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SECURITIES COMMISSIONER



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## Texas State Securities Board

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IN THE MATTER OF THE INVESTMENT     §  
ADVISER REPRESENTATIVE             §  
REGISTRATION OF SHAUN HAYES       §

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**Order No. IC-24-SUS-05**

TO: Shaun Hayes (CRD No. 4963876)  
8317 Victoria Lane, Suite 1725  
Lantana, TX 76226

### CONSENT ORDER

Be it remembered that Shaun Hayes ("Respondent") appeared before the Securities Commissioner of the State of Texas ("Securities Commissioner") and consented to the entry of this order ("Order"), the Findings of Fact and Conclusions of Law contained herein and the Undertaking incorporated by reference herein.

### FINDINGS OF FACT

1. Respondent has waived (a) Respondent's right to notice and hearing in this matter; (b) Respondent's right to appear and present evidence in this matter; (c) Respondent's right to appeal this Order; and (d) all other procedural rights granted to the Respondent by The Securities Act, Tex. Gov't Code §§ 4001.001-4008.105 ("Texas Securities Act"), and the Administrative Procedure Act, Tex. Gov't Code Ann. §§ 2001.001-2001.903.
2. Respondent was registered with the Securities Commissioner as an investment adviser representative of FQI Capital Management, LLC ("FQI") from April 20, 2020 through August 22, 2024. However, in or around June 2024, Respondent's trading privileges were revoked by FQI, rendering him unable to trade client accounts from that time through the time of his disassociation with FQI.

### Respondent's trading strategy included complex and risky products intended for sophisticated investors.

3. Respondent was an investment adviser representative of FQI and serviced clients through the recommendation of securities and the management of those securities and investments.

4. Respondent's clients are mostly individuals who had worked with Respondent for many years preceding Respondent's affiliation with FQI or referrals from those same clients. Around half of these clients indicated on FQI's Suitability Information form that they had a risk tolerance towards investing that was conservative or moderately conservative.
5. From on or around May 2020 through November 2022 (the "Relevant Period"), Respondent used a trading strategy that included complex and risky products (the "Strategy") for his clients.
6. Generally, the Strategy consisted of purchasing certain target exchange-traded funds ("ETFs"); leveraged or inverse ETFs; and single stocks in the S&P 500, NASDAQ, Russell 2000, biotechnology, energy, micro-cap, and small-cap sectors.
7. More specifically, the ETFs and leveraged and inverse ETFs in the Strategy included ones where the fund's sector was oversold by some metric. The Strategy also included buying and holding ETFs with sectors where the companies within that sector appeared undervalued.
8. The products Respondent utilized to implement his Strategy hold high levels of risk were volatile and were intended for sophisticated investors who could understand the risks associated with the products and who were willing to accept that level of volatility.
9. Complex products such as inverse or leveraged exchange-traded products that are designed primarily as short-term trading tools for sophisticated investors may not be in the best interest of a retail client absent an identified, short-term, client-specific trading objective and, to the extent that such products are in the best interest of a retail client initially, they would require daily monitoring by the adviser.<sup>1</sup>
10. Leveraged and inverse ETFs have extra risks for buy-and-hold investors because they reset daily and their performance over longer periods of time can differ significantly from the stated multiple or inverse of the performance of their underlying index or benchmark during the same period of time, magnifying its effect in volatile markets.<sup>2</sup>
11. One such security Respondent utilized in his Strategy was VXX—an exchange traded note ("ETN") designed to provide investors with exposure to equity market volatility that is linked to the daily price changes in CBOE Volatility Index.
12. Composed of derivative contracts<sup>3</sup>, VXX can be influenced by many factors and the price can fluctuate substantially between now and the maturity date.
13. Another security Respondent utilized in his Strategy was UVXY, a leveraged ETF with an objective of seeking returns that are one-and-a-half times (1.5x) the return of its underlying benchmark, the S&P 500 VIX Short-Term Futures Index.

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<sup>1</sup> [Commission Interpretation Regarding Standard of Conduct for Investment Advisers \(sec.gov\)](#)

<sup>2</sup> [SEC.gov | Updated Investor Bulletin: Leveraged and Inverse ETFs](#)

<sup>3</sup> Derivative contracts' value derive from the performance of underlying market factors such as interest rates, currency exchange rates, and commodity, credit, and equity prices.

14. Both the prospectuses for VXX and UVXY state that investing in the note (VXX) and fund (UVXY) involves significant risks not applicable to other types of investments and that the note/fund may be highly volatile and warns investors that they could lose the full principal value of their investment within a single day.
15. Respondent's Strategy also utilized single stock purchases in the S&P 500, NASDAQ, Russell 2000, biotechnology, energy, micro-cap; and small-cap sectors.
16. When an adviser is assessing whether high volatility products are in a retail client's best interest, the adviser should generally apply heightened scrutiny to whether such investments fall within the retail client's risk tolerance and overall investment objectives.<sup>4</sup>

**Respondent implemented his strategy in certain client accounts for which the strategy was not suitable.**

17. Respondent placed in or around twenty-two (22) clients into the Strategy who had marked conservative or moderately conservative risk tolerances on their Suitability Information Form.
18. The Suitability Information Form recorded a client's financial profile information, risk tolerance, and investment objective.
19. The form indicated a risk tolerance of "conservative" as "to minimize the chance for loss, willing to accept the lower long-term returns provided by conservative investments" and a risk tolerance of "moderately conservative" as "able to accept infrequent and very modest losses during difficult phases in a market cycle."
20. In or around April 17, 2020, one individual ("Client A") opened two (2) accounts with Respondent, for a total of \$331,463.09 across both accounts.
21. Client A was 57 years old and unemployed at the time she opened her account with Respondent.
22. Client A had a moderately conservative risk tolerance, a time horizon of more than seven (7) years, an annual income between \$50,000 and \$99,000, and a net worth and liquid net worth between \$250,000 and \$499,999.
23. Prior to opening an account with Respondent, Client A reported having investment experience in "Bank Savings, CDs, Money Market Funds" and "Mutual Funds" — all traditionally very conservative investments.
24. Shortly after Client A opened her account, Respondent started trading in Client A's account using the Strategy.

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<sup>4</sup> [Commission Interpretation Regarding Standard of Conduct for Investment Advisers \(sec.gov\)](#)  
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25. At the end of March 2022, Client A requested that Respondent stop using the Strategy in her accounts and that all positions in her account be sold and liquidated to cash.
26. By this point, Client A had lost just under half her account value (\$156,013.86) as a result of Respondent's Strategy—more than the “infrequent and very modest losses” she had indicated she was willing to accept as a moderately conservative investor.
27. Another individual (“Client B”) had an account with Respondent totaling approximately \$99,000.
28. Client B had a moderately conservative risk tolerance, a time horizon of four (4) to seven (7) years, an annual income between \$20,000 and \$49,999, and net worth and liquid net worth between \$100,000 and \$249,999.
29. The account was closed in May 2022. At the time the account was closed, Client B had also lost approximately \$40,000 as a result of Respondent's Strategy.
30. And as another example, two individuals (“Clients C”) had four (4) separate accounts with Respondent and two (2) joint accounts for a total of \$281,917.64.
31. Clients C, were both 69 years old and retired at the time they opened their accounts with Respondent.
32. Clients C had indicated a conservative risk tolerance, a time horizon of more than seven (7) years, an annual income between \$50,000 and \$99,999, a net worth between \$250,000 and \$499,999, and a liquid net worth between \$100,000 and \$249,999.
33. Clients C also had more than five (5) years of experience investing in bank savings, CDs, money market funds, stocks, bonds, mutual funds, and variable annuities, and less than five (5) years of experience investing in options and futures.
34. While Respondent did not implement the Strategy in one (1) of the joint accounts, he did implement it for the other five (5) accounts of Clients C.
35. Ultimately, Clients C lost approximately twenty percent (20%) as a result of Respondent's Strategy.

### **Other Factors Considered**

36. Beginning in or around June 2024, Respondent did not have access to client accounts and stopped receiving any fees and/or any compensation from FQI. As such, Respondent has not acted as an investment adviser, investment adviser representative, dealer, or agent in the State of Texas as these terms are defined within Section 4001.051–068 of the Act since in or around June 2024. Moreover, Respondent has not been registered in any capacity since August 22, 2024.

### CONCLUSIONS OF LAW

1. Respondent's utilization of the Strategy in accounts of clients with conservative and moderately conservative risk tolerances was unsuitable and constitutes an inequitable practice in rendering services as an investment adviser representative.
2. Pursuant to Section 4007.105(a)(3)(A) of the Texas Securities Act, the aforementioned inequitable practice in rendering services as an investment adviser representative constitutes a basis for reprimanding Respondent.

### ORDER

1. It is therefore ORDERED that Shaun Hayes is hereby REPRIMANDED.
2. It is further ORDERED that Shaun Hayes COMPLY with the terms of the Undertaking, incorporated by reference herein, wherein Respondent undertakes and agrees: to not reapply for registration with the Securities Commissioner as a dealer, investment adviser, agent of a dealer, or an investment adviser representative until after April 1, 2025, and abide by any additional supervisory requirements in connection with any future registration.

SIGNED AND ENTERED BY THE SECURITIES COMMISSIONER this 12<sup>th</sup> day of November, 2024.



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TRAVIS J. ILES  
Securities Commissioner

Respondent:

*Shaun E. Hayes*

Shaun E. Hayes (Nov 1, 2024 15:36 CDT)

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Shaun Hayes  
Individually

Approved as to Form:

*Cristi P. Ochoa*

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Cristi Ochoa,  
Deputy Securities Commissioner

*CD*

Chris Davis (Nov 1, 2024 17:35 CDT)

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Chris Davis,  
Counsel for Respondent

*Nadda Rungruangphol*

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Nadda Rungruangphol,  
Attorney  
Legal & Investigations Division

*William M Dailey*

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William M. Dailey,  
Counsel for Respondent