

TRAVIS J. ILES
SECURITIES COMMISSIONER



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Texas State Securities Board

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IN THE MATTER OF INDEPENDENT §
FINANCIAL GROUP, LLC §

Order No. IC21-CAF-01

TO: Independent Financial Group, LLC (CRD No. 7717)
Sarah Kreisman, Chief Legal Counsel/VP Compliance
12671 High Bluff Drive, Suite 200
San Diego, CA 92130

DISCIPLINARY ORDER

Be it remembered that Independent Financial Group, LLC ("Respondent") appeared before the Securities Commissioner of the State of Texas ("Securities Commissioner") and, without admitting or denying the Findings of Fact or Conclusions of Law, consented to the entry of this order ("Order") and the Findings of Fact and the Conclusions of Law contained herein.

This order is entered into solely for the purpose of resolving the investigation by the Texas State Securities Board and is not intended to be used for any other purpose. It is also not intended to subject Respondent to disqualification under federal securities laws, rules, or regulations thereof, or the rules and regulations of any self-regulatory agency, nor the securities laws, rules or regulations of the various states and U.S. territories, including, without limitation, any disqualification from relying upon the registration exemption or the safe harbor provisions. In addition, this order is not intended to be the basis for any such disqualifications.

OVERVIEW

From February 2016 through April 2017, an investment adviser representative (IAR) formerly affiliated with Respondent (hereinafter, the "Representative") traded in non-traditional exchange-traded funds ("non-traditional ETFs") in certain client accounts. Specifically, the Representative implemented a buy-and-hold strategy using UVXY, a leveraged inverse ETF designed for short-term use and incurred significant losses as a result.

During this time, Respondent failed to have specific training requirement regarding non-traditional ETFs, failed to have a supervisory system in place to monitor and flag for extended holding periods related to leveraged ETFs and failed to prevent the Representative from purchasing more than 2x leveraged ETFs in client accounts at a time when the Representative was not approved to purchase them. Accordingly, to resolve an investigation by the staff of the Texas State Securities Board, Respondent has agreed to refund \$276,398.42 to customers as well as pay an administrative fine in the amount of \$75,000 for its failure to have a reasonable supervisory system in place.

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, Westlaw through 2019 R. Sess.) ("Texas Securities Act"), and the Administrative Procedure Act, Tex. Gov't Code Ann. §§ 2001.001 to 2001.902 (West, Westlaw through 2019 R. Sess.).
2. At all relevant times, Respondent has been registered as an investment adviser with the U.S. Securities and Exchange Commission.
3. Accordingly, Respondent is considered a "Federal covered investment adviser" pursuant to §116.1(a)(10) of the Rules and Regulations of the Texas State Securities Board (the "Board Rules").
4. Pursuant to Section 116.1(b)(2)(C) of the Board Rules, Respondent has been notice filed with the Securities Commissioner as required since June 7, 2002.
5. Pursuant to Section 116.1(b)(2)(D), the Securities Commissioner has the authority to bring enforcement actions for unlawful conduct against investment advisers not registered under the Act. From August 21, 2012 to January 31, 2020, the Representative was registered with the Securities Commissioner as an investment adviser representative of Respondent.
6. The Representative is not currently registered in any capacity with the Securities Commissioner.

The Representative Used an Unsuitable Investment Strategy Trading Non-Traditional ETFs in Texas Client Accounts.

7. From February 2016 through April 2017 (the "Relevant Period"), the Representative provided investment advisory services to at least 18 client accounts (the "Client Accounts") that consisted of managing the Client Accounts at his discretion and primarily included the buying and selling of shares of

Proshares Ultra VIX Short-Term Futures ETF (“UVXY”), a leveraged ETF (also referred to as a “non-traditional ETF”) as part of the overall investment strategy.

8. Leveraged ETFs are securities that use financial derivatives and debt to amplify the returns of an underlying index. Leveraged ETFs are typically used to speculate on an index, or to take advantage of the index's short-term momentum.
9. Generally, shares in leveraged ETFs are designed to be held for a few days or less and may not be in the best interest of a client absent an identified, short-term, and specific trading objective.

Long Term Use of UVXY

10. 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 positively correlated to the VIX index which tracks the volatility of the S&P 500, and UVXY derives its profits from the increase in volatility of the S&P 500.
11. 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.”
12. However, the Representative held positions in the Client Accounts for periods that could not reasonably be considered “short-term”.
13. For example, in February of 2016, the Representative purchased 850 shares of UVXY at a price of \$40.00 a share in the account of Client A for a total cost of \$34,000.00. And he held the shares for 417 days, ultimately selling the shares for an average price of \$12.94 a share.
14. During the Relevant Period, UVXY was purchased significantly more than any other security in the Client Accounts.
15. As such, certain of the Client Accounts, over time, became increasingly concentrated in UVXY.
16. For example, Client A had two advisory accounts managed by the Representative. The combined value of those accounts on February 1, 2016 was \$578,799.93. From February 2016 through April 2017, the Representative purchased \$307,832.58 worth of UVXY shares in Client A's advisory accounts. This represented 53% of Client A's February 2016 account value. By April 2017, the Representative sold all the UVXY shares for \$45,880.80 — a loss of \$261,951.78, 85% of Client A's investment in UVXY and 45% of Client A's February 2016 combined account value.

Respondent Failed to Have a System in Place to Reasonably Supervise the Holding Periods of Non-traditional ETFs by the Texas-based Representative.

17. Firms must have a system in place to assure that its IARs are fully aware of the terms, features and risks of all ETFs that they sell, as well as the factors that would make such products either suitable or unsuitable for certain investors.
18. And in the case of non-traditional ETFs, that training should emphasize the need to understand and consider the risks associated with such products, including the investor's time horizons, and the impact of time and volatility on the fund's performance.
19. Respondent's procedures required that Respondent ensure their IARs are properly trained and understand their duty to make suitable recommendations based on full understanding of the terms and features of the products they recommend, including ETFs.
20. However, Respondent had no specific training requirements regarding non-traditional ETFs when the Representative began using this product and strategy and did not establish such requirements during the Relevant Period.

Respondent's Supervision of the Representative

21. The Representative worked from a branch office in Houston where he was the sole investment adviser and the "person in charge" of the branch office. And he was supervised remotely from Respondent's main office in San Diego, California during all relevant times.
22. Respondent's primary supervisory tool with respect to overseeing its branch offices, including the Representative's, was the use of a transaction-based supervisory system. Each trade goes through a rules engine and, based on certain criteria, may be flagged, through the generation of a surveillance report, for additional review.
23. The surveillance reports provide alerts for specific activities occurring within accounts that meet certain criteria.
24. Respondent used the surveillance reports to identify all purchases of non-traditional ETFs (such as leveraged ETFs) in client accounts.
25. The Representative's trading of non-traditional ETFs in the Client Accounts triggered 556 surveillance reports from July 2014 through February 2018.
26. These surveillance reports required a note from the Representative's supervisor in order to be cleared off the blotter.

27. Notably, nearly all the supervisor's notes contained in the 556 surveillance reports triggered by the Representative's investment strategy indicated that the report could be closed because the transaction had occurred in an investment advisory account and an ETF Disclosure Statement had been executed by the client.
28. This ETF Disclosure Statement provided to clients repeatedly warned against the risk of holding a non-traditional ETF, such as UVXY, for a period longer than one day.
29. Yet Respondent did not have a supervisory system in place to identify the actual holding periods of non-traditional ETFs in client accounts.
30. To this end, in most instances, Respondent's remote supervision of non-traditional ETF trading in the Client Accounts was limited to ensuring the clients signed the ETF Disclosure Statement.
31. Respondent also conducted annual branch office audits of the Representative during the Relevant Period, which included the review of trading activity and client files. However, Respondent never raised any concern regarding the holding periods the Representative was employing for non-traditional ETFs.

Prohibited Non-Traditional ETFs

32. The aforementioned UVXY, the primary non-traditional ETF purchased by Respondent, was 1.5x leveraged.
33. Beginning in 2013, Respondent's written supervisory procedures strictly prohibited the use of leveraged ETFs beyond 2x leverage without prior approval.
34. In April of 2016, nine surveillance reports were generated flagging the Representative's purchase of 3x leveraged ETFs in three client accounts.
35. The Representative never received approval to purchase 3x leveraged ETFs. And there was no system in place to prevent his use of more than 2x leveraged ETFs in client accounts despite the products requiring prior approval.

Remedial Efforts

36. Respondent has since implemented a system which does allow for the supervision of non-traditional ETF holding periods.
37. Additionally, Respondent has adopted a procedure which requires all IARs receive pre-approval to purchase any non-traditional ETF in client accounts. The pre-approval process includes an educational course which all IARs are required to take prior to purchasing any non-traditional ETFs in client accounts.

UNDERTAKING

1. Respondent has previously compensated certain clients for losses incurred due to the investment strategy employed by the Representative with regard to trading in UVXY.
2. Respondent undertakes and agrees to pay a total of two-hundred seventy-six thousand, three-hundred, ninety-eight dollars and forty-two cents (\$276,398.42) to certain other clients of the Representative whose accounts were heavily concentrated in UVXY and lost money as a result of the investment strategy employed by the Representative.
3. Respondent further undertakes and agrees to pay the pro rata amount applicable to each affected client within sixty (60) days of the entry of this order and provide legal counsel for the Inspections and Compliance Division of Board with evidence of payment within ninety (90) days of the entry of such order.

CONCLUSIONS OF LAW

1. Respondent's (1) failure to have specific training requirements regarding non-traditional ETFs during the Relevant Period; (2) failure to have a supervisory system in place to monitor and flag for extended holding periods; and (3) failure to prevent the Representative's purchase of more than 2x leveraged ETFs in client accounts at a time when the Representative was not approved to purchase them, constitute an unreasonable supervisory system.
2. Respondent's failure to have a reasonably designed system in place to supervise the activities of the Representative is a violation of §116.10 of the Rules and Regulations of the Texas State Securities Board ("Board Rules").
3. Pursuant to Section 14.A(6), the aforementioned violation of a Board Rule constitutes a basis for the issuance of an order reprimanding Respondent.
4. 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 Respondent.

ORDER

1. It is therefore ORDERED that Independent Financial Group, LLC COMPLY with the terms of the Undertaking contained herein.
2. It is further ORDERED that Independent Financial Group, LLC shall pay an ADMINISTRATIVE FINE in the amount of seventy-five thousand dollars (\$75,000). Payment shall be made by delivery of a check to the Securities Commissioner in the amount of seventy-five thousand dollars (\$75,000) payable to the State of Texas, contemporaneously with this Order.

SIGNED AND ENTERED BY THE SECURITIES COMMISSIONER this 15th
day of April, 2021.

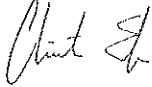


TRAVIS J. ILES
Securities Commissioner

Respondent:

 3-30-2021
Independent Financial Group, LLC
By: Joe Miller, Chief Executive Officer

Approved as to Form:



Clinton Edgar
Deputy Securities Commissioner



Cristi Ram3n Ochoa
Attorney
Inspections and Compliance Division