

STATE OF SOUTH DAKOTA  
DEPARTMENT OF LABOR & REGULATION  
DIVISION OF SECURITIES

IN THE MATTER OF: )  
 )  
MATTHEW NIEDERBAUMER, ) CONSENT ORDER  
CRD# 4553475 )  
 )  
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TO: Tim Schmidt  
Regional Finance Office  
Thrivent Financial  
4131 26<sup>th</sup> St. NW, Suite 3  
Rochester, MN 55901

The Director of the Division of Securities, Mr. Larry Deiter, has alleged the following:

JURISDICTION

1. That Matthew Niederbaumer has a last known address of 1712 Dakota Ave. S., Huron, SD 57350.
2. That Mr. Niederbaumer has been a registered representative with Thrivent Investment Management, Inc. since July 29, 2002.
3. That Mr. Niederbaumer has been a registered investment adviser with Thrivent Investment Management Inc. since March 12, 2003.
4. That Thrivent Investment Management Inc. has been a registered broker dealer in South Dakota since June 18, 1987.
5. That Thrivent Investment Management, Inc. has been a registered investment adviser with the Securities and Exchange Commission since May 18, 1987.
6. That at all times pertinent to this Order, Mr. Niederbaumer offered and sold securities in and from South Dakota through Thrivent Investment Management, Inc.

SUMMARY OF THE FACTS

7. That on January 21, 2016, Mr. Niederbaumer placed a sell of OIL and a buy of USO in five separate client accounts without prior authorization for a total of ten unauthorized trades.

8. That Mr. Niederbaumer also traded the same security (USO) in his own account and received a better price on the same side of the market on the same day which violated Thrivent Investment Management, Inc.'s personal trading policy.
9. That on June 24, 2016, Mr. Niederbaumer signed a Letter of Reprimand with Thrivent Investment Management, Inc. This Letter of Reprimand included a suspension for ten (10) business days, a termination of his Lead Financial Consultant Agreement for a period of one year and a fine of \$12,500.
10. That on December 12, 2016 Mr. Niederbaumer signed a Letter of Acceptance, Waiver and Consent (AWC) with FINRA. The AWC stated that Mr. Niederbaumer violated NASD Conduct Rule 2510(b) and FINRA Rule 2010 by exercising discretion in a customer's account without receiving prior written authorization. The AWC included a ten (10) business day suspension from associating with any FINRA member firm in any capacity and a fine of \$5000.

#### THE LAW

11. That pursuant to ARSD 20:08:03:06(3)(e), failing to comply with any applicable provision of the Conduct Rules and any other Rules of Fair Practice of FINRA does constitute dishonest or unethical practices under SDCL 47-31B-412(d)(13).
12. That NASD Rule 2510(b) states that no member or registered representative shall exercise any discretionary power in a customer's account unless such customer has given prior written authorization to a stated individual or individuals and the account has been accepted by the member, as evidenced in writing by the member or the partner, officer or manager, duly designated by the member, in accordance with Rule 3010.
13. That FINRA Rule 2010 states that "a member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."
14. That Mr. Niederbaumer violated ARSD 20:08:03:06, SDCL 47-31B-412, NASD Rule 2510(b) and FINRA Rule 2010 by exercising discretion in the accounts of five customers without obtaining prior written authorization from the customers or written approval of the accounts as discretionary from his employing member firm.

#### CONDITIONS

That Mr. Niederbaumer submits to the jurisdiction of the South Dakota Division of Securities and consents to entry of this Order by the Division of Securities as settlement of the issues contained in this Order.

NOW THEREFORE, in order to resolve this matter, Mr. Niederbaumer agrees to the following terms and conditions:

1. That Mr. Niederbaumer will not exercise discretion in client accounts without obtaining prior written authorization from the customers or written approval confirming the accounts as discretionary from his employing member firm.
2. That Mr. Niederbaumer be suspended from registration as a securities agent in South Dakota for a period of ten (10) business days. However, because Mr. Niederbaumer was already suspended from registration as a securities agent by his firm and FINRA for a period of ten (10) business days, any suspension of Mr. Niederbaumer's registration has been retroactively fulfilled as of the date of the signing of this Order by the Director.
3. That Mr. Niederbaumer shall keep dated, detailed broker notes on all transactions made in all customer accounts. Such notes shall include, at a minimum, the date, the name of the individual spoken to and a basic explanation of what was discussed regarding buying and selling securities and the reason for such transactions. This requirement shall apply to all securities transactions and recommendations, including variable life, variable annuity, mutual funds and alternative investments.
4. That if Mr. Niederbaumer becomes the subject of a written or oral customer complaint regarding allegations arising from his conduct of securities business, Mr. Niederbaumer shall notify the Director, in writing, within ten (10) business days from receipt of such complaint.
5. That if Mr. Niederbaumer becomes the subject of any regulatory investigation, internal investigation, arbitration proceeding, or securities-related litigation concerning allegations arising from his conduct of securities business, Mr. Niederbaumer shall notify the Director, in writing, within ten (10) business days of obtaining knowledge of the investigation, proceeding or litigation.
6. That pursuant to SDCL 47-31B-412(c), if the director finds that the order is in the public interest and subsection (d)(1) through (6), (8), (9), (10), or (12) and (13) authorizes the action, an order under this Act may censure, impose a bar, or impose a civil penalty in an amount not to exceed a maximum of ten thousand dollars per violation. Therefore, within sixty (60) days from the entry of this Order, and pursuant to SDCL 47-31B-604, Mr. Niederbaumer shall pay to the State of South Dakota five hundred dollars (\$500) as a fine and penalty.

#### ORDER

7. That, should Mr. Niederbaumer agree to the above terms, he shall sign, date, and return this Consent Order within fifteen (15) days after receipt. If both

parties agree to this Consent Order, the Division will take no further action on this matter.

8. The above Order is necessary and appropriate in the public interest and for the protection of investors and is consistent with the purposes fairly intended by the policy and provisions of SDCL 47-31B.

Dated this 11<sup>th</sup> day of May, 2017.



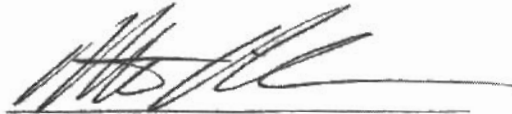
Larry Deiter  
Director  
124 S. Euclid Ave., Suite 104  
Pierre, SD 57501

Matthew Niederbaumer states that he has voluntarily entered into this Order and that no promise of any kind or nature was made to him to induce him into this Order except those stated above.

Matthew Niederbaumer admits the jurisdiction of the Division of Securities and consents to the jurisdiction of the Division of Securities for purposes of this Order.

Matthew Niederbaumer hereby acknowledges that he has been served with a copy of this Consent Order, has read the forgoing Order, is aware of his right to a hearing and appeal in this matter, and has waived the same.

Dated this 8<sup>th</sup> day of May, 2017.

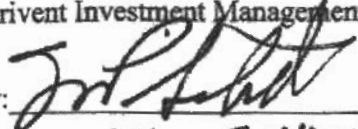


Matthew Niederbaumer  
1712 Dakota Ave. S.  
Huron, SD 57350

Dated this 8<sup>th</sup> day of May, 2017.

Thrivent Investment Management, Inc.

By:

  
TIM SCHMIDT

Title:

Managing Partner