

**COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE SECRETARY OF THE COMMONWEALTH
SECURITIES DIVISION
ONE ASHBURTON PLACE, ROOM 1701
BOSTON, MASSACHUSETTS 02108**

IN THE MATTER OF:)	
)	
PURSHE KAPLAN STERLING)	
INVESTMENTS, INC.,)	
)	
RESPONDENT.)	Docket No. E-2021-0014
)	

CONSENT ORDER

I. PRELIMINARY STATEMENT

This Consent Order (the “Order”) is entered into by the Massachusetts Securities Division and respondent Purshe Kaplan Sterling Investments, Inc. (the “Respondent” or “PKS”) with respect to the administrative complaint (the “Complaint”) filed by the Enforcement Section of the Massachusetts Securities Division (the “Enforcement Section” and the “Division,” respectively) against Respondent on February 17, 2022, that alleged violations of the Massachusetts Uniform Securities Act, Mass. Gen. Laws c. 110A (the “Act”) and the corresponding regulations promulgated thereunder at 950 Mass. Code Regs. 10.00 – 14.413 (the “Regulations”).

On December 27, 2023, Respondent submitted an Offer of Settlement (the “Offer”) to the Division. Respondent neither admits nor denies the Statement of Facts set forth in Section VI and the Violations of Law set forth in Section VII below, and consents to the entry of this Order by the Division, consistent with the language and terms of the Offer, settling the above-captioned administrative proceeding (E-2021-0014) with prejudice. This Order is

necessary and appropriate in the public interest for the protection of investors and is consistent with the purposes fairly intended by the polices and provisions of the Act.

II. JURISDICTION AND AUTHORITY

1. The Division has jurisdiction over matters relating to securities pursuant to the Act, codified at Chapter 110A of the Massachusetts General Laws.
2. The Offer was made and this Order is entered in accordance with the Act and Section 10.10 of the Regulations.
3. The acts and practices that are the subject of the Complaint occurred while Purshe Kaplan Sterling Investments, Inc. was registered as a broker-dealer in Massachusetts.

III. RELEVANT TIME PERIOD

4. Except as otherwise expressly stated, the conduct described herein occurred during the approximate time period of September 19, 2016, to the present (the “Relevant Time Period”).

IV. RESPONDENT

5. Purshe Kaplan Sterling Investments, Inc. (“PKS” or “Respondent”) is a corporation organized under the laws of New York with its principal place of business located at 80 State Street, Albany, New York. PKS has a Financial Industry Regulatory Authority (“FINRA”) Central Registration Depository (“CRD”) number of 35747 and has been registered as a broker-dealer in Massachusetts since October 24, 1994.

V. OTHER RELEVANT ENTITY

6. The Harvest Group Wealth Management, LLC (the “Harvest Group”) is a limited liability company organized under the laws of Massachusetts with its principal place of business located at 800 South Street, Suite 200, Waltham, Massachusetts. The Harvest

Group has a FINRA CRD number of 283572 and is an investment adviser registered with the U.S. Securities and Exchange Commission (“SEC”) and notice filed in Massachusetts since September 30, 2016.

VI. STATEMENT OF FACTS

A. Background

7. PKS is a full-service broker-dealer with over 600 branch offices and more than 1,600 broker-dealer agents. PKS has been registered as a broker-dealer with Massachusetts since October 24, 1994.

8. As of February 14, 2023, PKS had 277 broker-dealer agents registered in Massachusetts.

9. As of February 14, 2023, PKS had 70 individuals registered as both broker-dealer agents with PKS and investment adviser representatives for unaffiliated investment advisers (“dually-registered advisers” or “DRA”s) in Massachusetts.

10. Upon information and belief, all of PKS’ DRAs registered in Massachusetts transact securities business on behalf of Massachusetts clients.

B. PKS Approved Requests by DRAs to Act as Dually-Registered Investment Adviser Representatives of the Harvest Group

11. PKS is responsible for reviewing requests by its broker-dealer agents to conduct outside business activities.

12. PKS utilizes an internal checklist (“OBA Checklist”) to review outside business activity (“OBA”) requests.

13. PKS is responsible for reviewing requests by its broker-dealer agents to provide investment advisory services as representatives of unaffiliated investment advisers. In

reviewing a dually-registered individual's¹ request to provide investment advisory services, PKS is responsible for determining whether the dually-registered individual's proposed activity involves a private securities transaction.

14. PKS' OBA approval process is the same for all DRAs.

15. On August 18, 2016, PKS received an OBA application from one of its broker-dealer agents concerning a request to conduct business as an investment adviser representative of the Harvest Group, an unaffiliated and separately registered investment adviser. Under the proposed OBA, Harvest Group advisory accounts advised by the agent would be custodied at an unaffiliated broker-dealer firm and all securities transactions in those accounts would be executed by that firm. PKS would receive no commissions, advisory fees or other direct or indirect compensation on Harvest Group accounts held at the third party broker-dealer.

16. On September 19, 2016, PKS approved the broker-dealer agent's request to act as a DRA at the Harvest Group.²

17. In September 2016, PKS additionally approved similar requests by two other Harvest Group DRAs.

18. At the time PKS approved the OBA requests for the Harvest Group DRAs, PKS knew that the Harvest Group was a registered investment adviser and that these three broker-dealer agents would also be affiliated with the Harvest Group as investment adviser representatives.

¹ A dually registered individual is registered both as a broker-dealer agent and an investment adviser representative.

² Massachusetts allowed said broker-dealer agent's registration on October 4, 2016.

C. Leveraged Exchange-Traded Funds

19. Exchange-traded funds (“ETFs”) are investment vehicles that track an index, a commodity, or a basket of assets such as an index fund. ETFs provide investors many of the same benefits as mutual funds but differ in that, unlike most mutual funds, ETFs trade like typical stocks.

20. Leveraged ETFs, which are non-traditional ETFs, are ETFs that utilize borrowed funds in order to seek to return, on a daily or monthly basis, 200% or 300% of the daily or monthly returns of an underlying index or benchmark.

21. For example, a leveraged ETF that aims to deliver 200% of the S&P 500 Index’s daily return will increase in value by 2% for every 1% increase in the S&P 500 on any given day.

22. Conversely, that same leveraged ETF will decrease in value by 2% for every 1% decrease in the S&P 500 on any given day.

23. Due to compounding and other reasons, a leveraged ETF designed to return 200% of the daily return on the S&P 500 Index will not necessarily return 8% if held for a one month period in which the S&P 500 Index increases by 4%.

24. Since 2009, the Division has warned of the potential risks related to leveraged ETFs and has brought previous actions against broker-dealers for failing to adequately supervise the recommendation and/or purchase of leveraged ETFs.

25. In June 2009, FINRA released Regulatory Notice 09-31 (the “June 2009 FINRA Notice”) advising broker-dealers of suitability issues in the offer and sale of non-traditional ETFs, including leveraged ETFs.

26. The June 2009 FINRA Notice cautioned firms regarding the complexity of leveraged ETFs.

27. The June 2009 FINRA Notice warned firms regarding the design and potential negative effects of leveraged ETFs which reset daily.

28. The June 2009 FINRA Notice further reminded firms of their supervisory responsibilities regarding broker-dealer agents' recommendations to buy or sell leveraged ETFs.

29. PKS did not prohibit the Harvest Group DRAs' use of discretion to purchase and hold leveraged ETFs for periods longer than one year.

D. Unsuitable Sales of Proshares Ultra QQQ and Proshares Ultra S&P 500 Leveraged ETFs

30. Proshares Ultra QQQ (stock symbol "QLD") is a leveraged ETF that seeks daily investment results, before fees and expenses, which is designed to correspond to two times the return of the Nasdaq-100 Index for a single day.

31. The Prospectus and Summary Prospectus for QLD provide the following:

The Fund presents different risks than other types of funds. The Fund uses leverage and is riskier than similarly benchmarked funds that do not use leverage. The Fund may not be suitable for all investors and should be used only by knowledgeable investors who understand the consequences of seeking daily leveraged (2x) investment results, including the impact of compounding on Fund performance. Investors in the Fund should actively manage and monitor their investments, as frequently as daily. An investor in the Fund could potentially lose the full principal value of their investment within a single day. (emphasis in originals)

32. Proshares Ultra S&P 500 (stock symbol "SSO") is a leveraged ETF that seeks investment results, before fees and expenses, which is designed to correspond to two times the return of the S&P 500 Index for a single day.

33. The Prospectus and Summary Prospectus for SSO provide the following:

The Fund presents different risks than other types of funds. The Fund uses leverage and is riskier than similarly benchmarked funds that do not use leverage. The Fund may not be suitable for all investors and should be used only by knowledgeable investors who understand the consequences of seeking daily leveraged (2x) investment results, including the impact of compounding on Fund performance. Investors in the Fund should actively manage and monitor their investments, as frequently as daily. An investor in the Fund could potentially lose the full principal value of their investment within a single day. (emphasis in originals)

34. PKS did not flag for further review any accounts that the Harvest Group DRAs invested in leveraged ETFs for periods of time in excess of days, weeks, months, and even years despite the risks outlined in the prospectuses for QLD and SSO.

E. The Harvest Group DRAs Purchased Leveraged ETFs as Long-Term Investments in Massachusetts Client Accounts

35. Investors One and Two are a married couple residing in Hingham, Massachusetts. Investor One is 54 years old and unable to work due to medical disability. Investor Two is 54 years old.

36. Investors One and Two were clients of the Harvest Group from approximately January 2017 to February 2019. Each held an individual retirement account (“IRA”) as well as a joint account for a total of three accounts.

37. Investor Three, now deceased, was a client of the Harvest Group from approximately October 2016 to February 2019. Investor Three held an IRA as well as a transfer on death (“TOD”) account.

38. The Wealth Management Agreement, executed on April 6, 2017, between Investors One and Two and the Harvest Group indicates that Investors One and Two had a risk tolerance of six on a scale of zero to ten, placing them in the medium volatility range.

39. The Wealth Management Agreement, executed on October 5, 2016, between Investor Three and the Harvest Group indicates that Investor Three had a risk tolerance of five on a scale of zero to ten, placing Investor Three in the medium volatility range.

40. Despite Investors One, Two, and Three having moderate risk tolerance, the Harvest Group DRAs first began purchasing, on a discretionary basis, the leveraged ETFs QLD and SSO in their accounts on September 14, 2017. The DRAs purchased both leveraged ETFs in Investor One's IRA, Investor Two's IRA, Investors One and Two's joint account, Investor Three's IRA, and Investor Three's TOD account.

41. Harvest Group DRAs purchased additional shares of QLD in Investor One's IRA in February and August 2018. The DRAs purchased additional shares of SSO for the same account in October 2017 and August 2018. Following these additional purchases, these two leveraged ETFs comprised more than 37% of Investor One's IRA.

42. Harvest Group DRAs purchased additional shares of QLD in Investor Two's IRA in October 2017, February 2018, and August 2018. The DRAs purchased additional shares of SSO for the same account in October 2017 and August 2018. Following these additional purchases, these two leveraged ETFs comprised 42% of Investor Two's IRA.

43. Harvest Group DRAs purchased additional shares of QLD in Investors One and Two's joint account in February and August 2018. The DRAs purchased additional shares of SSO for the same account in October 2017 and August 2018. Following these additional purchases, these two leveraged ETFs comprised almost 39% of Investors One and Two's joint account.

44. Harvest Group DRAs purchased additional shares of QLD in Investor Three's IRA in February and August 2018. The DRAs purchased additional shares of SSO for the same

account in August 2018. Following these additional purchases, these two leveraged ETFs comprised 28% of Investor Three's IRA.

45. Harvest Group DRAs purchased additional shares of QLD for Investor Three's TOD account in February and August 2018. The DRAs purchased additional shares of SSO for the same account in August 2018. Following these additional purchases, these two leveraged ETFs comprised 30% of Investor Three's TOD account.

46. The Harvest Group DRAs participated in the execution of all of the leveraged ETF transactions, none of which were executed through PKS.

47. The Harvest Group DRAs purchased and held QLD and SSO for longer than a single day in hundreds of client accounts. Furthermore, the DRAs did not review the accounts daily or frequently in direct contradiction of the QLD and SSO prospectuses.

48. The Harvest Group DRAs held the QLD and SSO investments in almost all client accounts for more than one year.

F. PKS Failed to Have in Place Reasonable Policies and Procedures Necessary to Review Outside Business Activities of its Broker-Dealer Agents

a. PKS failed to review and flag leveraged ETF transactions in violation of its policies and procedures.

49. PKS failed to have in place written policies and procedures to review the investment advisory transactions of its DRAs in 2017 and 2018 performed in accounts managed solely by unaffiliated registered investment advisers.

50. PKS failed to review the investment advisory transactions of its DRAs in 2017 and 2018 performed in accounts managed solely by unaffiliated registered investment advisers.

51. In April 2019 PKS did establish written policies and procedures requiring the review of certain of the investment advisory transactions of DRAs, specifically leveraged ETF transactions.

52. Despite PKS establishing written policies and procedures requiring a review of a sample set of certain investment advisory transactions of DRAs, PKS failed to review the transactions of the Harvest Group DRAs in 2019 and only conducted one review in 2020.

53. All of the leveraged ETF transactions executed by the Harvest Group DRAs occurred outside the regular course or scope of their employment or agency with PKS.

54. From August 9, 2017, through April 1, 2020, the Harvest Group DRAs executed at least 1,477 transactions in the leveraged ETF QQQ.

55. From August 24, 2017, through April 1, 2020, the Harvest Group DRAs executed at least 1,337 transactions in the leveraged ETF SSO.

56. In total, from August 9, 2017, through April 1, 2020, the Harvest Group DRAs executed at least 2,814 transactions in these two leveraged ETFs.

57. All of the leveraged ETF transactions occurred at a broker-dealer other than PKS.

58. PKS did not flag any of these transactions for further review.

b. PKS maintained inadequate policies and procedures necessary to review investment advisory activities of DRAs with respect to leveraged ETFs.

59. PKS maintained inadequate policies and procedures necessary to review investment advisory activities of DRAs with respect to leveraged ETFs.

60. According to PKS written policies and procedures established in April 2019, PKS had undertaken to review certain transactions of “registered representatives who are also associated persons of independent registered investment advisory (RIA) firms who are not affiliated with PKS.”

61. In particular, Section 18.1.H, “Review of Investment Advisory Transactions,” states:

PKS shall conduct a review of electronic downloads of transactional information (“Downloads”) provided by the Custodians.

(a) Identified RIA Transactions. **Upon receipt** of Downloads, the Compliance Department **shall review** RIA Transactions **for the possible unsuitable activity** pursuant to (b) below . . .

(iv) Inverse or **leveraged securities**, where practicable . . .

(b) Review Criteria

On an ongoing basis, the Compliance Department shall review a sampling of the RIA Transactions **for the purpose of detecting unsuitable transactions**

(emphasis added)

62. According to PKS’ written policies and procedures regarding OBA, PKS “must evaluate the proposed activity to determine whether the activity properly is characterized as an OBA or whether it should be treated as an outside securities activity subject to the requirements of FINRA Rule 3280.”

63. PKS’ written policies and procedures further direct that, in certain circumstances, compliance personnel should refer the activity to the PKS 3280 Committee for further review.

64. In particular, the OBA Checklist includes nine questions to assist compliance personnel in determining whether PKS should refer the activity to the 3280 Committee.

65. The PKS OBA Checklist requires referral to the 3280 Committee in the event that a compliance officer responds affirmatively to any one of seven enumerated questions.

66. During PKS' review of the Harvest Group's broker-dealer agents' applications to conduct OBAs, a compliance officer marked an affirmative response to one of the mandatory referral questions.

67. Upon information and belief, PKS routinely received transactional data from the broker-dealer custodian for Harvest Group client accounts.

68. PKS' review of transactional data associated with the Harvest Group DRAs did not flag unsuitable activity concerning leveraged securities.

G. Investors One, Two, and Three Suffered Significant Losses

69. The Harvest Group DRAs' discretionary investments and holding periods in QLD and SSO were not suitable for Investors One, Two and Three.

70. Investors One, Two and Three experienced significant losses in their Harvest Group advisory accounts on their investments in QLD and SSO.

71. PKS did not follow its written policies and procedures in connection with their review of the leveraged ETF transactions for these Harvest Group clients' in leveraged ETFs in 2019 and 2020.

VII. VIOLATIONS OF LAW

Count I – Violations of Mass. Gen. Laws c. 110A, § 204(a)(2)(G)

72. Section 204(a)(2)(G) of the Act provides:

The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds ... (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

(G) has engaged in any unethical or dishonest conduct or practices in the securities, commodities or insurance business[.]

Mass. Gen. Laws. c. 110A, § 204(a)(2)(G)

73. The conduct of PKS, as described above, constitutes violations of Mass. Gen. Laws. c. 110A, § 204(a)(2)(G).

Count II – Violations of Mass. Gen. Laws. c. 110A, § 204(a)(2)(J)

74. Section 204(a)(2) of the Act provides:

The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds ... (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

(J) has failed reasonably to supervise agents, investment adviser representatives or other employees to assure compliance with this chapter[.]

Mass. Gen. Laws. c. 110A, § 204(a)(2)(J).

75. The conduct of PKS, as described above, constitutes violations of Mass. Gen. Laws. c. 110A, § 204(a)(2)(J).

VIII. ORDER

IT IS HEREBY ORDERED:

- A. PKS shall permanently cease and desist from further violations of the Act;
- B. PKS is hereby censured by the Division;
- C. PKS shall offer restitution to Investors One, Two and Three in the aggregate amount of \$64,628 for losses attributable to leveraged ETF trading activity conducted by dually-registered broker-dealer agents, pursuant to the following terms:
 - a. Offers of restitution made pursuant to Section VIII, subsection C, shall be sent to an address provided by the Division, a draft of which shall be

provided to the Division within 30 days of entry of the Order, and a finalized version not unacceptable to the Division shall be mailed within 15 days after approval by the Division (the "Offer Letter"). The Offer Letter will remain open for 60 days. Within 30 days of the mailing of the Offer Letter, Respondent shall provide the Division with a list of any Offer Letter for whom Respondent receives an offer as returned to sender ("Undeliverable Massachusetts Residents"). To the extent the Division has access to different mailing address information for Undeliverable Massachusetts Residents, Respondent shall mail a second Offer Letter to Massachusetts residents within 15 days of the Division providing such different address. Massachusetts residents who choose to accept the offer of restitution shall be required to sign a release in a form not unacceptable to the Division, agreeing to waive any further claims against Respondent relating to any violation giving rise to the offer of restitution. The offer of restitution shall be in the form of a bank check.

- b. Within forty-five (45) days of the expiration of the Offer Letter, Respondent shall prepare and submit to the Division a report detailing the amount of funds reimbursed pursuant to the Order, which shall include:
 - i. Identification of all accepted and verified offers;
 - ii. Dates, amounts, and methods of the transfer of funds for all restitution payments;
 - iii. Identification and detailed descriptions of any objections received by Respondent.

D. PKS shall conduct an internal review of its policies and procedures regarding the supervision, review, and monitoring of transactions of its dually-registered broker-dealer agents conducted within their outside business activity registered investment advisory firms within ninety (90) days of the date of entry of this Order;

E. The Chief Compliance Officer (“CCO”) of PKS shall certify to the Enforcement Section within thirty (30) days of completing the internal review the following in a written report to the Enforcement Section (“Report”):

a. That PKS has conducted the review described in Section VIII.D of this Order;

b. Any changes recommended to PKS’ policies and procedures as a result of the internal review; and

c. The timeline for implementing any recommended changes to PKS’ policies and procedures.

F. Within five (5) business days of the entry this Order, PKS shall pay an administrative fine in the amount of \$250,000 (USD) to the Commonwealth of Massachusetts. Payment shall be: (1) made by United States postal money order, certified check, bank cashier’s check, bank money order, or wire transfer; (2) made payable to the Commonwealth of Massachusetts; (3) either hand-delivered or mailed to One Ashburton Place, Room 1701, Boston, Massachusetts 02108, or wired per Division instructions; and (4) submitted under cover letter or other documentation that identifies the payor making the payment and the docket number of the proceedings. Additionally, PKS shall provide the Division with notice at least twenty-four (24) hours prior to the payment;

G. PKS shall not seek or accept, directly or indirectly, reimbursement or indemnification from any PKS insurance policy with regard to any amount that PKS shall pay pursuant to the Division's Order;

H. If PKS is the subject of a voluntary or involuntary bankruptcy petition under Title 11 of the United States Code within three hundred sixty-five (365) days of the entry of an Order by the Division pursuant to this Order, PKS shall provide written notice to the Enforcement Section within five (5) days of the date of the petition;

I. Any fine, penalty, and/or money that PKS shall pay in accordance with this Order is intended by PKS and the Division to be contemporaneous exchange for new value given to PKS pursuant to 11 U.S.C. § 547(c)(1)(A) and is, in fact, a substantially contemporaneous exchange pursuant to 11 U.S.C. § 547(c)(1)(B);

J. If PKS fails to comply with any of the terms set forth in the Order, the Enforcement Section may institute an action to have this agreement declared null and void. Additionally, PKS agrees that, after a fair hearing and the issuance of an order finding that PKS has not complied with the Order, the Enforcement Section may move to have the Order declared null and void, in whole or in part, and re-institute the associated proceeding that had been brought against PKS; and

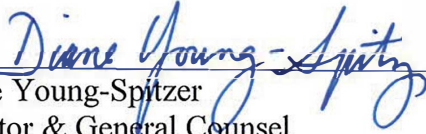
K. For good cause shown, the Enforcement Section may extend any of the procedural dates set forth above. PKS agrees to make any requests for extensions of the procedural dates set forth above in writing to the Enforcement Section.

IX. NO DISQUALIFICATION

This Order waives any disqualification in the Massachusetts laws, or rules or regulations thereunder, including any disqualification from relying upon the registration

exemptions or safe harbor provisions to which PKS may be subject. This Order is not intended to be a final order based upon violations of the Act that prohibit fraudulent, manipulative, or deceptive conduct. This Order is not intended to form the basis of any disqualifications under Section 3(a)(39) of the Securities Exchange Act of 1934; or Rules 504(b)(3) and 506(d)(1) of Regulation D, Rule 262(a) of Regulation A and Rule 503(a) of Regulation CF under the Securities Act of 1933. This Order is not intended to form the basis of disqualification under the FINRA rules prohibiting continuance in membership absent the filing of a MC-400A application or disqualification under SRO rules prohibiting continuance in membership. This Order is not intended to form a basis of a disqualification under Section 204(a)(2) of the Uniform Securities Act of 1956 or Section 412(d) of the Uniform Securities Act of 2002. Except in an action by the Division to enforce the obligations of this Order, any acts performed or documents executed in furtherance of this Order: (a) may not be deemed or used as an admission of, or evidence of, the validity of any alleged wrongdoing, liability, or lack of any wrongdoing or liability; or (b) may not be deemed or used as an admission of, or evidence of, any such alleged fault or omission of PKS in any civil, criminal, arbitration, or administrative proceeding in any court, administrative agency, or tribunal.

**WILLIAM FRANCIS GALVIN
SECRETARY OF THE COMMONWEALTH**

By: 
Diane Young-Spitzer
Director & General Counsel
Massachusetts Securities Division
One Ashburton Place, Room 1701
Boston, MA 02108

Date: January 4, 2024