

BEFORE THE SECURITIES COMMISSIONER
STATE OF COLORADO

Case No. 2019-CDS-045

CONSENT ORDER

IN THE MATTER OF PATHWAY ADVISORS GROUP AND WILLIAM D.
FRIER,

Respondents.

THIS MATTER is before David Cheval, Acting Securities Commissioner for the State of Colorado ("Commissioner"), on the Stipulation for Consent Order ("Stipulation") between the Staff of the Colorado Division of Securities ("Staff") and Respondents Pathway Advisors Group ("Pathway") (IARD# 290221) and William D. Frier (CRD# 1029781) (collectively, "Respondents"). After reviewing the Stipulation and grounds therein, the Commissioner makes the following Findings and enters the order as follows:

FINDINGS

1. The Commissioner has jurisdiction over the Respondents and this matter pursuant to the provisions of the Colorado Securities Act, §§ 11-51-101 through 803, C.R.S.
2. By entering into the Stipulation, Respondents waive the following rights: (1) to have a formal hearing pursuant to §§ 11-51-606(1), 24-4-104 and 24-4-105, C.R.S.; (2) to be represented by counsel in that action; (3) to present a defense through oral or documentary evidence; (4) to cross-examine witnesses at such hearing; and (5) to seek judicial review of the Consent Order as provided in §§ 11-51-607 and 24-4-106, C.R.S.
3. Respondents further waive the findings required by § 11-51-410(1), C.R.S. and do not contest that pursuant to § 11-51-704(2), C.R.S. entry of this Consent Order is necessary and appropriate in the public interest and is consistent with the purposes of the Colorado Securities Act.

ORDER

NOW, THEREFORE, based on the foregoing, it is ORDERED as follows:

1. The terms of the attached Stipulation are incorporated and made a part of this Consent Order.
2. Respondents shall comply with all agreements, undertakings, and directives contained in the Stipulation, to the extent any such agreements, undertakings, or directives remain unsatisfied on the date of this Order.
3. Respondents Pathway and William D. Frier hereby have a condition imposed upon it pursuant to § 11-51-410(1), C.R.S.
4. Respondents Pathway and William D. Frier shall retain a compliance consultant, approved by the Division, within sixty (60) days from the entry of the Consent Order for a period of two (2) years to perform services as outlined in the Stipulation.
5. The Commissioner shall retain jurisdiction over this action to ensure Respondents' compliance with this Order and reserves the power to enter additional orders as needed to ensure the compliance by the Respondents with this Order.
6. In the event Respondents fail to comply with any of the terms or conditions for this Consent Order or the Stipulation, the Commissioner or the Staff, in their sole discretion, may initiate formal enforcement proceedings against Respondents for such noncompliance. The Stipulation and this Consent Order shall be admissible as evidence in any such proceeding.
7. This Consent Order, and the terms and conditions herein, shall be binding on all successors and assigns.

DATE: Jan. 16, 2020





DAVID S. CHEVAL
Acting Securities Commissioner

BEFORE THE SECURITIES COMMISSIONER
STATE OF COLORADO

Case No. 2019-CDS-045

STIPULATION FOR CONSENT ORDER

IN THE MATTER OF PATHWAY ADVISORS GROUP AND WILLIAM D. FRIER,

Respondents.

The Staff of the Colorado Division of Securities ("Staff") and Respondents Pathway Advisors Group ("Pathway") and William D. Frier (collectively, "Respondents"), hereby enter into this Stipulation for Consent Order in this matter as follows:

I. Background

1. The Staff conducted an examination and investigation of Respondents pursuant to §§ 11-51-409 and 601, C.R.S.
2. As a result of its examination and investigation, the Staff alleges that Respondents engaged in the following conduct:
 - a. Pathway (IARD# 290221) is a Colorado limited liability corporation operating under the legal name Frier Planning Concepts, Inc., with its principal place of business located at 5025 Boardwalk Drive, Suite 200, Colorado Springs, CO 80919.
 - b. Pathway has been licensed in Colorado as an Investment Adviser since November 16, 2018.
 - c. William D. Frier ("Frier") (CRD# 1029781) has been licensed in Colorado as an investment adviser representative with Pathway since November 10, 2017 and was the President and Chief Compliance Officer of Pathway during all relevant periods.
 - d. Respondents provide asset management on a discretionary basis for approximately 678 accounts with assets under management totaling approximately \$64,000,000.
 - e. Respondents' objective is to develop a portfolio allocation appropriate for each client's risk tolerance. Respondents, as part

of their investment strategy, placed the majority (approximately 581 out of 678) of client accounts in twenty-one (21) different non-traditional exchange traded funds that offered leverage and/or are designed to perform inversely to the index or benchmark they track (“inverse and/or leveraged ETFs”).

- f. The inverse and/or leveraged ETFs utilized by Respondents, according to many of their prospectuses, seek investment results “for a single day only, measured as the time the Fund calculates its NAV to the next time the Fund calculates its NAV, and not for any other period.” Accordingly, the inverse and/or leveraged ETFs, as referenced in many of their prospectuses, “may not be suitable for all investors and should be used only by knowledgeable investors who understand the consequences of seeking daily leveraged 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.”
- g. Respondents placed clients in securities, including inverse and/or leveraged ETFs, based off of the recommendations of a third party investment research firm (“research firm”) that provides subscribers with model portfolios. Respondents relied on the research firm’s reports to monitor the investment holdings and strategy.
- h. Respondents placed clients in inverse and/or leveraged ETFs for significant periods of time, often weeks or months, without sufficient ongoing analysis and monitoring given the risks associated with the compounding nature of the returns.
- i. On certain occasions during the review period, after receiving a recommendation from the research firm, Respondents researched and placed clients in “similar” funds offered through Charles Schwab, where client funds were held. 9 of the 678 client accounts were invested in leveraged ETFs. In some instances, Respondents purchased funds with a different level of leverage than that recommended by the research firm. For example in October of 2018, the research firm recommended that clients in a leveraged sector rotation model purchase/hold 25% of that portfolio in the HCPIX leveraged fund, which corresponds to one and one-half times (1.5x) the daily performance of the Dow Jones U.S. Health Care Index. For multiple clients, Respondents purchased CURE, which provides 3x leveraged exposure to the daily performance of the Standard & Poor Health Care Select Sector Index.

- j. Additionally, for the research firm's Gold Trend Strength Indicator Model, the model specified that when the Model's Trend Strength Indicator is positive, 100% of the funds following that Model were to be invested in GLD, a non-leveraged ETF that seeks to reflect the price of gold bullion. After receiving a positive indicator, certain investors were placed into UGL, which is a 2X leveraged ETF designed with the same specific single-day trading risks. Positions in CURE and UGL were maintained without sufficient ongoing analysis and monitoring given the risks associated with the compounding nature of the returns.
- k. Respondents did not disclose to clients in the Form ADV Part 2A (or in a similar document) material information including that some investment strategies Respondents use are based off of the recommendations of a research firm; that Respondents purchased "similar" funds with different levels of leverage and different issues than those recommended by the research firm; and that the investment strategy utilized inverse and/or leveraged ETFs with reliance on the research firm without sufficient ongoing analysis and monitoring.

Based on this alleged conduct, Staff determined that Respondents willfully violated or willfully failed to comply with provisions of the Colorado Securities Act and rules thereunder by failing to fully disclose Respondents' use of, and the significant and unusual risks in, trading inverse and leveraged ETFs in violation of Rule 51-4.8(IA) and pursuant to §§ 11-51-410(1)(b) and 11-51-410(1)(I)(II), C.R.S. an appropriate sanction is warranted.

II. Stipulation

The Staff and Respondents, in order to resolve this matter without formal hearing, hereby enter into this Stipulation for Consent Order in this matter as follows:

1. The Securities Commissioner for the State of Colorado has jurisdiction over the Respondents and the subject matter of this action.
2. Respondents neither admit nor deny all allegations contained in this Stipulation.
3. Respondents agree to the entry of a Consent Order in the form attached and incorporated by reference.
4. Respondents agree to the following:

- a. Respondents agree to fully comply with all requested items in the Division deficiency letter issued September 25, 2019;
- b. Respondents agree to only trade inverse and/or leveraged ETFs consistent with the products' prospectuses and to maintain a detailed record of all analyses and monitoring performed on the investments and disclosures provided to clients regarding such products ("Respondents' journal");
- c. Respondents shall retain a compliance consultant, approved by the Division, within sixty (60) days from the entry of the Consent Order for a period of two (2) years to review the advisory business of Respondents and to develop supervisory procedures for the firm pertinent to the analysis, monitoring and risk disclosures relating to trading strategies and complex products, including trading in inverse and/or leveraged ETFs; and
- d. The compliance consultant shall perform an annual review and analysis (a total of two (2) reviews), of all client accounts utilizing complex products such as inverse and/or leveraged ETFs for consistency with client objectives, the inverse and/or leveraged ETF prospectuses (for any products held during the report period), the Respondents' journal; the Respondents' written supervisory procedures manual, and the Respondents' disclosure documents including the Form ADV Part 2. The reviews and analyses required of the compliance consultant shall be documented in writing and made available to the Division upon request.

5. Respondents understand that they have the following rights: (1) to have a formal hearing pursuant to § 11-51-606(1), C.R.S.; (2) to be represented by counsel in that action; (3) to present a defense through oral or documentary evidence; (4) to cross-examine witnesses at such hearing; (5) to findings by the Securities Commissioner as required by § 11-51-606(1.5), C.R.S; and (6) to seek judicial review of the Consent Order as provided in §§ 11-51-607 and 24-4-106, C.R.S. By entering into this Stipulation, Respondents expressly waive the rights set forth in this paragraph.

6. Respondents acknowledge that they have entered into this Stipulation voluntarily, after the opportunity to consult with counsel, and with the understanding of the legal consequences of this Stipulation and Consent Order.

7. Respondents hereby waive the findings required by § 11-51-410(1), C.R.S.; and pursuant to § 11-51-704(2), C.R.S., Respondents do not contest that the entry of a Consent Order is necessary and appropriate in the public interest and is consistent with the purposes and provisions of the Act.

8. Respondents agree that the entry of this Consent Order is a disciplinary event that is material to a client's or prospective client's evaluation of their advisory business or the integrity of its management and must disclose the event in appropriate filings and disclosure documents.

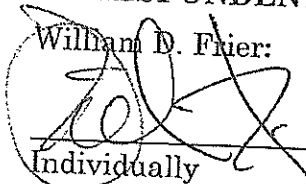
9. By consenting to the entry of the Consent Order, Respondents agree not to take any action or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding or Conclusion in the Consent Order or creating the impression that said Order lacks a factual basis.

10. Respondents further acknowledge that any violation of the Consent Order, when issued, may constitute grounds for further sanctions and formal proceedings against them for such violations.

11. This Stipulation is subject to approval by the Securities Commissioner, and shall become binding upon the parties hereto upon such approval.

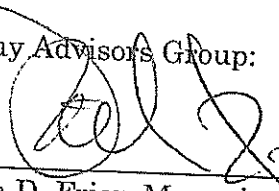
BY RESPONDENTS:

William D. Frier:


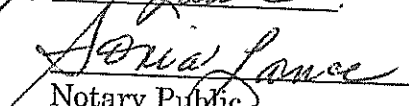


Individually

Pathway Advisors Group:


BY _____:
William D. Frier, Managing Member

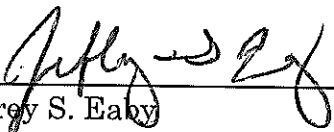
Subscribed and sworn before me this 15th day of January, 2020 in
the County/City of El Paso, State of Colorado by



Notary Public

My Commission Expires: 06/13/2022

SONIA LANCE
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20144023668
My Commission Expires 06-13-2022

BY THE STAFF OF THE DIVISION OF SECURITIES:



Jeffrey S. Eaby
Chief Examiner

January 16, 2020
Date