



STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

RICK SNYDER
GOVERNOR

SHELLY EDGERTON
DIRECTOR

Complaint Nos. 328796 & 330097

**THE PRACTICAL INVESTOR, LLC
CRD# 116747**

Complaint Nos. 328763 & 330099

**ANTHONY CHERNIAWSKI
CRD# 712628**

FINE PAYMENT INSTRUCTIONS

The FINE must be received by the Department on or before **OCTOBER 30, 2017**. The FINE must be paid by cashier's check or money order, with the Complaint No. clearly indicated on the check or money order, made payable to the State of Michigan, and sent to the address indicated below. Payment cannot be made by credit card.

Once the FINE has been overdue for at least six months, it will be referred to the Michigan Department of Treasury for collection. Questions may be directed to Final Order Monitoring staff at (517) 241-9180.

To ensure the proper posting of the payment to your account, please mail the Fine Payment Processing Stub with your payment to:

Michigan Department of Licensing and Regulatory Affairs
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU
Final Order Monitoring – Securities & Audit Division
P.O. Box 30018 – Lansing, MI 48909

FINE PAYMENT PROCESSING STUB
Please return this with your payment.

Make your check or money order drawn from a U.S. financial institution payable to the STATE OF MICHIGAN.
Do not send cash. Payment cannot be made by credit card.

Agency C3 ACCOUNT Code
10117

Complaint No.: 328796, 330097, 328763, 330099	Due: OCTOBER 30, 2017 Total Amount Due: \$500.00
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STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU

In the matters of:

THE PRACTICAL INVESTOR, LLC
CRD# 116747

Complaint Nos. 328796 & 330097

and

ANTHONY CHERNIAWSKI
CRD# 712628

Complaint Nos. 328763 & 330099

Respondents.

Issued and entered
This 30th day of AUGUST, 2017

**CONSENT ORDER REVOKING INVESTMENT ADVISER AND INVESTMENT
ADVISER REPRESENTATIVE REGISTRATIONS**

A. Relevant information and statutory provisions, under the Michigan Uniform Securities Act (2002) (the Act), 2008 PA 551, MCL 451.2101 *et seq.*:

1. On October 13, 2016, the State of Michigan, Department of Licensing and Regulatory Affairs, Corporations, Securities & Commercial Licensing Bureau (the Bureau) and the Director of the Bureau who serves as the Administrator of the Act (the Administrator) issued two Notices of Intent to Revoke Registration to The Practical Investor, LLC (TPI), and its Chief Compliance Officer and managing member, Anthony Cherniawski.
2. Cherniawski and TPI were represented by, and had the advice of, legal counsel throughout the process of resolving these orders in Michigan.
3. Cherniawski and TPI agree to the revocation of their respective registrations to avoid further proceedings in these matters.

B. AGREEMENT PROVISIONS

Cherniawski, TPI and the Administrator (collectively, "the Parties") agree that the two Notices of Intent will be resolved with the following conditions:

1. The Parties agree that the Administrator's revocation of TPI's Investment Adviser (IA) registration and Cherniawski's Investment Adviser Representative (IAR) registration will be final 90 days after the mailing date of this Consent Order, which is intended to give Cherniawski and TPI time to transfer their current clients to other advisers. Cherniawski and TPI neither admit nor deny any of the allegations in the Notices of Intent.
2. Cherniawski and TPI agree to waive any assertion or claim under MCL 451.2412(9)'s one-year time limit on the Administrator's action after knowledge of material facts bars the Administrator from using the facts set out in the Notices of Intent if and when considering future applications for registration by Cherniawski and TPI.
3. The Administrator agrees to reduce the fines in the Notices of Intent, and Cherniawski and TPI agree to pay a joint and severally imposed Five Hundred Dollar (\$500.00) fine to the Bureau within 60 days after the mailing date of this Consent Order. The fine must be paid by check or money order payable to the "State of Michigan," contain Cherniawski and TPI's identifying information (name and complaint nos.), and be mailed to:

Corporations, Securities & Commercial Licensing Bureau
Final Order Monitoring – Securities & Audit Division
P.O. Box 30018
Lansing, MI 48909
4. If any portion of the fine is overdue for at least six months, the Administrator may refer it to the Michigan Department of Treasury for collection action against Cherniawski and TPI. In addition, the Administrator reserves the right to pursue any other action or proceeding permitted by law to enforce payment of the fine.
5. The Parties acknowledge and agree that the Administrator retains the right to pursue any action or proceeding permitted by law to enforce compliance with the provisions of this Consent Order, and that failure to comply with this Consent Order may result in additional disciplinary action or a referral of the matter for criminal prosecution, consistent with MCL 451.2508.
6. The Parties further agree that this matter is a public record required to be published and made available to the public, consistent with section 11 of the

Michigan Freedom of Information Act, 1976 PA 442, as amended, MCL 15.241. The Administrator currently publishes copies of orders issued under the Act to the Bureau's website and includes a summary of order content in monthly disciplinary action reports separately published on the Bureau's website. The Administrator will also update its Form U6 filed with the CRD.

7. Cherniawski and TPI understand and intend that by signing this Consent Order, they are waiving the right, pursuant to the Act, the rules promulgated under that Act and the Uniform Securities Act (Predecessor Act), 1964 PA 265, MCL 451.501 *et seq.*, and the Administrative Procedures Act, 1969 PA 306, MCL 24.201 *et seq.*, to prior notice and a hearing before an administrative law judge, at which the Bureau would be required to defend any disciplinary action taken under Section 2412 of the Act, MCL 451.2412, by presentation of evidence and legal authority and at which Cherniawski and TPI would be entitled to appear with or without an attorney to cross-examine all witnesses presented by the Bureau and to present such testimony or other evidence or legal authority deemed appropriate.

Through their signatures, the Parties agree to the above terms and conditions.

Dated: Aug 16, 2017 Signed: Anthony M. Cherniawski, Owner
The Practical Investor, LLC

Dated: Aug 16, 2017 Signed: Anthony M. Cherniawski
Anthony Cherniawski

Acknowledged by:

Dated: Aug 23, 2017 Signed: Dennis Egan
Dennis Egan
Respondents' Attorney

Approved by:

Dated: _____ Signed: _____
Timothy L. Teague
Securities & Audit Division Director
Corporations, Securities & Commercial
Licensing Bureau

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Through their signatures, the Parties agree to the above terms and conditions.

Dated: _____ Signed: _____
The Practical Investor, LLC

Dated: _____ Signed: _____
Anthony Cherniawski

Acknowledged by:

Dated: _____ Signed: _____
Dennis Egan
Respondents' Attorney

Approved by:

Dated: 8-28-17 Signed: Timothy L. Teague
Timothy L. Teague
Securities & Audit Division Director
Corporations, Securities & Commercial
Licensing Bureau

C. ORDER

The Administrator NOW, THEREFORE, ORDERS:

THE TERMS AND CONDITIONS IN THIS CONSENT ORDER ARE BINDING
AND EFFECTIVE, IN ACCORD WITH THE FULLY EXECUTED STIPULATION
CONTAINED HEREIN.



Julia Dale, Administrator and Corporations, Securities & Commercial Licensing
Bureau Director

**STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU**

In the matter of:

Agency Nos. 328796 & 330097

THE PRACTICAL INVESTOR, LLC
CRD# 116747

Respondent.
_____ /

Issued and entered
This 13th day of October, 2016

**NOTICE OF INTENT TO REVOKE
INVESTMENT ADVISER REGISTRATION**

I. RELEVANT FACTS AND APPLICABLE LAW.

Relevant information and statutory provisions, under the Michigan Uniform Securities Act (2002), 2008 PA 551, as amended, MCL 451.2101 *et seq* (the "Securities Act"):

1. The Practical Investor, LLC (CRD#116747) ("Respondent") is a Michigan limited liability company that has been registered as an investment adviser in the State of Michigan from in or around August of 2005 through the present. Respondent is owned by Anthony Cherniawski, an investment adviser representative of the firm, as well as its owner, president, and chief compliance officer.
2. The Corporations, Securities & Commercial Licensing Bureau ("the Bureau") within the Department of Licensing and Regulatory Affairs received consumer complaints related to Respondent and Mr. Cherniawski. The Bureau opened investigations to review Respondent's activities in the securities industry.
3. The investigations developed evidence that Respondent in its capacity as an investment adviser, for compensation and through Mr. Cherniawski as its investment adviser representative, provided investment advice to clients AA, CB, and LB.
4. Client AA had a single account with Respondent, with an approximate value of \$12,186 in or around 2008. As of the first quarter of 2016, the account was valued at approximately \$205, with the diminutions in value being connected exclusively to investment performance and withdrawal of fees from the account.
5. Clients CB and LB are a married couple, and across three separate IRA accounts with Respondent, held approximately \$96,913 in or around 2010. As of the second quarter of 2016, the accounts were valued at approximately \$1,814, with the diminution in value

being connected exclusively to investment performance and withdrawal of fees from the accounts.

6. Approximately 90% of Client AA's account was invested at Respondent's and Mr. Cherniawski's direction in VelocityShares 2X Long VIX Short Term ETNs ("TVIX") for over two years. As discussed in paragraph 8, below, the suggested time horizon for investments in TVIX was daily or intra-daily according to its prospectus. The prospectus also states that TVIX's expected long term value is zero.
7. The concentration of TVIX in the accounts owned by Clients CB and LB fluctuated between 90% and 100% from in or around January of 2013 until the accounts were closed in or around the second quarter of 2016.¹ As discussed in paragraph 8, below, the suggested time horizon for investments in TVIX was daily or intra-daily according to its prospectus. The prospectus also states that TVIX's expected long term value is zero.
8. The prospectus for TVIX (Exhibit 1 – Excerpts of the TVIX Prospectus, dated November 7, 2012) stated repeatedly that the fund was not intended to be held for the long term, and that holding the fund for more than a one day period, or even intra-day, could result in significant losses:
 - A. "If you hold your ETNs as a long term investment, it is likely that you will lose all or a substantial portion of you investment." (Exhibit 1, pg. 40).
 - B. "The ETNs, and in particular the 2x Long ETNs, are intended to be trading tools for sophisticated investors to manage daily trading risks." (Exhibit 1, pg. 13).
 - C. "They are designed to achieve their stated investment objectives on a daily basis, but their performance over longer periods of time can differ significantly from their stated daily objectives." (Exhibit 1, pg. 13).
 - D. "Investors should actively and frequently monitor their investments in the ETNs, even intra-day." (Exhibit 1, pg. 13).
 - E. "The ETNs are riskier than securities that have intermediate or long-term investment objectives, and may not be suitable for investors who plan to hold them longer than one day." (Exhibit 1, pg. 13).
 - F. "[The ETNs may not be a suitable investment for you if] you are not a sophisticated investor and you seek an investment for purposes other than managing daily trading risks." (Exhibit 1, pg. 39).

¹ Information provided by Respondent during the investigation indicated that 56 of Respondent's 58 clients had held TVIX for six months or more.

- G. “The ETNs are only suitable for a very short investment horizon.” (Exhibit 1, pg. 39)
- H. “[The ETNs may not be a suitable investment for you if] you seek an investment with a longer duration than a daily basis.” (Exhibit 1, pg. 39).
- I. “The long term expected value of your ETNs is zero.” (Exhibit 1, pg. 39).
9. Respondent, through decisions by Mr. Cherniawski, invested client assets for significantly longer than what TVIX identified in its prospectus as suitable, leading to massive losses, identified in paragraphs 4 and 5 above, for Clients AA, CB, and LB.
10. Respondent, by Mr. Cherniawski, through the Investment Management Agreement with Client AA, represented that Respondent would “continuously monitor (perhaps daily) the underlying assets of our Client’s [AA’s] portfolios. Additionally, we will conduct internal reviews of specific portfolios on at least a quarterly basis...” (Exhibit 2 – AA Investment Management Agreement).
11. Respondent, through Mr. Cherniawski, stated in responses to the Bureau that it failed to monitor or review Client AA’s account individually as was represented in the Investment Management Agreement; rather, Client AA’s assets were placed in an omnibus account with other clients’ funds. The value of Client AA’s account diminished in value from \$12,186 to only \$205 by the first quarter of 2016, strictly as a result of investment performance and fee deductions.
12. The Director (“Administrator”) of the Bureau has reviewed materials relating to Respondent’s actions as a registrant under the Securities Act. The Administrator has determined that it is authorized, appropriate, and in the public interest to revoke Respondent’s investment adviser registration based upon Respondent’s conduct discussed above and hereafter.
13. Section 412(2) of the Securities Act, MCL 451.2412(2), states:
- If the administrator finds that the order is in the public interest and subsection (4) authorizes the action, an order under this act may revoke, suspend, condition, or limit the registration of a registrant and if the registrant is a broker-dealer or investment adviser, of a partner, officer, or director, or a person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser...
14. Section 412(3) of the Securities Act, MCL 451.2412(3) states:
- If the administrator finds that the order is in the public interest and subsection (4)(a) to (f), (i) to (j), or (l) to (n) authorizes the action, an order under this act may censure, impose a bar, or impose a civil fine in an amount not to exceed a maximum of

\$10,000.00 for a single violation or \$500,000.00 for more than 1 violation on a registrant and, if the registrant is a broker-dealer or investment adviser, on a partner, officer, or director, a person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser.

15. Section 412(4) of the Securities Act, MCL 451.2412(4) states in relevant part:

A person may be disciplined under subsections (1) to (3) if any of the following apply to the person:

(m) The person has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous 10 years...

16. Section 412(7) of the Securities Act, MCL 451.2412(7) states:

(7) Except under subsection (6), an order shall not be issued under this section unless all of the following have occurred:

- (a) Appropriate notice has been given to the applicant or registrant.
- (b) Opportunity for hearing has been given to the applicant or registrant.
- (c) Findings of fact and conclusions of law have been made on the record pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

17. The Administrator may revoke Respondent's investment adviser registration pursuant to section 412(2) of the Securities Act, MCL 451.2412(2), because it is in the public interest, and because:

- A. Respondent engaged in dishonest or unethical behaviors in the securities industry by recommending and carrying out an investment strategy without understanding its consequences, leading to massive client losses, contrary to section 412(4)(m), MCL 451.2412(4)(m).
- B. Respondent engaged in further dishonest or unethical behavior failing to individually monitor Client AA's account as was represented in both the Client Agreement, contrary to section 412(4)(m) of the Securities Act, MCL 451.2412(4)(m).

II. ORDER.

The Administrator finds that this ORDER is authorized, appropriate, and in the public interest based on the above-cited facts and law.

IT IS ORDERED as follows:

1. The Administrator intends TO REVOKE THE INVESTMENT ADVISER REGISTRATION OF THE PRACTICAL INVESTOR, LLC under section 412(2) of the Securities Act, MCL 451.2412(2), because it has engaged in dishonest or unethical business practices in the securities industry within the previous 10 years, which supports the revocation of it investment adviser registration under the above-cited provisions of the Michigan Uniform Securities Act (2002), 2008 PA 551, MCL 451.2101 *et seq.*
2. In her final order, the Administrator intends to impose a civil fine of \$10,000.00 against Respondent under section 412(3) of the Securities Act, MCL 451.2412(3).
3. In accordance with sections 412(2) and 412(7) of the Securities Act, MCL 451.2412(2) and MCL 451.2412(7): This is NOTICE that the Administrator intends to commence administrative proceedings to REVOKE Respondent's investment adviser registration, and that Respondent has thirty (30) days after the date that this Order is served on Respondent to respond in writing to the enclosed Notice of Opportunity to Show Compliance. If the Administrator timely receives a written request, depending upon the election, the Administrator shall either promptly schedule a compliance conference, or schedule a hearing within fifteen (15) days after receipt of the written request. If you fail to respond to this Notice and Order within the time frame specified, the Administrator shall schedule a hearing. If a hearing is requested or ordered, the Administrator, after notice of and an opportunity for hearing to Respondent, may modify or vacate this Order or extend the Order until final determination.

If Respondent requests a hearing, the request must be in writing and filed with the Department of Licensing and Regulatory Affairs, Corporations, Securities & Commercial Licensing Bureau, Regulatory Compliance Division, P.O. Box 30018, Lansing, MI 48909.

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

By:



Julia Dale, Administrator and Director
Corporations, Securities & Commercial Licensing Bureau