

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA	:
DEPARTMENT OF BANKING AND	:
SECURITIES, BUREAU OF SECURITIES	:
COMPLIANCE AND EXAMINATIONS	:Docket No. : 24_0025_(SEC-OSC)
	:
v.	:
	:
VIKING WEALTH MANAGEMENT, LLC.	:
MICHAEL ZISA	:
	:

NOTICE TO ANSWER AND REQUEST A HEARING

You have the right to challenge the attached Order to Show Cause (“Order”) by filing an Answer, in writing, with the Docket Clerk **within 30 days** of the date of this Order as required by 1 Pa. Code § 35.37. **If you do not file an Answer within 30 days, then you will waive your right to a hearing and the Banking and Securities Commission (“Commission”) may enter a final order against you.**

Your Answer must be in writing. Your Answer must specifically admit or deny the allegations in this Order, set forth the facts you rely upon, and state concisely the law upon which you rely. General denials of the allegations set forth in the Order are not sufficient; you must support your denials with specific facts. Failure to support your denials with specific facts may cause the Commission to deem the facts in the Order as admitted and to enter a final order against you, without a hearing.

The Answer and any other documents must be filed via first-class mail and electronic mail with the Docket Clerk:

Linnea Freeberg, Docket Clerk
Department of Banking and Securities
17 North Second Street, Suite 1300
Harrisburg, Pennsylvania 17101
Email: RA-BNDOCKETCLERK@pa.gov

Further, you must serve a copy of the Answer and any other documents on the person who signed the Order by providing a hard and electronic copy to his or her counsel indicated below:

Office of Chief Counsel
Pennsylvania Department of Banking and Securities
17 North Second Street, Suite 1300
Harrisburg, Pennsylvania 17101
Email: RA-BNChiefCounsel@pa.gov

Once you file your Answer, you will be notified of pertinent information such as the name of the presiding officer designated by the Commission to hear this matter and, if a hearing is scheduled, the date, time, and location of the hearing. You have the right to be represented by an attorney.

The hearing and all other procedural matters will be governed by the Pennsylvania Administrative Agency Law, 2 Pa.C.S. §§ 501-508, 701-704, and the General Rules of Administrative Practice and Procedure, 1 Pa. Code §§ 31.1.-35.251.

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ORDER TO SHOW CAUSE

You, Viking Wealth Management, LLC., and Michael Zisa, are notified that the Department of Banking and Securities (“Department”), through the Bureau of Securities Compliance and Examinations (“Bureau”) hereby **ORDERS YOU TO SHOW CAUSE** why the Banking and Securities Commission (“Commission”) should not impose the sanctions and remedies described below. Specifically, this proceeding is instituted pursuant to 1 Pa. Code § 35.14 to determine:

- (1) whether the allegations set forth below are true; and
- (2) if these allegations are true, whether there has been a violation of the Pennsylvania Securities Act of 1972 (“1972 Act”) or of the regulations promulgated thereunder; and
- (3) if so, whether the sanctions and remedies proposed by the Bureau should be imposed by the Commission.

The Bureau alleges the following facts and violations of law for the purpose of tentatively framing the issues for consideration by the Commission. The Commission may consider this

matter directly or may designate a hearing officer to issue a recommended decision prior to the Commission issuing a final order.

STATEMENT OF THE PARTICULARS AND MATTERS
CONCERNING WHICH THE BUREAU IS INQUIRING

PARTIES

1. The Department is the Commonwealth of Pennsylvania’s administrative agency authorized and empowered to administer and enforce the 1972 Act.

2. The Bureau is primarily responsible for administering and enforcing the 1972 Act for the Department.

3. The Bureau operates from the Department’s main office located at 17 North Second Street, Suite 1300, Harrisburg, Pennsylvania 17101.

4. Respondent Viking Wealth Management, LLC. (“Respondent Viking”), CRD # 306088, was, at all material times herein, a Pennsylvania limited liability company with an address at Redacted .

5. Respondent Michael Zisa (“Respondent Zisa”), CRD # 4399235, was, at all material times herein, the sole owner and chief compliance officer of Respondent Viking.

FACTUAL ALLEGATIONS

6. From on or about January 10, 2020, until the present, Respondent Viking was registered pursuant to Section 301(c) of the 1972 Act, 70 P.S. § 1-301(c), as an investment adviser.

7. From on or about January 10, 2020, until the present, Respondent Zisa was registered pursuant to Section 301(c) of the 1972 Act, 70 P.S. § 1-301(c), as an investment adviser representative of Respondent Viking.

8. As the sole owner and chief compliance officer of Respondent Viking, Respondent Zisa acted as an “affiliate” of Respondent Viking, within the meaning of Section 102(b) of the 1972 Act, 70 P.S. § 1-102(b), and, as such, caused Respondent Viking to commit the herein stated acts which violated the 1972 Act.

Respondent Viking’s Unsuitable Recommendations

9. Regulation 305.019(c)(3)(i), 10 Pa. Code § 305.019(c)(3)(i), prohibits an investment adviser from engaging in dishonest or unethical practices in the securities business by recommending to clients the purchase, sale or exchange of securities without reasonable grounds to believe that the recommendation was suitable based upon the clients’ investment objectives, financial situation and needs, and other information.

10. Respondent Viking recommended the purchase, sale or exchange in its clients’ accounts in ProShares Short S&P 500 Exchange Traded Fund (“ETF”) listed on NYSE Arca under the ticker SH.

SH

11. SH is an inverse ETF that targets a return by a factor of negative one times (-1x) the return of the S&P 500 Index for a single day.

12. Shares of SH are “securities” within the meaning of Section 102(t) of the 1972 Act, 70 P.S. § 1-102(t).

13. The prospectus for SH states:

- a. “The return of [SH] for periods longer than a single day will be the result of its return for each day compounded over the period. [SH]’s returns for periods longer than a single day will very likely differ in amount, and possibly even direction, from the Fund’s stated multiple (-1x) times the return of the Index for the same

period. For periods longer than a single day, [SH] will lose money if the Index's performance is flat, and it is possible that the Fund will lose money even if the level of the Index falls.”;

- b. “[SH] presents different risks than other types of funds. [SH] uses leverage and is riskier than similarly benchmarked funds that do not use leverage. [SH] may not be suitable for all investors and should be used only by knowledgeable investors who understand the consequences of seeking daily leveraged (-1x) investment results, including the impact of compounding on Fund performance. Investors in [SH] should actively manage and monitor their investments, as frequently as daily. An investor in [SH] could potentially lose the full principal value of their investment within a single day.”;
- c. “[SH] will lose money if its benchmark's performance is flat over time, and [SH] can lose money regardless of the performance of an underlying benchmark, as a result of daily rebalancing, the benchmark's volatility, compounding and other factors. Longer holding periods, higher benchmark volatility, inverse exposure and greater leverage each affect the impact of compounding on [SH]'s returns. Daily compounding of [SH]'s investment returns can dramatically and adversely affect performance, especially during periods of high volatility.”;
- d. “You may lose the full principal value of your investment within a single day.”;
- e. “Investing in derivatives may be considered aggressive and may expose [SH] to greater risks and may result in larger losses or smaller gains than investing directly in the reference asset(s) underlying those derivatives.”; and

- f. “[SH] obtains investment exposure in excess of its assets in seeking to achieve its investment objective — a form of leverage — and will lose more money in market environments adverse to its daily objective than a similar fund that does not employ such leverage. The use of such leverage increases the risk of a total loss of an investor’s investment.”
14. Respondent Viking recommended the purchase, sale or exchange of shares of SH at least 6 times in at least 3 investment advisory accounts belonging to at least 3 investors.
15. The investment objective of all 3 investment advisory accounts belonging to 3 investors for which Respondent Viking recommended the purchase, sale, or exchange of shares of SH was “growth and income.”
16. Out of the 3 investment advisory accounts belonging to 3 investors for which Respondent Viking recommended the purchase, sale or exchange of shares of SH:
- a. The investment experience of the investor in one account was “medium”; and
 - b. The investment experience of investors in 2 accounts was “good.”
17. Out of the 3 investment advisory accounts belonging to 3 investors for which Respondent Viking recommended the purchase, sale or exchange of shares of SH:
- a. The investment risk tolerance of one account was “moderate”;
 - b. The investment risk tolerance of 2 accounts was “moderately aggressive.”
18. Out of the 3 investment advisory accounts belonging to 3 investors for which Respondent Viking recommended the purchase, sale, or exchange of shares of SH:
- a. The investment knowledge of one account was “medium”;
 - b. The investment knowledge of 2 accounts was “good.”

19. Shares of SH were held in the investors' investment advisory accounts for an average period of 927 days.

20. Respondent Viking did not have a reasonable basis to recommend investors buy and hold SH.

21. Respondent Viking did not adequately explain to some or all of the investors the risks of investing in shares of SH.

Respondent Viking's Written Supervisory Procedures and Failure to Supervise

22. From in or about January 2020 until the present, Respondent Viking employed at least one "investment adviser representative" in Pennsylvania within the definition of Section 102(j.1) of the 1972 Act, 70 P.S. § 1-102(j.1).

23. Regulation 305.011(a), 10 Pa. Code § 305.011(a), requires registered investment advisers to exercise diligent supervision, and accept final responsibility for proper supervision, over the securities activities of their agents, investment adviser representatives, and employees by establishing and maintaining written procedures and a system for applying and enforcing those written procedures which are reasonably designed to achieve compliance with the 1972 Act and other securities laws and regulations.

24. From in or about January 2020 until the present, Respondent Viking did not exercise diligent supervision over the securities activities of at least one investment adviser representative by failing to establish and maintain written procedures and a system for applying and enforcing those written procedures, pursuant to Regulation 305.011(a), 10 Pa. Code § 305.011(a), with respect to leveraged ETFs.

Section 401(b) of the 1972 Act

25. In connection with the purchase of shares of securities identified in paragraph 10, Respondent Viking omitted to state material facts to some or all of the investors, including, but not limited to:

- a. A daily leveraged ETF seeks daily leveraged investment results and is very different from most other exchange-traded funds. As a result, daily leveraged ETFs may be riskier than alternatives that do not use leverage;
- b. Purchases of shares of daily leveraged ETFs must be actively managed and monitored, as frequently as daily because an investor could potentially lose the full principal value of their investment within a single day;
- c. If shares of daily leveraged ETFs are held longer than a single day, the shares are likely to lose money because the shares have a single day investment objective, and the results of each day are compounded when the shares are held in an investment advisory account for more than one trading session; and
- d. The leverage used with shares of leveraged ETFs increases the risk of a total loss of an investor's investment.

COUNTS

Conduct Forming Basis to Deny, Suspend, Revoke, or Condition the Registration of or Censure Respondent Viking and Respondent Zisa Pursuant to Section 305(a)(ix) of the 1972 Act, 70 P.S. § 1-305(a)(ix), and Regulation 305.019(c)(3)(i), 10 Pa. Code § 305.019(c)(3)(i), Promulgated Thereunder

6 Counts

26. Paragraphs 1 through 25 are incorporated herein by reference as if set forth in their entirety.

27. By engaging in the acts and conduct set forth in paragraphs 10 through 21 above, Respondent Viking and Respondent Zisa engaged in dishonest or unethical practices in the securities business by recommending to clients the purchase, sale or exchange of securities without reasonable grounds to believe that the recommendation was suitable based upon the clients' investment objectives, financial situation and needs, and other information, which acts and conduct form a basis to deny, suspend, revoke, or condition the registration of Respondent Viking and Respondent Zisa or censure of Respondent Viking and Respondent Zisa pursuant to Section 305(a)(ix) of the 1972 Act, 70 P.S. § 1-305(a)(ix), and Regulation 305.019(c)(3)(i), 10 Pa. Code § 305.019(c)(3)(i), promulgated thereunder.

Conduct Forming Basis to Deny, Suspend, Revoke, or Condition the Registration of or Censure of Respondent Viking Pursuant to Section 305(a)(v) of the 1972 Act, 70 P.S. § 1-305(a)(v), and Regulation 305.011(a), 10 Pa. Code § 305.011(a), Promulgated Thereunder

1 Count

28. Paragraphs 1 through 27 are incorporated herein by reference as if set forth in their entirety.

29. By engaging in the acts and conduct set forth in paragraphs 10 through 21 and paragraphs 22 through 24, Respondent Viking failed to exercise diligent supervision over the securities activities of its agents, investment adviser representatives, and employees by establishing and maintaining written procedures with respect to leveraged ETFs and a system for applying and enforcing those written procedures which are reasonably designed to achieve compliance with the 1972 Act and other securities laws and regulations, which acts and conduct form a basis to deny, suspend, revoke, or condition the registration of Respondent Viking or to

censure Respondent Viking pursuant to Section 305(a)(v) of the 1972 Act, 70 P.S. § 1-305(a)(v), and Regulation 305.011(a), (c), 10 Pa. Code § 305.011(a), (c), promulgated thereunder.

Violation of Section 401(b) of the 1972 Act, 70 P.S. § 1-401(b)

6 Counts

30. Paragraphs 1 through 29 are incorporated herein by reference as if set forth in their entirety.

31. By engaging in the acts and conduct set forth in paragraphs 10 through 21 and paragraph 25 above, Respondent Viking and Respondent Zisa, in connection with the purchase of shares of securities identified in paragraph 10, omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in willful violation of Section 401(b) of the 1972 Act, 70 P.S. § 1-401(b).

SANCTIONS AND REMEDIES

WHEREAS the Bureau respectfully requests the penalties and relief pursuant to its authority under the 1972 Act:

1. That an order be issued pursuant to Section 305 of the 1972 Act, 70 P.S. § 1-305, that the registration of Respondent Viking and Respondent Zisa be suspended, revoked, or conditioned, or that Respondent Viking and Respondent Zisa be censured.

2. That an order be issued pursuant to Section 512 of the 1972 Act, 70 P.S. § 1-512, which bars, conditionally or unconditionally, and either permanently or for such period of time as may be determined, Respondent Viking and Respondent Zisa from:

- a. Representing an issuer offering or selling securities in this State;
- b. Acting as a promoter, officer, director or partner of an issuer (or an individual occupying a similar status or performing similar functions)

offering or selling securities in this State or of a person who controls or is controlled by such issuer;

- c. Being registered as a broker-dealer, agent, investment adviser or investment adviser representative under Section 301 of the 1972 Act;
- d. Being an affiliate of any person registered under Section 301 of the 1972 Act; or
- e. Relying upon an exemption from registration contained in Section 202, 203 or 302 of the 1972 Act.

3. That Respondent Viking and Respondent Zisa be ordered to pay the costs of the investigation pursuant to Section 602.1(b) of the 1972 Act, 70 P.S. § 1-602.1(b).

4. That Respondent Viking and Respondent Zisa be ordered to pay an administrative assessment of up to \$100,000.00 for each act or omission constituting a willful violation of the 1972 Act, pursuant to Section 602.1(c) of the 1972 Act, 70 P.S. § 1-602.1(c).

IT IS SO ORDERED.



FOR THE COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES
BUREAU OF SECURITIES COMPLIANCE AND
EXAMINATIONS

Redacted

Eric Pistilli
Deputy Secretary of Securities

Dated: 05/13/2024

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *Order to Show Cause* upon the parties below, who constitute the only parties of record in this proceeding, in accordance with the requirements of 1 Pa. Code §§ 33.35, 33.36 and 33.37:

BY CERTIFIED AND FIRST-CLASS MAIL

Viking Wealth Management, LLC.	Michael Zisa
Redacted	Redacted

Dated this 14th day of May, 2024

Redacted

Timothy Kissinger
Legal Office Administrator
Office of Chief Counsel
FOR: Commonwealth of Pennsylvania
Department of Banking and Securities
Market Square Plaza
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Harrisburg, PA 17101
(717) 787-1471