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**BEFORE THE ARKANSAS SECURITIES COMMISSIONER
CASE NO S-12-0066
ORDER NO. S-12-0066-12-OR01**

12 OCT 26 AM 9:34
ARKANSAS SECURITIES DEPT.

**IN THE MATTER OF:
MORGAN KEEGAN & COMPANY, INC.**

RESPONDENT

CONSENT ORDER

This Consent Order is entered pursuant to the Arkansas Securities Act, codified at Ark. Code Ann. §§ 23-42-101 through 23-42-509 (“Act”), the Rules of the Arkansas Securities Commissioner (“Rules”) promulgated under the Act, and the Arkansas Administrative Procedures Act, codified at Ark. Code Ann. §§ 25-15-201 through 25-15-219, in accordance with an agreement by and between the Staff of the Arkansas Securities Department (“Staff”), and Morgan Keegan and Company, Inc. (“Morgan Keegan”) relating to the activities of former Morgan Keegan financial advisor Keith H. Freeman (“Freeman”) in full and final settlement of all claims that could be brought against Morgan Keegan by the Staff on the basis of the facts set forth herein.

Morgan Keegan admits the jurisdiction of the Act and the Arkansas Securities Commissioner (“Commissioner”), waives its right to a formal hearing and appeal, and, solely for purposes of these proceedings, neither admits nor denies the findings of facts made herein, consents to the entry of this order and agrees to abide by its terms in settlement of any possible violations committed by Morgan Keegan concerning the matters detailed in this order.¹

¹ Nothing set forth in this Consent Order is in any way binding on any other person or entity who is not a party to this Consent Order. Nothing contained herein shall preclude Morgan Keegan from asserting inconsistent positions in any litigation, arbitration or proceeding in which the Arkansas Securities Department is not a party.

FINDINGS OF FACT

1. Morgan Keegan, CRD number 4161, a Tennessee corporation, is a registered broker-dealer with the Arkansas Securities Department and the SEC, as well as a federally registered investment adviser with the SEC. At all relevant times Morgan Keegan was properly registered and notice-filed with the Arkansas Securities Department.

2. Freeman, CRD number 4350220, was registered as an agent of Morgan Keegan from November 14, 2006 through April 25, 2011, with the Arkansas Securities Department.

3. The Staff contends that, in violation of Ark. Code Ann. § 23-42-308 and Rule 308.01(E) of the Rules, Freeman engaged in mutual fund “switching” in the accounts of Arkansas residents one (“AR1”). AR1 is a married couple, who are near retirement age. Based on a review of their account profiles, AR1 are not highly experienced investors. A review of the trading history of AR1’s Morgan Keegan accounts reveals that on a number of occasions, Freeman recommended the sale of A shares of mutual or bond funds belonging to AR1 and the purchase of more A shares in either the same or similar mutual or bond funds, which generated commissions for Freeman without apparent benefit to AR1.

4. The Staff contends that, in violation of Ark. Code Ann. § 23-42-308 and Rule 308.01(D) of the Rules, between March and August 2009, Freeman recommended the purchase of seven nontraditional, leveraged or inverse ETFs (“non-traditional ETFs”) to AR1. Non-traditional ETFs have certain risks that are not found in traditional ETFs, such as the risks associated with a daily reset, leverage, and compounding, and are therefore generally appropriate for relatively aggressive investors. The new account forms signed by AR1 indicate their objectives, in order of priority, as growth, income, tax advantage, and speculation. Based on discussions with AR1 and review of their account profiles, AR1 are not highly experienced or

knowledgeable investors, and they were seeking less aggressive investments than the non-traditional ETFs recommended by Freeman. Most non-traditional ETFs “reset” daily, meaning they are designed to achieve their desired objective on a daily basis, and the effects of compounding present unique risks over longer holding periods. AR1 held positions in certain of these non-traditional ETFs for time periods of up to several months. AR1 denies that the extended holding of ETFs was done as part of any hedging strategy explained to or authorized by AR1. In light of these facts, the non-traditional ETFs were unsuitable for AR1. Although the Morgan Keegan compliance policy manual did not expressly address non-traditional ETFs prior to September 2009, Morgan Keegan did provide its registered personnel with written guidance about the risks of non-traditional ETFs dating back to August 2008.

5. In violation of Ark Code Ann. § 23-42-308(J), Morgan Keegan failed to reasonably supervise Freeman in order to detect or prevent the violations of the Act and Rules by Freeman as detailed above specifically with regard to the accounts of AR1. Specifically, Morgan Keegan and its supervisory/compliance employees failed to exercise measures to prevent Freeman from switching mutual or bond fund investments held by AR1 and the sale of unsuitable securities to AR1.

APPLICABLE LAW

6. Rule 308.01(E) of the Rules states that excessive trading is defined as trading in a customer’s account that is excessive in size or frequency in view of the financial resources and character of the account exclusively for the purpose of accumulating profits shall be considered grounds for suspension or revocation of a broker-dealer or agent registration.

7. Rule 308.01(D) of the Rules states that recommending to a customer the purchase, sale or exchange of any security when a broker-dealer or agent does not have reasonable grounds

for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs, or encouraging a customer to invest beyond his immediate financial resources shall be grounds for suspension or revocation of a broker-dealer or agent registration.

8. Under Ark. Code Ann. § 23-42-308(a)(2)(J), the Commissioner may by order suspend or revoke any registration or impose other appropriate penalties if he finds that the registrant has failed reasonably to supervise the agents of the broker-dealer or the representatives of the investment adviser.

CONCLUSIONS OF LAW

9. Freeman violated Ark. Code Ann. § 23-42-308 and Rule 308.01(E) of the Rules, when Freeman engaged in mutual fund switching in AR1's accounts as detailed in paragraph 3.

10. Freeman violated Ark. Code Ann. § 23-42-308 and Rule 308.01(D) of the Rules, when Freeman recommended unsuitable securities to AR1 as detailed in paragraph 4.

11. Morgan Keegan violated Ark. Code Ann. § 23-42-308(a)(2)(J) when it failed to supervise its former agent Freeman in connection with the accounts of AR1, as detailed in paragraphs 3 through 5.

12. Pursuant to Ark. Code Ann. § 23-42-308(g), the Commissioner may impose an appropriate fine against Morgan Keegan.

OPINION

This order is in the public interest. The facts as set out in paragraphs 3 through 5 support the violations of the Act as set out in paragraphs 9 through 11.

ORDER

IT IS THEREFORE ORDERED that Morgan Keegan shall pay a fine in the amount of \$15,000 to the Arkansas Securities Department within 10 days of the entry of this Order. In addition, Morgan Keegan shall pay restitution in the amount of \$44,659.60 to AR1 within 10 days of the entry of this Order.

WITNESS MY HAND AND SEAL on this 24th day of October, 2012.



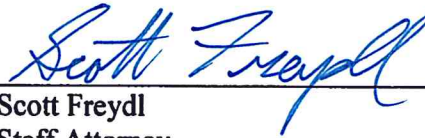
A. Heath Abshure
Arkansas Securities Commissioner

APPROVED AS TO CONTENT
AND FORM:



General Counsel
Morgan Keegan & Co.

APPROVED AS TO CONTENT
AND FORM:



Scott Freydl
Staff Attorney
Arkansas Securities Department



Terry R. Weiss, Attorney for Respondent
Morgan Keegan