and he personally made the trades and made or directed trade allocations to the Preferred and Non-Preferred Accounts. MacWright knew or was reckless in not knowing, and should have known, that he was engaging in numerous deceptive acts by directly or indirectly allocating the profitable trades to the Preferred Account and allocating the non-profitable trades to the Non-Preferred Accounts.

26. Throughout the Relevant Period, MacWright was the owner of, and an investment adviser representative of, HCM and he controlled the relevant trading for HCM's clients through the Average Price Account. Accordingly, his mental state and negligence can be imputed to HCM.

III. HCM AND MACWRIGHT FAILED TO IMPLEMENT APPROPRIATE WRITTEN POLICIES AND PROCEDURES.

27. As a SEC-registered investment adviser, HCM is required to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and rules adopted thereunder.

28. HCM's written policies and procedures manual contained policies and procedures with respect to "Trading" at HCM, including the aggregation and the allocation of trades, and the manual stated that MacWright had responsibility for the implementation and monitoring of those trading policies and procedures. As an investment adviser representative of HCM, MacWright was also required to follow those policies and procedures.

29. HCM's manual stated that its "allocation procedures must be fair and equitable to all clients with no particular group or client(s) being favored or disfavored over any other clients" and prohibited "any allocation of trades in a manner that [HCM]'s proprietary accounts, affiliated accounts, or any particular client(s) or group of clients receive more favorable treatment than other client accounts." Furthermore, HCM manual stated that HCM had "adopted a clear written policy for the fair and equitable allocation of transactions, (e.g., pro-rata allocation, rotational allocation, or other means), which is disclosed in [HCM's Form ADV, Part 2 A ("Brochure")]."

30. HCM's Brochure, which is contained in Part II of HCM's Form ADV that is filed with the Commission and contains representations to investors, stated that "[p]rior to entry of an aggregated order, a written order ticket must be completed which identifies each client account participating in the order and the proposed allocation of the order, upon completion, to those clients" and that "[i]f the order will be allocated in a manner other than that stated in the initial statement of allocation, a written explanation of the change must be provided to and approved by the Chief Compliance Officer no later than the morning following the execution of the aggregate

trade." The Brochure also stated that "[n]o client or account will be favored over another."

31. During the Relevant Period, HCM failed to appropriately implement these written policies and procedures, thereby violating Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. As described above, MacWright's trading favored the Preferred Account over the Non-Preferred Accounts and he did not complete written order tickets with the proposed allocation of the orders prior to entering block trades into the Average Price Account.

32. MacWright aided and abetted HCM's violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. MacWright was aware of the written policies and procedures and was responsible for implementing them. As described above, MacWright failed to ensure that HCM implemented the policies and procedures, thereby substantially assisting HCM's violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

33. Throughout the Relevant Period, MacWright engaged in conduct that violated HCM's written policies and procedures and therefore knew or was reckless in not knowing that HCM failed to appropriately implement the written policies and procedures, thereby violating Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. Accordingly, MacWright knowingly or recklessly provided substantial assistance to HCM's violation of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

FIRST CLAIM FOR RELIEF
Violations of Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c) Thereunder
(MacWright and HCM)

34. The Commission re-alleges and incorporates by reference here the allegations in paragraphs 1 through 33.

35. Defendants, 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 have (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.

36. By reason of the foregoing, Defendants, directly or indirectly, have violated and, unless enjoined, will again violate Section 10(b) of the 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)].

SECOND CLAIM FOR RELIEF
Violations of Sections 206(1) and (2) of the Advisers Act
(MacWright and HCM)

37. The Commission re-alleges and incorporates by reference here the allegations in paragraphs 1 through 36.

38. At all relevant times, Defendants were investment advisers under Section 202(11) of the Advisers Act [15 U.S.C. § 80b-2(11)].

39. Defendants by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly have: (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.

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

THIRD CLAIM FOR RELIEF
Violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 Thereunder
(HCM)

41. The Commission re-alleges and incorporates by reference here the allegations in

paragraphs 1 through 40.

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

43. Defendant HCM by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly has provided investment advice to clients without adopting and implementing written policies and procedures reasonably designed to prevent violation, by it and its supervised persons, of the Act and the rules that the Commission has adopted under the Act.

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

FOURTH CLAIM FOR RELIEF
Aiding and Abetting Violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 Thereunder
(MacWright)

45. The Commission re-alleges and incorporates by reference here the allegations in paragraphs 1 through 44.

46. Defendant HCM, which is an investment adviser under Section 202(11) of the Advisers Act [15 U.S.C. § 80b-2(11)], by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly has provided investment advice to clients without adopting and implementing written policies and procedures reasonably designed to prevent violation, by it and its supervised persons, of the Act and the rules that the Commission has adopted under the Act.

47. As a result of the conduct alleged herein, Defendant MacWright aided and abetted HCM's violations of Section 206(4) of the Advisers Act [15 U.S.C. §§ 80b-6(4)] and Rule 206(4)-7 thereunder [17 CFR § 275.206(4)-7] by knowing or recklessly providing substantial

assistance to Defendant HCM.

48. By reason of the foregoing, Defendant MacWright, directly or indirectly, aided and abetted and, unless enjoined, will again aid and abet violations of Section 206(4) of the Advisers Act [15 U.S.C. §§ 80b-6(4)] and Rule 206(4)-7 thereunder [17 CFR § 275.206(4)-7].

PRAYER FOR RELIEF

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

I.

Permanently enjoining: (i) Defendants MacWright and HCM and their agents, servants, employees and attorneys and all persons in active concert or participation with any of them from violating, directly or indirectly, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and (2)]; (ii) Defendant HCM and its agents, servants, employees and attorneys and all persons in active concert or participation with it from violating, directly or indirectly, Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-7 thereunder [17 CFR § 275.206(4)-7]; and (iii) Defendant MacWright from aiding and abetting violations of Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-7 thereunder [17 CFR § 275.206(4)-7];

II.

Ordering Defendant MacWright to disgorge all ill-gotten gains that he received directly or indirectly, with pre-judgment interest thereon, as a result of the alleged violations under Sections 21(d)(3), 21(d)(5), and 21(d)(7) of the Exchange Act [15 U.S.C. §§ 78u(d)(3), 78u(d)(5), and 78u(d)(7)];

III.

Ordering Defendants to pay civil monetary penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 209(e) of the Advisers Act [15 U.S.C. § 80b(9)(e)]; and

IV.

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

Dated: Denver, Colorado
September 25, 2023

s/ *Zachary T. Carlyle*

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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/ *Zachary T. Carlyle*
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DESIGNATION OF AGENT FOR SERVICE

Pursuant to Local Civil Rule 101.1(f), because the Securities and Exchange Commission does not have an office in this district, 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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s/ *Zachary T. Carlyle*

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