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BEFORE THE ARIZONA CORPORATIO

RECEIVED

- 1 KRISTIN K. MAYES
- 2 Chairman
- 3 GARY PIERCE
- 4 Commissioner
- 5 PAUL NEWMAN
- 6 Commissioner
- 7 SANDRA D. KENNEDY
- 8 Commissioner
- 9 BOB STUMP
- 10 Commissioner

2010 OCT 14 P 3:43

Arizona Corporation Commission

DOCKETED

OCT 14 2010

DOCKET CONTROL

DOCKETED BY	
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In the matter of:

DOCKET NO. S-20757A-10-0373

Richard M. Schmerman, individually and d/b/a Diversified Financial and/or Diversified Financial Planners; and Amy Schmerman, husband and wife;

RESPONDENTS RICHARD M. SCHMERMAN, DIVERSIFIED FINANCIAL AND/OR DIVERSIFIED FINANCIAL PLANNERS AND AMY SCHMERMAN'S ANSWER

Respondents.

Respondents Richard M. Schmerman ("Mr. Schmerman"), Diversified Financial and/or Diversified Financial Planners ("Diversified") and Amy Schmerman ("Ms. Schmerman") (collectively "Respondents") submit their Answer to the Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order of Revocation, Order of Denial and Order for Other Affirmative Action (the "Notice"). Respondents respond to the numbered paragraphs of the Notice as follows:

I.

JURISDICTION

- 1. Respondents admit the allegations in paragraph 1 of the Notice.

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BADE & BASKIN PLC
80 EAST RIO SALADO PARKWAY
SUITE 511
TEMPE, ARIZONA 85281
TELEPHONE NO 480-968-1225
FACSIMILE 480-968-6255

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II.

RESPONDENT

- 2. Respondents admit the allegations in paragraph 2 of the Notice.
- 3. Respondents admit the allegations in paragraph 3 of the Notice.
- 4. Respondents admit the allegations in paragraph 4 of the Notice.
- 5. Respondents admit the allegations in paragraph 5 of the Notice.
- 6. Respondents admit the allegations in paragraph 6 of the Notice.
- 7. Respondents admit the allegations in paragraph 7 of the Notice.
- 8. Respondents admit the allegations in paragraph 8 of the Notice.
- 9. Respondents admit the allegations in paragraph 9 of the Notice.
- 10. Respondents admit the allegations in paragraph 10 of the Notice.
- 11. This allegation requires no response.
- 12. This allegation requires no response.
- 13. Respondent Mr. Schmerman denies that he was acting for the benefit of the marital community.

III.

FACTS

14. Paragraph 14 refers to an individual who is called "Client 1," but fails to provide a name or any other identifying information for that individual. Accordingly, Respondents are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 14 of the Notice, and, therefore deny those allegations.

15. Paragraph 15 refers to an individual who is called "Client 1," but fails to provide a name or any other identifying information for that individual. Accordingly, Respondents are

1 without sufficient knowledge or information to admit or deny the allegations contained in
2 paragraph 15 of the Notice, and, therefore deny those allegations.

3 16. Paragraph 16 refers to an individual who is called "Client 1," but fails to provide a
4 name or any other identifying information for that individual. Accordingly, Respondents are
5 without sufficient knowledge or information to admit or deny the allegations contained in
6 paragraph 16 of the Notice, and, therefore deny those allegations.

7 17. Paragraph 17 refers to an individual who is called "Client 1," but fails to provide a
8 name or any other identifying information for that individual. Accordingly, Respondents are
9 without sufficient knowledge or information to admit or deny the allegations contained in
10 paragraph 17 of the Notice, and, therefore deny those allegations.

11 18. Paragraph 18 refers to an individual who is called "Client 1," but fails to provide a
12 name or any other identifying information for that individual. Accordingly, Respondents are
13 without sufficient knowledge or information to admit or deny the allegations contained in
14 paragraph 18 of the Notice, and, therefore deny those allegations.

15 19. Paragraph 19 refers to an individual who is called "Client 1," but fails to provide a
16 name or any other identifying information for that individual. Accordingly, Respondents are
17 without sufficient knowledge or information to admit or deny the allegations contained in
18 paragraph 19 of the Notice, and, therefore deny those allegations.

19 20. Paragraph 20 refers to an individual who is called "Client 1," but fails to provide a
20 name or any other identifying information for that individual. Accordingly, Respondents are
21 without sufficient knowledge or information to admit or deny the allegations contained in
22 paragraph 20 of the Notice, and, therefore deny those allegations.

23 21. Respondents admit the allegations in paragraph 21 of the Notice.
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22. Respondents admit the allegations contained in paragraph 22 of the Notice.

23. The allegations in paragraph 23 are an inaccurate, incomplete and misleading statement of the facts. Accordingly, Respondents deny each and every allegation in paragraph 23 of the Notice.

24. Paragraph 24 refers to an individual who is called "Client 1," but fails to provide a name or any other identifying information for that individual. Accordingly, Respondents are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 24 of the Notice, and, therefore deny those allegations.

25. The allegations in paragraph 25 are an inaccurate, incomplete and misleading statement of the facts. Accordingly, Respondents deny each and every allegation in paragraph 25 of the Notice.

26. Paragraph 26 refers to an individual who is called "Client 1," but fails to provide a name or any other identifying information for that individual. Accordingly, Respondents are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 26 of the Notice, and, therefore deny those allegations.

27. Paragraph 27 refers to an individual who is called "Client 1," but fails to provide a name or any other identifying information for that individual. Accordingly, Respondents are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 27 of the Notice, and, therefore deny those allegations.

28. Paragraph 28 refers to an individual who is called "Client 1," but fails to provide a name or any other identifying information for that individual. Accordingly, Respondents are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 28 of the Notice, and, therefore deny those allegations.

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29. Respondents admit the allegations contained in paragraph 29 of the Notice.

30. Respondents admit the allegations contained in paragraph 30 of the Notice.

31. Paragraph 31 refers to individuals who are called "Clients 1 and 2," but fails to provide a name or any other identifying information for those individuals. Accordingly, Respondents are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 31 of the Notice, and, therefore deny those allegations.

32. Paragraph 32 refers to an individual who is called "Client 2," but fails to provide a name or any other identifying information for that individual. Accordingly, Respondents are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 32 of the Notice, and, therefore deny those allegations.

33. Paragraph 33 refers to an individual who is called "Client 2," but fails to provide a name or any other identifying information for that individual. Accordingly, Respondents are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 33 of the Notice, and, therefore deny those allegations.

34. Paragraph 34 refers to an individual who is called "Client 2," but fails to provide a name or any other identifying information for that individual. Accordingly, Respondents are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 34 of the Notice, and, therefore deny those allegations.

35. Paragraph 35 refers to individuals who are called "Clients 1 and 2," but fails to provide a name or any other identifying information for those individuals. Accordingly, Respondents are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 35 of the Notice, and, therefore deny those allegations.

1 36. Respondents are without sufficient knowledge or information to admit or deny the
2 allegations contained in paragraph 36 of the Notice, and, therefore deny those allegations.

3 37. Paragraph 37 refers to individuals who are called "Clients 1 and 2," but fails to
4 provide a name or any other identifying information for those individuals. Accordingly,
5 Respondents are without sufficient knowledge or information to admit or deny the allegations
6 contained in paragraph 37 of the Notice, and, therefore deny those allegations.

7 38. Paragraph 38 refers to an individual who is called "Client 2," but fails to provide a
8 name or any other identifying information for that individual. Accordingly, Respondents are
9 without sufficient knowledge or information to admit or deny the allegations contained in
10 paragraph 38 of the Notice, and, therefore deny those allegations.

11 39. Paragraph 39 refers to an individual who is called "Client 2," but fails to provide a
12 name or any other identifying information for that individual. Accordingly, Respondents are
13 without sufficient knowledge or information to admit or deny the allegations contained in
14 paragraph 39 of the Notice, and, therefore deny those allegations.

15 40. Paragraph 40 refers to an individual who is called "Client 2," but fails to provide a
16 name or any other identifying information for that individual. Accordingly, Respondents are
17 without sufficient knowledge or information to admit or deny the allegations contained in
18 paragraph 40 of the Notice, and, therefore deny those allegations.

19 41. Paragraph 41 refers to an individual who is called "Client 2," but fails to provide a
20 name or any other identifying information for that individual. Accordingly, Respondents are
21 without sufficient knowledge or information to admit or deny the allegations contained in
22 paragraph 41 of the Notice, and, therefore deny those allegations.

23 41. Paragraph 41 refers to an individual who is called "Client 2," but fails to provide a
24 name or any other identifying information for that individual. Accordingly, Respondents are
25 without sufficient knowledge or information to admit or deny the allegations contained in
26 paragraph 41 of the Notice, and, therefore deny those allegations.

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1 42. Respondents are without sufficient knowledge or information to admit or deny the
2 allegations contained in paragraph 42 of the Notice, and, therefore deny those allegations.

3 43. Paragraph 43 refers to an individual who is called "Client 2," but fails to provide a
4 name or any other identifying information for that individual. Accordingly, Respondents are
5 without sufficient knowledge or information to admit or deny the allegations contained in
6 paragraph 43 of the Notice, and, therefore deny those allegations.

7 44. Paragraph 44 refers to an individual who is called "Client 2," but fails to provide a
8 name or any other identifying information for that individual. Accordingly, Respondents are
9 without sufficient knowledge or information to admit or deny the allegations contained in
10 paragraph 44 of the Notice, and, therefore deny those allegations.

11 45. Paragraph 45 refers to an individual who is called "Client 2," but fails to provide a
12 name or any other identifying information for that individual. Accordingly, Respondents are
13 without sufficient knowledge or information to admit or deny the allegations contained in
14 paragraph 45 of the Notice, and, therefore deny those allegations.

15 46. Paragraph 46 refers to an individual who is called "Client 2," but fails to provide a
16 name or any other identifying information for that individual. Accordingly, Respondents are
17 without sufficient knowledge or information to admit or deny the allegations contained in
18 paragraph 46 of the Notice, and, therefore deny those allegations.

19 47. Paragraph 47 refers to an individual who is called "Client 2," but fails to provide a
20 name or any other identifying information for that individual. Accordingly, Respondents are
21 without sufficient knowledge or information to admit or deny the allegations contained in
22 paragraph 47 of the Notice, and, therefore deny those allegations.

23 48. Paragraph 48 refers to an individual who is called "Client 2," but fails to provide a
24 name or any other identifying information for that individual. Accordingly, Respondents are
25 without sufficient knowledge or information to admit or deny the allegations contained in
26 paragraph 48 of the Notice, and, therefore deny those allegations.

27 49. Paragraph 49 refers to an individual who is called "Client 2," but fails to provide a
name or any other identifying information for that individual. Accordingly, Respondents are
without sufficient knowledge or information to admit or deny the allegations contained in
paragraph 49 of the Notice, and, therefore deny those allegations.

1 48. Paragraph 48 refers to an individual who is called "Client 2," but fails to provide a
2 name or any other identifying information for that individual. Accordingly, Respondents are
3 without sufficient knowledge or information to admit or deny the allegations contained in
4 paragraph 48 of the Notice, and, therefore deny those allegations.

5 49. Paragraph 49 refers to an individual who is called "Client 2," but fails to provide a
6 name or any other identifying information for that individual. Accordingly, Respondents are
7 without sufficient knowledge or information to admit or deny the allegations contained in
8 paragraph 49 of the Notice, and, therefore deny those allegations.

9 50. Paragraph 50 refers to an individual who is called "Client 2," but fails to provide a
10 name or any other identifying information for that individual. Accordingly, Respondents are
11 without sufficient knowledge or information to admit or deny the allegations contained in
12 paragraph 50 of the Notice, and, therefore deny those allegations.

13 51. Paragraph 51 refers to an individual who is called "Client 2," but fails to provide a
14 name or any other identifying information for that individual. Accordingly, Respondents are
15 without sufficient knowledge or information to admit or deny the allegations contained in
16 paragraph 51 of the Notice, and, therefore deny those allegations.

17 52. Paragraph 52 refers to an individual who is called "Client 2," but fails to provide a
18 name or any other identifying information for that individual. Accordingly, Respondents are
19 without sufficient knowledge or information to admit or deny the allegations contained in
20 paragraph 52 of the Notice, and, therefore deny those allegations.

21 53. The allegations in paragraph 53 are an inaccurate, incomplete and misleading
22 statement of the facts. Accordingly, Respondents deny each and every allegation in paragraph 53
23 of the Notice.
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54. Respondents admit the allegations in paragraph 54 of the Notice.

55. Respondents admit the allegations in paragraph 55 of the Notice.

56. The allegations in paragraph 56 are an inaccurate, incomplete and misleading statement of the facts. Accordingly, Respondents deny each and every allegation in paragraph 56 of the Notice.

57. Respondents deny the allegations in paragraph 57 of the Notice.

58. Respondents deny the allegations in paragraph 58 of the Notice.

IV.

REMEDIES PURSUANT TO A.R.S. § 44-1962

(Denial, Revocation, or Suspension of Registration of Salesman; Restitution, Penalties, or other Affirmative Action)

59. Respondents deny the allegations contained in paragraph 59 of the Notice.

60. Respondents deny the allegations contained in paragraph 60 of the Notice.

V.

REMEDIES PURSUANT TO A.R.S. § 44-3201

(Denial, Revocation, or Suspension of Investment Advisor or Investment Advisor Representative License; Restitution, Penalties, or other Affirmative Action)

61. Respondents deny the allegations contained in paragraph 61 of the Notice.

62. Respondents deny the allegations contained in paragraph 62 of the Notice.

63. Respondents deny the allegations contained in paragraph 63 of the Notice.

VI.

VIOLATION OF A.R.S. § 44-3241

(Fraud in the Provision of Investment Advisory Services)

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- 64. Respondents deny the allegations contained in paragraph 64 of the Notice.
- 65. Respondents deny the allegations contained in paragraph 65 of the Notice.
- 66. Respondents deny each and every allegation not specifically admitted herein.

AFFIRMATIVE DEFENSES

The following affirmative defenses nullify any potential claims asserted by the Division. Respondents reserve the right to amend this Answer to assert additional defenses after completion of discovery.

First Affirmative Defense

The alleged Clients 1 and 2 referred to in the Notice were not clients of Respondent or any relevant brokerage firm or investment advisor.

Second Affirmative Defense

Neither Respondent nor the alleged clients attempted to form a broker/customer or an investment advisor/client relationship in connection with the relevant funds.

Third Affirmative Defense

Respondent did not borrow money from any client.

Fourth Affirmative Defense

Respondent did not make unauthorized use of any customer or client funds.

Fifth Affirmative Defense

Respondent did not convert any client funds.

Sixth Affirmative Defense

The alleged Clients 1 and 2 approved and/or authorized and/or ratified and/or directed all of the transactions at issue.

Fifteenth Affirmative Defense

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The Division cannot meet the applicable standards for any of the relief it is seeking in the Notice.

Sixteenth Affirmative Defense

Respondents allege such other affirmative defenses set forth in the Arizona Rules of Civil Procedure 8(c) as may be determined to be applicable during discovery.

RESPECTFULLY SUBMITTED this 14th day of October, 2010.

BADE & BASKIN PLC

By Michelle M. Loney for
Alan S. Baskin
80 East Rio Salado Parkway, Suite 511
Tempe, Arizona 85281
Attorneys for Respondents

ORIGINAL and thirteen copies of the foregoing filed this 14th day of October, 2010 with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

COPY of the foregoing hand-delivered this 14th day of October, 2010 to:

Matthew J. Neubert
Director of Securities
Securities Division
Arizona Corporation Commission
1300 W. Washington Street, 3rd Floor
Phoenix, AZ 85007

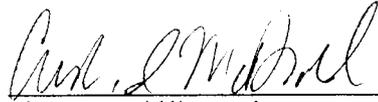
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COPY of the foregoing mailed
this 14th day of October, 2009 to:

Paul Huynh
Securities Division
Arizona Corporation Commission
1300 W. Washington, 3rd Floor
Phoenix, AZ 85007



schmerman.acc/pld/answer.doc