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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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

2012 JAN 21 P 4: 35

ARIZONA CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

JAN 27 2012

DOCKETED BY	<i>imn</i>
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In the matter of:

DOCKET NO. S-20757A-10-0373

Richard M. Schmerman, (CRD# 1302988)
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 TO
AMENDED NOTICE OF
OPPORTUNITY**

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 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 (the "Amended
Notice"). Respondents respond to the numbered paragraphs of the Notice as follows:

I.

JURISDICTION

1. Respondents admit the allegations in paragraph 1.

II.

RESPONDENT

2. Respondents admit the allegations in paragraph 2.
3. Respondents admit the allegations in paragraph 3.

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FACSIMILE 480-968-6255

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4. Respondents admit the allegations in paragraph 4.

5. Respondents deny the allegations in paragraph 5.

6. Respondents deny the allegations in paragraph 6.

7. Respondents admit the allegations in paragraph 7.

8. The allegations in paragraph 8 are an inaccurate, incomplete and misleading statement of the facts. Accordingly, Respondents deny each and every allegation in paragraph 8.

9. Respondents lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 9 and therefore deny the allegations.

10. Respondents lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 10 and therefore deny the allegations.

11. Respondents lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 11 and therefore deny the allegations.

12. Paragraph 12 does not require a response.

13. Respondents deny the allegations in paragraph 13.

14. Respondents admit the allegations in paragraph 14.

III.

FACTS

Investment Advisory Services

15. The allegations in paragraph 15 are an inaccurate, incomplete and misleading statement of the facts. Accordingly, Respondents deny each and every allegation in paragraph 15.

16. The allegations in paragraph 16 are an inaccurate, incomplete and misleading statement of the facts. Accordingly, Respondents deny each and every allegation in paragraph 16.

17. The allegations in paragraph 17 are an inaccurate, incomplete and misleading

1 statement of the facts. Accordingly, Respondents deny each and every allegation in paragraph 17.

2 18. The allegations in paragraph 18 are an inaccurate, incomplete and misleading
3 statement of the facts. Accordingly, Respondents deny each and every allegation in paragraph 18.

4 19. The Form ADV referred to in paragraph 19 speaks for itself and requires no answer.

5 20. Respondents deny the allegations in paragraph 20.

6 21. Respondents deny the allegations in paragraph 21.

7 22. Respondents deny the allegations in paragraph 22.

8 23. Respondents deny the allegations in paragraph 23.

9 24. Respondents deny the allegations in paragraph 24.

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

12 26. The allegations in paragraph 26 are an inaccurate, incomplete and misleading
13 statement of the facts. Accordingly, Respondents deny each and every allegation in paragraph 26.

14 27. The allegations in paragraph 27 contain an incomplete, inaccurate and misleading
15 statement of the facts and are therefore denied.

16 28. Respondents deny the allegations in paragraph 28.

17 29. Respondents deny the allegations in paragraph 29.

18 **Client PB CS Trust Account**

19 30. Paragraph 30 refers to an individual who is called "Client PB," 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 30 of the Amended Notice, and, therefore deny those allegations.
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1 31. The allegations in paragraph 31 contain an incomplete, inaccurate and misleading
2 statement of the facts and are therefore denied.

3 32. Paragraph 32 refers to an individual who is called "Client PB," 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 32 of the Amended Notice, and, therefore deny those allegations.

7 33. Paragraph 33 refers to an individual who is called "Client PB," 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 33 of the Amended Notice, and, therefore deny those allegations.

11 34. Paragraph 34 refers to an individual who is called "Client PB," 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 34 of the Amended Notice, and, therefore deny those allegations.

15 35. Paragraph 35 refers to an individual who is called "Client PB," 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 35 of the Amended Notice, and, therefore deny those allegations.

19 36. Paragraph 36 refers to an individual who is called "Client PB," 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 36 of the Amended Notice, and, therefore deny those allegations.

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37. Paragraph 37 refers to an individual who is called "Client PB," 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 37 of the Amended Notice, and, therefore deny those allegations.

38. The allegations in paragraph 38 contain an incomplete, inaccurate and misleading statement of the facts and are therefore denied.

39. Respondents lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 39 and therefore deny the allegations.

40. Respondents lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 40 and therefore deny the allegations.

41. Respondents lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 41 and therefore deny the allegations.

42. Respondents lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 42 and therefore deny the allegations.

43. Paragraph 43 refers to an individual who is called "Client PB," 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 43 of the Amended Notice, and, therefore deny those allegations.

44. The allegations in paragraph 44 contain an incomplete, inaccurate and misleading statement of the facts and are therefore denied.

45. Paragraph 45 refers to an individual who is called "Client PB," 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 45 of the Amended Notice, and, therefore deny those allegations.

3 **Client RG Trust**

4 46. Paragraph 46 refers to an individual who is called "Client RG," but fails to provide
5 a name or any other identifying information for that individual. Accordingly, Respondents are
6 without sufficient knowledge or information to admit or deny the allegations contained in
7 paragraph 46 of the Amended Notice, and, therefore deny those allegations.

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9 47. Paragraph 47 refers to an individual who is called "Client RG," but fails to provide
10 a 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 47 of the Amended Notice, and, therefore deny those allegations.

13 48. Paragraph 48 refers to an individual who is called "Client RG," but fails to provide
14 a 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 48 of the Amended Notice, and, therefore deny those allegations.

17
18 49. Paragraph 49 refers to an individual who is called "Client RG," but fails to provide
19 a name or any other identifying information for that individual. Accordingly, Respondents are
20 without sufficient knowledge or information to admit or deny the allegations contained in
21 paragraph 49 of the Amended Notice, and, therefore deny those allegations.

22 50. Respondents lack sufficient knowledge or information to form a belief as to the
23 truth or falsity of the allegations contained in paragraph 50 and therefore deny the allegations.

24 51. The allegations in paragraph 51 contain an incomplete, inaccurate and misleading
25 statement of the facts and are therefore denied.
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1 52. Paragraph 52 refers to an individual who is called "Client MD," but fails to provide
2 a 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 52 of the Amended Notice, and, therefore deny those allegations.

5 53. Paragraph 53 refers to an individual who is called "Client MD," but fails to provide
6 a 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 53 of the Amended Notice, and, therefore deny those allegations.

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10 54. Paragraph 54 refers to an individual who is called "Client MD," but fails to provide
11 a name or any other identifying information for that individual. Accordingly, Respondents are
12 without sufficient knowledge or information to admit or deny the allegations contained in
13 paragraph 54 of the Amended Notice, and, therefore deny those allegations.

14 55. Paragraph 55 refers to an individual who is called "Client RR," but fails to provide
15 a name or any other identifying information for that individual. Accordingly, Respondents are
16 without sufficient knowledge or information to admit or deny the allegations contained in
17 paragraph 55 of the Amended Notice, and, therefore deny those allegations.

18 56. Paragraph 56 refers to an individual who is called "Client RR," but fails to provide
19 a name or any other identifying information for that individual. Accordingly, Respondents are
20 without sufficient knowledge or information to admit or deny the allegations contained in
21 paragraph 56 of the Amended Notice, and, therefore deny those allegations.

22 57. Paragraph 57 refers to an individual who is called "Client RR," but fails to provide
23 a name or any other identifying information for that individual. Accordingly, Respondents are
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1 without sufficient knowledge or information to admit or deny the allegations contained in
2 paragraph 57 of the Amended Notice, and, therefore deny those allegations.

3 58. Respondents lack sufficient knowledge or information to form a belief as to the
4 truth or falsity of the allegations contained in paragraph 58 and therefore deny the allegations.

5 59. Respondents lack sufficient knowledge or information to form a belief as to the
6 truth or falsity of the allegations contained in paragraph 59 and therefore deny the allegations.

7 60. Paragraph 60 refers to an individual who is called "Client BS," 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 60 of the Amended Notice, and, therefore deny those allegations.

11 61. Paragraph 61 refers to an individual who is called "Client BS," 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 61 of the Amended Notice, and, therefore deny those allegations.

15 62. Paragraph 62 refers to an individual who is called "Client BS," 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 62 of the Amended Notice, and, therefore deny those allegations.

19 63. Paragraph 63 refers to an individual who is called "Client BS," 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 63 of the Amended Notice, and, therefore deny those allegations.

1 64. Respondents lack sufficient knowledge or information to form a belief as to the
2 truth or falsity of the allegations contained in paragraph 64 and therefore deny the allegations.

3 **Client GA Money Market Account**

4 65. Paragraph 65 refers to an individual who is called "Client GA," but fails to provide
5 a name or any other identifying information for that individual. Accordingly, Respondents are
6 without sufficient knowledge or information to admit or deny the allegations contained in
7 paragraph 65 of the Amended Notice, and, therefore deny those allegations.

8 66. Paragraph 66 refers to an individual who is called "Client GA," but fails to provide
9 a name or any other identifying information for that individual. Accordingly, Respondents are
10 without sufficient knowledge or information to admit or deny the allegations contained in
11 paragraph 66 of the Amended Notice, and, therefore deny those allegations.

12 67. Paragraph 67 refers to an individual who is called "Client GA" and "Client GA's
13 daughter," but fails to provide a name or any other identifying information for that individual.
14 Accordingly, Respondents are without sufficient knowledge or information to admit or deny the
15 allegations contained in paragraph 67 of the Amended Notice, and, therefore deny those
16 allegations.

17 68. Paragraph 68 refers to an individual who is called "Client GA" and "Client GA's
18 daughter," but fails to provide a name or any other identifying information for that individual.
19 Accordingly, Respondents are without sufficient knowledge or information to admit or deny the
20 allegations contained in paragraph 68 of the Amended Notice, and, therefore deny those
21 allegations.

22 69. Paragraph 69 refers to an individual who is called "Client GA" and "Client GA's
23 daughter," but fails to provide a name or any other identifying information for that individual.
24

1 Accordingly, Respondents are without sufficient knowledge or information to admit or deny the
2 allegations contained in paragraph 69 of the Amended Notice, and, therefore deny those
3 allegations.

4 70. Paragraph 70 refers to an individual who is called "Client GA" and "Client GA's
5 daughter," but fails to provide a name or any other identifying information for that individual.
6 Accordingly, Respondents are without sufficient knowledge or information to admit or deny the
7 allegations contained in paragraph 70 of the Amended Notice, and, therefore deny those
8 allegations.

9
10 71. Paragraph 71 refers to an individual who is called "Client GA" and "Client GA's
11 daughter," but fails to provide a name or any other identifying information for that individual.
12 Accordingly, Respondents are without sufficient knowledge or information to admit or deny the
13 allegations contained in paragraph 71 of the Amended Notice, and, therefore deny those
14 allegations.

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16 72. The allegations in paragraph 72 are an inaccurate, incomplete and misleading
17 statement of the facts. Accordingly, Respondents deny each and every allegation in paragraph 72.

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19 73. The allegations in paragraph 73 are an inaccurate, incomplete and misleading
20 statement of the facts. Accordingly, Respondents deny each and every allegation in paragraph 73.

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22 74. Paragraph 74 refers to an individual who is called "Client GA" and "Client GA's
23 daughter," but fails to provide a name or any other identifying information for that individual.
24 Accordingly, Respondents are without sufficient knowledge or information to admit or deny the
25 allegations contained in paragraph 74 of the Amended Notice, and, therefore deny those
26 allegations.
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75. Respondents lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 75 and therefore deny the allegations.

76. Paragraph 76 refers to an individual who is called "Client GA" and "Client GA's daughter," 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 76 of the Amended Notice, and, therefore deny those allegations.

77. Paragraph 77 refers to an individual who is called "Client GA" and "Client GA's daughter," 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 77 of the Amended Notice, and, therefore deny those allegations.

78. Paragraph 78 refers to individuals who are called "Client GA" and "Client GA's daughter," but fails to provide names 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 78 of the Amended Notice, and, therefore deny those allegations.

79. The allegations in paragraph 79 are an inaccurate, incomplete and misleading statement of the facts. Accordingly, Respondents deny each and every allegation in paragraph 79.

80. Paragraph 80 refers to an individual who is called "Client EA," 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 80 of the Amended Notice, and, therefore deny those allegations.

1 81. Paragraph 81 refers to an individual who is called "Client EA," but fails to provide
2 a 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 81 of the Amended Notice, and, therefore deny those allegations.

5 82. Paragraph 82 refers to an individual who is called "Client EA," but fails to provide
6 a 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 82 of the Amended Notice, and, therefore deny those allegations.

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10 83. Paragraph 83 refers to an individual who is called "Client EA," but fails to provide
11 a name or any other identifying information for that individual. Accordingly, Respondents are
12 without sufficient knowledge or information to admit or deny the allegations contained in
13 paragraph 83 of the Amended Notice, and, therefore deny those allegations.

14 84. Paragraph 84 refers to individuals who are called "Client GA" and Client EA," but
15 fails to provide names or any other identifying information for those individuals. Accordingly,
16 Respondents are without sufficient knowledge or information to admit or deny the allegations
17 contained in paragraph 84 of the Amended Notice, and, therefore deny those allegations.
18

19 85. Respondents lack sufficient knowledge or information to form a belief as to the
20 truth or falsity of the allegations contained in paragraph 85 and therefore deny the allegations.

21 86. Paragraph 86 refers to individuals who are called "Client GA" and Client EA," but
22 fails to provide names or any other identifying information for those individuals. Accordingly,
23 Respondents are without sufficient knowledge or information to admit or deny the allegations
24 contained in paragraph 86 of the Amended Notice, and, therefore deny those allegations.
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1 87. Paragraph 87 refers to an individual who is called "Client EA," but fails to provide
2 a 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 87 of the Amended Notice, and, therefore deny those allegations.

5 88. Paragraph 88 refers to an individual who is called "Client EA," but fails to provide
6 a 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 88 of the Amended Notice, and, therefore deny those allegations.

9 89. Paragraph 89 refers to an individual who is called "Client EA," but fails to provide
10 a 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 89 of the Amended Notice, and, therefore deny those allegations.

13 90. Paragraph 90 refers to an individual who is called "Client EA," but fails to provide
14 a 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 90 of the Amended Notice, and, therefore deny those allegations.

17 91. Paragraph 91 refers to an individual who is called "Client EA," but fails to provide
18 a 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 91 of the Amended Notice, and, therefore deny those allegations.

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23 **Client SR Money Market Account**

24 92. Paragraph 92 refers to an individual who is called "Client SR," but fails to provide a
25 name or any other identifying information for that individual. Accordingly, Respondents are
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1 without sufficient knowledge or information to admit or deny the allegations contained in
2 paragraph 92 of the Amended Notice, and, therefore deny those allegations.

3 93. Paragraph 93 refers to an individual who is called "Client SR," 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 93 of the Amended Notice, and, therefore deny those allegations.

7 94. Paragraph 94 refers to an individual who is called "Client SR," 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 94 of the Amended Notice, and, therefore deny those allegations.

11 95. Respondents lack sufficient knowledge or information to form a belief as to the
12 truth or falsity of the allegations contained in paragraph 95 and therefore deny the allegations.

13 **General Allegations**

14 96. The allegations in paragraph 96 are an inaccurate, incomplete and misleading
15 statement of the facts. Accordingly, Respondents deny each and every allegation in paragraph 96.
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17 97. The allegations in paragraph 97 are an inaccurate, incomplete and misleading
18 statement of the facts. Accordingly, Respondents deny each and every allegation in paragraph 97.
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20 98. The allegations in paragraph 98 are an inaccurate, incomplete and misleading
21 statement of the facts. Accordingly, Respondents deny each and every allegation in paragraph 98.
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23 99. Respondents admit the allegations in paragraph 99.

24 100. Respondents admit the allegations in paragraph 100.
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101. The allegations in paragraph 101 are an inaccurate, incomplete and misleading statement of the facts. Accordingly, Respondents deny each and every allegation in paragraph 101.

- 102. Respondents deny the allegations in paragraph 102.
- 103. Respondents deny the allegations in paragraph 103.
- 104. The Consent speaks for itself and requires no answer.
- 105. The Consent speaks for itself and requires no answer.

IV.

REMEDIES PURSUANT TO A.R.S. § 44-1962

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

- 106. Respondents deny the allegations in paragraph 106.
- 107. Respondents deny the allegations in paragraph 107.

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. Respondents deny the allegations in paragraph 108.
- 109. Respondents deny the allegations in paragraph 109.
- 110. Respondents deny the allegations in paragraph 110.

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VI.

VIOLATION OF A.R.S. § 44-3241

(Fraud in the Provision of Investment Advisory Services)

- 111. Respondents deny the allegations in paragraph 111.
- 112. Respondents deny the allegations in paragraph 112.
- 113. 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 BS, PB, GA, EA, and SR referred to in the Amended Notice were not clients of Mr. Schmerman or any relevant brokerage firm or investment advisor.

Second Affirmative Defense

Neither Respondent Mr. Schmerman 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 Mr. Schmerman did not borrow money from any client.

Fourth Affirmative Defense

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

Fifth Affirmative Defense

Respondent Mr. Schmerman did not convert any client funds.

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Sixth Affirmative Defense

The alleged Clients BS, PB, GA, EA, and SR approved and/or authorized and/or ratified and/or directed all of the transactions at issue.

Seventh Affirmative Defense

Respondent Mr. Schmerman never misrepresented his credentials.

Eighth Affirmative Defense

Upon completion of its inquiry, United Planners, Respondent's former brokerage firm, concluded that Mr. Schmerman's account of the relevant facts was entirely consistent with what the alleged client had said.

Ninth Affirmative Defense

Respondent Mr. Schmerman never collected fees in connection with the funds at issue.

Tenth Affirmative Defense

The Amended Notice fails to state a claim upon which relief can be granted.

Eleventh Affirmative Defense

Respondent Mr. Schmerman did not act with the requisite scienter.

Twelfth Affirmative Defense

The alleged clients at issue suffered no injuries or damages as a result of Respondents alleged acts.

Thirteenth Affirmative Defense

This proceeding before the Arizona Corporation Commission denies Respondents essential due process and is lacking in fundamental fairness. Respondents' constitutional rights will be further denied if they are not afforded trial by jury of this matter.

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Fourteenth Affirmative Defense

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

Fifteenth Affirmative Defense

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

7 RESPECTFULLY SUBMITTED this 21st day of January, 2012.

8
9 BADE & BASKIN PLC

10
11 By 
12 Alan S. Baskin
13 80 East Rio Salado Parkway, Suite 511
14 Tempe, Arizona 85281
15 Attorneys for Respondents

16 ORIGINAL and thirteen copies of the foregoing
17 filed this 21st day of January, 2012 with:

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

21 COPY of the foregoing hand-delivered
22 this 21st day of January, 2012 to:

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

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COPY of the foregoing mailed
this 21st day of January, 2012 to:

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



schmerman.acc/pld/answer amd nt.doc