

## [Securities Regulation Daily Wrap Up, TOP STORY—SEC uses data analysis to catch cherry-picked trades, \(Sept. 13, 2017\)](#)

Securities Regulation Daily Wrap Up

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The SEC charged two investment advisers with conducting illegal cherry-picking schemes. The SEC alleged that the advisers allocated profitable trades for their personal accounts to the detriment of their clients' accounts. The [charges](#) arose from the SEC's Division of Economic and Risk Analysis initiative to combat cherry picking, which used data analysis to uncover the schemes (*In the Matter of Jeremy A. Licht*, [Release No. 34-81584](#); and *In the Matter of Howarth Financial Services, LLC*, [Release No. 34-81585](#), September 12, 2017).

**Cherry picking.** According to the SEC, Jeremy Licht, doing business as JL Capital Management, realized nearly \$90,000 in ill-gotten gains by allocating a disproportionate number of favorable trades to his own account and a disproportionate number of unfavorable trades to his clients' accounts. Licht, an investment adviser with discretion over all of his client accounts, traded in an omnibus account but delayed allocation of those trades to a specific account until he had an opportunity to observe the security's intraday performance, often waiting several hours or until after the close of the trading day to allocate trades from his omnibus account.

In addition, Licht's Forms ADV made false statements to his clients, including representing that no client, account, or fund would be favored over any other client, account, or fund as the result of the allocation. The forms also falsely represented that pre-allocation statements would be used to allocate the order of trades, which was untrue because Licht never created or prepared such statements.

The SEC separately charged Howarth Financial Services (HFS) and its founder, principal, sole owner, and sole employee Gary Stanley Howarth with perpetrating a similar cherry-picking scheme. In addition to allocating favorable purchases to his personal accounts and losing trades to HFS client accounts, Howarth also used an omnibus account to first sell and then purchase shares of the same security. He would then allocate the shares to his personal accounts in reverse order to secure profits for himself, according to the SEC. His cherry-picking scheme resulted in over \$38,000 in ill-gotten gains, including losses avoided.

The SEC's order noted that Howarth was presented with evidence of cherry-picking in testimony in 2013, where he admitted that he misused the omnibus trading account, placed his interests ahead of his clients', and breached his fiduciary duty. He nevertheless continued to execute these cherry-picked trades, the SEC alleged.

**Sanctions.** To settle the SEC's charges, Licht and Howarth agreed to be barred from the securities industry. Licht agreed to pay nearly \$280,000 in disgorgement, interest, and civil penalties, while the Howarth respondents agreed to pay, jointly and severally, \$203,000. All respondents agreed to cease and desist from committing further violations. The respondents did not admit or deny the SEC's findings except for the purposes of bankruptcy proceedings.

The releases are [No. 34-81584](#) and [No. 34-81585](#).

Companies: Howarth Financial Services, LLC.

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