

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

**SECURITIES ACT OF 1933**  
**Release No. 10367 / May 26, 2017**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 80801 / May 26, 2017**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 4710 / May 26, 2017**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 32664 / May 26, 2017**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17614**

**In the Matter of**

**LAURENCE I. BALTER d/b/a**  
**ORACLE INVESTMENT**  
**RESEARCH,**

**Respondent.**

**ORDER MAKING FINDINGS, AND  
IMPOSING REMEDIAL SANCTIONS AND  
A CEASE-AND-DESIST ORDER PURSUANT  
TO SECTION 8A OF THE SECURITIES  
ACT OF 1933, SECTION 21C OF THE  
SECURITIES EXCHANGE ACT OF 1934,  
SECTIONS 203(f) AND 203(k) OF THE  
INVESTMENT ADVISERS ACT OF 1940,  
AND SECTIONS 9(b) AND 9(f) OF THE  
INVESTMENT COMPANY ACT OF 1940**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest to enter this Order Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), 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 Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”), as to Laurence I. Balter doing business as Oracle Investment Research (“Balter” or “Respondent”).

**II.**

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 the Respondent 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 Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, and Sections 9(b) and 9(f) of the Investment Company Act("Order"), as set forth below.

### III.

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

#### SUMMARY

1. This proceeding involves multiple breaches of fiduciary duty and violations of the antifraud provisions of the federal securities laws from January 2011 to April 2014 (the "Relevant Period") by Respondent, a formerly registered investment adviser to the Oracle Mutual Fund (the "Fund") and between 100 and 120 separate accounts ("Separately Managed Accounts" or "SMAs"). Balter engaged in three distinct violations. First, he fraudulently allocated profitable trades to his own accounts to the detriment of several client accounts. Second, Balter falsely told his SMA clients who invested in the Fund that they would not pay both advisory fees and Fund management fees for the portions of their accounts invested in the Fund. Third, Balter made trades for the Fund that deviated from two of its fundamental investment limitations. Together, the violations caused significant harm to Balter's clients.

2. By virtue of this conduct, Respondent willfully violated Securities Act Section 17(a), Exchange Act Section 10(b) and Rule 10b-5 thereunder, Advisers Act Sections 206(1), 206(2), 206(4) and 207, and Rule 206(4)-8 thereunder, and Investment Company Act Section 34(b), and willfully aided and abetted and caused violations of Investment Company Act Sections 13(a) and 34(b).

#### RESPONDENT

3. **Laurence Isaac Balter d/b/a Oracle Investment Research.** Balter is a resident of Kihei, Hawaii. He was the founder, principal, chief compliance officer, and sole owner of Oracle Investment Research ("Oracle"), which was a sole proprietorship for most of its existence. During most of the Relevant Period, Oracle had its principal place of business in Fox Island, Washington and was registered with the Commission as an investment adviser from June 2, 2010 until August 26, 2013, when it withdrew its investment adviser registration. At its peak, in February 2013, Oracle had \$47 million in regulatory assets under management, including the assets of the Fund. Balter held securities license series 7, 24, 63 and 66, and from 2000 to until September 16, 2010, he was a registered representative with two dual registrants. Balter also was registered as an investment adviser with the state of Washington from September 26, 2013 through December 20, 2013, when he withdrew the registration. Neither Balter nor Oracle is currently registered with the Commission or any other securities authority.

## **OTHER RELEVANT ENTITY**

4. **Oracle Mutual Fund.** The Fund (ticker symbol “ORGAX”) was a series of the Oracle Family of Funds, an Ohio statutory business trust registered as an investment company under the Investment Company Act with the Commission from June 8, 2010 until March 6, 2014. Balter served as the President, a Trustee, and the sole employee of the Oracle Family of Funds and as the portfolio manager, chief compliance officer, administrator for and adviser to the Oracle Mutual Fund. The Fund ceased operations on August 31, 2013 and withdrew its registration on November 21, 2013.

## **BACKGROUND**

5. The majority of Balter’s advisory clients were individual investors, many of whom were over 60 years old, retired or nearing retirement, and unsophisticated investors with little investment experience. Clients were generally charged an annual fee of 1.50 percent to 1.70 percent of assets under management. Balter used a buy-and-hold strategy for most of his advisory clients and primarily invested those clients in large-cap securities and in the Fund.

6. In addition to advising individuals, Balter also managed the Oracle Mutual Fund, in which he invested the majority of his SMA clients. The Fund’s stated investment objective, as set forth in its Prospectus, was “long-term capital appreciation while secondarily striving for income.” The Fund generally held between 13 and 18 securities in sectors focused on supply chain growth in the developing world. Oracle was entitled to receive, as adviser to the Fund, management fees of 0.70 percent of average daily net assets and, as administrator to the Fund, fees of 0.20 percent of average net assets. However, to the extent that the Fund’s operating expenses, including Oracle’s management and administrator fees, exceeded 1.00 percent (1.50 percent after January 1, 2013) of the Fund’s average net assets, Balter agreed to reimburse certain Fund operating expenses.

### **A. Balter Cherry-Picked Profitable Trades For Himself Without His Clients’ Knowledge**

7. In May 2012 Balter began to employ a day-trading strategy for himself and a few of his SMA clients. Balter executed these day trades through omnibus accounts at two different brokerage firms, one of which was the custodian for Balter’s advisory client accounts from June 2010 through June 2013 (“Broker 1”) and another from July 2013 through December 2013 (“Broker 2”). In June 2013 Broker 1 unilaterally terminated its relationship with Balter/Oracle and Balter/Oracle began its relationship with Broker 2.

8. Balter’s Forms ADV Part 2A, Item 11 filed on March 23, 2011, January 5, 2012 and July 22, 2013 state that “client trades are placed prior to any advisor personal transactions.” Similarly, Balter’s Compliance Manual, which was effective for all relevant periods and which he certified receiving and reviewing, required him to make “an equitable allocation of the securities to the client” before “contemporaneously purchasing the same securities as a client.”

9. Further, Balter’s Compliance Manual provided that “[c]lients must always receive the best price, in relation to employees, on same day transactions.” It required him to “first give

priority on all purchases and sales of securities to [his] clients, prior to the execution of transactions for [his] proprietary accounts” and mandated that “personal trading must be conducted so as not to conflict with the interests of a client.”

10. However, Balter regularly executed trades for himself and one client (“Client A”), and occasionally executed trades for himself and other clients in the same omnibus account, without pre-allocating or making an equitable allocation of the trades. Indeed, in virtually all instances in which Balter made trades in the omnibus trading account, he did not allocate the trades until after they were executed—in other words, after he knew the profitability of the trade. Moreover, Balter disproportionately allocated profitable trades to his own accounts and unprofitable trades to his client accounts, primarily those of Client A.

11. Despite Balter’s representation in his Form ADV that he would trade for his clients before he traded for himself, during the Relevant Period there are multiple days on which he traded before his clients in the same securities. On many of those days, he received a better price for his trade than he did for his clients’ trades. Almost all of the trades in which Balter traded before his clients and received a better price for the same security were made from his omnibus account and then allocated manually to his and his clients’ accounts, respectively, later in the day.

12. None of Balter’s clients, including Client A, was aware that Balter was executing his own trades in a single account that also included his clients’ trades, or that he was cherry-picking the profitable trades from that account. Balter sent daily emails to Client A, purporting to report the results from that day’s trading in Client A’s accounts, that underreported the losses that Client A sustained from Balter’s cherry-picking scheme.

13. Balter knew, or was reckless in not knowing, that his day-trading strategy disproportionately allocated profitable trades to his personal accounts and losing trades to his clients’ accounts. Moreover, Balter knew or should have known that his trading in the omnibus account conflicted with the disclosures in his Form ADV and was inconsistent with his written policies and procedures. These misrepresentations and omissions constituted breaches of Balter’s fiduciary duty to his clients.

14. Balter allocated a disproportionate number of profitable trades to his own accounts and a disproportionate number of unprofitable trades to client accounts, thereby profiting from this scheme. From April 21, 2012 to May 30, 2013, when Balter’s personal accounts and SMAs were at Broker 1, Balter earned first-day returns in the omnibus account of approximately \$220,000, or about a 0.63 percent return on his investment. At the same time, Client A suffered first-day losses of approximately \$1,365,000, or about a -0.38 percent return. Other clients collectively suffered total losses of more than \$34,000, representing about a -0.14 percent return on their investments. From July 22, 2013 to December 27, 2013, when Balter’s personal accounts and SMAs were at Broker 2, his account had total net profits of approximately \$118,000, or about a 1.39 percent return on his investment, while Client A had total losses of more than \$700,000, or about a -0.78 percent return. Ultimately, Balter reaped approximately \$490,000 in ill-gotten gains from his cherry-picking scheme.

15. In December 2013, Broker 2 advised Balter that it had concerns about the trading it observed in his block account, including the fact that trading in the same account as his clients was inconsistent with the disclosures he made in Item 11 of Form ADV Part 2A. Shortly thereafter, Broker 2 notified Balter that it was terminating its relationship with him and that he would need to move his client accounts off of Broker 2's platform. Balter did not disclose to his clients that he had previously traded alongside client accounts and continued to execute his own personal trades in a single account that also included Client A's trades, without making an equitable allocation of the trades beforehand. He did not tell Client A that Broker 2 had raised concerns about trading for himself and Client A in the block account.

#### **B. Balter Misrepresented the Fund's Management Fees to Investors**

16. In offering and selling the Fund to his SMA clients, Balter told many of them in emails and verbal conversations that he would apply a credit to their advisory fees (which were based on a percentage of assets under management in the client's account) if they invested certain of their assets in the Fund (for which Balter also was entitled to a management fee based on a percentage of assets under management in the Fund). Similarly, Balter disclosed in his Form ADV that "Private clients who invest in any of the mutual funds that we directly manage are credited the management fee, less the internal expense charged by . . . the firm's custodian."

17. Contrary to his representations, Balter did not apply any such credit to the quarterly advisory fees he manually deducted from certain client accounts.<sup>1</sup> Balter knew, or was reckless in not knowing, when he offered and sold interests in the Fund that his representations about applying a management fee credit to his clients' accounts were false. Moreover, he knew or should have known that, when applicable, no such credit was provided to certain clients. By making these misrepresentations, Balter breached his fiduciary duty to these clients. It was important to clients to have complete and accurate information regarding the fees associated with an investment in the Fund before making an investment decision.

#### **C. Balter Caused the Fund to Deviate from its Fundamental Investment Limitations**

18. Section 8(b) of the Investment Company Act requires that a registered investment company's registration statement contain a recital of certain investment policies, including (1) its subclassification as a "diversified" or "non-diversified" company under Investment Company Act Section 5(b) and (2) its concentration of investments in a particular industry or group of industries. Once a registered investment company subclassifies itself as a "diversified" company and recites a concentration policy, Section 13(a)(1) and (3) of the Investment Company Act requires it to obtain authorization by a vote of a majority of its outstanding voting securities to

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<sup>1</sup> Balter later reimbursed the Fund certain of its operating expenses, using some of the Fund management fees described above, because the Fund's operating expenses exceeded the average net asset threshold.

change “its subclassification from a diversified to a non-diversified company” or to “deviate from its policy in respect of concentration of investments in any particular industry or group of industries as recited in its registration statement.”

19. The Fund’s Statement of Additional Information (the “SAI”), which was first filed with the SEC on January 3, 2011 as part of its registration statement and “should be read in conjunction” with the Fund’s prospectus and incorporated therein by reference, designated the Fund as “diversified” under the requirements of Investment Company Act Section 5(b)(1) and touted its diversified nature as something that would make it “less subject to the risk that its performance may be hurt disproportionately by the poor performance of relatively few securities.” The SAI further identified the diversified subclassification set forth in Investment Company Act Section 5(b)(1) as a fundamental investment limitation that could not be changed without the favorable vote of the holders of a majority of the outstanding voting securities of the Fund. The registration statement containing the SAI and identical disclosures was further filed with the SEC on December 30, 2011 and December 28, 2012.

20. The SAI also disclosed that the Fund “may not . . . invest 25% or more of its net assets, calculated at the time of purchase and taken at market value, in securities of issuers in any one industry” and stated that this restriction was a fundamental investment limitation that could not be changed without the favorable vote of the holders of a majority of the outstanding voting securities of the Fund.

21. As president and sole employee of the Fund, Balter was responsible for preparing and approving the SAI disclosures described in paragraphs 19 and 20. He also approved them in his capacity as a member of the Fund’s Board of Trustees.

22. As investment adviser to the Fund, Balter was responsible for day-to-day management of the Fund’s portfolio and bound by the investment limitations set forth in the SAI. Specifically, as set forth in the Fund’s written compliance manual, he was required to ensure that the Fund’s portfolio was in compliance with all of its investment objectives, policies and restrictions, including those concerning diversification and industry concentration.

23. However, in many quarters beginning no later than March 2012, Balter made investments for the Fund that resulted in the Fund changing from a diversified to a non-diversified company, and in many quarters, he also purchased securities that caused the Fund to deviate from its concentration policy. Balter knew, or was reckless in not knowing, that the Fund was not “diversified,” as promised to investors in the SAI. Moreover, as the Fund’s adviser, Balter knew or should have known that the Fund had deviated from its concentration policy. By making these investments, Balter breached his fiduciary duty to his clients.

24. Beginning no later than August 2012, Balter made material misstatements regarding the Fund’s subclassification as a diversified company and its concentration policy in the offer and sale of interests in the Fund. He misled prospective and existing investors by causing the Fund’s registration statements to misrepresent the Fund’s subclassification as a diversified company and its concentration policy. Also, he misled the Board of Trustees, which

asked him at every one of the Board's quarterly meetings whether the Fund was in compliance with its fundamental investment limitations regarding diversification and industry concentration and to which he repeatedly represented that the Fund was compliant and that holdings appearing to exceed the diversification or industry concentration thresholds were a result of market fluctuations, not of the violative trades that he caused to be executed.

25. Balter's violations had a significant impact on the Fund's performance. As a result, the Fund's investors suffered harm as a result of the Fund's failure to comply with the diversification and industry concentration limitations.

### **VIOLATIONS**

26. As a result of the conduct described above, Respondent willfully violated Section 17(a) of the Securities Act, which makes it unlawful for any person in the offer or sale of any securities by the use of interstate commerce, (1) to employ any device, scheme, or artifice to defraud, (2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or (3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

27. As a result of the conduct described above, Respondent willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which makes it unlawful for any person, in connection with the purchase or sale of any security by the use of interstate commerce, (1) to employ any device, scheme, or artifice to defraud, (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

28. As a result of the conduct described above, Respondent willfully violated Sections 206(1) and 206(2) of the Advisers Act, which make it unlawful for any investment adviser, by the use of interstate commerce, (1) to employ any device, scheme, or artifice to defraud any client or prospective client, and (2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

29. As a result of the conduct described above, Respondent willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which make it unlawful for any investment adviser, by the use of interstate commerce to engage in any act, practice or course of business that is fraudulent or deceptive with respect to any investor or prospective investor in a pooled investment vehicle and to make an untrue statement of a material fact or omit any material fact to any investor or prospective investor in a pooled investment vehicle.

30. As a result of the conduct described above, Respondent willfully violated Section 207 of the Advisers Act, which makes it "unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the

Commission ... or willfully to omit to state in any such application or report any material fact which is required to be stated therein.”

31. As a result of the conduct described above, Respondent willfully aided and abetted and caused the Fund’s violations of Section 13(a) of the Investment Company Act, which requires that any change in an investment company’s classification from diversified to non-diversified under Investment Company Act Section 5(b) or any deviation from an investment company’s policy in respect of concentration of investments in any particular industry be authorized by the vote of a majority of outstanding voting securities.

32. As a result of the conduct described above, Respondent willfully violated and willfully aided and abetted and caused the Fund’s violations of Section 34(b) of the Investment Company Act, which prohibits any person from making any untrue statement of a material fact in any report filed pursuant to the Investment Company Act.

#### IV.

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

Accordingly, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, and Sections 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Balter cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Sections 206(1), 206(2), 206(4), and 207 of the Advisers Act and Rule 206(4)-8 thereunder, and Sections 13(a) and 34(b) of the Investment Company Act.

B. Respondent Balter 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 pay disgorgement of \$489,921.00, prejudgment interest of \$10,079.00, and a civil penalty of \$50,000.00, to the Securities and Exchange Commission. Payment shall be made in the following installments:

- (1) \$250,000.00 within 30 days of the entry of this Order;
- (2) \$100,000.00 no later than one year of the entry of this Order;
- (3) \$100,000.00 no later than two years of the entry of this Order; and
- (4) \$100,000.00 no later than three years of the entry of this Order.

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of \$550,000.00, less payments previously made, plus any additional interest accrued from the date of this Order pursuant to SEC Rule of Practice 600 and 31 U.S.C. § 3717, shall be due and payable immediately, without further application.

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 Laurence I. Balter 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 Erin Schneider, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104.

E. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the disgorgement, prejudgment interest and penalties referenced in Paragraph IV.D above. 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