

State of Missouri
Office of Secretary of State

Case No. AP-10-33

IN THE MATTER OF:

HUNTLEIGH SECURITIES CORPORATION,
CRD No. 7456,

Respondent.

Serve: Huntleigh Securities Corporation at:
 7800 Forsyth Boulevard
 5th Floor
 St. Louis, Missouri 63105

CONSENT ORDER

SUMMARY OF ENFORCEMENT SECTION'S ALLEGATIONS

1. The Enforcement Section of the Missouri Securities Division ("Enforcement Section") alleges that Huntleigh Securities Corporation ("Huntleigh" or "Respondent") failed to reasonably supervise an agent in Missouri who engaged in dishonest or unethical practices, and that this constitutes grounds to revoke, suspend, condition or limit Huntleigh's registration in Missouri pursuant to Section 409.4-412(d)(9), RSMo. (Cum. Supp. 2009). Huntleigh neither admits nor denies these allegations as provided herein below.
2. Respondent and the Enforcement Section desire to settle the allegations and the matters raised by the staff of the Enforcement Section relating to the alleged violations by Respondent.

CONSENT TO JURISDICTION

3. Respondent and the Enforcement Section stipulate and agree that the Commissioner has jurisdiction over the Respondent and these matters pursuant to the Missouri Securities Act of 2003, Chapter 409, RSMo. (Cum. Supp. 2009), *et seq.*
4. Respondent and the Enforcement Section stipulate and agree that the Commissioner has authority to enter this Order pursuant to Section 409.6-604(h), RSMo. (Cum. Supp. 2009), which provides:

"The commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act."

WAIVER AND EXCEPTION

5. Respondent waives its right to a hearing with respect to this matter.
6. Respondent waives any right that it may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order. Respondent specifically forever releases and holds harmless the Missouri Office of Secretary of State, Secretary of State, Commissioner of Securities, and their respective representatives and agents from any and all liability and claims arising out of, pertaining to, or relating to this matter.

CONSENT TO COMMISSIONER'S ORDER

7. Respondent and the Enforcement Section stipulate and agree to the issuance of this Consent Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein.
8. Respondent agrees not to take any action or to make or permit to be made any public statement creating the impression that this Order was entered into for reasons other than obtaining a good faith settlement of all claims asserted herein. Nothing in this paragraph affects Respondent's (a) testimonial obligations; (b) right to take legal or factual positions in defense of litigation or in defense of other legal proceedings in which the Commissioner of Securities is not a party; or (c) right to make public statements that are factual.
9. Respondent agrees that Respondent is not the prevailing party in this action since the parties have reached a good faith settlement.
10. Respondent neither admits nor denies the Allegations made by the Enforcement Section, but consents to the Commissioner's Findings of Fact and Order as set forth below solely for the purposes of this proceeding and any proceeding that may be brought to enforce the terms of this Consent Order.

FINDINGS OF FACT

11. Huntleigh is a Missouri-registered broker-dealer and is a member of the Financial Industry Regulatory Authority (“FINRA”). Huntleigh is registered in Missouri through the Central Registration Depository (“CRD”) with CRD number 7456. Huntleigh has a main office address of 7800 Forsyth Boulevard, 5th Floor, St. Louis, Missouri 63105.
12. James S. McClellan, Jr. (“McClellan”) was registered in Missouri as an agent of Huntleigh from April 2003 until August 2010. McClellan is registered in Missouri through the CRD with CRD number 325492. McClellan worked out of a Huntleigh branch office located at 15400 South Outer Forty, Suite 201, Chesterfield, Missouri 63017. Prior to his registration with Huntleigh, McClellan was registered in Missouri as an agent with First Union Securities, Inc. (“First Union”) from October, 2001, to April 24, 2003. First Union subsequently became Wachovia Securities Inc. (and both hereinafter will be referred to as “Wachovia”).
13. Meadow Ridge of Door County, LLC (“Meadow Ridge”) is a Wisconsin limited liability company with an address of 7573 State Hwy. 42, Egg Harbor, Wisconsin 54209. Meadow Ridge was organized on January 4, 2002, and McClellan was one of the original managing members of Meadow Ridge and as of the date of this order continues to be a managing member of Meadow Ridge. McClellan also has purported to be the CEO of Meadow Ridge.
14. From at least April 5, 2002, until April 5, 2008, McClellan offered and sold investments in Meadow Ridge to at least eighteen (18) Missouri residents of the St. Louis area, six of whom were over the age of eighty (80). Most of these eighteen (18) residents were also customers of Wachovia and/or Huntleigh. These eighteen residents invested in excess of four million four hundred forty thousand dollars (\$4,440,000) in Meadow Ridge through McClellan.
15. While employed by Wachovia, McClellan offered and sold non-voting A shares in Meadow Ridge to eleven (11) Missouri residents, most of whom were also customers of Wachovia.
16. On April 21, 2003, McClellan left Wachovia and on April 24, 2003, McClellan registered as an agent of Huntleigh.
17. From at least April 24, 2003, until April 5, 2008, McClellan offered and sold investments in Meadow Ridge to at least twelve (12) Missouri residents, six of whom were over the age of eighty (80). Most of these twelve (12) residents were also customers of Huntleigh.
18. On May 5, 2008, the Enforcement Section sent a letter to McClellan requesting information regarding McClellan’s sales of Meadow Ridge.
19. In McClellan’s response dated May 29, 2008, McClellan stated, among other things, the following:
 - a. “From 2002 thru *[sic]* March 2007, I have been *primarily* engaged in raising funds for the operation and development of Meadow Ridge Timeshare Resort.” (Emphasis added).
 - b. “In March of 2007 I became . . . *fully engaged* in the operations of Meadow Ridge. Today, I am involved in each and every decision and work closely with an outside marketing company to promote sales at the resort.” (Emphasis added)
20. A review of McClellan’s CRD on November 11, 2009, revealed that McClellan listed Meadow Ridge as an outside business activity. In this CRD filing, McClellan stated, among other things, that:

MEADOW RIDGE OF DOOR COUNTY 7573 HWY 42, EGG HARBOR, WI 54209 BUSINESS:
RESORT REAL ESTATE AND TIME SHARES INVESTMENT RELATED POSITION: MANAGING
MEMBER **TIME: MINIMAL TO NONE** [emphasis added].
21. On November 12, 2009 and November 13, 2009, the Audit Section of the Securities Division and two members of the Enforcement Section completed an unannounced audit of Huntleigh. Information gathered from the audit included, among other things, the following:
 - a. A June 1, 2006, memo sent to Huntleigh compliance from McClellan stating that McClellan anticipated making several sales of “C” units in Meadow Ridge.
 - b. On June 6, 2006, Huntleigh compliance sent a memo to McClellan stating that Huntleigh approved and gave consent for the sale of Meadow Ridge “C” shares. The memo also stated “Pursuant to NASD Conduct Rule 3040, you are required to keep this office informed of any future private securities transactions in which you wish to engage or facilitate for your clients.”
 - c. In an interview with the Chief Compliance Officer of Huntleigh, Catherine Marshall (“Marshall”) indicated that Huntleigh did not supervise McClellan’s sales of Meadow Ridge based on Huntleigh’s interpretation of FINRA Rule 3040.
22. FINRA Rule 3040 states as follows:

“No person associated with a member shall participate in any manner in a private securities transaction except in accordance with the requirements of this Rule...

...In the case of a transaction in which an associated person has received or may receive selling compensation, a member which has received notice... shall advise the associated person in writing stating whether the member:

- 1) approves the person’s participation in the proposed transaction; or
- 2) disapproves the person’s participation in the proposed transaction.”

“If the member approves a person’s participation in a transaction... the transaction shall be recorded on the books and records of the member and the member shall supervise the person’s participation in the transaction as if the transaction were executed on behalf of the member...

...“selling compensation” shall mean any compensation paid directly or indirectly from whatever source in connection with or as a result of the purchase or sale of a security... not limited to, commissions; finder’s fees; securities or rights to acquire securities; rights of participation in profits, tax benefits, or dissolution proceeds, as a general partner or otherwise; or expense reimbursements.”

23. As the managing member and CEO of Meadow Ridge, McClellan had a right to participate in the profits, tax benefits, dissolution proceeds, and expense reimbursements at Meadow Ridge.
24. A check of the records maintained by the Missouri Commissioner of Securities confirmed that there was no registration or notice filing indicating status as a “federal covered security” for any securities offered or sold by Meadow Ridge and McClellan.
25. Based upon its investigation, the Enforcement Section alleges, among other things, that McClellan engaged in unethical and dishonest practices in the securities business by failing to disclose, among other things, the following:
 - a. that the investments in Meadow Ridge were not registered in the State of Missouri;
 - b. that sales of Meadow Ridge were not under the supervision and control of McClellan’s employing broker-dealer;
 - c. that Meadow Ridge was in financial difficulty; and
 - d. that McClellan failed to follow the policies and procedures of his employing broker-dealer in the sales of securities in Meadow Ridge.
26. Huntleigh failed to reasonably supervise McClellan, by among other things, the following:
 - a. failing to have adequate policies and procedures relating to the OBA of its agents;
 - b. failing to record the private securities transactions of its agent on its books and records;
 - c. failing to review the private securities transactions of its agent;
 - d. failing to determine that the private securities transactions its agent sold were not registered in the State of Missouri;
 - e. failing to have adequate policies and procedures relating to the use of margin in its customers’ accounts;
 - f. failing to adequately review the use of margin in its customers’ accounts;
 - g. failing to have adequate policies and procedures relating to the sale of securities to elderly customers;
 - h. failing to adequately review the sale of private securities in Meadow Ridge to elderly customers; and
 - i. failing to have adequate policies and procedures relating to reviewing investment portfolios of elderly customers for concentration in unsuitable securities.
27. Huntleigh failed to reasonably supervise McClellan and this constitutes grounds to revoke, suspend, condition or limit Huntleigh’s registration in Missouri pursuant to Section 409.4-412(d)(9), RSMo. (Cum. Supp. 2009).

ORDER

28. Huntleigh, through its execution of this Consent Order, and without admitting or denying the Commissioner's allegations of violations, accepts and consents to the entry of the following Order by the Commissioner; and
29. The Commissioner, after consideration of the stipulations set forth above and on the consent of Respondent and the Enforcement Section, finds the following Order to be in the public interest, necessary for the protection of public investors and consistent with the provisions of Chapter 409, RSMo. (Cum. Supp. 2009).

NOW, THEREFORE, it is hereby Ordered that:

1. Respondent Huntleigh's registration is hereby CENSURED;
2. Respondent Huntleigh will retain, at its expense, an outside consultant ("Consultant") not unacceptable to the Commissioner, no later than three (3) months after the effective date of this Consent Order. Within twelve (12) months of the effective date of this Consent Order, the Consultant will furnish an initial report to Huntleigh concerning Huntleigh's supervisory and compliance policies and procedures relating to the outside business activities of its agents, margin trading, margin accounts, correspondence with customers, and the documentation and review of agents on heightened supervision by Huntleigh and/or its Registered Agents. The Consultant will make recommendations to improve Huntleigh's policies and procedures relating to non-conventional investments. If the Consultant becomes unable to perform his or her duties, Huntleigh shall have thirty (30) days to select a replacement Consultant not unacceptable to the Commissioner;
3. The Consultant will prepare follow-up reports twelve (12), eighteen (18), and twenty-four (24) months following the effective date of this Consent Order unless the Consultant affirmatively determines that such follow-up reports are unnecessary. These follow-up reports, if any, will make further recommendations and discuss the extent to which Huntleigh has implemented the Consultant's earlier recommendations;
4. Huntleigh will provide to the Enforcement Section copies of all reports prepared by the Consultant. The Enforcement Section may speak with the Consultant at any time during the period that the Consultant is retained by Huntleigh. Any costs and/or fees associated with the Enforcement Section's speaking with the Consultant shall be borne by the Enforcement Section;
5. Huntleigh will promptly adopt and implement the processes, procedures and practices recommended by the Consultant. However, Huntleigh may propose alternative procedures ("Alternative Procedures") designed to achieve the same objective or purpose as those that were recommended by the Consultant. Huntleigh may adopt the Alternative Procedures if the Consultant agrees that Huntleigh's proposed procedures will achieve the same objectives or purposes as the Consultant's original recommendations. In the event that Huntleigh and the Consultant disagree regarding any recommendation by the Consultant, Huntleigh shall have thirty (30) days to appeal such recommendation to the Commissioner and shall be bound by the decision of the Commissioner;
6. Huntleigh will make available upon request by the Enforcement Section all written communications between Huntleigh, its employees and the Consultant, as well as all documents that the Consultant has advised Huntleigh in writing that the Consultant reviewed or relied upon in connection with this engagement;
7. For a period of three (3) years following the conclusion of the Consultant's work, Huntleigh, its affiliates and any of its officers may not employ or hire the Consultant in any capacity;
8. For a period of three (3) years from the effective date of this Consent Order, Respondent Huntleigh:
 - a. shall not allow any agent to open any new margin account or conduct any new margin trading for any customer over the age of seventy (70) who has a net worth under five hundred thousand dollars (\$500,000);
 - b. shall place all margin trading on heightened review;
 - c. shall not approve any private securities transactions, with the exception of transactions in regulated industries;
 - d. will have heightened supervision of all outside business activities,
 - e. shall report all outside business activities, with the exception of activities in regulated industries, to the Enforcement Section within five days of approval by Huntleigh's chief compliance officer;
 - f. shall report all outside business activities, with the exception of activities in regulated industries, to the Enforcement Section within five days of approval by Huntleigh's chief compliance officer;
 - g. shall undergo audits every six months by staff of the securities division;
 - h. shall pay all travel costs associated with these audits;
 - i. shall not allow their securities agents to participate in any sales contests;
 - j. shall provide for appropriate record keeping to track compliance with these requirements; and
 - k. shall certify annually, in writing, compliance in all material respects with the requirements set forth above;
9. Respondent is ordered to pay a penalty up to three hundred thousand dollars (\$300,000). As provided herein below, two hundred thousand dollars (\$200,000) of this penalty will be suspended provided Respondent is in compliance with the provisions of this Consent Order and with the Missouri Securities Act. Respondent will pay an amount equal to one hundred percent (100%) of the firm's net capital in excess of four hundred thousand dollars (\$400,000) on a quarterly basis commencing after the calendar quarter that begins on January 1, 2011, until the firm has paid one hundred thousand dollars

(\$100,000) of the aforesaid penalty. The requirement to make such payments shall be based on the Net Capital reported on line 3750¹ of the Respondent's quarterly FOCUS report, which Respondent must file by the 17th business day after the end of each quarter. Should the Net Capital exceed the aforementioned four hundred thousand dollar (\$400,000) level, Respondent shall then have ten (10) business days to remit the required payment to the Enforcement Section. Should this one hundred thousand dollar (\$100,000) amount not be satisfied within three (3) years from the date hereof, Respondent may request a reduction of any remaining payments, including a full waiver thereof;

10. Respondent Huntleigh is ordered to pay two hundred thousand dollars (\$200,000) to the Missouri Investor Education and Protection Fund. This payment will be suspended provided Respondent Huntleigh is in compliance with the provisions of this Consent Order and with the Missouri Securities Act;
11. For two (2) years from the execution of this document, the suspended payments in paragraphs nine (9) and ten (10) immediately above shall only become payable, under operation of law, upon Respondent's failure to comply with the terms of this Consent Order and the Missouri Securities Act following reasonable notice and opportunity to cure any alleged violation, and such payments shall be in addition to all other penalties then available under the law; otherwise, at the conclusion of said period, the suspended payments will be waived and thereby Respondent shall be released from any obligation regarding same;

[1] Until this \$100,000 penalty is paid, Respondent will send to the Enforcement Section a copy of its FOCUS Report or portion thereof that reflects Respondent's Net Capital as it is reported on line 3750. These reports will be sent to the Enforcement Section within thirty days of filing.

12. Any payments under this Consent shall be mailed to the Enforcement Section at 600 W. Main Street, Jefferson City, Missouri 65101. All penalties will be made payable to the State of Missouri. The Secretary of State shall forward all penalties received to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri;
13. All payments to the Missouri Investor Education and Protection Fund will be mailed to the Enforcement Section at 600 W. Main Street, Jefferson City, Missouri 65101 within ten (10) days following each quarter. All payments to investor education will be made payable to the Missouri Investor Education Fund and the Secretary of State shall forward all payments to that fund;
14. Respondent Huntleigh is ordered to pay fifteen thousand three hundred dollars (\$15,300) as the costs of the audit by the Securities Division. This amount shall be sent within ten (10) days of the effective date of this Consent Order to the Enforcement Section at 600 W. Main Street, Jefferson City, Missouri 65101 and shall be payable to the Missouri Secretary of State's Investor Education and Protection Fund;
15. Respondent Huntleigh is ordered to pay five thousand one hundred dollars (\$5,100) as the cost of this investigation. This amount shall be sent within ten (10) days of the effective date of this Consent Order to the Enforcement Section at 600 W. Main Street, Jefferson City, Missouri 65101, and shall be payable to the Missouri Secretary of State's Investor Education and Protection Fund; and
16. Respondent shall pay its own costs and attorneys' fees with respect to this matter.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 13TH DAY OF DECEMBER, 2010.

ROBIN CARNAHAN
SECRETARY OF STATE

(Signed/Sealed)
MATTHEW D. KITZI
Commissioner of Securities

Consented to by:

MISSOURI SECURITIES DIVISION

Mary S. Hosmer
Assistant Commissioner of Securities

HUNTLEIGH SECURITIES CORPORATION

Robert L. Chambers
President

Approved as to Form:

Jonathan F. Dalton
Attorney for Huntleigh Securities Corporation