



STATE OF MISSOURI  
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF: )  
)  
CASPAR “MARTY” UNTERREINER, ) AP-15-28  
)  
Respondent. )  
)  
Serve: Caspar Martin Unterreiner )  
112 Pine Trial Drive )  
Lake St. Louis, Missouri 63367 )

**CONSENT ORDER**

**SUMMARY OF ENFORCEMENT SECTION’S ALLEGATIONS**

1. The Enforcement Section of the Missouri Securities Division of the Office of Secretary of State (“Enforcement Section”), through Enforcement Counsel Jennifer J. Martin, alleged that Respondent Caspar “Marty” Unterreiner (“Unterreiner”) transacted business in the State of Missouri as an unregistered investment adviser representative and engaged in an act, practice, or course of business that operated as a fraud or deceit while providing investment advice in violation of Sections 409.4-404 and 409.5-502, RSMo. (Cum. Supp. 2013)<sup>1</sup>, and that this constitutes grounds to issue an order pursuant to Section 409.6-604.
2. Respondent and the Enforcement Section desire to settle the allegations and the matters raised by the Enforcement Section relating to the Respondent’s violations of Section 409.4-404 and 409.5-502.

**CONSENT TO JURISDICTION**

3. Respondent and the Enforcement Section stipulate and agree that the Missouri Commissioner of Securities (“Commissioner”) has jurisdiction over the Respondent and these matters pursuant to the Missouri Securities Act of 2003, Chapter 409, *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), which provides:

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<sup>1</sup> Unless otherwise noted, all statutory references are to the 2013 cumulative supplement to the Revised Statutes of Missouri.

“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 Respondent’s right to a hearing with respect to this matter.
6. Respondent waives any right that Respondent 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, and their respective representatives and agents from any and all liability and claims arising out of, pertaining to, or relating to this matter.
7. Respondent stipulates and agrees with the Enforcement Section that, should the facts contained herein prove to be false or incomplete in a material way, the Enforcement Section reserves the right to pursue any and all legal or administrative remedies at its disposal.

CONSENT TO COMMISSIONER’S ORDER

8. 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.
9. Respondent agrees not to take any action or to make or permit to be made any public statement creating the impression that this Order is without factual basis. Nothing in this paragraph affects Respondent’s (a) testimonial obligations; (b) right to take legal or factual positions in connection with litigation, arbitration, or other legal proceeding in which the Commissioner is not a party; or (c) right to make public statements that are factual.
10. Respondent agrees that Respondent is not the prevailing party in this action since the parties have reached a good faith settlement.
11. Respondent admits the allegations made by the Enforcement Section and consents to the Commissioner’s Findings of Fact, Conclusions of Law, and Order as set forth below for the purposes of resolving this proceeding and any proceeding that may be brought to enforce the terms of this Consent Order.

COMMISSIONER'S FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND ORDER

Respondent Unterreiner admits the following findings of fact and conclusions of law:

I. FINDINGS OF FACT

12. Proactive is a Missouri limited liability company formed on May 22, 2000. Proactive's registered agent is Unterreiner with an address of 112 Pine Trail Drive, Lake St. Louis, Missouri 63367. Proactive was registered as an investment adviser in Missouri from March 24, 2005, through March 7, 2006, with a home office address of 112 Pine Trail Drive, Lake St. Louis, Missouri 63367. Proactive was registered in Missouri through the Central Registration Depository ("CRD") with number 134733.
13. Unterreiner was a Missouri-registered investment adviser representative with Proactive Money Management, Inc. ("PMM") from January 1980 through July 2005 and from March 2005 through March 2006, with CRD number 451745. Unterreiner maintains a residential address at 112 Pine Trail Drive, Lake St. Louis, Missouri 63367.
14. On or about March 7, 2006, Unterreiner's registration as an investment adviser representative expired. Since March 7, 2006, Unterreiner has not been registered as an investment adviser, investment adviser representative, broker-dealer, or agent in the State of Missouri. However, from March 7, 2006 through 2014, Unterreiner continued to act as an unregistered investment adviser representative.
15. Guggenheim Funds Distributors, LLC is a federally covered broker-dealer with CRD number 39805 and a main address of 227 West Monroe Street, 7th Floor, Chicago, Illinois 60606. In or around 2011, the parent company for Guggenheim acquired the parent company for Rydex Investments (hereinafter, Guggenheim Funds Distributors, LLC and Rydex Investments shall be known as "Guggenheim").
16. ProFund Advisors, LLC ("Profund") is a federally covered investment adviser with a CRD number of 109585 and a main address of 7501 Wisconsin Avenue, Suite 1000E, Bethesda, Maryland 20814.

**Unregistered Activity and Fraud from 2006 through 2014**

17. Unterreiner acted as an investment adviser representative in and/or from Missouri without the benefit of registration for at least 30 client accounts from on or about March 7, 2006, through 2014. These clients resided in California, Florida, Georgia, Indiana, Louisiana, Massachusetts, Maryland, Missouri, Nebraska, New York, Rhode Island, Texas, Washington, and West Virginia. Unterreiner and Proactive received compensation for investment advisory services.
18. Sometime after the securities registration for Unterreiner expired, Unterreiner failed to

state to at least some clients that Unterreiner was not registered in Missouri, but would still be acting as an investment adviser representative for compensation.

19. A review of the Guggenheim records revealed, among other things, that after the securities registration expired for Unterreiner, Unterreiner managed at least 16 client accounts and earned \$19,863.66 from advisory fees and trailer fees.
20. A review of ProFund records revealed, among other things, that after the securities registrations expired for Unterreiner, Unterreiner:
  - a. earned a total of \$26,653.13 in advisory fees from July 3, 2006 to April 2, 2007 for managing 17 client accounts;
  - b. managed a total of 18 client accounts until at least November 2010;

#### **Texas Resident**

21. In or around April 5, 2005, Unterreiner became an investment adviser representative for a Texas resident (“TR”). Unterreiner, on behalf of Proactive, opened and began managing a Guggenheim mutual fund account for TR (“TR Account”). TR understood Unterreiner to tell TR, among other things, that the investment was low risk and TR could expect “positive returns in the 10% range.”
22. On or about June 25, 2005, TR invested \$24,400 by wiring the funds directly to the TR Account. TR understood that Unterreiner would manage the TR Account in a conservative manner.
23. On or about June 8, 2005, TR signed an “Investment Advisory Agreement” (“TR Agreement”). The TR Agreement stated, among other things, the following:
  - a. “Advisor is responsible for providing continuous advisory services for the mutual funds”; and
  - b. Unterreiner would earn 2.6% in annual fees.
24. After the securities registrations expired for Unterreiner, Unterreiner continued acting as an investment adviser and investment adviser representative, respectively, with regard to TR by managing, making trades in, and deriving compensation from, the TR Account.
25. Unterreiner never provided TR any statements from the TR Account, and Unterreiner never updated TR as to the status of the TR Account.
26. On or about March 31, 2014, TR obtained a statement for the TR Account that showed a balance of \$4,939.53. TR asked Unterreiner about the lack of funds in the TR Account.

Unterreiner told TR that the decrease in account value was attributed to Unterreiner's trading strategies that were based on a belief the market would go down.

27. Unterreiner and Proactive never told TR that the securities registrations for Unterreiner and Proactive expired.
28. Unterreiner ceased managing TR's account in 2014.

### **Unterreiner's On-The-Record Statement**

29. On September 24, 2014, the Enforcement Section conducted an on-the-record examination of Unterreiner ("Unterreiner OTR"). During the Unterreiner OTR, Unterreiner stated, among other things:
  - a. TR invested approximately \$25,000 by sending funds directly to the TR Account at Guggenheim;
  - b. Unterreiner sent Guggenheim an authorization form signed by TR that allowed Unterreiner to manage the TR Account online;
  - c. Unterreiner used a "double beta long and inverse funds" strategy in managing the accounts;
  - d. Unterreiner described the "double beta long and inverse funds" strategy as "high risk";
  - e. the substantial decrease in TR's account was caused by Unterreiner in that Unterreiner "simply didn't make good decisions at the right time...I made more wrong decisions than right decisions";
  - f. Unterreiner used the same "double beta long and inverse funds" strategy in managing all client accounts;
  - g. Unterreiner never informed Guggenheim about the expiration of Unterreiner's securities registration, though Unterreiner "still had...the authority to trade in the accounts";
  - h. Unterreiner quit managing TR's account in or around the spring of 2014;
  - i. Unterreiner currently manages accounts for six to eight persons; and
  - j. Unterreiner receives trailer fees in the accounts of clients Unterreiner currently manages.

## II. CONCLUSIONS OF LAW

25. The Commissioner finds that: (a) Respondent Unterreiner transacted business in the State of Missouri as an unregistered investment adviser representative; and (b) Respondent Unterreiner engaged in an act, practice, or course of business that operated as a fraud or deceit while providing investment advice, and that this conduct constitutes grounds to issue an order pursuant to Section 409.6-604.
26. The Commissioner, after consideration of the stipulations set forth above and on the consent of the Respondent and the Enforcement Section, finds and concludes that the Commissioner has jurisdiction over the Respondent and this matter and that the following Order is in the public interest, necessary for the protection of public investors and consistent with the purposes intended by Chapter 409.

## III. ORDER

**NOW, THEREFORE,** it is hereby Ordered that:

1. Respondent, Respondent's agents, employees and servants, and all other persons participating in the above-described violations with knowledge of this order are permanently enjoined and restrained from offering unregistered investment advice, transacting business as an unregistered investment adviser representative, and engaging in an act, practice, or course of business that would operate as a fraud or deceit while providing investment adviser in violation of Sections 409.4-404 and 409.5-502.
2. Respondent Unterreiner is hereby **BARRED** from applying as an investment adviser, investment adviser representative, broker-dealer, or agent in the State of Missouri.
3. Respondent is ordered to pay, jointly and severally, \$19,000 in restitution. Nine thousand dollars of this amount will be suspended provided Respondent complies with the terms of this Consent Order and does not violate the Missouri Securities Act for a period of four years from the date of execution of this Consent Order. The remaining \$10,000 shall be paid in 5 equal installments of \$2,000, with the first installment due within 30 days of the execution of this Consent Order. The second installment will be due on February 1, 2016, the third installment will be due on August 1, 2016, the fourth installment will be due on February 1, 2017, and the last installment will be due on August 1, 2017. These payments shall be sent to the Missouri Securities Division at 600 W. Main Street, Jefferson City, Missouri 65101, and shall be payable to the Missouri Secretary of State's Investor Restitution Fund. These payments will be distributed by that Fund to the investor listed in Exhibit A attached.
4. Respondent shall pay to the Missouri Secretary of State's Investor Education and Protection Fund the sum of \$30,000. This amount will be suspended provided Respondent complies with the terms of this Consent Order and does not violate the

Missouri Securities Act for a period of four years from the date of execution of this Consent Order.

5. Respondent is ordered to pay \$2,000 as the cost of this investigation. This amount will be suspended provided Respondent complies with the terms of this Consent Order and does not violate the Missouri Securities Act for a period of 4 years from the date of execution of this Consent Order.
6. The suspended payments in paragraphs 3, 4, and 5 shall become due immediately upon the sooner of (1) Respondent's noncompliance with the terms of this Consent Order or (2) a finding, after notice and opportunity for a hearing, by the Commissioner or a court of competent jurisdiction, that Respondent has violated the Missouri Securities Act. Such immediately due payments shall include all interim interest under Section 409.6-604(d)(2) accrued from the dates of Respondent's violations noted above and be in addition to all other penalties then available under the law.
7. The Commissioner may take all available actions to enforce this Consent Order. Upon Respondent's satisfaction of the terms referenced above and Respondent's compliance with the terms of this Consent Order for a period of four years from the date of this Consent Order, the suspended payment in paragraphs 3, 4, and 5 shall be fully waived.
8. Respondent shall pay Respondent's own costs and attorney's fees with respect to this matter.

**SO ORDERED:**

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,

MISSOURI THIS 7<sup>TH</sup> DAY OF AUGUST, 2015.



JASON KANDER  
SECRETARY OF STATE

*Andrew M. Hartnett*  
ANDREW M. HARTNETT  
COMMISSIONER OF SECURITIES

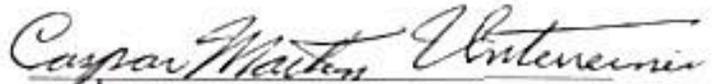
Consented to by:

THE ENFORCEMENT SECTION OF THE  
MISSOURI SECURITIES DIVISION



Jennifer J. Martin  
Enforcement Counsel

RESPONDENT



Caspar Martin Unterreiner