

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 8650 / December 28, 2005

SECURITIES EXCHANGE ACT OF 1934

Release No. 53029 / December 28, 2005

INVESTMENT ADVISERS ACT OF 1940

Release No. 2470 / December 28, 2005

ADMINISTRATIVE PROCEEDING

File No. 3-12136

In the Matter of

**Schultz Investment Advisors,
Inc. and Scott Schultz,**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER PURSUANT TO
SECTION 8A OF THE SECURITIES ACT OF
1933, SECTIONS 15(b) AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
AND SECTIONS 203(e), 203(f) AND 203(k) OF
THE INVESTMENT ADVISERS ACT OF
1940**

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”), Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), against Schultz Investment Advisors, Inc. (“Schultz Investment”) and Scott Schultz (“Schultz”) (collectively “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have 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 them and the subject matter of these proceedings, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-

Desist Order Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, and Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, as set forth below.

III.

On the basis of this Order and Respondents' Offer, the Commission finds that:

Summary

1. From at least June 2002 through December 2003, Scott Schultz, President and founder of Schultz Investment, engaged in marking-the-close transactions in four closed-end funds. Specifically, Scott Schultz and Schultz Investment regularly placed large, end-of-the-quarter trades in four thinly-traded closed-end funds to boost the reported performance results of their clients' portfolios. On at least 6 separate occasions, Schultz Investment entered market buy orders within approximately five minutes of market close on the last trading day of the quarter for the four funds with the intent to affect the closing prices of the funds for the quarter. These trades directly caused an increase in the closing prices of the closed-end funds. Schultz Investment already held 90% of its clients' assets in these funds. Consequently, Schultz Investment was able to report higher quarterly performance results for its clients than it would have absent the purchases. As a result of the improper marking-the-close trades, Schultz Investment benefited by collecting more management fees from enhanced performance results.

2. In addition, Schultz Investment misrepresented the investment strategies of its portfolios that it offered to clients. While Schultz Investment advertised that its World Growth portfolio held a combination of closed-end domestic and foreign funds, clients who selected this portfolio had positions primarily in domestic funds with an immaterial amount of foreign funds. Similarly, Schultz Investment's Fixed Income portfolio was advertised as holding closed-end bond funds, but clients in this portfolio held primarily equity funds and an immaterial amount of closed-end bond funds. Finally, Schultz Investment failed to file a Schedule 13G with the Commission in 2003. Schultz Investment was a beneficial owner of more than 5% of two closed-end funds under Section 13(d) of the Exchange Act and Rule 13d-1 thereunder, and failed to meet its reporting requirements.

Respondents

3. Scott Schultz is 48 years old and resides in Williamston, Michigan. Schultz is President and founder of Schultz Investment. During the relevant period, Schultz was a registered representative of a broker-dealer registered with the Commission.

4. Schultz Investment Advisors is an investment adviser firm registered with the Commission. Schultz Investment is located in Williamston, Michigan and has approximately \$38 million under its management with 125 clients as of July 2005. Schultz Investment offers its clients investments in closed-end funds. In addition to registering with the Commission, Schultz

Investment has registered as an investment adviser with the State of Michigan since 1994 and the State of Florida since 2005.

Facts

5. Schultz Investment invests client assets in closed-end funds through separate managed accounts. Schultz Investment's fees are based on a percentage of assets under management calculated based on the quarterly value of client holdings.

6. Schultz Investment offers 8 different "portfolios" to its clients: Domestic Growth, World Growth, Asset Allocation, Fixed Income, Foreign Growth, Hybrid, Equity, and Money Market. Clients are asked to select among these portfolios. Schultz Investment states that it holds securities for its clients within each portfolio, which are intended to reflect the particular investment objectives of each portfolio. However, during the relevant period, each of Schultz Investment's client portfolios primarily consisted of four closed-end funds: Boulder Growth and Income Fund ("BIF"), Boulder Total Return Fund ("BTF"), John Hancock Financial Trends, Inc. ("JHFT") and First Financial Fund ("FF"). Over 90% of Schultz Investment's assets under management were held in these four funds. Schultz Investment's clients received account statements that identified the underlying holdings in each of their portfolios.

7. Schultz had sole decision-making authority for trading his clients' assets at Schultz Investment. At the end of the last trading day of every quarter, between June 2002 and December 2003, Schultz placed market orders for the purchase of the four closed-end funds for his clients' accounts. In total, Schultz Investment placed 16 market buy orders to boost the price of the funds. These orders were placed within approximately five minutes of market close on the last trading day of the quarter. They were placed to purchase funds that already represented over 90% of Schultz Investment clients' holdings. The size of these trades were significant and often constituted approximately one-third to one-half of that day's trading volume. These trades caused the funds' shares to close at artificially higher prices on those trading days.

8. For instance, on December 31, 2003, the last trading day of the fourth quarter of 2003, Schultz Investment successfully placed two trades that caused a significant increase in the closing prices of the funds. Schultz placed a market buy order for 80,750 shares of BIF at 3:57 p.m. EST, which constituted 76.18% of the day's trading volume in BIF. The share price before the order was \$5.90 and BIF closed at \$6.30 that day. Similarly, Schultz placed a market buy order for 48,775 shares in JHFT at 3:50 p.m. EST, which constituted 57.84% of that day's trading volume in JHFT. The share price before the order was \$16.59, and JHFT closed at \$18.40 that day. Schultz Investment's trades on December 31, 2003 were significantly higher than the average trading volume for that year. The trades resulted in a closing price that was the highest price of the year for both JHFT and BIF, and the BIF trade was the last trade of the day. Indeed, Schultz Investment successfully executed the last trade of the day on 8 out of the 16 trades placed near market close over the course of six quarters.

9. From at least June 2002 through December 2003, Schultz Investment's quarterly performance of its portfolios were calculated based on the total value of the portfolios' holdings

using the closing prices of the fund shares on the last trading day of the quarter. Because Schultz Investment already held large positions for its clients in BIF, JHFT, BTF and FF, higher fund closing prices resulted in a larger quarter-ending market value of client accounts. For example, in the fourth quarter of 2003, Schultz Investment's improper marking-the-close trades caused an increase in the ending market values of the following four portfolios:

| Portfolio | No. of Accounts | Unadjusted Ending Market Value | Adjusted Ending Market Value ¹ | Difference |
|------------------|-----------------|--------------------------------|---|-------------|
| Asset Allocation | 86 | \$22,519,493 | \$21,512,644 | \$1,006,849 |
| Domestic Growth | 16 | \$4,092,725 | \$3,917,217 | \$175,508 |
| World Growth | 21 | \$2,872,702 | \$2,773,256 | \$99,446 |
| Fixed Income | 3 | \$701,161 | \$660,201 | \$40,960 |

Furthermore, for the fourth quarter of 2003, Schultz's improper marking-the-close trades had the following effect on the performance of his clients' portfolios:

| Portfolio | No. of Accounts | Schultz's Reported Performance | Recalculated Performance ² |
|------------------|-----------------|--------------------------------|---------------------------------------|
| Asset Allocation | 86 | 23.81% | 18.27% |
| Domestic Growth | 16 | 23.39% | 18.08% |
| World Growth | 21 | 23.10% | 18.83% |
| Fixed Income | 3 | 17.72% | 10.83% |

Accordingly, Schultz Investment's improper marking-the-close trades materially increased the market value and performance of its client accounts. The trades also materially increased the reported performance of its portfolios during the relevant periods.

10. Schultz Investment's performance numbers contributed to increased media coverage in newspapers and by third-party performance reporting agencies at the end of 2002 and throughout 2003. Schultz Investment also experienced a significant growth in assets under management from 2002 through 2004. As a result of its performance results and additional assets

¹ Adjusted Ending Market Value is the market value of the client accounts in the portfolio just before Schultz's improper marking-the-close trades at the end of the quarter.

² The staff has recalculated Schultz Investment's reported performance by excluding the trades that were part of the marking-the-close conduct and adjusting the quarter-ending market value accordingly.

under management, Schultz Investment received more management fees. At least a portion of these management fees are attributable to Schultz's improper marking-the-close conduct.

11. Recorded telephone conversations between Schultz and a brokerage firm's trade desk employees, made over the course of several quarters, establish that Schultz placed the end-of-the-quarter trades with the intent to cause an increase in the closing prices of the funds. In these conversations, Schultz stated that he wanted the closing prices of the funds to reflect his marking-the-close trades, and that his reported performance results and management fees would be adversely affected if the price he paid for the marking-the-close trades was not reported as the closing price. For example, on September 30, 2003, Schultz was unsuccessful in placing a trade for the purchase of 12,750 shares of JHFT. The clearing firm used by the broker could not fill the entire JHFT order and had only purchased 800 shares at a price of \$14.98. The clearing firm was able to purchase another 950 shares at \$15.50 on the after-hours market. The financial market had closed. Schultz questioned the brokerage firm's employee why the closing price of JHFT showed \$14.98. Schultz stated: "I need the last tape . . . it's important. I am at quarter end . . . the last trade has to show \$15.50." Schultz further stated: "the [news]paper will show \$14.98. . . that costs me a lot of money. . . I bill on a quarterly basis."

12. In addition to marking the close, Schultz Investment and Schultz misrepresented in its advertising the composition and investment objectives of two of its portfolios. During the relevant period, over 90% of Schultz Investment's client assets were held in four closed-end funds: BTF, BIF, JHFT and FF. While these four closed-end funds had different underlying holdings, their objectives were long-term capital appreciation. In general, these four funds held significant positions in domestic financial services securities and were considered domestic, closed-end equity funds.

13. Nevertheless, in Schultz Investment's advertising materials and on its website, the World Growth portfolio was described as a combination of "domestic and foreign closed-end funds" and appropriate for "[i]nvestors who seek some exposure to the foreign stock markets." The Fixed Income portfolio was described as holding "closed-end bond mutual funds." Schultz Investment's description of its World Growth portfolio was materially misleading because its holdings in 2002 and 2003 contained an insignificant amount of foreign closed-end funds. In 2002, the World Growth portfolio consisted of over 95% of domestic securities (the four closed-end funds identified above) with approximately 0.35% of assets in New Ireland (a foreign closed-end fund) and the remainder in money market and cash accounts. In 2003, the World Growth portfolio held an average of 0.42% of assets in foreign closed-end funds for the first three quarters of 2003, and 5.50% for the fourth quarter of 2003.

14. Similarly, during the relevant period, the description of Schultz Investment's Fixed Income portfolio was materially misleading because its holdings contained only a small amount of closed-end bond funds. Specifically, over 79.9% of the Fixed Income portfolio was invested in BIF as of December 31, 2002 and 92.0% as of December 31, 2003. However, BIF had changed its investment strategy on April 26, 2002 such that it no longer invested primarily in bonds but in domestic common stocks. The Fixed Income portfolio also held as many as three other closed-end funds that invested in bonds, but these funds only made up a small portion of the portfolio.

Specifically, as of December 31, 2002, the Fixed Income portfolio held 15.7% of assets in closed-end bond funds, and as of December 31, 2003, that amount had decreased to 3.6%

15. Clients who reviewed these portfolio descriptions and chose portfolios for their funds were led to believe that Schultz Investment would invest their assets in accordance with their selected investment objectives. However, these clients had holdings very different from their chosen objective.

16. Schultz Investment was required to but has never filed a Schedule 13G with the Commission. Schultz Investment had discretionary control over its clients' accounts and thus the right to direct disposition of its clients' shares. Schultz Investment's clients held 1,612,045 shares of BIF and 481,782 shares of JHFT at December 31, 2003. BIF's total outstanding common shares, reported as of November 30, 2003, were 11,327,784. JHFT's total outstanding common shares, reported as of December 31, 2003, were 3,993,124. Therefore, on December 31, 2003, Schultz Investment had beneficial ownership in BIF and JHFT equal to 14.23% and 12.07%, respectively, of the outstanding shares of these issuers.

Violations

Marking-the-Close Transactions

17. As a result of the conduct described above, Respondents willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

18. Market manipulation is "[i]ntentional or willful conduct designed to deceive or defraud investors by controlling or artificially affecting the prices of securities." Ernst & Ernst v. Hochfelder, 425 U.S. 185, 199 (1976). Marking-the-close "is the practice of attempting to influence the closing price of a stock by executing purchase or sale orders at or near the close of the market." In the Matter of Thomas C. Kocherhans, Exchange Act Release No. 34-36556, 1995 WL 723989, at *2 (1995). The Commission has found that marking-the-close is a manipulative practice that violates Section 10(b) of the Exchange Act when done with the intent to deceive and affect the price of a security. In the Matter of Sam Moore, Exchange Act Release No. 34-39155, 1997 WL 598033, at *3 (Sept. 30, 1997); In the Matter of Myron S. Levin, Exchange Act Release No. 34-31124, 1992 WL 213989, at *2 (Sept. 1, 1992).

19. From June 2002 through December 2003, Schultz Investment and Schultz successfully marked the close in four closed-end funds. The evidence establishes a clear pattern: Schultz Investment and Schultz placed large, end-of-the-quarter trades within five minutes of market close that caused an increase in the prices of four particular funds. Schultz Investment's improper marking-the-close trades were designed to boost artificially the reported performance results of its clients' accounts, which used the closing price of the fund on the last day of the quarter to determine the quarterly return on clients' investments. Schultz Investment provided performance results to its clients. These performance results were artificially inflated by the improper trades. Investors were misled while investing in Schultz Investment's portfolios based on

these enhanced performance results. Moreover, although Schultz Investment's clients received quarterly account statements showing higher performance results, these results were enhanced by artificially-created gains. While Schultz Investment's clients would have received positive returns without Schultz's marking-the-close trades, these clients were deceived because they paid more in management fees. Moreover, their assets were partly used to manipulate the market instead of being used as part of a legitimate investment strategy. Schultz Investment's existing and new clients were not informed that Scott Schultz used their assets to artificially inflate the closing prices of these funds in the securities market.

20. As a result of the conduct described above, Respondents willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit investment advisers from employing any device, scheme or artifice, or to engage in any transaction, practice or course of business that operates as a fraud on clients or prospective clients. Investment advisers owe a fiduciary duty to their clients to exercise the utmost good faith, and to provide such clients with full and fair disclosure of all material facts. SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 194 (1963). As investment advisers, Schultz Investment and Schultz owed a fiduciary duty to their clients. They breached this fiduciary duty by intentionally placing end-of-quarter trades to artificially inflate the prices of four securities. Their clients received reports that showed artificially-inflated values and paid more management fees as a result of the increase in the quarterly value of their portfolios.

Misrepresentation of Investment Objectives of Portfolios

21. As a result of the conduct described above, Schultz Investment and Schultz willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-(1)(a)(5) thereunder. Section 206(4) of the Advisers Act prohibits investment advisers from engaging in any act, practice, or course of business that the Commission, by rule, defines as fraudulent, deceptive, or manipulative. Rule 206(4)-1 under the Advisers Act governs advertising by investment advisers. Rule 206(4)-1(a)(5) prohibits investment advisers from publishing, circulating, or distributing, directly or indirectly, any advertisement that contains any untrue statement of material fact or that is otherwise false or misleading.

22. Schultz Investment and Schultz's advertisements on its World Growth and Fixed Income portfolios were materially misleading. Despite Schultz's promotion of World Growth as a combination of domestic and foreign closed-end funds, the portfolio held an insignificant amount of foreign closed-end funds. In addition, the Fixed Income portfolio held primarily closed-end equity funds despite advertisements that described the portfolio as holding closed-end bond funds.

Failure to Meet Section 13(d) Reporting Requirements

23. As a result of the conduct described above, Schultz Investment willfully violated Sections 13(d) of the Exchange Act and Rule 13d-1 thereunder. Section 13(d) of the Exchange Act and rules thereunder require a person acquiring a beneficial ownership of more than five percent of a class of registered equity securities to disclose within ten days certain information relating to his or her share acquisition. Rule 13d-1(b)(1) thereunder requires investment advisers and other

institutions, who become the beneficial owners of five percent or more of a voting class of equity securities registered with the Commission pursuant to Section 12 of the Exchange Act, and who are not acquiring the securities for the purpose of affecting control of the issuer, to file a statement with the Commission on Schedule 13G. Additionally, Rule 13d-1(b)(2) under the Exchange Act requires such advisers to file an additional statement with the Commission on Schedule 13G within ten days after the end of the first month in which such aggregate position meets or exceeds ten percent. Under Rule 13d-3(a), an investment adviser is considered a *beneficial owner* of an equity security, if it has or shares, directly or indirectly, the power to vote or direct the voting of shares, or if it has or shares the right to direct the disposition of shares.

24. On December 31, 2003, Schultz Investment had beneficial ownership in BIF and JHFT equal to 14.23% and 12.07%, respectively, of the registered shares of these issuers. Schultz Investment has never filed a Schedule 13G with the Commission.

Undertakings

25. Respondents undertake to:

a. Abstain from, directly or indirectly, publication, circulation or distribution of any advertisement (as defined in Rule 206(4)-1(b) of the Adviser's Act) or any other marketing materials regarding Schultz Investment for a period of one year following the entry of the Order. Within 30 days after expiration of the above time period, Respondents shall deliver to Robert J. Burson, Senior Associate Regional Director of the Securities and Exchange Commission's Midwest Regional Office, 175 West Jackson Street, Suite 900, Chicago, IL 60604 ("MRO") an affidavit that Schultz Investment has complied with the prohibitions set forth in this paragraph.

b. Retain, at Respondents' expense, an Independent Consultant who is not unacceptable to the staff of the Commission to review on a quarterly basis all trading conducted by Schultz Investment. Respondents shall cause the Independent Consultant to verify that Schultz Investment's trading is compliant with the federal securities laws, for a period of two years, to begin upon the entry of the Order. Respondents shall not terminate the Independent Consultant without the prior written approval of the staff. Respondents shall arrange for the Independent Consultant to make written representations, for a period of two years from the date of the entry of the Order, on a quarterly basis confirming that he or she has conducted a review of Schultz Investment's trading, describing the review, and reporting that either Schultz Investment's trading is compliant with the federal securities laws or identifying any trading where Schultz Investment may not be compliant, which writings shall be sent to the MRO (as above).

c. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Schultz Investment, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with

which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the MRO, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Schultz Investment, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

d. Mail a copy of this Order to each existing investment advisory client within 30 days following the entry of this Order. The Order shall be sent by certificate of mailing, along with a cover letter in a form not unacceptable to the staff of the Commission. Respondents shall notify the staff of the Commission by mail directed to the MRO (as above) when this undertaking is completed. Respondents shall also provide this Order to any new advisory client obtained within a period of two years following entry of this Order.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, and Sections 203(e), 203(f) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondents shall cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rules 10b-5 thereunder, and Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) promulgated thereunder, and Schultz Investment shall cease and desist from committing or causing any violations and any future violations of Section 13(d) of the Exchange Act and Rule 13d-1 thereunder.

B. Respondents shall pay disgorgement and prejudgment interest, jointly and severally, in the total amount of \$14,534.00, and a civil penalty, jointly and severally, in the total amount of \$100,000 to the United States Treasury. Respondents shall pay this total amount of \$114,534.00 in four equal payments. Respondents' first payment shall be due within 30 days of the entry of this Order. Each subsequent payment shall be paid in 90 day intervals after the first payment (*i.e.* 2nd payment due in 90 days, 3rd payment due in 180 days, and 4th payment due in 270 days.) Such payments shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, Stop 0-3, VA 22312; and (D) submitted under cover letter that identifies Schultz Investment and Scott Schultz as Respondents in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Robert J. Burson, Senior Associate Regional

Director, Securities and Exchange Commission, Midwest Regional Office, 175 West Jackson Street, Chicago, IL 60604.

C. Respondents shall comply with the undertakings enumerated in Section III(25) above.

By the Commission.

Nancy M. Morris
Secretary