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REC'D - AR SECURITIES

\BEFORE THE ARKANSAS SECURITIES COMMISSIONER

CASE NO. S-22-0027

ORDER NO. S-22-0027-24-OR02

IN THE MATTER OF:

MICHAEL BRANDON STALCUP

RESPONDENT

CONSENT ORDER

This Consent Order ("Order") is entered pursuant to the Arkansas Securities Act ("Act"), codified at Ark. Code Ann. §§ 23-42-101 through 23-42-509, the Rules of the Arkansas Securities Commissioner ("Rules") promulgated pursuant to 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 between the Staff of the Arkansas Securities Department ("Staff") and the Respondent, Michael Brandon Stalcup ("Stalcup").

The Respondent admits the jurisdiction of the Act and the Arkansas Securities Commissioner ("Commissioner"), waives his right to a formal hearing and appeal, consents to the entry of this Order, and agrees to abide by its terms in full and final settlement of all claims that could be brought against him on the basis of the facts set forth herein.

FINDINGS OF FACT

1. Stalcup (CRD No. 4024498) is a resident of Arkansas. Stalcup became registered with the Arkansas Securities Department ("Department") as a broker-dealer agent on October 25, 1999, and as an investment adviser representative on January 23, 2003. Stalcup is currently employed as an investment adviser representative by Cabana Asset Management (CRD No. 151418). From April 21, 2017, until November 29, 2018, Stalcup was employed as an investment adviser representative by Magann Capital Corp. (CRD No. 162713). Concurrent with Stalcup's affiliation with Magann Capital Corp., Stalcup was registered as a broker-dealer agent with

Trutoro, formerly known as Veritas Independent Partners, LLC (CRD No. 169291), from April 21, 2017, until July 18, 2019.

2. Magann Capital Corp. was registered with the Department as an investment adviser firm from August 10, 2015, until December 31, 2018. Magann Capital Corp. is no longer registered with the Department in any capacity.

3. During the period from August 24, 2017, through September 25, 2018, Stalcup invested clients' funds in complex, non-traditional exchange traded products ("ETPs"), including leveraged exchange traded funds ("ETFs"), inverse leveraged ETFs, and inverse exchange traded notes ("ETNs") (collectively, "Non-traditional ETPs") without reasonable grounds to believe that the Non-traditional ETPs were suitable based on the clients' investment objectives, financial situations, and needs. Of the 64 accounts examined by Staff, 48 client accounts contained Non-traditional ETPs. These Non-traditional ETPs were held in accounts with a conservative risk tolerance and longer than their recommended holding periods, in some instances up to 89 days.

4. Stalcup invested clients' funds in the following Non-traditional ETPs:

Name	Type
ProShares Ultra Dow30	Leveraged 2x the daily performance of the Dow Jones Industrial Average
ProShares UltraPro Short S&P500	Inverse, leveraged -3x of the daily performance of the S&P500
ProShares Ultra S&P500	Leveraged 2x the daily performance of the S&P500
Direxion Daily Small Cap Bear 3x Shares	Inverse, leveraged -3x of the performance of the Russell 2000 Index

ProShares UltraPro S&P500	Leveraged 3x the daily performance of the S&P500
VelocityShares Daily Inverse VIX Short-Term ETNs	Inverse of the daily performance of the S&P500 VIX Short-Term Futures™ Index ER

5. Non-traditional ETPs are designed for a one-day performance. Adverse returns could result from holding them for longer periods of time, particularly if the index to which the Non-traditional ETPs is keyed goes in a direction other than the direction anticipated when the Non-traditional ETPs were purchased. These characteristics of Non-traditional ETPs were well known and could be easily ascertained at the time Stalcup recommended the purchase of the Non-traditional ETPs in question, as shown by the following:

- The Financial Industry Regulatory Authority (FINRA) has issued several Regulatory Notices related to ETPs, including, but not limited to, Regulatory Notice 09-31 (June 2009) entitled, “Non-Traditional ETFs – FINRA Reminds Firms of Sales Practice Obligations Relating to Leveraged and Inverse Exchange-Traded Funds.” The notice explains that inverse and leveraged ETFs are “highly complex financial instruments that are typically designed to achieve their stated objectives on a daily basis.” Because these Non-traditional ETFs reset daily and compound any returns or losses, their performance “can differ significantly from their stated daily objective.” On the first page of the notice is a clear warning that “inverse and leveraged ETFs . . . are unsuitable for retail investors who plan to hold them for longer than one trading session, particularly in volatile markets.” This warning that “inverse and leveraged ETFs typically are not suitable for retail investors who plan to hold them for more than one

trading session . . .” is repeated on page three of the notice under the heading, “Suitability.”

- On August 1, 2009, FINRA and the United States Securities and Exchange Commission (SEC) jointly issued an Investor Alert titled, “Leveraged and Inverse ETFs: Specialized Products with Extra Risks for Buy-and-Hold Investors.” Like FINRA Regulatory Notice 09-31, this Investor Alert also reiterates that inverse ETFs are one-day products, warning that the “performance of these ETFs over a period longer than one day can differ significantly from their stated daily performance objectives.”

- The Direxion Daily Small Cap Bear 3x Shares prospectus states as follows:

Because 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 -300% of the return of the Index over the same period. The Fund will lose money if the Index performance is flat over time, and as a result of daily rebalancing, the Index’s volatility and the effects of compounding, it is even possible that the Fund will lose money over time while the Index’s performance decreases over a period longer than a single day.

- The VelocityShares Daily Inverse VIX Short-Term ETNs prospectus states as follows:

The ETNs, and in particular the 2x Long ETNs, are intended to be trading tools for sophisticated investors to manage daily trading risks. They are designed to achieve their stated investment objectives on a daily basis, but their performance over longer periods of time can differ significantly from their stated daily objectives. The ETNs are riskier than securities that have intermediate or long-term investment objectives, and may not be suitable for investors who plan to hold them for longer than one day. Accordingly, the ETNs should be purchased only by knowledgeable investors who understand the potential consequences of investing in volatility indices and of seeking inverse or leveraged investment results, as applicable. Investors should actively and frequently monitor their investments in the ETNs, even intra-day.

6. Contrary to FINRA Regulatory Notice 09-31, the FINRA and SEC joint Investor Alert, and the prospectuses and fact sheets of the Non-traditional ETPs, Stalcup invested clients' funds in these high risk, complex products which resulted in significant realized losses as shown by the following examples:

- Investors JB and SB: The account opening documents completed by JB and SB showed a desired conservative risk tolerance with an investment objective of "income and growth." At the time of this account opening, JB was 83 years old, and SB was 78 years old. Approximately 15% of the JB and SB account holdings were Non-traditional ETPs. Stalcup purchased and held the following Non-traditional ETPs in JB's and SB's account:

Product	Holding Period	Realized Losses
VelocityShares Daily Inverse VIX Short Term ETNs	5-7 days	\$70,076.26

- Investor RM: The account opening documents completed by RM showed a desired moderate risk tolerance and a "balanced" portfolio allocation. Stalcup purchased and held the following Non-traditional ETP in RM's account:

Product	Holding Period	Realized Losses
VelocityShares Daily Inverse VIX Short Term ETNs	5-7 days	\$139,812.86

- Investor NB: The account opening documents completed by NB showed a desired moderate risk tolerance and a "balanced" portfolio allocation. Stalcup purchased and held the following Non-traditional ETP in NB's account:

Product	Holding Period	Realized Losses
VelocityShares Daily Inverse VIX Short Term ETNs	5-7 days	\$134,396.39

LEGAL AUTHORITY AND CONCLUSIONS OF LAW

7. The Commissioner has jurisdiction over this matter pursuant to Ark. Code Ann. § 23-42-308.

8. An investment adviser is a fiduciary, and as such owes the highest standard of care at law to its clients. *SEC v. Capital Gains Research Bureau, Inc.* 375 U.S. 180, 194 (1963). Investment advisers and representatives have a duty to act primarily for the benefit of their clients. All investment advisers and representatives shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. Certain conduct shall constitute fraudulent or deceptive practices and shall be considered grounds for denial, suspension, or revocation of an investment adviser or investment adviser representative registration, or for the issuance of a cease and desist order or other action under Section 23-42-209 of the Act, in addition to other dishonest or unethical practices within the meaning of Sections 23-42-307 and 23-42-308 of the Act. Rule 308.02 (Introduction) of the Rules.

9. Under Rule 308.02(a) of the Rules, recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the investment adviser after reasonable analysis of the client's information and records provided to the investment adviser shall be considered unethical and grounds for denial, suspension or revocation.

10. Under Ark. Code Ann. § 23-42-308(a)(2)(G), the Commissioner may by order deny, suspend, make conditional or probationary, or revoke any registration if he or she finds that an investment adviser has engaged in dishonest or unethical practices in the securities business.

11. Pursuant to Ark. Code Ann. § 23-42-308(g) the Commissioner may fine any investment adviser or representative up to ten thousand dollars (\$10,000) for each violation of Ark. Code Ann. § 23-42-308; or up to twenty thousand dollars (\$20,000) for each violation of Ark. Code Ann. § 23-42-308 if a victim is sixty-five (65) years of age or older.

12. Ark. Code Ann. § 23-42-308(h) allows for the informal disposition of a proceeding or allegations which might give rise to a proceeding by consent.

13. Stalcup violated Rule 308.02(a) of the Rules and, thus, violated Ark. Code Ann. § 23-42-308(a)(2)(G) by recommending that his clients buy and hold the Non-traditional ETPs which were held for more than one day.

14. The Commissioner may fine Stalcup up to \$10,000, or up to \$20,000 for victims sixty-five (65) years of age or older, for each violation of the Act or Rules pursuant to Ark. Code Ann. § 23-42-308(g).

15. This matter may be settled by consent pursuant to Ark. Code Ann. § 23-42-308(h).

UNDERTAKINGS

In settlement of this matter, Stalcup agrees to pay a fine to the Department in the amount of \$15,000.00 immediately upon entry of this Order.

OPINION

This Order is in the public interest. The facts set forth in paragraphs one through six support the violations of the Act and Rules as set forth in paragraphs seven through 15.

ORDER

IT IS THEREFORE ORDERED that Michael Brandon Stalcup shall comply with the Act and Rules and pay a fine to the Department in the total amount of \$15,000.00 upon entry of this Order.

IT IS SO ORDERED this 28th day of June, 2024.

SUSANNAH T. MARSHALL
ARKANSAS SECURITIES COMMISSIONER

By: J. Campbell McLaurin
J. Campbell McLaurin
Deputy Commissioner
Arkansas Securities Department
1 Commerce Way, Suite 402
Little Rock, Arkansas 72202

CONSENT TO ENTRY OF ORDER

I hereby agree to the entry of this Consent Order and consent to all terms, conditions, and orders contained therein, and waive any right to appeal from this Order.

Michael Brandon Stalcup

Michael Brandon Stalcup

(CRD No. 4024498)

Respondent

AEC 67-28-24

Date

Approved as to content and form:

Amber E. Crouch

Amber E. Crouch

General Counsel

Arkansas Securities Department

June 28, 2024

Date