Independent Expert Report

Financial Industry Regulatory Authority
Arbitration 14-2896

Fred M. Smith
Claimant

vs.

BDIS Investment Services, LLC
Respondent
and
Bill Joseph Vincent
Respondent

Prepared for
Michael N. Weiss, Esq.
426 South 17th Street
Las Vegas, NV 89101

January 15, 2015

Prepared by
Gregory B. Wood
Securities Litigation Support, LLC
44 Anthem Creek Circle
Henderson, Nevada 89052
702-253-9663

INTRODUCTION

Michael N. Weiss, Esq. has retained SLS's managing member, Gregory B. Wood to conduct an independent investigation into the facts and circumstances that resulted in claimant Fred M. Smith's ("Smith") securities account losses. The findings are contained in this expert report. The respondents in this matter are BD Investment Services, LLC ("BDIS") and Bill Joseph Vincent ("BJV"). Collectively they will be referred to as the "Respondents." The scope of this investigation is limited to the topics covered in this report.

QUALIFICATIONS[1]

Gregory B. Wood's securities industry career spans 35 years. During that time, he has been a retail stock and commodities broker, a commodities exchange member, a commodities futures analyst, a securities firm branch manager, a securities firm regional training director, the retail head for a regional securities broker-dealer, a regional executive for the private client services group of a national bank, and a key member of a financial services company "corporate synergy" team. He is an active FINRA and NFA Arbitrator. Since 2004, Gregory B. Wood has owned and operated Securities Litigation Support, LLC. This business provides securities litigation clients a variety of services.

Gregory B. Wood has passed the following securities examinations or their equivalents and has held the following securities licenses or their equivalents:

- Series 3 National Commodities Futures (1969)
- Series 4 Registered Options Principal (1983)
- Series 5 Interest Rate Options Examination (1983)
- Series 7 General Securities Representative (1969 - S1 & S12)
- Series 8 General Securities Sales Supervisor (S40, S5 & S15)
- Series 15 Foreign Currency Options Examination (1987)
- Series 40 General Securities Principal (1976 - Qualifies as S24)
- Series 63 Uniform Securities Agent State Law Examination (1981)
- Series 65 Uniform Investment Advisor Examination (1993)
- State Life and Health Insurance Examination

[1] Exhibit 1 - Curriculum Vitiate

THE BASIS FOR EXPRESSED OPINIONS, DATA OR OTHER INFORMATION CONSIDERED BY THE WITNESS IN FORMING HIS OPINION

Mr. Wood, in this report, has opined on selected topics related to the financial services industry, registered investment advisors and certain other related topics. His testimony is supported by his thirty-five years of personal experience in the financial services industry. Also supporting his testimony is the information and his experience gained during the last eleven years in securities litigation consulting and his twelve-year experience as a FINRA arbitrator. He has augmented his experience with independent research, data and information from outside sources. Mr. Wood has also considered the following information, sources and documents:

#	Item	Bates Start
1	E-mails – Unsolicited Orders	BDIS00009461
2	E-mails – Leveraged ETF Tax Issues IRA	BDIS0000467
3	E-mails – Re Trading - Important	BDIS0000480
4	Letter	BDIS0000532
5	Letter	BDIS000533
6	Account Opening Documents, IPS	BDIS000915
7	Memo Re Call with Smith	BDIS000353
8	Audit Findings	BDIS000462
9	Annual Client Contact	BDIS00045322
10	Commission Runs (145 Pages)	BDIS00063117
11	Direxion Blotter (92 Pages) Trades Reviewed and approved – Shows No Discretion	BDIS0008574
12	Transaction Blotter	BDIS0006667
13	BVJ CRD	
14	2008 – 2012 Monthly Statements	
15	Statement of Claim and Statement of Answer	
16	VBJ IARD	
17	BVJ BrokerCheck	

18	NASD and FINRA Rule Books	
19	SEC and FINRA Website	
20	Independent Research	

CASE SUMMARY

BDIS, formerly Broker-Dealer Financial Services, is a Fort Worth, Texas based financial services company whose business model includes placing registered representatives in banking institutions. BJV was a register representative and a registered investment advisor representative who was employed and supervised by BDIS from May 2, 2007 to September 11, 2012. BJV worked in First Cooperative Bank's North Las Vegas, NV location.

Fred M. Smith is a dentist who changed practices during 2008. As a result, he needed to rollover his former retirement plan into a new SEP IRA. BJV was Dr. Smith's patient and offered his help in financial matters, whenever Smith needed it. During this period of change, Smith took BJV up on his offer. On May 20, 2008 Smith signed a Broker-Dealer SEP IRA new account form, which indicated his objective, was growth and his time horizon was four to eight years (BDIS0003412). Further he noted that he had ten years investment experience in stocks, bonds and mutual funds and no experience in options or annuities or other investment products. Smith gave Respondents a copy of his March 2008 Prescott Stevens Investments IRA statement (BDIS0003716) that showed that over 90% of that account's assets were in cash or cash equivalents.

Smith also completed an investment questionnaire that, when processed, resulted in an investment policy statement ("IPS"). The following is a copy of the language on the first page of this document.[2]

[2] BDIS0003929

Your Investment Policy Statement

The purpose of this Investment Policy Statement (IPS) is to establish a clear understanding between and as to the investment goals and objectives and management policies applicable to the Investors' investment portfolio. This Investment Policy Statement will:

- Establish reasonable expectations, objectives and guidelines in the investment of the Portfolio's assets
- Create the framework for a well-diversified asset mix that may generate long-term returns commensurate with a level of risk suitable to the Investor, including:
  - Describing an appropriate risk posture for the investment of the Investor's Portfolio;
  - Specifying the target asset allocation policy;
  - Establishing investment guidelines regarding the selection of investment manager(s) and diversification of assets;
- Encourage effective communication between the investment manager(s) and the Investor

Later in the document on bates numbered page (BDIS0003931) the following is shown:

Your Investment Policy Statement

This investment plan is created by your investment advisor based on the information you provided. The following summarizes the information provided regarding your financial circumstances.

Risk Profile

Growth investor.

Time Horizon

10 - 15 years

Base Year 2008

Your Net Worth

NA

Your Liquid Assets

NA

Current portfolio value

NA

The investment policy statement went on to recommend Smith purchase a diversified portfolio consisting of the following percentage asset allocation (BDIS0003943).

Asset Class	Percentage of Portfolio
Cash	3.0%
Large-Cap Core	10.0%
International Equities	12.0%
Investment Grade Bonds	24.0%
Mid-Cap Equities	6.0%
Small-Cap Equities	10.0%
Large-Cap Growth	15.0%
Large-Cap Value	17.0%
International Bond	4.0%

Respondents sold Smith a fee based "Pure Asset Management" account in which BJV, a Registered Investment Advisor Representative, gave his advice for a fee plus transaction charges. The Respondents did not have discretionary trading authority over Smith's account. Respondents' standard of care for this account was the highest in the securities industry. Respondents were fiduciaries.

Smith purchased a recommended mutual fund portfolio during November 2008. Though the portfolio was not the one recommended in the Investment Policy Statement, it was suitable for him and matched his objectives and would have produced acceptable results for him during his stated time horizon. A review of that portfolio[3] as shown in Smith's September 2009 statement, shows the investments had less risk, volatility and return than the Standard & Poor's 500 index. The account assets grew and by September 2009 the account value was $377,925.74 that included $65,535.13 in profits.

The misuse of a new complex, volatile, risky and highly sophisticated investments called ***Inverse and Leveraged Exchange-Traded funds***, often referred to as

[3] Exhibit 4 - Morningstar Analysis – September 2009

"Leveraged ETFs", came to FINRAs attention. During June 2009, FINRA became concerned that both the securities industry and their customers did not understand these high-risk products. To reinforce this concern, FINRA issued Regulatory Notice 09-31.[4] FINRA's concern included a need for additional training and supervision. Leveraged ETFs were being improperly represented and sold causing large customer losses. After this notice was issued, many firms tightened their supervision of these product sales and implemented representative training programs. Some firms stopped selling them altogether.

Among the issues noted by FINRA were the intended product uses. These complex and sophisticated day-trading vehicles reset at the end of each business day. They were not designed to be held for longer than a single trading day. These products are linked to an index and use leverage to magnify the movement of the index either up or down. Due to the daily reset, a client could be correct on the direction of the market index linked to the Leveraged ETF and lose money on the Leveraged ETF transaction.

On August 13, 2009 BDIS issued an internal memorandum regarding the use of these products in IRAs and long term holding of these investments. Among other things, this memo discussed the fact that the IRS prohibits the use of leverage in IRAs and SEP IRAs. Since these products use leverage, BDIS deemed them unsuitable for these accounts. BDIS explained that a person who uses these products in an IRA runs the risk of developing IRS problems.

Respondents disregarded FINRA warnings and prohibitions and BDIS's warnings and prohibitions. On October 2, 2009 Respondents Purchased 1,000 shares of Direxion Large Cap Bull 3X ETF in Smith's SEP IRA. Even though this transaction was profitable ($21,054.15) when it was liquidated six months later, April 19, 2010, it was unsuitable for Smith and should not have been made. This transaction, which was reviewed and approved by a BDIS supervisor is contrary to Smith's stated goals of

[4] Exhibit 3 – FINRA Regulatory Notice 09-31

growth and his time horizon of ten to fifteen years. Further, placing a leveraged or inverse ETF in a SEP IRA exposed Smith to potential tax liability and severe losses.

On or about April 19, 2010, the same day the unsuitable Direxion Large Cap Bull 3X ETF transaction was liquidated, Respondents entered orders to liquidate all of Smith's mutual fund positions. The ETF liquidation was marked "unsolicited" and the mutual fund liquidations were marked "solicited." At the end of April 2010, Smith's IRA balance was $429,396.31 which was 100% in cash. This was also unsuitable and did not match his stated investment objectives. When questioned about these transactions, Smith said that he did not authorize any of them and did not know about any of the transactions in his account until after they were made.

Smith's SEP IRA account remained in cash until June 24, 2010 when two inverse and leveraged ETFs were purchased. The June 2010 month end statement showed the value of those two purchases totaled $535,065. This meant that 98% of Smith's SEP IRA was concentrated in two unsuitable and inappropriate investments. Further, the concentration of any security type at that level is unsuitable and would have been a violation of Respondents' fiduciary duty. On July 2, 2010 those securities were liquidated and re-purchased again and the position was maintained until it was liquidated on or about February 15, 2012 for a combined loss of $254,699.69. These two leveraged and inverse ETFs measured between 80.9% and 99.3% of total monthly statement value during that time.

Documents shown later in this report confirm that BDIS supervisors were aware of BJV's unsolicited order marking, high volume use of Leveraged ETFs, and suspected use of discretion without written authorization. Regardless of their awareness, BDIS failed to supervise BJV and allowed the activities in many accounts, including Smith's to continue.

Smith, due to the actions of the Respondents, lost money out of pocket. Further, during the time he maintained his account with the Respondents, their actions deprived him of the asset growth he would have enjoyed if Respondents had allowed him to continue with the original mutual fund purchases or implement the recommendations in the 2008 Investment Policy Statement.

OPINIONS

The opinions expressed in this report are complete as of the report date. The opinions are supported by the entire report. Mr. Wood reserves the right to modify any expressed opinion, if new information becomes available. Further, Mr. Wood reserves the right to offer additional opinions if new information becomes available. All opinions are based upon a reasonable degree of professional certainty.

1. FRED SMITH IS AN UNSOPHISTICATED INVESTOR

It is my opinion, based upon a reasonable degree of professional certainty, that Dr. Fred M. Smith was an unsophisticated investor.

Frequently those investors who are wealthy or have professional degrees and licenses are falsely categorized as sophisticated because of their wealth, education or station in life. Being wealthy or having a professional designation does not necessarily correlate to investor sophistication. There is more to it.

Sophisticated investors have a deep understanding of investments, portfolios, risks and rewards. They have the ability to independently evaluate the risks of investment ideas presented to them. They have the ability to independently develop investment ideas. They frequently manage their own money and call their broker only to give orders. Sophisticated investors, after evaluating the alternatives, may reject stockbroker recommendations. They have the ability to develop portfolios and manage portfolio risk. They understand how the inclusion of bonds in a stock portfolio can reduce the risk more than returns and frequently they practice this in their portfolios.

On or about December 16, 2014 and again on January 7, 2015, I interviewed Dr.

Smith by telephone. I asked him questions to aid me in determining his level of sophistication. The answers to those questions resulted in my opinion that he is an unsophisticated investor who had total reliance on the Respondents. Further confirming this opinion is the discovery, which contained notes from a compliance call with Smith. These notes confirm that Smith relied upon Respondents' who gave him little information about the unsuitable investments they purchased for him. This document (BDIS0004353) is dated June 3, 2011. Included on the call were Jane Matthews, Nichole Brown, and Fred Adams. Here is what was recorded by BDIS in that document.

"We were able to reach Mr. Smith on June 3rd at I:36 pm.
Mr. Smith explained that he met Mr. Vincent through an acquaintance that referred him to the bank for a business line of credit. He has known Vincent for approximately four years. Vincent's customer service is not bad, Mr. Smith commented that the investment strategy was not great at the moment. He seemed dismayed that he did not get a phone call alerting him to the declining value of the investment, just received the usual monthly statement, which revealed a $100,000 loss. When he asked Vincent about the investment's decline in value, Vincent's response was that the market was going to turn around within the next six months. Vincent takes the lead on investment decisions, and Mr. Smith just trusts that he knows his business. Current performance of his investment does not meet his objective, because losing $100,000 is not good. He did expect that Vincent would keep him abreast of what was going on in his accounts; most contact was initiated by Smith via texts and emails in the evenings. Mr. Smith stated that he told Vincent that he was pretty nervous about what was going on with the ETFs, and is frustrated with internet access to his accounts as each account requires a different password and doesn't show a consolidated view of all investments. The investment in ETF's was Vincent's idea, as he takes the lead in what investments are made in Smith's accounts. No explanatory material was provided on ETFs, his understanding was that this was a safe product, low risk, and conservative. Smith claims he was not aware that the ETF could move significantly based on the markets. At this point, he has not talked with Vincent for two months, nor has he looked at his statements. Vincent's advice was to ride it out. Overall, Mr. Smith would like more frequent updates from his representative, but thinks he is a good guy and trusts him. He is still nervous about what is going on with the market and the losses in his account, as he is older (?) and has little kids and doesn't want to work forever."

When the call notes in the preceding paragraph were made Smith's account was dangerously concentrated (85%) in two Leveraged ETFs. BDIS knew or should have known that fact. A review of the questions asked in the interview show that BDIS did not warn Smith of the high risk situation in which Respondents had placed him. Smith's reliance on Respondents and unsophistication is shown by his answers in the transcribed conversation. BDIS appeared to just "check the box" by making a required call and then failed to respond to the warning that was in font of them. Had they taken action at that time, Smith's losses would have been reduced to less than $50,000.

2. CONCENTRATED POSITION

It is my opinion, based upon a reasonable degree of professional certainty, that BDIS allowed BJV to establish a concentrated position in inverse and leveraged ETFS in Smith's account. A review of the Direxion Blotter (BDIS0006574) shows that these transactions were reviewed and approved by BDIS supervisors and management. A combination of the concentration and investment selection caused Smith's losses.

Diversified portfolios spread risk and returns across sectors and asset classes. A one or two stock portfolio is generally much more volatile than a diversified portfolio of stocks because in a balanced portfolio the negative stock-specific events of one stock may be offset by the positive stock-specific events of other stocks. The more a portfolio becomes concentrated in a small number of securities or issues, the more the portfolio reacts to events related to the concentrated portfolio.

During September 2009, Smith's mutual fund portfolio was less risky than the Standard & Poor's 500 Index, but it had a .90 correlation to this index. However at the end of June 2010 when the portfolio was 98% concentrated in two leveraged and inverse ETFs, the risk level was three times that of the Standard & Poor's 500[5]. Smith's stated objectives and goals do not justify this level of risk. Regardless, respondents approved the transactions and placed him there. A concentrated portfolio was high-risk for Smith and placing him in one was unsuitable and a violation of Respondents' fiduciary duty

[5] Exhibit 6 – June 2010 Portfolio Snapshot

The table that follows shows that prior to October 2009, while the portfolio was diversified, the monthly gains and losses were moderate compared to the period after. The portfolio volatility and the period of asset decline began after the portfolio was concentrated in the Leveraged ETFs.

Leveraged and Inverse ETF Concentration Report

Fred M. Smith SEP IRA – BD Investment Services Account Number 318-9827323-5

Prepared by Securities Litigation Support, LLC

December 29, 2014

	Month End	Direxion Large Cap Bull 3X	Direxion Daily Fin Bear 3X	Direxion Shares L/C Bear 3X	Total Leveraged ETF	Month End Equity	Lev. ETF Cons.	Monthly P & L	Cum. P & L	Income	Misc. CR/DR
1	08/29/2008	$-	$-	$-	$-	$20,619		-$26	-$26	$19	-$48
2	09/30/2008	$-	$-	$-	$-	$20,416		-$202	-$228	$27	
3	10/31/2008	$-	$-	$-	$-	$20,175		-$242	-$470	$33	-$77
4	11/28/2008	$-	$-	$-	$-	$260,873		-$5,048	-$5,518	$221	
5	12/31/2008	$-	$-	$-	$-	$269,163		$8,290	$2,772	$2,873	-$574
6	01/31/2009	$-	$-	$-	$-	$251,051		-$18,111	-$15,339	$16	-$1,121
7	02/27/2009	$-	$-	$-	$-	$236,598		-$14,454	-$29,793	$424	
8	03/31/2009	$-	$-	$-	$-	$252,347		$15,749	-$14,044	$897	
9	04/30/2009	$-	$-	$-	$-	$271,548		$19,201	$5,157	$6	-$944
10	05/29/2009	$-	$-	$-	$-	$292,188		$20,640	$25,797	$418	
11	06/30/2009	$-	$-	$-	$-	$292,380		$193	$25,990	$1,298	
12	07/31/2009	$-	$-	$-	$-	$311,109		$18,728	$44,718	$1	-$1,105
13	08/31/2009	$-	$-	$-	$-	$318,860		$7,752	$52,470	$363	
14	09/30/2009	$-	$-	$-	$-	$377,926		$13,066	$65,535	$822	
15	10/30/2009	$47,090	$-	$-	$47,090	$367,223	**12.8%**	-$10,703	$54,832	$1	-$1,452
16	11/30/2009	$49,210	$-	$-	$49,210	$390,442	**12.6%**	$23,219	$78,051	$6,517	
17	12/31/2009	$52,510	$-	$-	$52,510	$399,124	**13.2%**	$8,682	$86,733	$2,866	
18	01/29/2010	$46,620	$-	$-	$46,620	$380,034	**12.3%**	-$19,089	$67,644	$1	-$1,501
19	02/26/2010	$51,000	$-	$-	$51,000	$388,530	**13.1%**	$8,495	$76,139	$1	
20	03/31/2010	$59,520	$-	$-	$59,520	$415,712	**14.3%**	$27,182	$103,321	$2,563	
21	04/30/2010	$-	$-	$-	$-	$429,396	**0.0%**	$13,685	$117,006	$1	-$1,555
22	05/31/2010				$-	$545,817	**0.0%**	$116,421	$233,427	$7	

23	06/30/2010	$-	$261,315	$273,750	$535,065	$545,817	**98.0%**	$0	$233,427		
24	07/30/2010	$-	$234,940	$240,570	$475,510	$478,679	**99.3%**	-$67,138	$166,288	$3	-$2,217
25	08/31/2010				$-	$484,576	**0.0%**	-$43,103	$123,185	$0	
26	09/30/2010	$-	$227,477	$204,930	$432,407	$484,576	**89.2%**	$0	$123,185		
27	10/29/2010	$-	$214,030	$180,840	$394,870	$445,075	**88.7%**	-$39,501	$83,685	$1	-$1,964
28	11/30/2010				$-	$355,561	**0.0%**	-$89,515	-$5,830	$0	
29	12/31/2010	$-	$160,650	$144,705	$305,355	$355,561	**85.9%**	$0	-$5,830		
30	01/31/2011	$-	$145,690	$134,310	$280,000	$328,891	**85.1%**	-$26,669	-$32,499	$1	-$1,315
31	02/28/2011	$-	$131,070	$120,054	$251,124	$300,016	**83.7%**	-$28,876	-$61,375	$0	
32	03/31/2011	$-	$136,748	$117,480	$254,228	$303,120	**83.9%**	$3,104	-$58,271	$0	
33	04/29/2011	$-	$133,450	$106,953	$240,403	$288,162	**83.4%**	-$14,958	-$73,229	$0	-$1,134
34	05/31/2011				$-	$313,991	**0.0%**	$25,830	-$47,399	$1	
35	06/30/2011	$-	$152,184	$114,048	$266,232	$313,991	**84.8%**	$0	-$47,399		
36	07/29/2011	$-	$164,628	$120,028	$284,656	$331,228	**85.9%**	$17,237	-$30,162	$0	-$1,187
37	08/31/2011				$-	$423,595	**0.0%**	$92,367	$62,205	$1	
38	09/30/2011	$-	$224,298	$152,724	$377,022	$423,595	**89.0%**	$0	$62,205		
39	10/31/2011	$-	$135,252	$106,029	$241,281	$286,253	**84.3%**	-$137,342	-$75,138	$0	-$1,602
40	11/30/2011				$-	$269,395	**0.0%**	-$16,858	-$91,996	$1	
41	12/30/2011	$-	$126,973	$97,449	$224,422	$269,395	**83.3%**	$0	-$91,996		
42	01/31/2012	$-	$101,660	$84,018	$185,678	$229,646	**80.9%**	-$39,748	-$131,744	$0	-$1,005
43	**2/29/2012***	$-	$-	$-	$-	$213,290	0.0%	-$16,356	-$148,101	$1	
44	03/30/2012	$-	$-	$-	$-	$213,292	0.0%	$2	-$148,099	$2	
45	04/30/2012	$-	$-	$-	$-	$212,448	0.0%	-$844	-$148,942	$2	-$845
46	05/31/2012				$-	$0	**0.0%**	-$92	-$149,034	$3	-$95
47	06/29/2012	$-	$-	$-	$-	$0	0.0%	$0	-$149,034		
48	07/31/2012	$-	$-	$-	$-	$-	0.0%	$26	-$149,008		$26
49	*All Direxion Shares Liquidated on 02/15/2012										
50	FINRA Issued Regulatory Notice 09-31 - Non Traditional ETFs										
51	Two-Month Statement. Statement Not Issued this Month. The Following Month Contains Two-Month Data										
52	August 13, 2009 - BDIS Issues Firm Guidelines Regarding ETFs in IRAs and Long Term Holding of ETFs										
53	Vincent liquated Smith's entire balanced account during April 2010										

3. <u>DISCRETIONARY TRADING WITHOUT WRITTEN AUTHORIZATION</u>

It is my opinion, based upon a reasonable degree of professional certainty that Respondents engaged in discretionary trading without written authorization. This is a violation of FINRAs Rules, was unsuitable and a breach of Respondents' fiduciary duty.

Securities rules are very clear regarding the use of discretion. According to FINRA Rule 2510; *"No member or registered representative shall exercise any discretionary power in a customer's account unless such customer has given prior written authorization to a stated individual or individuals and the account has been accepted by the member, as evidenced in writing by the member or the partner, officer or manager, duly designated by the member, in accordance with Rule 3010."*[6]

Further, BDIS's own order forms confirm this policy to their employees. BDIS0003974 includes the following:

- The Firm does not permit its Registered Representatives to exercise discretionary authority over customer accounts unless both Representative and Account are approved for discretion.
- The current value does not reflect unsettled trades and is based on previous night's closing price.

BDIS0003989 includes the following:

Order Submitted

The Firm does not permit its Registered Representatives to exercise discretionary authority over customer accounts unless both Representative and Account are approved for discretion.

In my interview with Smith, he told me that BJV just placed trades in his account. Smith did not get a call before the transaction and sometimes did not get calls until several months after the trades. Neither did Smith receive a prospectus or any explanatory document on the Leveraged ETFs. Further, a review of the Direxion Blotter shows that BJV marked these trades as non-discretionary when entered and the trades were reviewed and approved by BDIS's designated supervisor.

4. RESPONDENTS HAD A FIDUCIARY DUTY TO SMITH

It is my opinion, based upon a reasonable degree of professional certainty, that Respondents had a fiduciary duty to Smith.

[6] http://finra.complinet.com/en/display/display.html?rbid=2403&element_id=3667

The duty of a financial services representative to his client is a byproduct of the type of business being conducted and the licenses held by the representative and his firm. A stockbroker has the duty of “suitability” as established by applicable FINRA Rules. A registered investment advisor and a registered investment advisor representative has a higher duty, a fiduciary duty, as established by the SEC. The discovery clearly shows that Smith signed an “Investment Advisor Products and Services Disclosure” (BDIS0003921) and a “Pure Asset Management Account Agreement” (BDIS0003922). These are the products of a Registered Investment Advisor (BDIS) as sold by a Registered Investment Advisor Representative (BJV).

Page three the “Pure Asset Management Account Agreement” shows transaction charges that were applicable to activity in the account and the last page (BDIS0003926) shows the management fee schedule for annual charges. Respondents’ were charging a fee for advice and a transactional fee as well. A review of the accounting report shows that in addition to his losses, Smith was charged $19,714.08 for Respondents’ advice, trade charges and account transfer fees.

In the Pure Agreement, the following language appears:
“Client hereby appoints BROKER-DEALER as its investment adviser to provide the services described herein on the terms and conditions described herein, and BROKER-DEALER hereby accepts such appointment. BROKER-DEALER and IAR shall provide managed account services for Program, including an initial consultation to determine Client's financial situation and investment objectives. Based on this consultation, IAR will provide Client with recommendations and ongoing investment-related services.in connection with assets in the Account. Available investments include, but are not limited to, stocks, bonds, options, U1Ts, certain types and classes of mutual funds, and cash and cash equivalents. Client understands that he/she is under no obligation to follow any of the recommendations made by IAR. Transactions in the Account will be executed only with Client's prior authorization. The IAR (or in his/her absence an alternate designated by BROKER-DEALER) will be reasonably

available during regular business hours to consult with' Client regarding Client's financial situation, investment objectives and related matters, provide advice, make recommendations, and execute transactions. Client will receive transaction confirmations, Account statements, and quarterly reports containing performance and other information about the Account. BROKER-DEALER reserves the right to establish minimum account balances as a condition to Client's ability to participate in the Program."

5. RESPONDENTS BREACHED THEIR FIDUCIARY DUTY TO SMITH

It is my opinion, based upon a reasonable degree of professional certainty, that Respondents breached their fiduciary duty to Smith.

Fiduciary duty as described by the sec in their document "Information for Newly-Registered Investment Advisers" is as follows:7

"Investment Advisers Are Fiduciaries

As an investment adviser, you are a "fiduciary" to your advisory clients. This means that you have a fundamental obligation to act in the best interests of your clients and to provide investment advice in your clients' best interests. You owe your clients a duty of undivided loyalty and utmost good faith. You should not engage in any activity in conflict with the interest of any client, and you should take steps reasonably necessary to fulfill your obligations. You must employ reasonable care to avoid misleading clients and you must provide full and fair disclosure of all material facts to your clients and prospective clients. Generally, facts are "material" if a reasonable investor would consider them to be important. You must eliminate, or at least disclose, all conflicts of interest that might incline you — consciously or unconsciously — to render advice that is not disinterested. If you do not avoid a conflict of interest that could impact the impartiality of your advice, you must make full and frank disclosure of the conflict. You cannot use your clients' assets for your own benefit or the benefit of other clients, at least without client consent. Departure from this fiduciary standard may constitute "fraud" upon your clients (under Section 206 of the Advisers Act)."

[7] http://www.sec.gov/divisions/investment/advoverview.htm

My examination of the documents and shows Respondents violated their fiduciary duty to Smith in many ways. Some of them are listed here:

Liquidating Smith's balanced mutual fund portfolio was not acting in the best interests of he client.

Purchasing investments that were contrary to his stated objectives and time horizons was not acting in the best interests of the client.

Not explaining that inverse and leveraged ETFs were highly sophisticated and complex investments associated the significant risks is not acting in the best interest of the client.

Holding leveraged and inverse ETFs longer than a day, which increases risk, is not acting in the best interests of the client.

Purchasing and maintaining a portfolio that was between 80.9% and 99.3% concentrated in inverse and leveraged ETFs is not acting in the best interests of the client.

Using discretion in an account with out written permission is not acting in the best interests of the client.

6. <u>BDIS FAILED TO RESPOND TO IDENTIFIED RED FLAGS AND FAILED TO SUPERVISE BJV</u>

It is my opinion, based upon a reasonable degree of professional certainty, that BDIS failed to respond to identified red flags and failed to supervise BJV.

The securities regulators require both stock brokerage firms and registered investment advisors to develop written supervisory procedures to assure compliance with the various rules and regulations that govern the investment industry.

My examination of the discovery in this matter shows that between the time Smith opened his account with the Respondents to the time it was closed, BDIS was aware of BJV's inappropriate behavior and even approved the Leveraged ETF transactions. While, on multiple occasions, they reviewed the circumstances that resulted in Smith's losses, they did nothing to stop BJV's inappropriate behavior and mitigate Smith's losses.

The list that follows was compiled from provided discovery, forensic accounting reports and independent research. The table is a timeline of events and documents. Included in the table is Smith's concentration in inverse and leveraged ETFs and his account cumulative profit or loss. The table shows that on thirteen occasions marked in red, between October 2009 and March 2012 BJVs significant events occurred that would have caused a reasonable securities firm branch manager and firm compliance to investigate and take action. The first six of these Red Flags occurred while the Smith account had a cumulative profit. Had they taken action as a reasonable branch manager or supervisor would have, Smith would not have lost money.

Compliance Red Flags

#	Date	Document / Information Summary	Smith Leveraged and Inverse ETF Month-end Concentration	Smith Account Cumulative (P&L)	Bates / Reference
	06/01/09	FINRA issues Regulatory Notice 09-31 "FINRA Reminds Firms of Sales Practice Obligations Relating to Leveraged and Inverse Exchange-Traded Funds"	0.00%	$25,990	FINRA
	07/03/09	Broker-Dealer annual client contact form. This form was completed and signed by Vincent. The form indicates he contacted Smith by phone. No changes or problems were noted.	0.00%	$44,718	BDIS003997
	08/13/09	BDIS issues firm guidelines regarding ETFs in IRAs and long term holding of ETFs	0.00%	$52,470	BDIS000539
1	10/02/09	1,000 shares Direxionshares Large Cap Bull 3X purchased in Smith's account. No updated client objectifies or account form.	12.80%		

2	10/16/09	E-mail from Judith Hansen to BDISIS Reps. Subject: Leveraged ETFs - - - Caution on Two Fronts This large type bold face e-mail to BDISIS Reps discusses the dangers of trading these products in IRAs. 1. Recommends reps understand the leverage and make sure the investment is suitable for the account. 2. Make sure your client is sophisticated. Document why the product is appropriate and your discussion with the client.	12.80%	$54,832	Prime Vest 001006-07
3	04/19/10	Vincent liquidated Smith's entire balanced portfolio - Objectives, time horizon and risk tolerance change - No updated new account form as required	0.00%	$103,321	Monthly Statement
4	07/29/10	This is a string of e-mails between Jane Matthews and Judith Hansen regarding the marking of trades as "unsolicited"	99.30%	$166,288	Prime Vest 00975
5	07/30/10	E-mail from Judith Hansen (Director of Compliance and Risk) to Jane Matthews. Subject: Heads' up - Bill V. Importance: High E-mail discussed solicited vs. unsolicited problems with Bill ticket marking. Issues comparing IPS and client investments. Unsolicited trades in managed accounts.	99.30%	$166,288	Prime Vest 001005
6	07/30/10	E-mail from Judith Hansen to Bob Hogan, Adam Bear. Subject: Heads' up - Bill V. Importance: High This e-mail lists 11 items covering 1,529 transactions in ETFs and Leveraged and Inverse ETFs that were problematic and concerning to the firm.	99.30%	$166,288	Prime Vest 001005-06

7	12/15/10	Audit Findings from the September 2010 Audit of Vincent's office. This findings report shows nine deficiencies. The last noted deficiency says "It was noted on the audit that Judith Hansen discussed and cautioned Mr. Vincent regarding leveraged ETFs and various issues surrounding them. Broker-Dealer policy has been reviewed so no response is needed on this item."	85.90%	-$5,830	BDIS004362-63
8	12/27/10	Vincent Letter of Reprimand. 1. Suitability issues - ETFs in IRAs and long tem holding of ETFs, Contrary to August 13, 2009 Firm Guidelines 2. Books and records issues - trades marked as unsolicited, questionable portfolio objectives relative to client age /financial profile; matching portfolio objectives on IPS documentation to Prime View New Account Application and not getting updated Prime View new account application when appropriate 3. Non or slow responsiveness to inquires from Principal Review 4. Measures implemented included a review of FINRA Regulatory Notice 09-31 regarding suitability of ETFs and the August 13, 2009 Alert from Catherine Pemberton on Leveraged and Inverse ETFs. 5. Review definitions of solicited vs. unsolicited with designated supervisor, Judith Hansen.	85.90%	-$5,830	BDIS000539
	05/19/11	Letter to Smith from The Principal Review Department. In the next few weeks, we may contact you to get your feedback.	83.40%	-$47,399	BDIS000533

9	06/03/11	Notes from the telephone call described in the May 19, 2011 letter. We were able to reach Mr. Smith on June 3rd at I :36 pm. "Mr. Smith explained that he met Mr. Vincent through an acquaintance that referred him to the bank for a business line of credit. He has known Vincent for approximately four years. Vincent's customer service is not bad, Mr. Smith commented that the investment strategy was not great at the moment. He seemed dismayed that he did not get a phone call alerting him to the declining value of the investment, just received the usual monthly statement which revealed a $100,000 loss. When he asked Vincent about the investment's decline in value, Vincent's response was that the market was going to turn around within the next six months. Vincent takes the lead on investment decisions, and Mr. Smith just trusts that he knows his business. Current performance of his investment does not meet his objective, because losing $100,000 is not good. He did expect that Vincent would keep him abreast of what was going on in his accounts, most contact was initiated by Smith via texts and emails in the evenings. Mr. Smith stated that he told Vincent that he was pretty nervous about what was going on with the ETFs, and is frustrated with internet access to his accounts as each account requires a different password and doesn't show a consolidated view of all investments. The investment	84.80%	-$47,399	BDIS004353

		in ETFs was Vincent's idea, as he takes the lead in what investments are made in Smith's accounts. No explanatory material was provided on ETFs, his understanding was that this was a safe product, low risk, and conservative. I'1r. Smith claims he was not aware that the ETF could move significantly based on the markets. At this point, he has not talked with Vincent for two months, nor has he looked at his statements. Vincent's advice was to ride it out. Overall, Mr. Smith would like more frequent updates from his representative, but thinks he is a good guy and trusts him. He is still nervous about what is going on with the market and the losses in his account, as he is older (?) and has little kids and doesn't want to work forever."			
10	10/14/11	Complaint Received - Exchange Traded Funds- Not receiving a prospectus, Discretionary Trading, Violation of Fiduciary Duty - Vincent named	84.30%	-$75,138	CRD
11	10/20/11	Vincent placed under heightened supervision. 1. Non approved e-mail 2. Insufficient customer documentation in files 3. Lack of diversity in customer portfolios 4. Firm believes you have engaged in unauthorized discretionary trading	84.30%	-$75,138	BDIS000541

	01/11/12	Vincent wrote a letter to Dr. Smith a letter suggesting they should review the account. Further he recommended making the account a brokerage account because the minimal activity level would reduce the cost.	80.90%	-$131,744	BDIS003996
12	02/08/12	Customer Complaint - Unsuitability, Exchange Traded Funds, Unauthorized Trading - Vincent named	0.00%	-$148,100	CRD
13	03/07/12	Complaint Received - Exchange Traded Funds - Vincent named	0.00%	-$148,099	CRD
	09/11/12	Vincent no longer employed by Broker-Dealer – Stated Reason: Employment position terminated by financial institution with which firm had a networking agreement			IARD

Red Flags that Should have Triggered Reviews of BJV and Corrective Action

7. <u>DAMAGES</u>

It is my opinion, based upon a reasonable degree of professional certainty that Respondents' actions damaged Smith in three ways.

Smith lost money on the unsuitable and highly risky leveraged ETFs

Smith, because Respondents' placed his assets in a concentrated position in unsuitable and highly risky leveraged ETFs, was unable to participate in the growth in suitable portfolio such as the one recommended to him in Respondents' Investment Policy Statement. That portfolio was up 57.23% during between August 2008 and June 2012. Respondents' charged Smith for unjustified management fees and other costs totaling $19,714.08, that were deducted from his account assets.

Direxion Losses

Direxionshares Large Cap Bull 3X ETF	$21,054.15
Direxionshares Large Cap Bear 3X ETF	-$134,565.07
Direxion Daily Fin Bear 3X ETF	-$120,134.62

Net Direxion Losses	-$233,645.54
Fees Charged	-$19,714.08
Total Direxion Losses and Fees	-$253,359.62
Market Adjusted Damages	

Respondents' prepared an Investment Policy Statement for Smith after he opened his account in 2008 and recommended a mutual fund portfolio.

Your Investment Policy Statement

NAME OF INVESTMENT PROGRAM: Asset Management(PAM)
MODEL NAME: Growth
RISK TOLERANCE: Growth investor.

THE FOLLOWING LIST OF MANAGERS/FUNDS WERE SELECTED ON THE BASIS OF THE INVESTOR'S RESPONSE ON THE ASSET ALLOCATION QUESTIONNAIRE FOR THE ACCOUNT :

Asset Class	% Of Portfolio	$ Amount	Investments/Funds*	Product ID/Ticker
Cash				
	3.00	$1,500.00	CASH & MM BALANCE	CASH-1
Large Cap Core				
	5.00	$2,500.00	Pioneer A	PIODX
	5.00	$2,500.00	Fidelity Advisor Equity Value I	FAIVX
International Equities				
	8.00	$4,000.00	American Funds EuroPacific Gr F	AEGFX
	4.00	$2,000.00	AllianceBernstein International Value/Ad	ABIYX
Investment Grade Bonds				
	17.00	$8,500.00	American Funds Bond Fund of Amer F	BFAFX
	7.00	$3,500.00	Franklin Total Return Fund/Adv	FBDAX

Asset Class	% Of Portfolio	$ Amount	Investments/Funds*	Product ID/Ticker
Mid Cap Equities				
	6.00	$3,000.00	Fidelity Advisor Value I	FVIFX
Small Cap Equities				
	7.00	$3,500.00	Oppenheimer Main St Small Cap A	OPMSX
	3.00	$1,500.00	Hartford Small Company I	IHSIX
Large-Cap Growth				
	10.00	$5,000.00	American Funds Amcap F	AMPFX
	5.00	$2,500.00	Franklin Flex Cap Growth Adv	FKCAX
Large-Cap Value				
	5.00	$2,500.00	Oppenheimer Select Value A	OSVAX
	12.00	$6,000.00	Pioneer Cullen Value A	CVFCX
International Bond				
	3.00	$1,500.00	Capital World Bond Fund/F	WBFFX

Market adjusted damages calculations were prepared using the mutual funds in the 2008 Investment Policy Statement and in the recommended percentages. In this analysis, the software invested money into the recommended mutual funds in the recommended percentages every time assets were received into the account. The last Direxion investment was liquidated during February 2012. The difference between the actual February 2012 month-end account value and the calculated February 2012 month-end account value is the market adjusted damages value.

Portfolio	**Date**	**Month End Value**
BDIS Portfolio Calculated Value[8]	February 29, 2012	$526,386.00
Actual Account value	February 29, 2012	$213,290.08
Market Adjusted Damages		**$313,095.92**

PUBLICATIONS AUTHORED WITHIN THE PAST TEN YEARS

Mr. Wood's website is www.expertsecurities.com. Other than his website, Mr. Wood has not authored any publications within the past ten years.

SLS' COMPENSATION

Mr. Wood's billing rate is $300.00 per hour for consulting and $3,000 per day for testimony. Mr. Wood bills his clients hourly or daily for his billable time, for travel time and for actual travel costs and other related expenses. The complete SLS Fee Schedule is an exhibit to this report.[9]

Respectfully Submitted,

Gregory B. Wood
Securities Litigation Support, LLC
44 Anthem Creek Circle
Henderson, NV 89052
702-253-9663

[8] Exhibit 5 - Morningstar Analysis – Market Adjusted Damages.
[9] Exhibit 2 – SLS Fee Schedule

EXHIBITS

1. Gregory B. Wood Curriculum Vitiate
2. SLS Fee Schedule
3. FINRA Regulatory Notice 09-31
4. Morningstar Analysis – September 2009
5. Morningstar Analysis – Market Adjusted Damages
6. Morningstar Analysis – June 2010 Snapshot