Press Release

SEC Charges Advisory Firm and Part-Owner for Breach of Fiduciary Duty in Connection with Use of Leveraged ETFs

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Washington D.C., May 4, 2023 — The Securities and Exchange Commission today announced settled charges against Fargo, North Dakota-based investment adviser Classic Asset Management LLC (CAM) and indirect part-owner and investment adviser representative Douglas G. Schmitz for breach of fiduciary duty in connection with the use of leveraged exchange traded funds (ETFs) in discretionary client accounts.

According to the SEC's order, from at least 2017 through December 2020, CAM and Schmitz invested advisory clients in leveraged ETFs for extended periods of time, often in significant concentrations, despite warnings in the funds' prospectuses that the products carried unique risks, were designed to be held for no more than a single trading day, and required frequent monitoring. The order finds that CAM and Schmitz misunderstood these fundamental characteristics of the leveraged ETFs and thus lacked a reasonable belief that the leveraged ETFs were in their clients' best interests. Further, according to the order, CAM and Schmitz failed to appropriately monitor the performance of these products and, consequently, did not evaluate whether the leveraged ETFs were in their clients' best interests throughout the holding period. The order also finds that CAM failed to adopt and implement policies and procedures reasonably designed to prevent violations of the Advisers Act.

"Investment advisers have fiduciary duties to act in their clients' best interest, and this is particularly important when investing clients in complex products such as leveraged ETFs," said Jason J. Burt, Director of the SEC's Denver Regional Office. "Complex products present unique risks, and investment advisers must ensure that there is a reasonable basis to recommend these products before purchasing them for clients."

The SEC's order finds that CAM and Schmitz violated the Investment Advisers Act of 1940 and that CAM also violated the compliance provision of the Advisers Act. CAM and Schmitz agreed, without admitting or denying the SEC's findings, to a cease-and-desist order and censures. CAM and Schmitz also agreed to pay $195,228 and $738,113, respectively, in disgorgement, prejudgment interest, and civil penalties. CAM also agreed to conduct a respondent-administered distribution.

The SEC's investigation was conducted by Jeffrey D. Felder and supervised by Kimberly L. Frederick, Nicholas P. Heinke, and Jason J. Burt of the Denver Regional Office. Alex Lefferts of the Enforcement Division's Office of Investigative & Market Analytics, and Denise Saxon, Jason Morrison, David Buhler, and Scott Gammel of the Denver Regional Office, assisted with the investigation.

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Related Materials

- SEC Order