



BEFORE THE SECURITIES COMMISSIONER  
OF THE STATE OF KANSAS

In the Matter of:

OVERSTAKE ASSET MANAGEMENT, LLC (CRD #125786) Docket No.

Respondent. KSC No. 2014-6186

\_\_\_\_\_/ Pursuant to K.S.A. 17-12a412

**CONSENT ORDER**

- 1. The Staff of the Securities Commissioner of Kansas (“KSC Staff”) alleges that Respondent Overstake Asset Management, LLC (“Overstake”) engaged in conduct that constitutes violations of the Kansas Uniform Securities Act and that Respondent is subject to discipline pursuant to K.S.A. § 17-12a604.
- 2. Respondent and KSC Staff desire to settle the matters raised by KSC Staff relating to Respondent’s alleged violations.

**I. CONSENT TO JURISDICTION**

- 3. Respondent and the KSC Staff stipulate and agree that the Securities Commissioner of Kansas (“the Commissioner”) has jurisdiction over Respondent and these matters pursuant to the Kansas Uniform Securities Act, K.S.A. §§ 17-12a101-17-12a703.
- 4. Respondent and the KSC Staff stipulate and agree that the Commissioner has authority to enter this Order pursuant to K.S.A. § 17-12a604.

**II. WAIVER AND EXCEPTION**

- 5. Respondent waives its right to a hearing with respect to these matters.
- 6. Respondent waives any rights that it may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order. Respondent specifically forever

releases and holds harmless the Kansas Securities Commissioner, the KSC Staff and their respective representatives and agents from any and all liability and claims arising out of, pertaining to, or relating to this matter.

7. Respondent stipulates and agrees that, should the facts contained herein prove to be false or incomplete, KSC Staff preserves the right to pursue any and all legal and administrative remedies at its disposal.

### **III. CONSENT TO COMMISSIONER'S ORDER**

8. Respondent and KSC Staff agree to the issuance of this Consent Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein.
9. Without admitting or denying the allegations made by KSC Staff as reflected in the Findings of Fact and Conclusions of Law set forth below, Respondent agrees to the issuance of this Consent Order solely for the purposes of this proceeding and any proceeding that may be brought to enforce the terms of this Consent Order.
10. Respondent agrees not to take any action or to make or permit to be made any public statement creating the impression that this Order is without a factual basis. Nothing in this Order affects Respondent's: (a) testimonial obligation, or (b) right to take legal or factual positions in defense of litigation or in defense of other legal proceedings in which the Commissioner is not a party.

### **IV. FINDINGS OF FACT**

11. Overstake Asset Management, LLC ("Overstake") is an investment advisory firm headquartered at 6132 SE Ellis Road, Leon, Kansas 67074.

12. James R. Overstake is a registered investment adviser representative for Overstake Asset Management, LLC. He has a business address of 6132 SE Ellis Road, Leon, Kansas 67074, and a residential address of [REDACTED]
13. Overstake is the owner and sole managing member of Overstake Asset Management, LLC.
14. All actions related to this matter occurred between September 2009 and June 2015.
15. On June 25, 2014 an on-site compliance inspection of Respondent was performed by KSC Staff.
16. A review of the transactions in client accounts revealed a common trading strategy, *to wit*, the recommendation of long-term positions in leveraged inverse exchange traded funds (“ETF”) (specifically, ProShares UltraShort 20+ Year Treasury [TBT]).
17. The TBT shares were purchased between September 18, 2009 and April 30, 2015.
18. Long term positions in TBT were found in 25 client accounts. The TBT shares comprised a substantial portion of the assets held within the accounts.
19. The prospectuses for the leveraged-inverse ETF that Respondent purchased on behalf of its clients contained multiple statements warning that the fund seeks investment results for a single day only and that “[b]ecause of daily rebalancing and the compounding of each day’s return over time, the return of the Fund for periods longer than a single day will be the result of each day’s returns compounded over the period, which will very likely differ from two times the inverse (-2x) of the return of the Index over the same period. The Fund will lose money if the level of the Index is flat over time, and it is possible that the Fund will lose money over time even if the level of the Index falls, as a result of daily rebalancing, the Index’s volatility and the effects of compounding.”

20. **Despite the fact that the prospectus contained multiple warnings against such practices, Respondent purchased shares of TBT in the accounts managed on behalf of its clients with the intent of holding such shares for more than one day. The inverse ETFs were held for periods much longer than recommended (in many instances, over several years).**
21. **Respondent's acts of holding a portion of the assets that it managed for its clients in the TBT leveraged-inverse ETF for extended periods was contrary to multiple warnings contained in the prospectus that the Fund was not likely to achieve its objective if held for more than one day.**
22. **The accounts in which the TBT shares were purchased have suffered losses as a result of the long-term holdings of such shares.**
23. **K.A.R. 81-14-5(c) imposes a fiduciary duty on all investment advisers and investment adviser representatives registered with the State of Kansas. Consequently, Respondent had a duty to act in its clients' best interests when managing their investment accounts.**
24. **Pursuant to K.S.A. § 17-12a412(h), a person that controls, directly or indirectly, a person not in compliance with securities laws and regulations may be disciplined to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the conduct of the noncomplying person.**
25. **At the time that James R. Overstake committed the acts that constituted a breach of fiduciary duty, he was an Investment Advisor Representative of Overstake Asset Management, LLC. Therefore, Overstake Asset Management, LLC directly controlled James R. Overstake.**

## **V. CONCLUSIONS OF LAW**

26. Between September 1, 2009 and April 30, 2015, Respondent's representative James R. Overstake purchased shares of an inverse leveraged ETF, TBT, in 25 client accounts. The shares of TBT were held for extended periods, contrary to multiple warnings contained in the prospectus that the Fund was not likely to achieve its objective if held for more than one day. By holding the TBT fund for extended periods despite warnings contained in the prospectus, James R. Overstake breached his fiduciary duty to clients.
27. Pursuant to § 17-12a412(h), Respondent is a control person of James R. Overstake and is subject to discipline to the same extent as James R. Overstake for the aforementioned violations of the Kansas Uniform Securities Act.
28. Respondent failed to reasonably supervise James R. Overstake and accordingly acted in violation of K.S.A. § 17-12a412(d)(9) and K.A.R. 81-14-10.

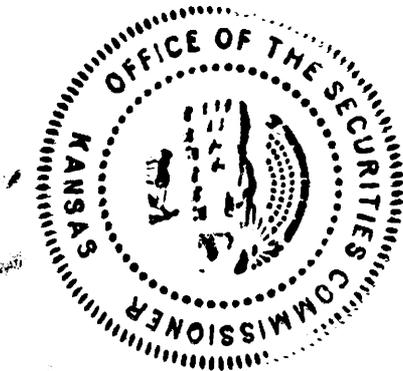
## **VI. ORDER**

**IT IS, THEREFORE ORDERED** by the Securities Commissioner of Kansas that:

- (1) Not later than June 27, Respondent shall withdraw its registration as an investment advisor in Kansas and terminate the registration of James R. Overstake as an investment advisor representative.
- (2) Neither Respondent nor James R. Overstake, by virtue of his consent to this order, shall, directly or indirectly, employ or associate with an investment advisor, federal covered investment advisor, or broker dealer, or engage in any activity related to investment advice in Kansas in the future.
- (3) The Respondent is to oversee the orderly and timely termination of all current client investment advisory contracts or transition of said accounts to another entity.

(4) IT IS SO ORDERED BY THE COMMISSIONER.

Entered at Topeka, Kansas this 23<sup>rd</sup> day of June, 2016.



[REDACTED]  
Joshua A. Ney  
Securities Commissioner

CONSENTED TO BY:

[REDACTED]  
Ryan A. Kriegshauser  
Director of Litigation  
Office of the Kansas Securities Commissioner

[REDACTED]  
Overstake Asset Management, LLC  
By: James R. Overstake, President  
Respondent

[REDACTED]  
James R. Overstake

**CERTIFICATE OF SERVICE**

I hereby certify that on this 24<sup>th</sup> day of June, 2016, a copy of the above Consent Order was sent via certified and first class mail to the following:

Thomas P. Garretson  
TRIPLETT WOOLF & GARRETSON, LLC  
2959 N. Rock Road, Suite 300  
Wichita, KS 67226

And via email to:

Kathryn G. Pederson  
Office of the Securities Commissioner  
4200 Somerset Dr. Suite 241  
Prairie Village, Kansas 66208  
katie.pederson@ks.gov



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Nickie Oathout  
Clerk of Administrative Hearings