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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission
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COMMISSIONERS

GARY PIERCE, Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

In the matter of: Richard M. Schmerman, (CRD# 1302988) individually and d/b/a Diversified Financial and/or Diversified Financial Planners, and Amy Schmerman, husband and wife; Respondents.	DOCKET NO. S-20757A-10-0373 **AMENDED NOTICE OF OPPORTUNITY FOR HEARING REGARDING PROPOSED ORDER TO CEASE AND DESIST, FOR RESTITUTION, FOR ADMINISTRATIVE PENALTIES, ORDER OF REVOCATION, ORDER OF DENIAL, AND FOR OTHER AFFIRMATIVE ACTION**

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondent Richard M. Schmerman, individually and d/b/a Diversified Financial and/or Diversified Financial Planners, has engaged in acts, practices, and transactions that constitute violations of A.R.S. § 44-1801, *et seq.,* the Arizona Securities Act ("Securities Act"), and A.R.S. § 44-3101, *et seq.*, the Investment Management Act ("IM Act").

I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution, the Securities Act, and the IM Act.

II.

RESPONDENT

2. For all times relevant, Richard M. Schmerman ("Schmerman") was an Arizona resident.

3. Diversified Financial and Diversified Financial Planners (collectively "DF") are trade names registered with the Arizona Office of the Secretary of State ("SOS"), and are owned by Schmerman.

4. Documents filed with the SOS state that Diversified Financial Planner's business type is tax preparation and portfolio management services and Diversified Financial's business type is financial advisory services.

5. For all times relevant, Schmerman was acting as an investment adviser representative in Arizona.

6. For all times relevant, Schmerman operated from an office located in Maricopa County, Arizona.

7. Schmerman was a registered securities salesman from on or about November 4, 1986, to March 13, 2008, and from May 15, 2008, to March 10, 2010, CRD# 1302988.[1]

8. Schmerman has never been a licensed Investment Adviser ("IA") with the State of Arizona and has not been a federally licensed IA since February 10, 1995.

9. From on or about March 31, 1999, to March 13, 2008, Schmerman was registered in Arizona as a securities salesman in association with Mutual Service Corporation ("MSC"). During the same time frame, MSC, CRD# 4806, was a federally licensed IA and an IA notice filer in Arizona.[2] MSC is also a registered securities dealer, federally and with the state of Arizona.

10. From on or about May 15, 2008, to March 10, 2010, Schmerman was registered as a securities salesman in Arizona in association with United Planners' Financial Services of America, a limited partnership ("United Planners"). United Planners, CRD# 20804, is a federally licensed IA and an IA notice filer in Arizona. United Planners is also a registered securities dealer, federally and with the state of Arizona.

[1] On or about November 4, 1986, Schmerman became a registered securities salesman with FINRA and on or about November 6, 1986, Schmerman became a registered securities salesman with the state of Arizona.
[2] On December 23, 2009, MSC's federal IA license was terminated.

11. From on or about June 3, 2008, to March 10, 2010, Schmerman was licensed in Arizona as an investment adviser representative ("IAR") in association with United Planners.

12. Schmerman, individually and/or doing business as DF, may be referred to as "Respondent."

13. Amy Schmerman ("A. Schmerman") has been at all relevant times the spouse of Respondent Schmerman and may be referred to as "Respondent Spouse." Respondent Spouse is joined in this action under A.R S. § 44-2031(C) and A.R.S. § 44-3291(C) solely for purposes of determining the liability of the marital community.

14. At all relevant times, Respondent has been acting for Respondent's own benefit and for the benefit or in furtherance of the marital community.

III.

FACTS

Investment Advisory Services

15. Since at least September 1995, Schmerman has represented to certain Arizona residents (hereafter "client(s)") that he is a registered IA.

16. On or about September 1995, Schmerman submitted a statement to a client ("Client BS") that included a three-page correspondence that stated, "your investment management statement" is included, which reflects all investments, sales transactions, and all applicable brokerage charges. The correspondence contained written statements about the nearly 20% rise of the Dow Jones Industrial Average ("DJIA") for the first eight months of 1995, that the average stock mutual fund posted a total return of 9.67% for the second quarter of 1995, and various other statements or observations of the stock market and economy. The correspondence contained Schmerman's signature.

17. The September 1995 correspondence contained a representation that Schmerman was a "Registered Investment Advisor."

18. On or about March 30, 1996, Client BS received correspondence from Schmerman that stated "Under the Brochure Rule of the Investment Advisers Act (Rule 204-3), all Registered Investment Advisers in the United States are required to deliver a written description of the firm's available services and qualifications to its current and prospective financial advisory clients. Enclosed is a Form ADV-Part II (dated March 29, 1996) of the Uniform Application for Investment Adviser Registration with the Securities and Exchange Commission." This March 30, 1996, correspondence again contained a representation that Schmerman was a "Registered Investment Advisor."

19. Form ADV-Part II (dated March 29, 1996) named Schmerman as the investment adviser and contained an SEC File number 801-23323. It also disclosed that Schmerman offered investment advisory services for a fee, the types of clients he provided investment advice to, the types of investments, and methods of analysis or investment strategies employed.

20. Schmerman charged certain clients a fee, from one percent (1%) to three percent (3%), for managing their assets, providing advice as to timing or selection of securities to invest in, and/or conducted discretionary trading on behalf of certain clients (collectively the "IA Services").

21. The one percent (1%) to three percent (3%) fee charged by Schmerman for the IA Services was paid monthly, quarterly, and/or semi-annually; however, Schmerman has never been a licensed IA with the State of Arizona and has not been a federally licensed IA since February 10, 1995.

22. On or about February 5, 2002, Schmerman sent a correspondence to an Arizona resident ("Client PO") that confirmed the terms, objectives, and limitation of services to be provided by Schmerman. The correspondence contained the following:

a) Under Schmerman's name, it stated "Registered Investment Advisor";

b) That Schmerman would "Develop any investment planning strategies that may be appropriate";

c) That Schmerman would "Review and manage your new investment portfolio"; and

d) The annual fee for the services was "1.5% of your investment management account to be determined" at the end of each quarter.

23. As late as February 2006, Schmerman continued to include on his correspondences to clients that he was a "Registered Investment Advisor."

24. As late as February 2008, Schmerman included on his correspondence to a client that he was a "Licensed Investment Advisor."

25. Schmerman had discretionary trading authority on numerous clients' Charles Schwab brokerage accounts and he was designated as the IA or IAR on the accounts.

26. On or about March 4, 2010, Schmerman's discretionary trading authority, regarding all client accounts upon which he was designated the IA or IAR, was terminated by Charles Schwab and he was no longer allowed access or authorization to transact discretionary trades or to collect IA fees.

27. Schmerman has not been an associated IAR since March 2010.

28. In or around August 2011, Schmerman submitted a statement and/or invoice to a client that requested a payment of approximately $12,445 for IA services rendered for the period of April 1, 2010, to June 30, 2011, regarding the client's Charles Schwab brokerage account; however, Schmerman's authorization and access was terminated by Schwab prior to the start date of the alleged IA services rendered by him.

29. Between January 1, 2005, to April 30, 2011, Schmerman received at least $258,810 in advisory fees.

Client PB CS Trust Account

30. On or about December 21, 1997, an Arizona resident ("Client PB") opened a Charles Schwab Trust Brokerage Account ("CS Trust Acct") as the trustee of her bypass trust ("Bypass

Trust"). Client PB was the only trustee named on the CS Trust Acct application. The Bypass Trust was for Client PB's benefit.

31. Diversified Financial was listed as the Investment Manager ("IM") on the CS Trust Acct application. In addition, the CS Trust Acct application contained the following authorizations that Client PB initialed:

a) Trading Authorization, which authorized the IM to direct Schwab to execute trades in the account; and

b) Fee Payment Authorization, which authorized Schwab to pay management fees to the IM from the account as directed by the IM.

32. Beginning from at least January 2005, Schmerman billed Advisor fees on Client PB's CS Trust Acct. The Advisor fees were billed approximately semi-annually and deducted directly from the CS Trust Acct.

33. In or around July 5, 2005, Client PB executed a second amendment to the Bypass Trust. Pursuant to Provision 10.1, if Client PB was unable to act as Trustee, Schmerman, if able and willing, would serve as the sole Trustee for the Bypass Trust and the Survivor's Trust. Client PB's spouse had passed away in 1996.

34. Schmerman is not a listed beneficiary on Schedule F of the amended Bypass Trust dated July 5, 2005. Schmerman is not a related family member of Client PB.

35. Client PB was the signatory on a Bypass Trust bank account held at SunWest Federal Credit Union ("SFCU Acct").

36. On or about July 22, 2007, Client PB died.

37. Pursuant to Client PB's second amendment to the Bypass Trust, Schmerman became the trustee of the Bypass Trust and the Survivor's Trust.

38. On or about July 31, 2007, Schmerman, as trustee, executed a joint owner application for the SFCU Acct and became a joint account owner.

39. On or about August 10, 2007, a disbursement request of $50,000 was made on the SC Trust Acct. Upon information and belief, Schmerman made the disbursement request.

40. The $50,000 disbursement was deposited into the SFCU Acct, then was disbursed to a Wells Fargo Bank account # 1069 ("WF# 1069") owned by Schmerman.

41. On or about August 29, 2007, a disbursement request of $7,000 as made on the SC Trust Acct, thereby leaving a remaining balance of $310. Upon information and belief, Schmerman made the disbursement request.

42. The $7,000 disbursement was deposited into the SFCU Acct, then was disbursed to WF# 1069 owned by Schmerman.

43. Client PB's personal residence was titled in the name of the Bypass Trust.

44. On or about May 19, 2009, Schmerman, as trustee of the Bypass Trust executed a trust certification that named Schmerman as the beneficiary of the Bypass Trust.

45. On or about May 19, 2009, Schmerman sold Client PB's personal residence. The monies were deposited into the SFCU Acct, and then ultimately transferred into a Wells Fargo bank account upon which Schmerman is a signatory.

Client RG Trust

46. In or around August 1994, Schmerman was appointed a co-personal representative and/or co-trustee, in the last will and testament of the estate of Client RG ("RG Trust"). An attorney was also appointed as co-personal representative and/or co-trustee.

47. On October 9, 2001, Client RG died and her estate entered probate in Maricopa County. Schmerman was still a co-personal representative and/or co-trustee of the RG Trust.

48. Schmerman is not a related family member of Client RG. Schmerman was not named a direct beneficiary in Client RG's last will and testament or in the RG Trust.

49. During the course of the probate proceeding, after a September 1, 2004, status conference, counsel for the co-trustees informed the beneficiaries that there was significantly less money in the RG Trust than was contemplated by the original probate settlement agreement. In

response to a demand for an accounting, the co-trustees produced an accounting that showed disbursements in excess of receipts in the amount of $779,203.[3]

50. On or about January 26, 27, and 31, 2005, Schmerman received three client deposits of $70,000, $20,000, and $100,000, respectively, into WF# 1069.

51. On February 3, 2005, Schmerman obtained a cashier's check from the WF# 1069 account in the amount of $145,000, payable to the RG Trust.

52. On or about February 4, 2005, Schmerman received $375,000 from Client MD that was deposited into the WF# 1069.

53. Client MD noted the $375,000 payment to Schmerman as a loan. Client MD is not a relative of Schmerman.

54. Schmerman did not obtain prior written authorization from MSC to borrow money from Client MD.

55. On or about February 8, 2005, Schmerman received $128,000 from Client RR that was deposited into the WF# 1069.

56. Client RR provided the $128,000 to Schmerman as a personal loan. Client RR is not a relative of Schmerman.

57. Schmerman did not obtain prior written authorization from MSC to borrow money from Client RR.

58. On or about February 10, 2005, Schmerman obtained cashier checks from the WF# 1069 in the amount of $128,000 and $36,970, respectively, and payable to the RG Trust.

59. Pursuant to the June 24, 2005, dated "stipulation to approve settlement statement" in PB2002-002946, the current balance of the disbursements in excess of receipts was $469,000. In addition and pursuant to the stipulation, the co-trustees' were required to pay $790,000 (which represents $469,000 principal and $321,000 in damages) within thirty days of the Court's approval

[3] This information is derived from the June 24, 2005, dated "stipulation to approve settlement statement" in PB2002-002946.

of the settlement agreement. The stipulation to approve the settlement agreement regarding the RG Trust was filed in the Maricopa Superior Court on June 30, 2005.

60. On or about July 22, 2005, an Arizona resident ("Client BS"), submitted approximately $162,620 to Schmerman, which was deposited into the WF# 1069.

61. Client BS stated that Schmerman had handled his taxes and investments for approximately twenty years.

62. Client BS's $162,620 was to be invested by Schmerman for Client BS's benefit and was not a personal loan to Schmerman.

63. Unbeknownst to Client BS, Schmerman used the $162,620 to satisfy the settlement agreement reached regarding the RG Trust. Schmerman did not disclose to Client BS that his funds would be used to repay the RG Trust.

64. On or about July 27, 2005, Schmerman obtained a cashier check from the WF# 1069 in the amount of $469,000, and payable to the RG Trust.

Client GA Money Market Account

65. In or around May 2005, an Arizona resident ("Client GA") was seeking advice regarding securities and/or assistance in managing her money and was referred to Schmerman.

66. On or about May 4, 2005, Client GA engaged Schmerman to provide advice or assistance in managing her money and provided Schmerman a total of $175,000 to be invested.

67. Client GA, Client GA's daughter, and Schmerman discussed investing the $175,000 in stocks and other securities to be recommended by Schmerman if and when Schmerman determined the opportunity was right in the stock market. Until then, Client GA's monies would be placed into a money market account to earn interest.

68. Schmerman told Client GA and/or Client GA's daughter that a Charles Schwab Institutional Brokerage Account was established for Client GA in which her monies were placed.

69. Schmerman told Client GA and/or Client GA's daughter that the Schwab Institutional Brokerage Account would allow Schmerman to conduct investment transactions on behalf of Client A.

70. However, no Charles Schwab Institutional Brokerage Account in the name of Client GA was ever opened, established, or funded by Schmerman.

71. Client GA was never made aware that a Charles Schwab Institutional Brokerage account was not established in her name or that her monies were not placed with Charles Schwab as represented.

72. On or about May 4, 2005, Schmerman deposited the entire $175,000 into a business account in the name of Diversified Financial at Wells Fargo Bank ("DF Bank Account").

73. Schmerman was the sole authorized signatory on the DF Bank Account and accessed and controlled the account and the funds contained therein.

74. Client GA was never made aware that her money was deposited into a DF Bank Account owned and controlled by Schmerman.

75. In May 2005 and subsequent months, Schmerman made money transfers from the DF Bank Account to a personal bank account of Schmerman.

76. Client GA did not authorize in writing the transfer of her monies to the DF Bank Account or to Schmerman's personal account and Client GA is not a relative of Schmerman.

77. Client GA's monies in the DF Bank Account were withdrawn as cash and/or commingled by Schmerman.

78. On or around August 2006, Schmerman provided an account statement in the name of Client GA, which contained the following:

a) Richard M. Schmerman, CFP, ChFC, Licensed Investment Advisor; and

b) A column heading that read, "Institutional Money Market Account."

79. As noted above, Schmerman has never been a licensed IA with the state of Arizona and has not been a federally licensed IA since February 10, 1995.

80. On or about June 2008, a Charles Schwab Institutional Brokerage Account ("Schwab Account") was opened in the name of Client GA's daughter, who is also an Arizona resident ("Client EA"). Diversified Financial was listed as the IA on the Schwab Account application.

81. In addition, the Schwab Account application also stated that:

a) Client EA authorized Schwab to execute security trades in the account at the direction of the IA; and

b) Client EA authorized Schwab to pay IA and related IA fees from the account in the amount of IA's instructions.

82. Both above Schwab Account provisions were initialed by Client EA and the application was signed by Client EA.

83. The Schwab Account application also authorized Schmerman to access Client EA's account and execute discretionary security trades.

84. In or around August 2008, Client GA gifted the remaining value of her account, approximately $117,204, to Client EA.

85. Schmerman was contacted to help effectuate the gifting transaction.

86. On or about August 14, 2008, Schmerman acknowledged the gifting transaction and stated in writing that Client GA had gifted the amount from Client GA's Schwab Institutional Brokerage Account to Client EA's Schwab Account.

87. Schmerman represented that the $117,204 was deposited into Client EA's Schwab Account in which Schmerman had discretionary trading authority.

88. However, Schmerman never funded Client EA's Schwab Account as represented because no monies were ever placed in the account.

89. Between December 2005 and February 2006, Client EA requested various payments from Schmerman by specified dates. Client EA was unable to obtain the full payment amounts by the specified dates.

90. On or around February 26, 2010, Client EA contacted United Planners regarding her ongoing difficulties with Schmerman. Shortly thereafter, United Planners conducted an internal inquiry after it was made aware of Schmerman's failure to release Client EA's funds as requested.

91. On March 5, 2010, United Planners submitted a final payment to Client EA for the outstanding balance.

Client SR Money Market Account

92. On or around January 4, 2006, an Arizona resident ("Client SR") submitted approximately $373,390 to Schmerman to be invested.

93. Client SR stated to Schmerman that she did not want the money invested in the stock market. Schmerman represented that the money would be placed into a money market fund.

94. Client SR's $373,390 was deposited into the DF Bank Account.

95. Between January 6, 2006, through January 25, 2006, Schmerman conducted cash withdrawals, wire transfers to his personal account, and obtained cashiers checks payable to other Schmerman clients, in an amount of approximately $373,000.

General Allegations

96. Between January 1, 2005, to April 30, 2011, approximately $3,462,887 of client funds was deposited into Respondent's Wells Fargo bank accounts.

97. Between January 1, 2005, to April 30, 2011, approximately $1,272,940 was distributed or paid from Respondent's Wells Fargo bank accounts to clients.

98. On March 10, 2010, United Planners discharged Schmerman for violating company policy. United Planners stated that pursuant to its own investigation, it determined that Schmerman had commingled client assets with his own checking account.

99. Diversified Financial Planners, LLC ("DFP LLC") was organized in Arizona on May 11, 2010.

100. Schmerman is the sole member of DFP LLC.

101. On May 6, 2010, Schmerman, for and on behalf of DFP LLC, filed an application for licensure as an IA with the Commission.

102. On May 28, 2010, Schmerman filed an application for licensure as an IAR with the Commission.

103. Schmerman would be the sole IAR for DFP LLC.

104. On or about August 15, 2011, in FINRA case number 2010022046001, Schmerman executed a letter of acceptance, waiver, and consent ("FINRA Consent").

105. The FINRA Consent contained the following:

a) Schmerman failed to provide requested information and documents in violation of FINRA Rule 8210 and 2010;

b) Schmerman violated Rule 2110 and IM-1000-1 when he failed to disclose a 2007 federal tax lien on the form U-4 completed on May 13, 2008; and

c) Schmerman consented to the sanction of being barred from association with any FINRA member in any capacity, which became effective on the same day;

IV.

REMEDIES PURSUANT TO A.R.S. § 44-1962

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

106. Respondent's conduct is grounds to revoke Respondent's registration with the Commission as a securities salesman pursuant to A.R.S. § 44-1962. Specifically, Respondent has:

a) Engaged in dishonest or unethical practices in the securities industry, within the meaning of A.R.S. § 44-1962(A)(10), which includes but is not limited to:

(i) Borrowing of money by a salesman from a customer who is not a relative of the salesman, within the meaning of R14-4-130(A)(15); and

(ii) Making unauthorized use of funds of a customer or converting customer funds for personal benefit within the meaning of R14-4-130(A)(16).

b) Engaged in dishonest or unethical practices in business or financial matters within the meaning of A.R.S. § 44-1962(A)(12), which includes but is not limited to:

(i) When on or about May 19, 2009, Schmerman, as trustee of the Bypass Trust executed a trust certification that named Schmerman as the beneficiary of the Bypass Trust;

(ii) When on or about May 19, 2009, Schmerman sold Client PB's personal residence. The monies were ultimately transferred into a Wells Fargo bank account upon which Schmerman is the signatory; and

(iii) When Schmerman improperly used Client BS's $162,620 to satisfy the settlement agreement reached regarding the RG Trust.

107. Respondent's conduct is grounds to assess restitution, penalties, and/or take appropriate affirmative action pursuant to A.R.S. § 44-1962. Specifically, Respondent has:

a) Engaged in dishonest or unethical practices in the securities industry, within the meaning of A.R.S. § 44-1962(A)(10), which includes but is not limited to:

(i) Borrowing of money by a salesman from a customer who is not a relative of the salesman, within the meaning of R14-4-130(A)(15); and

(ii) Making unauthorized use of funds of a customer or converting customer funds for personal benefit within the meaning of R14-4-130(A)(16).

V.

REMEDIES PURSUANT TO A.R.S. § 44-3201

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

108. Respondent's conduct is grounds to revoke Respondent's license with the Commission as an investment adviser representative pursuant to A.R.S. §§ 44-3201 and 44-3202(D). Specifically, revocation of Respondent's license would be in the public interest, and Respondent violated Chapter 13 and a rule or order of the commission adopted or issued under Chapter 13 within the meaning of

A.R.S. § 44-3201(A)(3). Specifically, Respondent violated A.R.S. § 44-3241 when he represented that Client EA's funds were actually deposited into Client EA's Schwab Account in which he had discretionary trading authority; however, Respondent never funded Client EA's Schwab Account as represented because no monies were ever placed in the account.

109. Respondent's conduct is grounds to deny Respondent's license application with the Commission as an investment adviser representative pursuant to A.R.S. § 44-3201. Specifically, denial of Respondent's license application would be in the public interest, and Respondent:

a) Pursuant to the FINRA Consent, Schmerman is barred from association with any FINRA member in any capacity, and may be revoked pursuant to A.R.S. § 44-3201(A)(9).

b) Engaged in dishonest or unethical practices in the securities industry within the meaning of A.R.S. § 44-3201(A)(13). Specifically:

(i) Schmerman violated R14-6-203(6) when he borrowed money from a client or client's account that was not authorized in writing and the client was not a relative of Respondent; and

(ii) From at least September 1995, to 2011, Schmerman has misrepresented to certain clients, who reside in Arizona, that he is a "Registered Investment Advisor" or a "Licensed Investment Advisor," in violation of R14-6-203(8);

c) Engaged in dishonest or unethical practices in business or financial matters within the meaning of A.R.S. § 44-3201(A)(14). Specifically:

(i) On or about May 19, 2009, Schmerman, as trustee of the Bypass Trust executed a trust certification that named Schmerman as the beneficiary of the Bypass Trust;

(ii) When on or about May 19, 2009, Schmerman sold Client PB's personal residence. The monies were ultimately transferred into a Wells Fargo bank account upon which Schmerman is the signatory; and

(iii) When Schmerman improperly used Client BS's $162,620 to satisfy the settlement agreement reached regarding the RG Trust.

110. Respondent's conduct is grounds to assess restitution, penalties, and/or take appropriate affirmative action pursuant to A.R.S. § 44-3201. Specifically, Respondent has:

a) Engaged in dishonest or unethical practices in the securities industry within the meaning of A.R.S. § 44-3201(A)(13). Specifically:

(i) Schmerman violated R14-6-203(6) when he borrowed money from a client or client's account that was not authorized in writing and the client was not a relative of Respondent; and

(ii) From at least September 1995, to 2008, Schmerman has misrepresented to certain clients, who reside in Arizona, that he is a "Registered Investment Advisor" or a "Licensed Investment Advisor," in violation of R14-6-203(8).

VI.

VIOLATION OF A.R.S. § 44-3241

(Fraud in the Provision of Investment Advisory Services)

111. Respondent engaged in a transaction or transactions within or from Arizona involving the provision of investment advisory services in which Respondent, directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; (iii) misrepresented professional qualifications with the intent that the client rely on the misrepresentation; or (iv) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit. Respondent's conduct includes, but is not limited to, the following:

a) Representing to clients that he was a "Registered Investment Advisor" or a "Licensed Investment Advisor," when, in fact, he was not;

b) Submitting a statement and/or invoice to a client that requests a payment of approximately $12,445 for IA services rendered for the period of April 1, 2010, to June 30, 2011, regarding the client's Charles Schwab brokerage account; however, Schmerman's authorization and access was terminated by Schwab prior to the start date of the alleged IA services rendered by him;

c) Representing to multiple clients that their funds would be placed into a money market fund when in fact they were deposited into Schmerman's bank accounts;

d) Representing to Client GA and/or Client GA's daughter that a Charles Schwab Institutional Brokerage Account was established for Client GA in which her monies were placed; however, no Charles Schwab Institutional Brokerage Account in the name of Client GA was ever opened, established, or funded by Schmerman; and

e) Representing to Client EA her funds were actually deposited into Client EA's Schwab Account in which Schmerman had discretionary trading authority; however, Schmerman never funded Client EA's Schwab Account as represented because no monies were ever placed in the account.

112. This conduct violates A.R.S. § 44-3241.

VII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order Respondent to permanently cease and desist from violating the Securities Act and IM Act, pursuant to A.R.S. §§ 44-2032, 44-3292, 44-1962, and 44-3201;

2. Order Respondents to take affirmative action to correct the conditions resulting from Respondent's acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. §§ 44-2032, 44-1962, and 44-3201;

3. Order Respondent to pay the state of Arizona administrative penalties of up to five thousand dollars ($5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

4. Order Respondent to pay the state of Arizona administrative penalties of up to one thousand dollars ($1,000) for each violation of the IM Act, pursuant to A.R.S. § 44-3296;

5. Order Respondent to pay the state of Arizona administrative penalties, pursuant to A.R.S. § 44-1962 and 44-3201;

6. Order the revocation of Respondent's registration as a securities salesman pursuant to A.R.S. § 44-1962;

7. Order the revocation of Respondent's license as an investment adviser representative pursuant to A.R.S. § 44-3201;

8. Order the denial of Respondent's license application as an investment adviser representative pursuant to A.R.S. § 44-3201;

9. Order that the marital community of Respondent and Respondent Spouse be subject to any order of administrative penalties or other appropriate affirmative action pursuant to A.R.S. § 25-215; and

10. Order any other relief that the Commission deems appropriate.

VIII.

HEARING OPPORTUNITY

Each respondent, including Respondent Spouse, may request a hearing pursuant to A.R.S. § 44-1972, 44-3212, and A.A.C. R14-4-306. **If Respondent or Respondent Spouse requests a hearing, the requesting respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at http://www.azcc.gov/divisions/hearings/docket.asp.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the

parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation.

IX.

ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if Respondent or Respondent Spouse requests a hearing, the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at http://www.azcc.gov/divisions/hearings/docket.asp.

Additionally, the answering respondent must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007, addressed to Phong (Paul) Huynh.

The Answer shall contain an admission or denial of each allegation in this Notice and the original signature of the answering respondent or respondent's attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

When the answering respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify that part or qualification of the allegation and shall admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

The officer presiding over the hearing may grant relief from the requirement to file an Answer for good cause shown.

Dated this 20 day of December, 2011.

Matthew J. Neubert
Director of Securities