

1 **STATE OF WASHINGTON**
2 **DEPARTMENT OF FINANCIAL INSTITUTIONS**
3 **SECURITIES DIVISION**

4 IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Securities Act of Washington by:

5 Thomson Financial Advisors LLC;
6 Lindsay Thomson;
Brendan Shaw,

7 Respondents.

Order Number S-17-2258-19-FO01

ENTRY OF FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND FINAL
ORDER TO CEASE AND DESIST, TO
DENY FUTURE REGISTRATIONS, TO
IMPOSE FINES, AND TO CHARGE COSTS

8 **INTRODUCTION**

9 On March 12, 2019, the Securities Administrator of the State of Washington issued Statement of
10 Charges and Notice of Intent to Enter Order to Cease and Desist, to Deny Future Registrations, to Impose
11 Fines, and to Charge Costs, S-17-2258-19-SC01 (“Statement of Charges”) against Respondents Thomson
12 Financial Advisors LLC, Lindsay Thomson, and Brendan Shaw. The Statement of Charges, together with
13 a Notice of Opportunity to Defend and Opportunity for Hearing (“Notice of Opportunity for Hearing”),
14 and an Application for Adjudicative Hearing (“Application for Hearing”), was served on the respondents
15 on March 13, 2019.

16 The Notice of Opportunity for Hearing advised the respondents that a written application for an
17 administrative hearing on the Statement of Charges must be received within twenty days form the date of
18 receipt of the notice. The Statement of Charges advised the respondents that if a hearing was not
19 requested, the Securities Administrator intends to adopt the “Tentative Findings of Fact” and
20 “Conclusions of Law,” as set forth in the Statement of Charges, as final, and enter a final order against the
21 respondents to cease and desist from violations of the Securities Act, and to impose the fines and recover
22 costs.

23 The Respondents Thomson Financial Advisors LLC, Lindsay Thomson, and Brendan Shaw failed
24 to request an administrative hearing within twenty days of receipt of the Statement of Charges and Notice

1 of Opportunity for Hearing, either on the Application for Hearing provided or otherwise. The Securities
2 Administrator therefore will adopt as final the findings of fact conclusions of law as set forth in the
3 Statement of Charges and enter a final order against the respondents to cease and desist from violation of
4 the Securities Act, and to impose the fines and recover costs.

5 **FINDINGS OF FACT**

6 **Respondents**

7 1. Thomson Financial Advisors LLC (“Thomson Financial Advisors”) is an Arizona entity
8 formed on December 13, 2005 with its principal place of business in Scottsdale, Arizona. Thomson
9 Financial Advisors provides investment advisory services to its clients. Thomson Financial Advisors was
10 registered as an investment adviser with the Securities and Exchange Commission from 2006 until 2012.
11 Thomson Financial Advisors has been registered as an investment adviser with Arizona since 2012 (CRD
12 #139165).

13 2. Lindsay Thomson (“Thomson”) resides in Scottsdale, Arizona. Thomson is the founder and
14 principal of Thomson Financial Advisors. Thomson was registered as an investment adviser representative
15 in Arizona (CRD #2984060). Thomson withdrew his registration with Arizona in October 2018. Thomson
16 was registered with Washington State as a securities salesperson from 1999 to 2006. From 2005 to 2014,
17 Thomson had sixteen customer complaints filed against him relating to options trading in client accounts.
18 These complaints included eleven allegations that Thomson executed unauthorized trades in customer
19 accounts, six allegations that he made misrepresentations to customers, five allegations that he placed
20 customers in unsuitable investments, and six allegations that he mishandled customers’ investment
21 accounts. In 2005, UBS Financial Services Inc. terminated Thomson for making unauthorized trades in
22 customer accounts and for not following an instruction from his manager. In 2009, the Financial Industry
23 Regulatory Authority (“FINRA”), a self-regulatory organization that regulates member brokerage firms
24 and exchange markets, suspended Thomson from association with any FINRA regulated broker/dealer in

1 any capacity for 25 business days based on allegations that he sent emails to customers that contained
2 misleading and inaccurate information relating to options trading.

3 3. Brendan Shaw (“Shaw”) resides in Phoenix, Arizona. Shaw worked at Thomson Financial
4 Advisors from 2005 until 2016 as the Chief Operating Officer and Chief Compliance Officer. During this
5 time, Shaw was registered as an investment adviser representative with Arizona (CRD# 4721215). Prior to
6 working for Thomson Financial Advisors, Shaw worked as a securities salesperson at UBS Financial
7 Services Inc. from 2003 to 2005. In 2005, UBS Financial Services Inc. terminated Shaw for sharing
8 confidential client financial information with the spouse of a recently terminated financial adviser. In 2017,
9 Shaw had a customer complaint filed against him relating to options trading in client accounts at Thomson
10 Financial Advisors.

11 **Overview**

12 4. Between November 2012 and June 2017, Thomson Financial Advisors, Thomson, and Shaw
13 provided investment advisory services to an unsophisticated Washington State resident (“Investor DE”)
14 interested in low-risk investments. Thomson Financial Advisors, Thomson, and Shaw made unsuitable
15 high-risk options trades in Investor DE’s account including large and speculative bets on the performance
16 of the S&P 500. Thomson Financial Advisors, Thomson, and Shaw invested Investor DE exclusively in
17 options on the S&P 500 index, never taking any other positions. In the end, Thomson Financial Advisors,
18 Thomson, and Shaw’s highly concentrated, speculative, and high-risk trades were unsuitable for Investor
19 DE and contributed to a total loss in Investor DE’s account of approximately \$60,000.

20 **Nature of the Conduct**

21 5. In or around November 2012, Thomson and Investor DE spoke on the telephone regarding
22 investment opportunities. Thomson informed Investor DE that he was an investment adviser. Investor DE
23 told Thomson that she had an inheritance of \$100,000. Investor DE agreed to hire Thomson Financial
24 Advisors to invest and manage her \$100,000 inheritance. Investor DE told Thomson that because this

1 \$100,000 represented most of her savings, she did not want to invest her money in anything high-risk.
2 Investor DE was fifty-seven years old and did not have any prior investment experience.

3 6. In their capacity as either an investment adviser or an investment adviser representative,
4 Thomson Financial Advisors, Thomson, and Shaw had an ethical duty to place clients in investments that
5 were suitable for the client based on information furnished by the client including the client's investment
6 objectives, financial situation, and needs.

7 7. According to Investor DE, Thomson Financial Advisors, Thomson, and Shaw did not enter
8 into a written investment advisory agreement with Investor DE.

9 8. The Securities Division subpoenaed investment advisory agreements and client profiles
10 directly from Thomson Financial Advisors and Thomson, but, at the time of this order, they have refused
11 to provide any documents to the Securities Division.

12 9. In November 2012, Thomson assisted Investor DE in opening a TD Ameritrade margin
13 brokerage account.

14 10. In a TD Ameritrade account application, Investor DE granted trading authority in her TD
15 Ameritrade brokerage account to Thomson Financial Advisors and granted Thomson Financial Advisors
16 the authority to deduct advisory fees directly from her TD Ameritrade Brokerage account. Thomson
17 Financial Advisors charged Investor DE a fee of 1% of her assets under management.

18 11. Investor DE initially funded this brokerage account with her entire inheritance of \$100,000.

19 *Unsuitable Trades*

20 12. From about 2013 through 2017, Thomson Financial Advisors, Thomson, and Shaw used
21 margin to make hundreds of options trades on behalf of Investor DE.

22 13. Thomson Financial Advisors, Thomson, and Shaw invested Investor DE's funds exclusively
23 in option contracts that tracked the performance of the S&P 500. Thomson Financial Advisors, Thomson,
24 and Shaw never held any other positions in Investor DE's account.

1 14. Thomson Financial Advisors, Thomson, and Shaw implemented a market timing strategy in
2 Investor DE's account. A market timing strategy makes investment decisions based on predictions of future
3 market price movement (in this case the performance of the S&P 500). Placing a high concentration of an
4 investor's assets in a market timing strategy is highly speculative and is not appropriate for a low-risk
5 investor.

6 15. Thomson Financial Advisors, Thomson, and Shaw made unsuitable trades on behalf of
7 Investor DE when, using S&P index options, they invested a high concentration of her assets in a market
8 timing strategy that was highly speculative and not appropriate for a low-risk investor.

9 16. For example, on October 14, 2013, Thomson Financial Advisors, Thomson, and Shaw
10 placed a high concentration of Investor DE's funds in options, which expired on November 16, 2013, that
11 speculated that the S&P 500 index would not gain more than approximately three percentage points. If
12 Thomson Financial Advisors, Thomson, and Shaw's speculation proved to be correct, Investor DE could
13 earn a maximum profit of approximately \$16,250. If their speculation proved to be incorrect, Investor DE
14 could face a maximum loss of approximately \$48,000. In the end, the S&P 500 index gained over five
15 percentage points during this period, leading to losses in Investor DE's account of approximately \$35,000.

16 17. In the following two months, Thomson Financial Advisors, Thomson, and Shaw predicted
17 that the price of the S&P 500 index would drop in the coming weeks. Accordingly, Thomson Financial,
18 Thomson, and Shaw executed twenty-six call and put options with the same expiration date in a bear market
19 strategy. In order for this strategy to be profitable, the S&P 500 index needed to drop in price. In the end,
20 the market gained during this period, and contributed to Investor DE's loss of over \$22,000.

21 18. Thomson Financial Advisors, Thomson, and Shaw failed to disclose to Investor DE that
22 their trading strategy consisted of a highly concentrated, speculative and high-risk market timing strategy.

23 19. Due to Thomson Financial Advisors, Thomson, and Shaw's highly speculative market
24 timing strategy, from October 2013 through December 2013, Investor DE's investment account lost over

1 \$60,000 or, after accounting for \$20,000 in withdrawals, about 80% of the total value of her investment
2 account.

3 20. As an unsophisticated investor, Investor DE found her account statements confusing. On at
4 least one occasion, Investor DE noticed that her account value was low. When Inventor DE asked Thomson
5 why her account value was so low, Thomson told her not to pay attention to the account value, as it would
6 be confusing to her.

7 21. By June 2014, Thomson Financial Advisors, Thomson, and Shaw, utilizing aggressive,
8 high-risk and speculative trading strategies, depleted Investor DE's investment account to approximately
9 \$2,000.

10 22. In or around July 2014, Thomson contacted Investor DE to discuss the losses in her account.
11 In this conversation, Thomson told Investor DE that her entire investment was gone, and that he needed an
12 additional \$20,000 from her to get it back.

13 23. In July 2014, Investor DE borrowed \$20,000 from her brother and deposited it in her TD
14 Ameritrade account in order for Thomson Financial Advisors, Thomson, and Shaw to recover her
15 significant investment losses. Thomson failed to disclose to Investor DE that Thomson Financial Advisors
16 would continue to manage her account using the same unsuitable and high-risk investment strategy as
17 before.

18 24. Thomson Financial Advisors, Thomson, and Shaw continued to make unsuitable high-risk
19 trades in Investor DE's account. At first, the unsuitable speculative market timing strategy was generating
20 gains for Investor DE. From July 2014 to July 2015, Investor DE's account gained \$60,000 in its value, or
21 about 75% of Investor DE's principal investment. Unfortunately, as is common in a market timing strategy,
22 eventually Thomson Financial Advisors, Thomson, and Shaw's market predictions proved to be incorrect
23 and caused major losses once again in Investor DE's account. For example, Thomson Financial Advisors,
24

1 Thomson, and Shaw executed trades in August 2015 that resulted in a loss of over \$30,000, or nearly half
2 of the value of Investor DE's account at the time.

3 25. In June 2017, Investor DE closed her investment account and terminated her relationship
4 with Thomson Financial Advisors. In the end, Thomson Financial Advisors, Thomson, and Shaw's
5 aggressive and speculative trading strategy resulted in Investor DE losing over \$60,000, or roughly 50% of
6 her investment account.

7 Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

8 **CONCLUSIONS OF LAW**

9 1. Respondents Thomson Financial Advisors LLC, Lindsay Thomson, and Brendan Shaw
10 acted as an investment adviser and/or and investment adviser representative, as defined in RCW
11 21.20.005(8) and (9), by selecting securities to purchase and sell for customer accounts in return for
12 compensation.

13 2. Respondents Thomson Financial Advisors LLC, Lindsay Thomson, and Brendan Shaw
14 purchased and sold securities for customer accounts that were unsuitable for the customer given the
15 customer's financial situation and needs, in violation of RCW 21.20.702(1) and RCW 21.20.020(1)(c).
16 Such conduct is also a dishonest or unethical practice as defined by WAC 460-24A-220(1), and is grounds
17 for the denial of any future securities registration applications pursuant to RCW 21.20.110(1)(g).

18 4. Respondents Thomson Financial Advisors LLC and Lindsay Thomson engaged in a
19 dishonest or unethical practice by failing to disclose to a client that their trading strategy consisted of a
20 speculative and high-risk market timing strategy, in violation of RCW 21.20.020 as defined by WAC 460-
21 24A-220, and is grounds for the denial of any future securities registration applications pursuant to RCW
22 21.20.110(1)(g).

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1 **FINAL ORDER**

2 Based on the foregoing and finding it in the public interest:

3 IT IS HEREBY ORDERED that Respondents Thomson Financial Advisors LLC, Lindsay
4 Thomson, and Brendan Shaw each shall cease and desist from violations of RCW 21.20.702 and RCW
5 21.20.020.

6 IT IS FURTHER ORDERED that the Securities Administrator will deny any future securities
7 registration applications of Respondents Thomson Financial Advisors LLC, Lindsay Thomson, and
8 Brendan Shaw as an investment adviser, broker-dealer, investment adviser representative, or securities
9 salesperson.

10 IT IS FURTHER ORDERED that:

- 11 a. Thomson Financial Advisors LLC shall be liable for and shall pay a fine of \$20,000;
- 12 b. Lindsay Thomson shall be liable for and shall pay a fine of \$20,000; and
- 13 c. Brendan Shaw shall be liable for and shall pay a fine of \$20,000.

14 IT IS FURTHER ORDERED that:

- 15 a. Thomson Financial Advisors LLC shall be liable for and shall pay investigative costs of \$2,000;
- 16 b. Lindsay Thomson shall be liable for and shall pay the investigative costs of \$1,500; and
- 17 c. Brendan Shaw shall be liable for and shall pay the investigative costs of \$1,500.

18 **AUTHORITY AND PROCEDURE**

19 This Final Order is entered pursuant to the provisions of RCW 21.20.390, and is subject to the
20 provisions of RCW 21.20.440 and RCW 34.05. The respondents have the right to petition the superior court
21 for judicial review of this agency action under the provisions of RCW 34.05. For the requirements for filing
22 a Petition for Judicial Review, see RCW 34.05.510 and sections following. Pursuant to RCW 21.20.395, a
23 certified copy of this order may be filed in Superior Court. If so filed, the clerk shall treat the order in the
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1 same manner as a Superior Court judgment as to the fine, and the fine may be recorded, enforced, or
2 satisfied in like manner.

3 **WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE**

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5 DATED AND ENTERED this 11th day of April, 2019.

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10 _____
William M. Beatty
Securities Administrator

11 Approved by:

Presented by:

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15 _____
Suzanne Sarason
Chief of Enforcement

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Brian J. Guerard
Financial Legal Examiner

20 Reviewed by:

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24 _____
Jack McClellan
Financial Legal Examiner Supervisor