

STATE OF ALABAMA  
ALABAMA SECURITIES COMMISSION

IN THE MATTER OF:

JON LINDBERG  
FIRST ADVISORS CAPITAL, INC.

) ADMINISTRATIVE ORDER

) NO. SC 2019-0015

)

RESPONDENTS

)

SHOW CAUSE ORDER

The Alabama Securities Commission ("Commission"), having the authority to administer and provide for the enforcement of all provisions of Title 8, Chapter 6, Code of Alabama 1975, the Alabama Securities Act ("Act"), upon due consideration of the subject matter hereof, has determined as follows:

RESPONDENTS

1. **JON LINDBERG ("LINDBERG")**, who has the Central Registration Depository (hereafter "CRD") #: 1085475, was previously registered as a Broker Dealer Agent in Alabama from August 22, 1986 until April 27, 1989 with Transamerica Financial Advisors, Inc. ("TFAI") (CRD # 3600). Subsequently, he was registered with ProEquities, INC. ("PEI") (CRD # 15708) from August 2, 1989 until August 10, 2018. **LINDBERG** was also registered as an Investment Adviser Representative from August 8, 2000 until July 24, 2009 with PEI. **LINDBERG** has been continuously registered as an Investment Adviser Representative with **FIRST ADVISORS CAPITAL, INC.** (CRD # 149832) since July 24, 2009. During all times relevant to the offer and sale of the securities described herein, **LINDBERG** represented himself as chief executive officer and principal of **FIRST ADVISORS CAPITAL, INC.** with a business address of 4956 Valleydale Road, Suite 203, Birmingham, AL 35242.

2. **FIRST ADVISORS CAPITAL, INC. ("FAC")**, is an Alabama domestic corporation. **FAC** has been registered in the State of Alabama as an Investment Adviser since May 4, 2012. During all times involving the offer and sale of the securities described herein,

**FAC** was an Alabama corporation with a business address of 4956 Valleydale Road, Suite 203, Birmingham, AL 35242.

**STATEMENT OF FACTS**

3. During June 26 and 27, 2018, the Commission staff conducted the on-site portion of a routine audit of the office of **FAC**. While on-site, the Commission staff obtained numerous documents from the firm and conducted an interview of **LINDBERG**.

4. Over the course of the **FAC** audit, the Commission staff received information identifying at least two client complaints **LINDBERG** failed to disclose to PEI which included purported violations of the Procedures Manual of **FAC**. Further, in failing to inform PEI of the complaints, **LINDBERG** caused PEI to violate FINRA Rule 4530 which requires member firms to report customer complaints on their representatives' Form U-4s.

5. At least one of these clients was retired with stated investment objectives of "Capital Preservation" and "Income." **LINDBERG** failed to adequately disclose, to this investment adviser client, the degree of speculation and risks of the options program in which the client was placed and left the client in the program until the client's funds were nearly depleted. Since the investor was a client of the investment adviser, **FAC**, **LINDBERG**, an investment adviser representative of **FAC**, had a fiduciary duty to that client.

6. The Commission staff conducted an interview of **LINDBERG** on June 27, 2018. During the interview, the Commission staff notified **LINDBERG** that he was compelled to report to PEI the previously undisclosed customer complaints. At that time, **LINDBERG** verbally committed to do so. However, the complaints were not disclosed on the Form U-4 for **LINDBERG** until August 10, 2018, the day he was terminated by PEI.

7. **LINDBERG** failed to update **FAC**'s Form-ADV by not including a disciplinary event, i.e., termination with cause (see FINRA Occasion ID# 1992566). As of the date of this Order, **FAC**'s Form-ADV has not been properly updated to reflect any disciplinary action against **LINDBERG**.

## CONCLUSIONS OF LAW

8. Pursuant to Section 8-6-2(18), Code of Alabama 1975, the Act defines an investment adviser as any person who receives compensation for providing investment advice to others. **FAC** is a registered investment adviser under the Act.

9. Pursuant to Section 8-6-2(19), Code of Alabama 1975, the Act defines an investment adviser representative as any partner, officer, director of, or other individual employed by or associated with an investment adviser. **LINDBERG** is a registered investment adviser representative of **FAC** under the Act.

10. Pursuant to Section 8-6-17(a)(2), Code of Alabama 1975, it is unlawful for a person, in connection with the offer, sale or purchase of a security, to make any untrue statement or to omit a material fact necessary to make the statements made not misleading. **LINDBERG** failed to disclose the degree of speculation and risk involved in the options program in which certain clients were placed, a material omission, in violation of the Act.

11. Pursuant to Section 8-6-17(b)(4), Code of Alabama 1975, it is unlawful for a person who receives consideration from another, for advising the other person, to engage in dishonest or unethical practices as the Commission may define by Rule. **LINDBERG** engaged in dishonest and unethical behavior such as failing to meet the fiduciary duty owed to his investment advisory clients; failing to promptly update various regulatory forms to correct materially inaccurate information; and failing to establish, maintain, and enforce written procedures to comply with securities laws and rules that pertain to the firm, in violation of the Act.

12. In accordance with Alabama Securities Commission Rule 830-X-3-.21(2)(a), an investment adviser representative is a fiduciary and has a duty to act primarily for the benefit of his clients. Regardless of any fiduciary duty, an investment adviser representative shall not engage in unethical practices. **LINDBERG** failed to ethically provide advice to the investment advisory clients of **FAC** by placing an elderly client in an investment that was unsuitable for the client's investment needs, resulting in a substantial loss to that client, in violation of Commission Rules.

13. In accordance with Alabama Securities Commission Rule 830-X-3-.03(2), whenever the information contained in an investment adviser's Form-ADV becomes inaccurate or incomplete for any reason, it is the responsibility of the investment adviser to amend the Form-ADV within thirty (30) days. Form-ADV Part 2 Item 9 requires the disclosure of any disciplinary event that is material to a client's evaluation of the investment adviser's business or integrity of its management. **FAC** failed to timely amend the Form-ADV as required by Rule 830-X-3-.03(2) in violation of Commission Rules.

14. In accordance with Alabama Securities Commission Rule 830-X-3-.13(3), an investment adviser shall establish, maintain and enforce written procedures to comply with the securities laws and rules that pertain to their firm. **LINDBERG** failed to establish, maintain, and enforce policies and procedures to sufficiently meet the securities laws and rules pertaining to **FAC** in violation of Commission Rules.

15. Pursuant to Section 8-6-3(j)(7), Code of Alabama 1975, the Commission may suspend, revoke, censor or bar any registrant or any officer from employment with a dealer or investment adviser, or restrict or limit a registrant as to any function or activity of the business for which registration is required in this state if the Commission finds that the order is in the public interest and that the registrant or, in the case of a dealer or investment adviser, any partner, officer or director, has engaged in dishonest or unethical business practices. **LINDBERG**, in his roles as chief executive officer and principal of **FAC**, failed to adequately disclose the degree of risks and speculation involved in the options programs in which he placed certain clients, did not properly report client complaints filed against him, and neglected his fiduciary duty owed to all of the clients of **FAC** in violation of the Act.

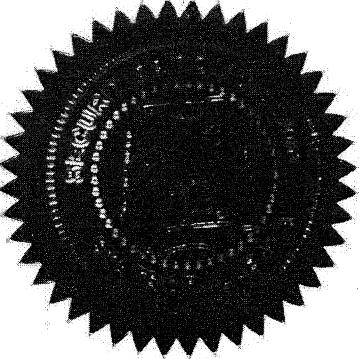
This Order is appropriate in the public interest for the protection of investors and consistent with the purposes of the Alabama Securities Act.

This Order does not prevent the Commission from seeking such other civil or criminal remedies that may be available to it under the Alabama Securities Act.

Additionally, if the allegations set forth herein are found to be true, through either administrative adjudication, failure of the **RESPONDENTS** to make a timely request for hearing, or default of the **RESPONDENTS**, it is the intention of the Commission to impose sanctions upon the **RESPONDENTS**. Such sanctions may include, *inter alia*, an administrative assessment imposed on **RESPONDENTS**, an additional administrative assessment for investigative costs arising from the investigation of the violation(s) described herein against **RESPONDENTS**, and a permanent order to bar **RESPONDENTS** from participation in any securities related industry in the state of Alabama.

**ACCORDINGLY, IT IS HEREBY ORDERED** that **RESPONDENTS SHOW CAUSE** to the Commission, within 28 days of the date of this Order, why **RESPONDENTS** should not be suspended, revoked, censored or barred from the securities industry in the state of Alabama.

Entered at Montgomery, AL, this 2nd day of April, 2019.



ALABAMA SECURITIES COMMISSION  
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BY:



Edwin L. Reed  
Deputy Director