

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

CONSENT AGREEMENT
IN THE MATTER OF:

Rydex Distributors, Inc. (CRD #40805)

COM2014-00015

- I. For purposes of settling the above-captioned matter, and in lieu of further administrative proceedings, Rydex Distributors, Inc. ("Rydex") nka Guggenheim Funds Distributors, LLC ("Guggenheim"), 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, Guggenheim does hereby consent to the entry of this Consent Agreement and to the following:

FACTS AND ALLEGATIONS

1. Rydex was a broker-dealer firm located at 805 King Farm Blvd., Ste 600, Rockville, Maryland 20850. As part of its business, Rydex through its division Rydex Financial Services provided services to independent registered investment advisers ("RIAs"). The primary services offered to independent unaffiliated RIAs by Rydex Financial Services was unsolicited trade execution services as well as other ancillary back-office functions. Rydex did not engage in direct retail transactions with clients in New Hampshire. On or about August 28, 2009, the brokerage division of Rydex, Rydex Financial Services, was purchased in an asset sale by Ceros Financial Services, Inc. ("Ceros") and Rydex Financial Services ceased to operate as a distinct division. An affiliate of Rydex Successor acquired Rydex through the acquisition of the stock of the parent company of Rydex, Security Benefit Corporation, on or about August 2, 2010.
2. Prior to its purchase by Ceros, Rydex Financial Services offered trading execution services independent, unaffiliated 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 Financial Services in August of 2009, the Agreement, in effect between Focus and Rydex, was assigned to Ceros, which thereby took on the role, responsibilities, and functions of Rydex Financial Services. As a result of the 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 in 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 purpose of the Rydex CAS was to establish a limited brokerage arrangement and 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." Consistent with the Rydex CAS, Rydex did not monitor the suitability of transactions in securities recommended by Focus.
6. Shortly after the Rydex CAS was 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. Around the same time the Rydex 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 6 above, outlining the responsibilities of each party to the Rydex-NFS Clearing Agreement.
8. As described above, Rydex contracted with NFS to provide clearing services to their customers, including the clients of Focus. As part of the Rydex-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.”
9. 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.

10. This contractual obligation and the foundational FINRA Rule were the impetus of the letter sent by NFS to all Rydex customers, including Focus customers, regarding each clearing agreement. Rydex understood that NFS was required to send the notice described above to all new Rydex customers for whom NFS would be clearing trades. Rydex did not participate in drafting or delivering the notice.
11. Language about monitoring customer accounts was included in the Rydex CAS that was inconsistent with information that would be sent to each client by NFS. Rydex was or should have been aware of the inconsistency.
12. 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 Rydex CAS, to have the CAS flipped to the signature page, not giving the client the opportunity to review its contents before signing.

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. Rydex was a “person” within the meaning of N.H. RSA 421-B:1-102(39) (formerly N.H. RSA 421-B:2, XVI).
2. Rydex was 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 3230).
4. 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. Rydex was a broker-dealer subject to this section.
5. 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 any rule or order under this title the secretary of state shall be entitled to recover the costs of the investigation. Rydex was a person subject to this provision.

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

1. Guggenheim agrees that this Consent Agreement is entered into for purposes of resolving only the matter as described herein. This Consent Agreement shall have no collateral estoppel effect in any other lawsuit, proceeding, or action, not described herein. Likewise, this Consent Agreement shall not be construed to restrict the Bureau’s right to initiate an administrative investigation or proceeding relative to conduct by Rydex of which the Bureau has no knowledge at the time of the date of final entry of this Consent Agreement.
2. Guggenheim 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 Agreement or create the impression that the Consent Agreement is without factual basis.
3. Guggenheim agrees, pursuant to this Consent Agreement, to make an administrative payment of One Hundred Thousand Dollars (\$100,000), plus costs of investigation of Fifty Thousand Dollars (\$50,000), totaling One Hundred Fifty Thousand (\$150,000).

Payment of the total One Hundred Fifty Thousand Dollars (\$150,000) shall be made to the State of New Hampshire upon execution of the Consent Agreement. 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.

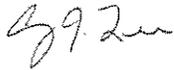
4. Failure to comply with the terms of this Consent Agreement shall enable the Bureau to withdraw from the Consent Agreement and proceeding with such enforcement action allowed by RSA 421-B.

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

1. Guggenheim pay an administrative payment and the Bureau's costs, in the total amount of One Hundred and Fifty Thousand Dollars (\$150,000).
2. Guggenheim complies with all other undertakings outlined herein.

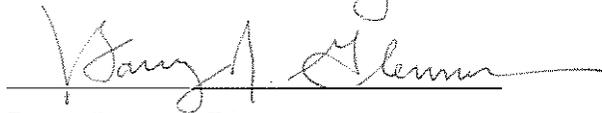
Executed this 24th day of January, 2018.

Guggenheim Fund Distributors, LLC, as successor to Rydex Distributors, Inc.



By: _____
Amy J. Lee, its Vice President and Secretary

Entered this 24th day of January, 2018.



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