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REGISTRATION & DISCLOSURE

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,
COMPLAINANT,

v.

LANCE SCIDA (CRD NO. 4634133)

and

DENNIS BAILEY (CRD NO. 3060060),

RESPONDENTS.

**Disciplinary Proceeding
No. 2006005546007**

Hearing Officer _____

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From June 2004 through April 2006 (the "relevant period"), Lance Scida made unsuitable recommendations to three customers and Dennis Bailey made unsuitable recommendations to five customers that they open accounts with SAMCO Financial Services, Inc. for purposes of buying and selling Collateralized Mortgage Obligation ("CMO") securities. These recommendations were not suitable investments for the customers in light of their investment objectives, risk tolerance, and investment experience. Based upon the financial situations and needs of their customers, Scida and Bailey did not have reasonable grounds to believe that their recommendations to these

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customers to invest in CMOs were suitable. In addition, in making recommendations to customers to invest in CMOs, Scida and Bailey made misrepresentations and omitted material facts in connection with the CMO investments. Scida's three customers lost approximately \$138,000 and Bailey's five customers lost approximately \$745,000 by investing in the unsuitable CMOs. Based upon the foregoing conduct, Scida and Bailey violated NASD Conduct Rules 2310, 2120, and 2110 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder.

2. Scida and Bailey each knew at the time they recommended that these customers open non-discretionary accounts for the purpose of investing in CMOs that JLS, the head of the SAMCO Boca Raton office, would exercise discretion and make all trading decisions for their customers' accounts. Neither Scida nor Bailey obtained written authorization signed by any of their clients and a Firm principal, in order to authorize JLS or anyone at SAMCO to exercise discretion in any of their customers' accounts. Scida and Bailey were aware that their clients had non-discretionary accounts and that they needed to get authorization from them before each and every trade. Scida and Bailey, nonetheless, each delegated the authority to JLS to (a) select particular CMO investments for his customers; (b) decide how much of the security his customers would buy and when; and (c) decide how much margin borrowing would be utilized to purchase CMOs. By allowing JLS to control all of the trading in their customers' accounts in this manner, Scida's and Bailey's customers were not always contacted for trade authorization prior to trades being executed in their accounts. Scida and Bailey thus exercised discretion in these non-discretionary accounts by permitting JLS to make all trading decisions on

behalf of their customers. Based upon the foregoing conduct, Scida and Bailey violated NASD Conduct Rules 2510(b) and 2110.

RESPONDENTS AND JURISDICTION

3. Respondent Lance Scida (CRD No. 4634133) ("Scida") first became registered with FINRA (f/k/a National Association of Securities Dealers, Inc. or NASD) as a General Securities Representative in 2003. From June 14, 2004 through March 17, 2006, Scida was registered with SAMCO Financial Services, Inc. ("SAMCO" or "Firm") as a General Securities Representative and General Securities Principal. After his registration with SAMCO was terminated, Scida became registered as a General Securities Representative at three other member firms between March 21, 2006 and May 5, 2008. Scida has not been registered with any member firm since his termination from a member firm on May 5, 2008. Accordingly, pursuant to Article V, § 4(a) of the By-Laws, Scida is subject to FINRA's jurisdiction since the conduct which serves as the basis for this action commenced prior to his termination of registration from a member firm and this complaint has been filed within two years after the effective date of the termination of Scida's registration.

4. Respondent Dennis Bailey (CRD No. 3060060) ("Bailey") first became registered with FINRA as a General Securities Representative in 2000. From July 19, 2004, through March 31, 2006, Bailey was registered as a General Securities Representative with SAMCO. After his registration with SAMCO was terminated, Bailey was registered as a General Securities Representative with two other member firms between March 31, 2006 and November 21, 2007. Bailey has not been registered with any member firm since his termination from a member firm on November 21, 2007.

FINRA retains jurisdiction over Bailey pursuant to Article V, § 4(a) of the By-Laws since the conduct which serves as the basis for this action commenced prior to his termination of registration from a member firm and this Complaint is filed within two years after the effective date of his termination of registration from a member firm.

FACTS COMMON TO ALL COUNTS

Inverse Floating Rate CMOs

5. A CMO is a security that pools together mortgages and issues shares, called tranches, with various characteristics and risks. The underlying mortgages serve as the collateral for the CMO and provide principal and interest payments, which are directed to the various tranches and paid to shareholders. While CMOs have stated final maturity dates at which all principal must be returned, they can make principal payments throughout the life of the security. In addition, the timing on these payments may vary significantly depending on interest rate changes.

6. One of the most volatile and risky CMO tranches is the inverse floater CMO ("inverse floater"). An inverse floater is a type of tranche that pays an adjustable rate of interest that moves in the opposite direction from movements of an interest rate index, such as the London Interbank Offered Rate ("LIBOR"). Inverse floaters are thinly traded securities which trade in the over-the-counter market. FINRA informed members as early as 1993 that inverse floaters, "are only suitable for sophisticated investors with a high-risk profile."

7. Inverse floaters typically are highly leveraged and vulnerable to a high degree of price volatility as interest rates move. An increase in the interest rate index decreases the interest rate of an inverse floater and subsequently, the interest earned by

the inverse floater holder. Rising interest rates also generally reduce the prepayment speeds of inverse floaters because home owners are less likely to refinance their mortgages. Although most mortgages include at least a partial repayment of principal with each payment, refinancing results in large principal payments before the expiration of the loan. A slow down in home refinancing may result in a decrease in principal payments to the inverse floater owner. The smaller repayment of principal extends the maturity date and keeps the owner's investment tied up in the inverse floater, potentially for as much as 30 years. In addition, an increase in the index reflects an increase in prevailing interest rates, which further decreases the value of the inverse floater. Should the inverse floater owner need to sell the security on the open market, the trading price could be significantly lower than the original purchase price. Furthermore, inverse floaters generally are traded for institutional clients. Therefore, trades of smaller denominations can be difficult to execute without being subjected to lower than market pricing.

8. Due to the fact that each inverse floater tranche is uniquely structured and thinly traded, prices used for valuation purposes are determined using theoretical pricing models. These prices are strictly best estimates of value and can vary substantially from prices obtained through actual bidding or market offerings. Consequently, the risk of inverse floaters can be exacerbated by the use of margin borrowing given that the value of the underlying asset is difficult to ascertain until it is actually offered for sale on the market.

9. The CMOs sold to Scida's and Bailey's customers were issued by the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan

Mortgage Corp. ("Freddie Mac"), or the Government National Mortgage Association ("Ginnie Mae").

SAMCO's Boca Raton Office

10. SAMCO, a broker-dealer registered with FINRA from March 1992 to December 2006, was incorporated in Arizona and had its principal office in Phoenix. During the relevant period, SAMCO had a branch office in Boca Raton, Florida (the "Boca Branch"). The head of the Boca Branch was registered representative and trader, JLS.

11. JLS's business consisted entirely of investing in highly complex and volatile CMOs ("JLS's CMO program"). JLS's business focused almost exclusively on trading inverse floaters. All of the registered representatives in the Boca Branch solicited customers to open accounts at SAMCO for purposes of investing in JLS's CMO program. After customers opened accounts, all of the CMO investments were managed by JLS, who selected the specific inverse floaters for the customers. JLS employed a trading strategy in which he bought and sold the same inverse floater for many, if not all, of the Boca Branch's retail customers at the same time. JLS also decided whether to utilize margin borrowing to fund additional CMO purchases for the Boca Branch's retail customers, how much margin to utilize, and how often. No other business was conducted through the Boca Branch.

12. Scida worked out of the Boca Branch.

13. Bailey conducted business from his home in Bel Aire, Kansas, and his transactions were executed through the Boca Branch.

14. Scida and Bailey were two of eight registered representatives who solicited customers to open accounts at SAMCO for purposes of investing in JLS's CMO program. Scida and Bailey knew at the time they recommended to their customers to open accounts that JLS would be managing the accounts once opened.

15. Scida prospected for potential retail CMO investors by attending networking meetings and through word of mouth referrals. During Scida's prospecting calls and in-person meetings with potential CMO investors, Scida presented the features of the CMO investment, discussed the basic characteristics of the investment, and provided certain written materials to potential customers. During the course of these presentations, Scida recommended that customers open accounts with SAMCO to invest in JLS's CMO program.

16. Bailey prospected for potential retail CMO investors by explaining JLS's CMO program and trading strategy. During Bailey's prospecting meetings with potential customers, he explained the CMO investment and its characteristics, and provided certain written materials to potential customers. During the course of these meetings, Bailey recommended that customers open accounts with SAMCO to invest in JLS's CMO program.

17. Scida and Bailey each represented to customers that JLS's CMO program would result in substantial returns with virtually no risk. Scida and Bailey each promoted JLS's knowledge and experience with CMOs, as well as JLS's previous investment returns, as the basis for their recommendations to customers to open accounts at SAMCO.

18. At the time that Scida and Bailey recommended that a customer invest in JLS's CMO program, they were required, pursuant to NASD Conduct Rule 2310, to have reasonable grounds, based upon the customer's investment objectives, financial situation, and needs, for believing that their recommendation was suitable for that customer. They failed to do so. Instead, they each made recommendations to customers irrespective of their customers' investment objectives, financial situation, and needs.

19. Based upon the recommendations by Scida and Bailey, customers opened accounts at SAMCO with the intention of investing in inverse floater CMOs. Scida's and Bailey's customers opened their SAMCO accounts with initial cash deposits to be used to purchase inverse floater CMOs. The particular CMO investments were determined at a date subsequent to the account opening. That decision was made entirely by JLS, who controlled all of the trading of inverse floaters in Scida's and Bailey's customers' accounts.

20. In addition to the initial cash deposits made by Scida's and Bailey's customers, margin was used to purchase inverse floaters for their retail customers' accounts at SAMCO, thereby dramatically increasing the risks associated with investing in these complex and volatile securities. At the time of their recommendations, Scida and Bailey understood that JLS would utilize margin borrowings to fund the investments for their customers.

21. Scida and Bailey delegated the authority to JLS to select the particular inverse floaters for their customers, to determine how much margin would be utilized in their customers' accounts, and to decide when their customers bought and sold. Neither Scida nor Bailey obtained written authorization signed by any of their clients and a Firm

principal in order to authorize JLS or anyone at SAMCO to exercise discretion in any of their customers' accounts.

FIRST CAUSE OF ACTION

UNSUITABLE RECOMMENDATIONS BY RESPONDENT SCIDA (NASD Conduct Rules 2310 and 2110)

22. The Department realleges and incorporates by reference paragraphs 1 through 21 above.

Customers ED & AD

23. In June 2005, Scida met with customers ED and AD and recommended that they open an account at SAMCO for the purpose of investing in JLS's CMO program.

24. At the time that Scida made the recommendation, he did not have reasonable grounds to believe that recommending that ED and AD open an account at SAMCO for the purpose of investing in JLS's CMO program was suitable for ED and AD, based upon ED and AD's investment experience, financial status, and investment objectives. Specifically, inverse floaters were not suitable investments for ED and AD, who had limited investment experience, insufficient financial resources to warrant margin use, and the expectation that their investment was short-term.

25. In June 2005, based on Scida's recommendation, ED and AD opened an account at SAMCO with an initial deposit of \$65,000, for the purpose of investing in JLS's CMO program. ED and AD's entire initial deposit was invested in CMOs, primarily inverse floater CMOs. In addition, margin borrowing was used in ED and AD's account to further fund their CMO investments.

26. Between June 2005 and June 2006, ED and AD suffered losses of approximately \$48,000 investing in JLS's CMO program.

Customer LJ

27. In January 2005, Scida spoke with customer LJ and recommended that she open an account at SAMCO for the purpose of investing in JLS's CMO program.

28. At the time that Scida made the recommendation, he did not have reasonable grounds to believe that recommending that LJ open an account at SAMCO for the purpose of investing in JLS's CMO program was suitable for LJ, based upon LJ's investment experience, financial status, and investment objectives. Specifically, inverse floaters were not suitable investments for LJ, who had no prior investment experience and the conservative investment objective of obtaining additional income to supplement her living expenses.

29. In January 2005, based on Scida's recommendation, LJ opened an account at SAMCO with an initial deposit of \$180,000, for the purpose of investing in JLS's CMO program. LJ's entire initial deposit was invested in CMOs, primarily inverse floater CMOs. In addition, margin borrowing was used in LJ's account to further fund her CMO investments.

30. Between January 2005 and August 2006, LJ suffered losses of approximately \$90,500 investing in JLS's CMO program.

31. By reason of the foregoing unsuitable recommendations to customers ED and AD and to customer LJ, Scida violated NASD Conduct Rules 2310 and 2110.

SECOND CAUSE OF ACTION

MISREPRESENTATIONS AND OMISSIONS BY RESPONDENT SCIDA

(Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 Promulgated Thereunder and NASD Conduct Rules 2120 and 2110)

32. The Department realleges and incorporates by reference paragraphs 1 through 31 above.

33. In connection with Scida's recommendations that customers open accounts to invest in JLS's CMO program, Scida made material misrepresentations and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. Scida acted recklessly in making these misrepresentations and omissions of material facts.

34. In making his recommendation to ED and AD to open the account and invest in JLS's CMO program, Scida made the following misrepresentations of material facts:

- a. that the inverse floater investment was virtually risk-free;
- b. that the risks of investing in inverse floaters was minimal because the investment would be short-term, lasting between 6 and 18 months;
- c. that bond prices for CMO investments never move more than a few points and because the investment was short term, there were no real risks;
- d. that because ED and AD's holdings were short term, and the securities always mature at a price of \$100, their holdings could always be sold at a price close to \$100.

- e. that the use of margin was like a "bonus" or "perk" allowing ED and AD to invest with other people's money and earn more than it costs to borrow; and
- f. that the prices listed on ED and AD's monthly account statements were not important because their holdings would always mature at a price of \$100.

35. In making his recommendation to ED and AD that they open an account at SAMCO to invest in JLS's CMO program, Scida omitted the following material information:

- a. the risks associated with inverse floaters;
- b. the risks associated with utilizing margin to fund the purchase of inverse floaters which are volatile, illiquid, highly leveraged products; and
- c. when he told ED and AD that their principal was guaranteed because these investments always mature at a price of \$100, he failed to adequately disclose to ED and AD that (i) this principal guarantee only applied if they held the inverse floater positions until maturity, and (ii) that rising interest rates could extend the expected maturity date of the inverse floaters purchased by ED and AD.

36. Based upon the recommendations by Scida, ED and AD opened an account at SAMCO to invest in JLS's CMO program.

37. In making his recommendation to LJ to open the account and invest in JLS's CMO program, Scida made the material misrepresentation that her investments would be in short term securities, with maturities between 3 and 12 months.

38. In making his recommendation to LJ that she open an account at SAMCO to invest in JLS's CMO program, Scida told LJ that the payments she would receive from her investment were guaranteed without adequately disclosing to LJ the following material information:

- a. this principal guarantee only applied if she held the inverse floater positions until maturity; and
- b. that rising interest rates could extend the expected maturity date of the inverse floaters purchased by LJ.

39. Based upon Scida's recommendations, Customer LJ opened an account at SAMCO to invest in JLS's CMO program.

40. By reason of the foregoing, Scida violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, and NASD Conduct Rules 2120 and 2110.

THIRD CAUSE OF ACTION

UNSUITABLE RECOMMENDATIONS BY RESPONDENT BAILEY (NASD Conduct Rules 2310 and 2110)

41. The Department realleges and incorporates by reference paragraphs 1 through 21 above.

Customer AC

42. In August 2004, Bailey spoke with customer AC and recommended that she open an account for the purpose of investing in JLS's CMO program.

43. At the time that Bailey made the recommendation, he did not have reasonable grounds to believe that recommending that AC open an account at SAMCO for the purpose of investing in JLS's CMO program was suitable for AC, based upon AC's investment experience, financial status, and investment objectives. Specifically, inverse floaters were not suitable investments for AC, whose investment objective was to avoid risk, and whose initial deposit represented a significant portion of her liquid net worth.

44. In August 2004, based on Bailey's recommendation, AC opened an account at SAMCO with an initial deposit of \$142,000, for the purpose of investing in JLS's CMO program. AC's entire initial deposit was invested in CMOs, primarily inverse floater CMOs. In addition, margin borrowing was used in AC's account to further fund her CMO investments.

45. Between August 2004 and June 2006, AC suffered losses of approximately \$132,000 investing in JLS's CMO program.

Customers AS and MS

46. In February 2005, Bailey spoke with customers AS and MS and recommended that they open an account at SAMCO for the purpose of investing in JLS's CMO program. Bailey also recommended that AS and MS liquidate a variable annuity contract in order to invest in JLS's CMO program.

47. At the time that Bailey made the recommendation, he did not have reasonable grounds to believe that recommending that AS and MS open an account at SAMCO for the purpose of investing in JLS's CMO program was suitable for AS and MS, based upon AS and MS's investment experience, financial status, and investment objectives. Specifically, inverse floaters were not suitable investments for AS and MS, who had conservative investment objectives and whose total investment exceeded their actual liquid net worth.

48. In February 2005, based on Bailey's recommendation, AS and MS opened an account at SAMCO with an initial deposit of \$100,000, for the purpose of investing in JLS's CMO program. AS and MS's entire initial deposit was invested in CMOs, primarily inverse floater CMOs. In addition, margin borrowing was used in AS and MS's account to further fund their CMO investments. In August 2005, AS and MS deposited an additional \$50,000 into their SAMCO account to invest in CMOs.

49. Between February 2005 and March 2006, AS and MS suffered losses of approximately \$70,000 investing in JLS's CMO program.

Customers DP and AP

50. In September 2004, Bailey spoke with DP and AP and recommended that they open an account at SAMCO for the purpose of investing in JLS's CMO program.

51. At the time of the recommendation, Bailey did not have reasonable grounds to believe that recommending that DP and AP open an account at SAMCO for the purpose of investing in JLS's CMO program was suitable for DP and AP, based upon DP and AP's investment experience. Specifically, inverse floaters were not suitable investments for DP and AP who had limited investment experience. DP and AP did not

possess the necessary level of sophistication to make inverse floaters a suitable investment for them.

52. In September 2004, based upon Bailey's recommendation, DP and AP opened an account at SAMCO with an initial deposit of \$25,000, for the purpose of investing in JLS's CMO program. DP and AP's entire initial deposit was invested in CMOs, primarily inverse floater CMOs. In addition, margin borrowing was used in DP and AP's account to further fund their CMO investments. Between November 2004 and August 2005, DP and AP deposited an additional \$775,000 into their SAMCO account, which also was invested in CMOs.

53. Between September 2004 and March 2006, DP and AP suffered losses of approximately \$543,000 investing in JLS's CMO program.

54. By reason of the foregoing unsuitable recommendations to customer AC, customers AS and MS, and customers DP and AP, Bailey violated NASD Conduct Rules 2310 and 2110.

FOURTH CAUSE OF ACTION

MISREPRESENTATIONS AND OMISSIONS BY RESPONDENT BAILEY

**(Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 Promulgated
Thereunder and NASD Conduct Rules 2120 and 2110)**

55. The Department realleges and incorporates by reference paragraphs 1 through 21 and 42 through 54 above.

56. In connection with Bailey's recommendations that customers open accounts to invest in JLS's CMO program, Bailey made material misrepresentations and omitted material facts necessary in order to make the statements made, in light of the

circumstances under which they were made, not misleading. Bailey acted recklessly in making these misrepresentations and omissions of material facts.

57. Customer AC opened an account at SAMCO in August 2004 based upon Bailey's recommendation. In making his recommendation to AC to open the account and invest in JLS's CMO program, Bailey made the material misrepresentation that the inverse floater investment was virtually risk-free.

58. In making his recommendation to AC to open the account to invest in JLS's CMO program, Bailey told AC that her principal was guaranteed without adequately disclosing to AC the following material information:

- a. that this principal guarantee only applied if she held the inverse floater positions until maturity; and
- b. that rising interest rates could extend the expected maturity date of the inverse floaters purchased by AC.

59. Customers AS and MS opened an account at SAMCO in February 2005 based upon Bailey's recommendation. In making his recommendation to AS and MS that they open an account at SAMCO to invest in JLS's CMO program, Bailey omitted the following material information:

- a. the risks associated with inverse floaters; and
- b. the risks associated with utilizing margin to fund the purchase of inverse floaters, which are volatile, illiquid, highly leveraged products.

60. Customers DP and AP opened an account at SAMCO in September 2004 based upon Bailey's recommendation. In making his recommendation to DP and AP to

open the account and invest in JLS's CMO program, Bailey told DP and AP that their principal was guaranteed without adequately disclosing to them the following material information:

- a. that this principal guarantee only applied if they held the inverse floater positions until maturity; and
- b. that rising interest rates could extend the expected maturity date of the inverse floaters purchased by DP and AP.

61. By reason of the foregoing, Bailey violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, and NASD Conduct Rules 2120 and 2110.

FIFTH CAUSE OF ACTION

EXERCISING DISCRETION IN NON-DISCRETIONARY ACCOUNTS RESPONDENTS SCIDA AND BAILEY (NASD Conduct Rules 2510(b) and 2110)

62. The Department realleges and incorporates by reference paragraphs 1 through 21 above.

63. During the review period, Scida and Bailey opened 28 and 75 customer accounts, respectively. None of the accounts opened by Scida's and Bailey's customers were discretionary accounts.

64. When Scida and Bailey recommended to their customers that they open accounts to invest in JLS's CMO program, they did so with the understanding and intention that JLS would exercise such discretion over their customer accounts. Yet, neither Scida nor Bailey obtained written authorization signed by any of their clients and

a Firm principal, in order to authorize JLS or anyone at SAMCO to exercise discretion in any of their customers' accounts.

65. Scida and Bailey, nonetheless, exercised discretionary power in non-discretionary accounts by delegating to JLS the power to (a) select particular CMO investments for their customers; (b) decide how much of the security their customers would buy and when; and (c) decide how much margin borrowing would be utilized to purchase CMOs.

66. Due to Scida's and Bailey's relinquishment of control over all trading done in their customers' accounts, their customers were not always contacted by Scida, Bailey, or anyone else at SAMCO for trade authorization prior to trades being executed in their accounts.

67. Nine trades were executed for Scida customer LJ between February 2005 and March 2006. LJ was not contacted by Scida or anyone else from SAMCO seeking authorization for those trades prior to execution.

68. Seven trades were executed for Bailey customer AC between September 2004 and April 2006. AC was not contacted by Bailey or anyone else from SAMCO seeking authorization for these trades prior to execution.

69. Four trades were executed for Bailey customers AS and MS between March 2005 and April 2006. AS and MS were not contacted by Bailey or anyone else from SAMCO seeking authorization for these trades prior to execution.

70. Fourteen trades were executed for Bailey customers DP and AP between September 2004 and April 2006. DP and AP were not contacted by Bailey or anyone else from SAMCO seeking authorization for these trades prior to execution.

71. By reason of the foregoing, Scida and Bailey violated NASD Conduct Rules 2510(b) and 2110.

PRAYER FOR RELIEF

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Procedural Rule 8310(a) be imposed, including that the Respondents be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest; and
- B. order that Respondents bear such costs of the proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Procedural Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: March 17, 2009

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