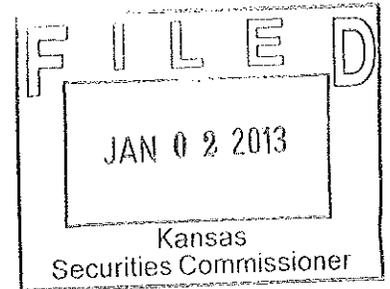


**BEFORE THE SECURITIES COMMISSIONER
OF THE STATE OF KANSAS**



In the Matter of:

PERKINS, SMART & BOYD, INC. (CRD #7221),

Docket No.13 E 014

KSC No. 2012-6020

Respondent.

_____/
Pursuant to K.S.A. 17-12a412

STIPULATION FOR CONSENT ORDER

This proceeding follows an examination and investigation conducted by the staff of the Office of the Kansas Securities Commissioner, pursuant to K.S.A. 17-12a411(d) and K.S.A. 17-12a602. As a result of the examination and investigation, staff for the Office of the Kansas Securities Commissioner alleges that:

Allegations of Fact

JURISDICTION

1. Pursuant to K.S.A. 17-12a601, the Securities Commissioner of Kansas is charged with administering the Kansas Uniform Securities Act.
2. Pursuant to K.S.A. 17-12a412, found in the Kansas Uniform Securities Act, an order may be issued to revoke, suspend, condition the registration of, or penalize a person or entity that is registered with the Office of the Securities Commissioner of Kansas as a broker-dealer, agent of a broker-dealer, investment adviser, or investment adviser representative.
3. Respondent is currently registered, and at the time when the actions relevant to this matter occurred was registered, with the Office of the Securities Commissioner of Kansas as a broker-dealer.
4. Accordingly, the Securities Commissioner of Kansas has jurisdiction over this matter.

RELEVANT TIME PERIOD

5. All transactions and other actions related to this matter occurred from December 1, 2008 to March 17, 2010.

RESPONDENT and RELATED PARTIES

6. Respondent is a registered broker-dealer structured as a corporation under the laws of the State of Kansas. It has an address of 4330 Shawnee Mission Parkway, Suite 204, Shawnee Mission, Kansas 66205.
7. At the time when the actions related to this matter occurred, Foster S. Perkins was, and currently is, a general securities principal and direct owner of the Respondent.
8. At the time when the actions related to this matter occurred, Robert L. Smart was, and currently is, a general securities principal and direct owner of the Respondent.
9. Foster S. Perkins and Robert L. Smart were originally named as Respondents in this matter.
10. At the time when the actions related to this matter occurred, Callom B. Jones, V, (CRD #2846342) (Jones) was employed as an agent of a broker-dealer by the Respondent.
11. In March 2010, Jones formed his own investment advisory firm, Trend Capital Management, LLC, and terminated his employment with the Respondent on March 17, 2010. Jones has not been associated with the Respondent since such date.
12. Jones is no longer registered as an agent of a broker-dealer. He is currently registered with the Office of the Securities Commissioner of Kansas as an investment adviser representative for Trend Capital Management, LLC (CRD #152466).
13. Trend Capital Management, LLC is registered with the Office of the Kansas Securities Commissioner as an investment adviser.

DESCRIPTION OF RELEVANT TRANSACTIONS

14. In August 2011, the Office of the Securities Commissioner of Kansas conducted a routine compliance examination of Trend Capital Management, LLC. During said examination, it was discovered that at the time when Jones was employed as an agent for the Respondent he sold shares of a two times leveraged-inverse exchange traded fund (ETF) known as the ProShares UltraShort Russell 2000 (TWM) to several clients of the Respondent.
15. A document describing a sample of purchases of the ProShares UltraShort Russell 2000 that were effectuated by Jones at the time when he was an agent for the Respondent is attached hereto as Exhibit 1 and is hereby incorporated by reference.
16. Each transaction described in Exhibit 1 was a solicited transaction.
17. Each share of the ProShares UltraShort Russell 2000 described in Exhibit 1 was held in an account with the Respondent for at least 26 days and some shares were held for more than 467 days.

FAILURE TO ESTABLISH APPROPRIATE SUPERVISORY PROCEDURES

18. K.A.R. 81-3-7(a)(2) and NASD Rule 3010(b)(1) require broker-dealers to establish and maintain written supervisory procedures tailored to the types of business and activities that are conducted by its agents.
19. In June 2009, the Financial Industry Regulatory Authority (FINRA) issued Regulatory Notice 09-31. Regulatory Notice 09-31 informed broker-dealers that in order to properly supervise trades in leveraged and inverse ETFs, the broker-dealer must ensure that its written supervisory procedures require that:
 - a. the appropriate reasonable-basis suitability analysis is completed;
 - b. associated persons perform appropriate customer-specific suitability analysis;

- c. all promotional materials are accurate and balanced; and
- d. all FINRA and SEC rules are followed.

Regulatory Notice 09-31 also stated, "In addition to establishing written procedures, such firms must document the steps they have taken to ensure adherence to these procedures."

- 20. The Supervisory Procedures Manual of the Respondent in effect at the time the transactions described in Exhibit 1 occurred did not address transactions in leveraged and inverse ETFs in any manner.
- 21. In an email to the Office of the Securities Commissioner of Kansas dated February 8, 2012, the Respondent stated, "Our firm didn't have any procedures against non-traditional ETFs being held for long term periods.
- 22. In an email to the Office of the Securities Commissioner of Kansas dated February 8, 2012, the Respondent stated, "Our firm didn't comply with FINRA Notice 19-31 which was issued in June of 2009" (This statement was made in response to a question regarding the Respondent's compliance with FINRA Regulatory Notice 09-31. Therefore, it is assumed that "19-31" is a typographical error.)
- 23. Regulatory Notice 09-31 requires firms that allow agents to effectuate trades in leveraged and inverse ETFs to provide training specifically related to leveraged and inverse ETFs.
- 24. Respondent did not provide any appropriate training to Jones regarding effectuating transactions in leveraged and inverse ETFs.
- 25. In an email to the Office of the Securities Commissioner of Kansas dated February 8, 2012, the Respondent stated, "As far as I know, neither I nor anyone connected with our firm, provided Mr. Jones with any training concerning suitability of the ETF's he used in his clients accounts but they were discussed at length."

Allegations of Law

FAILURE TO ESTABLISH APPROPRIATE SUPERVISORY PROCEDURES

26. Respondent failed to establish and maintain written supervisory procedures regarding the suitability and use of leveraged and inverse exchange traded funds, in violation of K.A.R. 81-3-7(a)(2) and NASD Rule 3010(b)(1) (as incorporated by K.A.R. 81-3-6(d)(1) and adopted by K.A.R. 81-2-1(d)(2)).
27. Respondent failed to provide Callom B. Jones, V, training related to leveraged and inverse-leveraged exchange traded funds in violation of K.A.R. 81-3-7(a)(2).

RESPONDENT, WISHING TO OBTAIN DISPOSITION OF THIS MATTER

without invoking any right to a hearing before the Securities Commissioner, or his designee, has determined not to contest the issuance of an order by the Commissioner on the basis of the above allegations.

IT IS THEREFORE STIPULATED AND AGREED by and between the Respondent and staff for the Kansas Securities Commissioner that:

1. Foster S. Perkins shall be dismissed from this matter with prejudice.
2. Robert L. Smart shall be dismissed from this matter with prejudice.
3. The Consent Order as to Perkins, Smart & Boyd, Inc. may be issued by the Kansas Securities Commissioner without further proceedings in this matter.
4. Respondent neither admits nor denies the allegations of the Commissioner's staff.
5. Respondent agrees that:
 - a. it will pay a fine of \$15,000.00;
 - b. complete and full payment of said fine will be delivered to the Office of the Kansas Securities Commissioner located at 109 SW 9th Street, Suite 600,

Topeka Kansas, 66612 within 30 days of entry of the Consent Order;

- c. said fine shall be paid in the form of a cashier's check or money order made payable to the Office of the Kansas Securities Commissioner; and
- d. the registration of the Respondent as a broker-dealer in the State of Kansas shall be conditioned on the timely payment of the fine described herein.

4. Staff for the Kansas Securities Commissioner agrees that the Allegations of Fact recited in this Stipulation for Consent Order shall not be used as the basis for any further actions by the Kansas Securities Commissioner against the Respondent, Foster S. Perkins, or Robert L. Smart.

5. Respondent, Foster S. Perkins, and Robert L. Smart hereby waive their right to a hearing before the Commissioner with respect to this matter, the issuance of the Consent Order, and the above allegations.

APPROVED BY:



Foster S. Perkins

12/31/2012

Date

Robert L. Smart

Date

PERKINS, SMART, & BOYD, INC.

By: 

Foster S. Perkins, President and CEO
RESPONDENT

12/31/2012

Date

Topeka Kansas, 66612 within 30 days of entry of the Consent Order;

- c. said fine shall be paid in the form of a cashier's check or money order made payable to the Office of the Kansas Securities Commissioner; and
- d. the registration of the Respondent as a broker-dealer in the State of Kansas shall be conditioned on the timely payment of the fine described herein.

- 4. Staff for the Kansas Securities Commissioner agrees that the Allegations of Fact recited in this Stipulation for Consent Order shall not be used as the basis for any further actions by the Kansas Securities Commissioner against the Respondent, Foster S. Perkins, or Robert L. Smart.
- 5. Respondent, Foster S. Perkins, and Robert L. Smart hereby waive their right to a hearing before the Commissioner with respect to this matter, the issuance of the Consent Order, and the above allegations.

APPROVED BY:

Foster S. Perkins



Robert L. Smart

Date

12/31/2012

Date

PERKINS, SMART, & BOYD, INC.

By: _____
Foster S. Perkins, President and CEO
RESPONDENT

Date

BRYAN CAVE LLP

By: 

Jeff Ziesman, #17645
1 Kansas City Place
1200 Main Street, Suite 3500
Kansas City, Missouri 64105
(816) 374-3225 Phone
(816) 855-3225 Fax
jeff.ziesman@bryancave.com
ATTORNEYS FOR RESPONDENT

12/31/12
Date

OFFICE OF THE KANSAS SECURITIES COMMISSIONER

By: 

Caleb D. Crook, #22156
Staff Attorney, Compliance
Office of the Securities Commissioner
109 SW 9th St., Suite 600
Topeka, Kansas 66612
(785) 296-3630 Phone
(785) 296-6872 Fax
caleb.crook@ksc.ks.gov
ATTORNEY FOR THE SECURITIES COMMISSIONER

1-2-13
Date