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Texas State Securities Board

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IN THE MATTER OF THE INVESTMENT §
ADVISER REGISTRATION OF LOWELL §
& COMPANY, INC. §

Order No. REG19-CAF-04

TO: William H. Lowell, President
Lowell & Company, Inc. (CRD No. 24913)
4021 84th Street, Suite 100
Lubbock, TX 79423

DISCIPLINARY ORDER

Be it remembered that Lowell & Company, Inc. ("Respondent") appeared before the Securities Commissioner of the State of Texas ("Securities Commissioner") and consented to the entry of this order ("Order") and the Findings of Fact and the Conclusions of Law contained herein.

OVERVIEW

From April 1, 2014 through June 7, 2018, Jody Bowers (hereinafter, the "Representative") was an investment adviser representative of Respondent. The Representative traded exclusively in leveraged exchange-traded funds ("leveraged ETF") in certain client accounts that incurred significant losses as a result of the trading in the Leveraged ETFs. Respondent's supervision of the Representative and the Representative's trading in the clients' accounts did not include a review of the account activity in the manner required by Respondent's written supervisory procedures. To resolve an investigation by the staff of the Texas State Securities Board, Respondent has agreed to pay an administrative fine for Respondent's failures to reasonably supervise the Representative.

FINDINGS OF FACT

1. Respondent has waived (a) Respondent's right to notice and hearing in this matter; (b) Respondent's right to appear and present evidence in this matter; (c) Respondent's right to appeal this Order; and (d) all other procedural rights granted to the Respondent by The Securities Act, Tex. Rev. Civ. Stat. Ann. arts. 581-1 to 581-45 (West 2010 & Supp. 2018) ("Texas Securities Act"), and the Administrative Procedure Act, Tex. Gov't Code Ann. §§ 2001.001 to 2001.902 (West 2010 & Supp. 2018) ("Administrative Procedure Act").
2. On January 6, 1990, Respondent registered with the Securities Commissioner as an investment adviser. This registration is currently effective.
3. From April 1, 2014 through June 7, 2018, the Representative was registered with the Securities Commissioner as an investment adviser representative of Respondent.
4. The Representative is not currently registered in any capacity with the Securities Commissioner.

Trading in Leveraged ETFs

5. During the relevant period of April 2014 through June 2018 (the "Relevant Period"), the Representative provided investment advisory services to client accounts that consisted of managing the accounts at the discretion of the Representative.
6. During the Relevant Period, the Representative's management of certain accounts was exclusively buying and selling shares of the Proshares Ultra VIX Short-Term Futures ETF ("UVXY"), a leveraged ETF.
7. Leveraged ETFs are securities that use financial derivatives and debt to amplify the returns of an on underlying index. Leveraged ETFs are typically used to speculate on an index, or to take advantage of the index's short-term momentum. Due to the high-risk, high-cost structure of leveraged ETFs, they are rarely used as long-term investments. In many cases, positions in leveraged ETFs are held for a few days, or less.
8. UVXY is a leveraged ETF with an investment objective of seeking returns that are 1.5 times the return of its underlying benchmark (i.e. the S&P 500 VIX Short-Term Futures Index). UVXY is negatively correlated to the S&P 500, and it profits from the increase in volatility of the S&P 500.
9. The Prospectus of UVXY indicates that it is "intended for short-term use; investors should actively manage and monitor their investments, as frequently as daily."

10. The Representative ignored the warnings contained in the UVXY prospectus and held positions in UVXY in the accounts of two (2) clients ("Client A" and "Client B") for periods that were much longer than one (1) day.
11. For example, the Representative purchased eleven thousand (11,000) shares of UVXY in the account of Client A, held the position for nine hundred and eighty-seven (987) days, and ultimately sold the shares at a loss of ninety-three percent (93%) of Client A's initial investment.
12. As another example, the Representative purchased two thousand (2,000) shares of UVXY in the account of Client B, held the position for three hundred and fifty-six (356) days, and ultimately sold the shares at a loss of ninety-eight percent (98%) of Client B's initial investment.
13. During the Relevant Period, both Client A and Client B lost nearly all their assets managed by the Representative.

Failure to Enforce Supervisory System

14. The Representative managed the client accounts from an office in Abilene, Texas but was supervised remotely from Respondent's main office in Lubbock, Texas.
15. Respondent's written supervisory procedures relating to discretionary accounts, entitled *Approval of Orders and Monthly Review of Transactions*, stated the following:

All discretionary orders require prompt approval by the designated supervisor...Approval will be recorded by initialing the record of each order. In addition, the designated supervisor is responsible for reviewing the monthly statements for all discretionary accounts and retaining a copy of the statements (with initials denoting the review) in a file for the customer's account.
16. Respondent reviewed the Representative's trading activity daily and evidenced the review by initialing a copy of the trade blotter.
17. However, Respondent did not conduct reviews of the monthly account statements for the discretionary investment advisory accounts managed by the Representative; and Respondent did not otherwise establish supervisory controls to monitor activity in investment advisory accounts.
18. Accordingly, Respondent was not able to detect the significant holding periods of UVXY and losses in the clients' accounts managed by the Representative.

CONCLUSIONS OF LAW

1. Respondent's failure to review the monthly account statements of the Representative's investment advisory accounts was a failure to enforce Respondent's supervisory system and was a violation of §116.10 of the Rules and Regulations of the Texas State Securities Board ("Board Rules").
2. Pursuant to Section 14.A(6), the aforementioned violation of a Board Rule constitutes a basis for the issuance of an order reprimanding Respondent.
3. Pursuant to Section 23-1 of the Texas Securities Act, the aforementioned violation of a Board Rule constitutes a basis for the assessment of an administrative fine against the Respondent.

ORDER

1. It is therefore ORDERED that Lowell & Company, Inc. is hereby REPRIMANDED.
2. It is further ORDERED that Lowell & Company, Inc shall pay an ADMINISTRATIVE FINE in the amount of Forty Thousand Dollars (\$40,000). Payment shall be made by delivery of a cashier's check to the Securities Commissioner in the amount of Forty Thousand Dollars (\$40,000) payable to the State of Texas, contemporaneously with the delivery of this Order.

SIGNED AND ENTERED BY THE SECURITIES COMMISSIONER this 2nd
day of August, 2019.

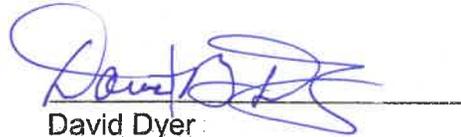


TRAVIS J. ILES
Securities Commissioner

Respondent:



Lowell & Company, Inc.
By: William H. Lowell, President

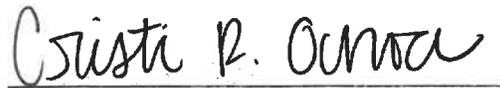


David Dyer
Scheef & Stone, LLP
Attorney for Respondent

Approved as to Form:



Clinton Edgar
Deputy Securities Commissioner



Cristi Ramón Ochoa
Attorney, Inspections and Compliance Division