

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF STATE  
BUREAU OF SECURITIES REGULATION  
25 CAPITOL STREET  
CONCORD, NH 03301

**CONSENT ORDER**  
**IN THE MATTER OF:**

Ceros Financial Services, Inc. (CRD # 37869)

COM2016-0001

- I. For purposes of settling the above-captioned matter, and in lieu of further administrative proceedings, Ceros Financial Services, Inc. (“Ceros”) has submitted an offer of settlement, which the State of New Hampshire, Department of State, Bureau of Securities Regulation (the “Bureau”) has determined to accept. Accordingly, without admitting or denying the facts and allegations contained herein, Ceros does hereby consent to the entry of this Consent Order and to the following:

**FACTS AND ALLEGATIONS**

1. Ceros is a broker-dealer located at 1445 Research Boulevard, Suite 530, Rockville, Maryland 20850. As part of its business, Ceros provides services to independent registered investment advisers (“RIAs”). The primary services offered to independent unaffiliated RIAs by Ceros are unsolicited trade execution services as well as other ancillary back-office functions. Ceros did not engage in direct retail transactions with clients in New Hampshire.
2. On August 29, 2009, Ceros purchased Rydex Financial Services (hereinafter “Rydex”). Prior to 2009, Rydex was the brokerage arm of a larger company by the name of Rydex Distributors, Inc. Prior to its purchase by Ceros, Rydex also offered trading execution services to RIAs. One such RIA with whom Rydex agreed to provide these services was Focus Capital Wealth Management (hereinafter “Focus”, CRD No. 117715) located in Bedford, New Hampshire. The agreement between Focus and Rydex was memorialized in an Investment Adviser Service Agreement (hereinafter the “Agreement”) executed on September 12, 2005.
3. At all times relevant to this Consent Order, Focus’ principal was Nicholas Rowe (hereinafter “Rowe”, CRD No. 2109143). The Agreement provided that Rydex would offer execution-only services to Focus customers on a fully disclosed basis through a separate unaffiliated clearing firm, National Financial Services, LLC (hereinafter “NFS”). The clearing relationship between Rydex and NFS was memorialized in a Fully Disclosed Clearing Agreement (hereinafter the “Rydex-NFS Clearing Agreement”) dated May 1, 2002. As a result of Ceros purchasing the assets of Rydex in August of 2009, the Agreement, in effect

between Focus and Rydex, was assigned to Ceros. Prior to this assignment, Ceros had also contracted with NFS to provide clearing services through a Fully Disclosed Clearing Agreement dated May 14, 2009 (hereinafter the "Ceros-NFS Clearing Agreement"). As a result of this asset sale the Rydex-NFS Clearing Agreement was terminated on October 6, 2010.

4. In August 2012, the Bureau filed a formal enforcement action against Focus and Rowe related to the mismanagement of investment advisory client accounts, COM 2011-0037. For years, Rowe had invested his customers' assets in highly-risky and unsuitable investment vehicles, which resulted in the loss of millions of dollars to his customers. In March 2013, Focus and Rowe entered into a Consent Order with the Bureau in which both Focus and Rowe agreed to be permanently barred from securities licensure in the State of New Hampshire and agreed to pay certain monetary penalties and restitution to many of Rowe's customers. Rowe has since been permanently barred by the U.S. Securities and Exchange Commission by order contained Admin. Proc. File No. 3-16155.
5. As outlined above, prior to August of 2009, Rydex and Focus were both bound by the Agreement, through which Rydex offered Focus trade execution and other services. During this time, when a client entered into an advisory agreement with Focus and opened a brokerage account with Rydex, the client would purportedly receive and sign what was known as the Rydex Customer Agreement Supplement (hereinafter the "Rydex CAS"). The purported purpose of the Rydex CAS was to inform the client of the respective responsibilities of Focus and Rydex. One critical provision of the Rydex CAS stated that "Rydex is not obliged to monitor my investment Adviser's or my trading activity in my account."
6. Shortly after the Rydex CAS was purportedly signed by each client, NFS, the clearing firm engaged by Rydex through the Rydex-NFS Clearing Agreement, would send a letter to each client outlining the responsibilities of each party to the clearing agreement. This document informed the client that as between NFS and Rydex, Rydex would be responsible for "[t]he opening, approving and monitoring of your account(s), including obtaining, verifying and retaining your account information and documents; accepting your account(s); and *monitoring trading and other activity in your account(s).*" (Emphasis added).
7. In September 2009, as a result of Ceros acquiring Rydex a month earlier, NFS, the clearing firm engaged by Ceros through the Ceros-NFS Clearing Agreement, sent a letter to all existing Ceros customers, including former Rydex customers who had purportedly signed a Rydex CAS when opening their accounts with Rydex. This letter outlined the responsibilities of each party to the Ceros-NFS Clearing Agreement. It informed the client that, between the parties to the NFS Clearing Agreement, Ceros would be responsible for "[t]he opening, approving and monitoring of your account(s), including obtaining, verifying and retaining your account

information and documents; accepting your account(s); and *monitoring trading and other activity in your account(s)*.” (Emphasis added).

8. Additionally, whenever a client opened a new account with Focus and also with Ceros, the client would purportedly receive and sign what was known as the Ceros Customer Agreement Supplement (hereinafter “Ceros CAS”). Similar to the Rydex CAS, one of the purposes of the Ceros CAS was to inform the client of the respective responsibilities of Focus and Ceros. One critical provision of the Ceros CAS stated that “Ceros Financial Services, Inc. is not obliged to monitor my Investment Adviser’s or my trading activity in my account.” Consistent with the Ceros CAS, Ceros did not monitor the suitability of transactions in securities recommended by Focus.
9. Around the same time the Ceros CAS was purportedly provided to and signed by each new client, each new client would also receive a letter from NFS, as described in paragraph 7 above, outlining the responsibilities of each party to the Ceros-NFS Clearing Agreement.
10. As described above, both Rydex and Ceros contracted with NFS to provide clearing services to their customers, including the clients of Focus. As part of both the Rydex-NFS Clearing Agreement and the Ceros-NFS Clearing Agreement, NFS agreed to “provide, or cause to be provided to every Customer upon the opening of a Customer Account, notice of the existence and general terms of this Clearing Agreement indicating the allocation of responsibility contained herein. This notice shall comply with NYSE Rule 382 and NASD Conduct Rule 3230.”
11. As a matter of background, FINRA Rule 4311 (formerly NASD Conduct Rule 3230 and NYSE Rule 382), outlined the general obligations of a broker-dealer when entering in agreements for the carrying of client accounts. These agreements are commonly referred to as “carrying agreements” or “clearing agreements.” FINRA Rule 4311(d) requires that, when a clearing agreement is entered into:

Each customer whose account is introduced on a fully disclosed basis shall be notified in writing upon the opening of the account of the existence of the carrying agreement and the responsibilities allocated to each respective party. The carrying firm shall be responsible for the content of such notification to the customer. The customer shall be notified promptly and in writing in the event of any change to any of the parties to the agreement or any material change to the allocation of responsibilities thereunder.

12. This contractual obligation and the foundational FINRA Rule were the impetus of the letter sent by NFS to all Rydex and Ceros customers, including Focus customers, regarding each clearing agreement. Ceros understood that NFS was required to send the notice described above to all new Ceros customers for whom NFS would be clearing trades.

13. Language about monitoring customer accounts was included in both the Rydex CAS and Ceros CAS that was inconsistent with information that would be sent to each client by NFS. Ceros was aware of the inconsistency.
14. Rydex customers received the same information described above as Ceros customers but, when Ceros purchased Rydex in 2009, these customers would not have executed a Ceros CAS since their accounts were already open and account opening documents, including a Ceros CAS, were not required. However, under the terms of the Ceros-NFS Clearing Agreement and FINRA Rule 4311, these customers would have received the notice from NFS outlining the responsibilities of both Ceros and NFS under the clearing agreement. During the course of its investigation of Focus and Rowe, the Bureau also obtained testimony from Focus' former office manager who testified that Rowe's practice was, when having customers sign the Ceros CAS, to have the CAS flipped to the signature page, not giving the client the opportunity to review its contents before signing. Rowe testified under oath that Ceros only required him to return to it the executed signature page of the Ceros CAS.

#### THE LAW

- II. The Bureau hereby makes the following statements of law under the New Hampshire Revised Statutes Annotated, N.H. RSA 421-B, and regulations thereunder:
1. Ceros is a "person" within the meaning of N.H. RSA 421-B:1-102(39) (formerly N.H. RSA 421-B:2, XVI).
  2. Ceros is a broker-dealer within the meaning of N.H. RSA 421-B:1-102(6) (formerly N.H. RSA 421-B:2, II).
  3. NFS is a "carrying firm", otherwise known as a "clearing firm", pursuant to FINRA Rule 4311 (formerly FINRA Rule 5230).
  4. Pursuant to N.H. RSA 421-B:5-501(c) (formerly N.H. RSA 421-B:3, I(c)), it is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person. Ceros is a person subject to this section.
  5. Pursuant to N.H. RSA 421-B:4-401(3)(B) (formerly N.H. RSA 421-B:6, V(c)(2)), each broker-dealer shall establish and maintain supervisory procedures that are reasonably designed to achieve compliance with all applicable securities laws and statutes. Ceros is a broker-dealer subject to this section.
  6. Pursuant to N.H. RSA 421-B:4-412(d)(13) (formerly N.H. RSA 421-B:10, I(b)(7)) the Secretary of State may by order deny, suspend, or revoke any license or application, or bar

any person from licensure if he finds that the order is in the public interest and the licensee or applicant has engaged in dishonest and unethical practices in the conduct of business or elsewhere. Ceros is a person subject to this section.

7. Pursuant to N.H. RSA 421-B:6-604(g) (formerly N.H. RSA 421-B:22, IV), in any investigation to determine whether any person has violated or is about to violate this title or any rule or order under this title, upon the secretary of state's prevailing at hearing, or the person charged with the violation being found in default, or pursuant to a consent order issued by the secretary of state, the secretary of state shall be entitled to recover the costs of the investigation, and any related proceedings, including reasonable attorney's fees, in addition to any other penalty provided for under this chapter. Ceros is a person subject to this provision.
8. Pursuant to N.H. RSA 421-B:6-604(f) (formerly N.H. RSA 421-B:23), whenever it appears to the Secretary of State that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule under this chapter, he shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of this chapter. Ceros is a person subject to this provision and shall be ordered to permanently cease and desist from any violations of N.H. RSA 421-B.
9. Pursuant to N.H. RSA 421-B:6-604(e) (N.H. RSA 421-B:26, III), any person who, either knowingly or negligently, violates any provisions of this chapter may, upon hearing, and in addition to any other penalty provided for by law, be subject to such suspension, revocation or denial of any registration or license, or an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation. Ceros is a person subject to this provision.

III. In view of the foregoing, Ceros agrees to the following:

1. Ceros agrees to cease and desist from any violations of N.H. RSA 421-B:6-604(f).
2. Ceros agrees that this Order is entered into for purposes of resolving only the matter as described herein. This order shall have no collateral estoppel effect in any other lawsuit, proceeding, or action, not described herein. Likewise, this order shall not be construed to restrict the Bureau's right to initiate an administrative investigation or proceeding relative to conduct by Ceros of which the Bureau has no knowledge at the time of the date of final entry of this Consent Order.
3. Ceros agrees not to take any action or make any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any allegation in this Consent Order or create the impression that the Consent Order is without factual basis.
4. Ceros agrees, pursuant to this Consent Order, to pay an administrative fine of Three

Four Hundred Thousand Dollars (\$400,000), including costs of One Hundred Thousand Dollars (\$100,000), total (\$500,000) as follows: Eighty Seven Thousand Five Hundred Dollars (\$87,500) within 30 days of execution of this Consent Order, Eighty Seven Thousand Five Hundred Dollars (\$87,500) on or before June 30<sup>th</sup>, 2018, and Seventy Five Thousand Dollars (\$75,000) on or before June 30<sup>th</sup>, 2019, June 30<sup>th</sup>, 2020 and June 30<sup>th</sup>, 2021. Payment of the total Four Hundred Thousand Dollars (\$400,000) shall be made to the State of New Hampshire. Payment must be made by 1) business check, certified check, or postal money order; 2) made payable to the State of New Hampshire; and 3) mailed to the Bureau of Securities Regulation, Department of State, State House, Room 204, Concord, New Hampshire, 03301.

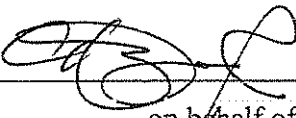
5. In a manner acceptable to the Bureau, Ceros agrees to undertake to enhance its procedures regarding New Hampshire residents within 90 days of the execution of this Consent Order as they relate to the notifications required by FINRA Rule 4311 and report such enhancements to the Bureau within the 90-day period. Said undertakings shall endeavor to provide clear and accurate written disclosure to Ceros' New Hampshire customers of the clearing agreement provisions in place as they relate to Ceros' responsibilities over customer accounts. Said undertakings shall also endeavor to ensure that Ceros' New Hampshire customers have reviewed said disclosures and shall provide for enhancements to the review process.
6. In addition to the reports outlined in Section III, Paragraph 5 above, Ceros agrees to submit a final report to the Bureau regarding compliance with all undertakings outlined herein. The final report will be due no later than six months after the execution of this Consent Order and will detail Ceros' progress in satisfying all undertakings outlined herein, including but not limited to all supervisory enhancements and the specific means of compliance being employed. The Bureau shall have the right to request additional reporting as it deems necessary in the sole discretion of the Bureau.
7. Ceros agrees that if it fails to meet any undertaking set forth in this Consent Order, such a failure shall constitute a violation of this Consent Order pursuant to N.H. RSA 421-B:6-604 and may subject Ceros to enforcement action and penalties.

IV. Based on the foregoing, the Bureau deems it appropriate and in the public interest to accept and enter into this Order. **THEREFORE, IT IS HEREBY ORDERED THAT:**

1. Ceros cease and desist from any violations of the New Hampshire Securities Act pursuant to N.H. RSA 421-B:6-604.
2. Ceros pay an administrative fine, the Bureau's costs, in the total amount of Four Hundred and Thousand Dollars (\$400,000) as outlined herein.

3. Ceros undertake compliance and supervisory enhancements as outlined herein.
4. Ceros report to the Bureau within 90 days and within one six months of execution of this Consent Order regarding compliance with and completion of all undertakings set forth herein.
5. Ceros comply with all other undertakings outlined herein.

Executed this 23<sup>rd</sup> day of October, 2017.

  
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on behalf of Ceros

(Please print name below: Catherine Agui-Pegley, President)

Entered this 24<sup>th</sup> day of October, 2017.

  
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Barry Glennon, Director  
N.H. Bureau of Securities Regulation