

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

GREG SCOTT SCHAEFER
(CRD No. 1939626),

Respondent.

Disciplinary Proceeding
No. 20080120347-01

Hearing Officer – MAD

DEFAULT DECISION

April 9, 2010

Respondent violated: (1) Conduct Rules 3011 and 2110 for failing to implement independent AML testing; (2) Conduct Rule 2110 for creating and submitting inaccurate compliance attendance lists; (3) Conduct Rule 2110 for causing his member firm to violate Section 17(f)(2) of the Securities Exchange Act of 1934 and SEC Rule 17f-2, by failing to timely fingerprint an employee who had regular access to the firm's book and records; and (4) Conduct Rules 3012, 2110, and 2010 for failing to establish, maintain, and enforce supervisory control procedures. For these violations, Respondent was suspended in all capacities for one year and fined a total of \$42,500.

Appearances

Lara C. Thyagarajan, Senior Regional Counsel, and David Jaffe, Regional Chief Counsel, New York, NY, for the Department of Enforcement.

No appearance by or for Greg Scott Schaefer.

DECISION

I. Introduction

The FINRA Department of Enforcement ("Enforcement") filed the attached Complaint against Respondent Greg Scott Schaefer ("Schaefer") with the Office of Hearing Officers on November 16, 2009. The Complaint contains four causes of action relating to Schaefer's role as the president, Chief Compliance Officer ("CCO"), and Anti-Money

Laundering (“AML”) Officer of Dillon Scott Securities (“Dillon Scott”). The First Cause of Action alleges that Schaefer violated Conduct Rules 3011 and 2110, by failing to implement FINRA’s AML testing requirement in 2006 and 2007. The Second Cause of Action alleges that Schaefer violated Conduct Rule 2110 by creating inaccurate, substitute compliance meeting attendance lists and submitting them to FINRA without notifying FINRA staff that the lists were not the original attendance records. The Third Cause of Action alleges that Schaefer violated Conduct Rule 2110 by causing a violation of Section 17(f)(2) of the Securities Exchange Act of 1934 and Securities and Exchange Commission (“SEC”) Rule 17f-2, promulgated thereunder, by failing to timely submit a Dillon Scott employee’s fingerprints to the Central Registration Depository (“CRD”). The Fourth Cause of Action alleges that Schaefer violated Conduct Rules 3012 and 2110 by failing to establish, maintain, and enforce supervisory control procedures at Dillon Scott.¹

Schaefer did not answer the Complaint. Accordingly, on February 19, 2010, Enforcement filed a Motion for Entry of Default Decision, which is supported by a declaration signed by Lara C. Thyagarajan, counsel for Enforcement in this proceeding, and 20 exhibits.² Schaefer did not file an opposition to the Motion for Entry of Default Decision.

¹ NASD consolidated with the member regulation and enforcement functions of NYSE Regulation in July 2007 and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this decision to FINRA include, where appropriate, NASD. Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. The first phase of the new consolidated rules became effective on December 15, 2008. *See* Regulatory Notice 08-57 (Oct. 2008). This decision refers to and relies on the Conduct Rules that were in effect at the time of Respondent’s alleged misconduct. The applicable rules are available at www.finra.org/rules.

² Enforcement’s exhibits are labeled CX-1 through CX-20.

II. Jurisdiction

Schaefer joined Dillon Scott in December 2001.³ From May 2002 until October 2009, Schaefer was registered with FINRA through Dillon Scott as a General Securities Representative and a General Securities Principal.⁴ Schaefer's association with Dillon Scott ended on October 7, 2009, when Dillon Scott's FINRA membership was cancelled for non-payment of assessment fees.⁵

Although Schaefer has not been associated with a FINRA member since October 7, 2009, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years following the termination of his last registration with a FINRA member, and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member firm.⁶

III. Origin of Investigation

Enforcement's investigation of Schaefer originated from a July 2008 routine examination of Dillon Scott.⁷ At the conclusion of its investigation, Enforcement filed the Complaint in this proceeding.

³ CX-1.

⁴ Thyagarajan Decl. ¶ 6; CX-1.

⁵ Thyagarajan Decl. ¶ 7; CX-1. Dillon Scott filed a Uniform Notice for Termination of Registration ("Form BDW") on August 24, 2009, requesting termination of its SEC registration and withdrawal from FINRA membership. Thyagarajan Decl. ¶ 7. On October 7, 2009, FINRA cancelled Dillon Scott's membership for non-payment of assessment fees. *Id.*; CX-3. Dillon Scott's SEC registration was formally terminated on October 23, 2009. Thyagarajan Decl. ¶ 7.

⁶ Article V, Sec. 4(a), FINRA By-Laws, available at www.finra.org/rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

⁷ Thyagarajan Decl. ¶ 22; CX-20.

IV. Respondent's Default

On November 16, 2009, Enforcement sent the Notice of Complaint and Complaint to Schaefer by first-class and certified mail at his residential address recorded in CRD ("CRD Address").⁸ The U.S. Postal Service returned the certified mailing marked "unclaimed."⁹ The first-class mailing was not returned.¹⁰ Schaefer did not answer the Complaint by the deadline specified in the Notice of Complaint.

On December 15, 2009, Enforcement served Schaefer with copies of the Second Notice of Complaint and Complaint, by first-class and certified mail, at his CRD Address.¹¹ The U.S. Postal Service returned the Second Notice sent by certified mail marked "unclaimed."¹² The first-class mailing was not returned.¹³ To date, Schaefer has not answered or otherwise responded to the Complaint.

Schaefer defaulted by failing to answer the Complaint.¹⁴ Accordingly, pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer deems the allegations in the attached Complaint admitted and grants Enforcement's Default Motion.

⁸ Thyagarajan Decl. ¶ 10; CX-4.

⁹ Thyagarajan Decl. ¶ 13; CX-5.

¹⁰ Thyagarajan Decl. ¶ 12.

¹¹ *Id.* ¶ 16; CX-6.

¹² Thyagarajan Decl. ¶ 18; CX-7.

¹³ Thyagarajan Decl. ¶ 17.

¹⁴ *Dep't of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 n.1 (N.A.C. Dec. 9, 2003) ("NASD Procedural Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent's most recent CRD address." (citing *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

V. Findings of Fact and Conclusions of Law

A. Respondent's Roles at Dillon Scott

Schaefer was the president, CCO, and AML Officer at Dillon Scott, a fully disclosed, introducing broker-dealer, until October 7, 2009.¹⁵ As the president and CCO of Dillon Scott, Schaefer was directly responsible for maintaining and enforcing Dillon Scott's written supervisory procedures¹⁶ and its supervisory control procedures.¹⁷ As the AML Officer, Schaefer was responsible for establishing, maintaining, and implementing Dillon Scott's AML compliance procedures, including ensuring that Dillon Scott properly completed its annual AML testing.¹⁸ Pursuant to the firm's written supervisory procedures, Schaefer was responsible for ensuring compliance with the fingerprinting requirements for Dillon Scott's employees between October 2006 and late 2008.¹⁹ Schaefer also directly supervised a non-registered administrative assistant, Eric Pou ("Pou").²⁰

B. AML Violation

1. Legal Standard

Conduct Rule 3011 requires each member firm to "develop and implement a written anti-money laundering program reasonably designed to achieve and monitor the member's compliance with the requirements of the Bank Secrecy Act [("BSA")],... , and the implementing regulations promulgated thereunder by the Department of the Treasury." Rule 3011(c) provides that firms must "[p]rovide for annual ... independent testing for

¹⁵ Thyagarajan Decl. ¶¶ 4, 26; CX-3.

¹⁶ CX-9, at 1.

¹⁷ Thyagarajan Decl. ¶ 49.

¹⁸ Thyagarajan Decl. ¶ 27.

¹⁹ Thyagarajan Decl. ¶ 43; CX-9, at 3.

²⁰ Thyagarajan Decl. ¶ 31; CX-8, at 10; CX-11, at 6, 8.

compliance to be conducted by member personnel or by a qualified outside party” IM-3011-1 sets forth additional requirements for independent testing. It states that independent testing must be conducted by a person with “working knowledge of applicable requirements under the Bank Secrecy Act and its implementing regulations.” Pursuant to IM-3011-1(c), “[i]ndependent testing may not be conducted by: (1) a person who performs the functions being tested, (2) the designated anti-money laundering compliance person, or (3) a person who reports to a person described in either (1) or (2) above”

2. Failure to Conduct Independent Testing

In the First Cause of Action, Enforcement alleges that Schaefer failed to properly satisfy the AML independent testing requirement in 2006 and 2007. Dillon Scott did not use an independent third party to conduct its required AML testing.²¹ Instead, each year, Schaefer prepared a one-page “AML Independent Review (Dillon Scott)” report.²² Schaefer then provided the annual AML reports to Pou for his signature.²³ Pou did not conduct any AML testing or reviews prior to signing the reports.²⁴

As the AML Officer, Schaefer was required to ensure that Dillon Scott complied with its AML testing requirements. As stated above, pursuant to IM-3011-1, he was not qualified to personally perform the AML testing. In addition, Pou was not permitted to perform the independent testing as he reported directly to Schaefer. Under the circumstances, Dillon Scott needed to have its annual AML testing conducted by an independent third party, which it

²¹ Thyagarajan Decl. ¶ 30.

²² *Id.* ¶¶ 30, 33; CX-10, 12.

²³ *Id.* ¶¶ 31, 34; CX-8, at 10.

²⁴ Thyagarajan Decl. ¶¶ 31, 33.

failed to do.²⁵ The Hearing Officer finds that Schaefer violated Conduct Rules 3011 and 2110, by failing to implement FINRA's AML testing requirement in 2006 and 2007.

C. Creation of Inaccurate Documentation Violation

In the Second Cause of Action, Enforcement alleges that Schaefer created and submitted inaccurate, substitute attendance lists for Dillon Scott's compliance meetings. On August 19, 2008, in connection with the routine examination of Dillon Scott, FINRA staff requested that Dillon Scott produce the firm's annual compliance meeting and continuing education attendance lists from September 5, 2006, through July 30, 2008.²⁶ That same day, an employee of Dillon Scott delivered four lists to FINRA staff, representing that the documents were copies of actual attendance sheets.²⁷ In reality, in order to respond to the FINRA staff's request, Schaefer created the four lists after the meetings ended by copying the attendees' signatures onto the lists from other documents.²⁸ Two of the four recreated lists were inaccurate because they included the signature of an individual who was not yet employed by Dillon Scott at the time of the meetings.²⁹

The Hearing Officer finds that allegations in the Second Cause of Action are sufficient to establish that Schaefer violated Conduct Rule 2110 by failing to observe high standards of commercial honor and just and equitable principles of trade. The

²⁵ While IM-3011-1 permits a person who is not independent to perform the AML testing, Dillon Scott did not meet the criteria outlined in IM-3011-1. *Id.* ¶ 28.

²⁶ *Id.* ¶ 36; CX-13.

²⁷ Thyagarajan Decl. ¶¶ 37, 38; CX-8, at 24; CX-14.

²⁸ Thyagarajan Decl. ¶ 39; CX-8, at 23-33.

²⁹ Thyagarajan Decl. ¶ 41; CX-15-17.

attendance lists were inaccurate, and Schaefer misled FINRA staff by failing to disclose that he had recreated the attendance lists.

D. Fingerprinting Violation

Section 17(f)(2) of the Securities Exchange Act requires broker-dealers to fingerprint their partners, directors, officers, and employees. While SEC Rule 17f-2 provides certain exemptions to the fingerprinting requirement, Rule 17f-2(a)(1)(i)(B) specifically excludes from exemption anyone who regularly has access to the keeping, handling, or processing of (1) securities, (2) monies, or (3) the original books and records relating to securities or monies.³⁰ Firms are required to have applicable employees fingerprinted within a reasonable amount of time after the commencement of their employment or association.³¹

In the Third Cause of Action, Enforcement alleges that Schaefer failed to timely submit Pou's fingerprints to CRD. Although Pou's fingerprints were not submitted to CRD until February 2008,³² from September 2005 through February 2008, Pou had regular access to Dillon Scott's original books and records, which included order tickets, trade blotters, customer files, and financial records.³³ In addition, he maintained the Dillon Scott check

³⁰ 17 CFR 240.17f-2.

³¹ See *Stephens, Inc.*, SEC No Action Letter, 1976 SEC No Act. LEXIS 2855 (July 18, 1976) ("Pursuant to Rule 17f-2, [the firm] would be required to have its employees and associated persons who do not qualify for an exemption fingerprinted only at the time they commence their association with [the firm]."); *First Merchant Nat'l Bank*, SEC No Action Letter, 1976 SEC No Act. LEXIS 2853 (June 14, 1976) ("Persons becoming employed by or associated with the bank after that date are required to be fingerprinted prior to or within a reasonable time after the commencement of employment or association.").

³² Thyagarajan Decl. ¶ 45; CX-19.

³³ Thyagarajan Decl. ¶ 44; CX-11, at 25; CX-18.

book and possessed an ink stamp of Schaefer's signature, which he used to sign firm checks.³⁴ Schaefer did not submit Pou's fingerprints to CRD until February 2008.

The Hearing Officer finds that Schaefer violated Rule 2110 by causing a violation of Section 17(f)(2) of the Securities Exchange Act and Rule 17f-2. Schaefer failed to timely submit Pou's fingerprints to CRD as required by Section 17(f)(2) of the Securities Exchange Act and SEC Rule 17f-2.

E. Supervisory Control Procedures Violation

Conduct Rule 3012(a) requires that each member firm "establish, maintain and enforce written supervisory control policies and procedures." As the president and CCO, Schaefer was directly responsible for Dillon Scott's supervisory control procedures.³⁵ From September 2006 through January 2009, Dillon Scott had no supervisory control procedures.³⁶

The Hearing Officer finds that Schaefer violated Conduct Rules 3012, 2110, and 2010 by failing to ensure that Dillon Scott established, maintained, and enforced supervisory control procedures between September 2006 and January 9, 2009.³⁷

VI. Sanctions

Enforcement requests that Schaefer be suspended in all capacities for one year for his creation of the inaccurate compliance attendance lists. In addition, Enforcement requests that he be fined a total of \$40,000 (\$10,000 for the AML violation under the First Cause of the Complaint, \$20,000 for the creation and submission of inaccurate documentation to FINRA

³⁴ Thyagarajan Decl. ¶ 44; CX-11, at 35-38.

³⁵ Thyagarajan Decl. ¶ 49.

³⁶ *Id.* ¶ 48.

³⁷ When the first phase of the new consolidated rules became effective on December 15, 2008, FINRA renumbered NASD Conduct Rule 2110 as FINRA Conduct Rule 2010. Because Schaefer's violation continued beyond December 15, 2008, he also violated FINRA Rule 2010.

violation under the Second Cause of the Complaint, \$2,500 for the fingerprinting violation under the Third Cause of the Complaint, and \$7,500 for the supervisory control procedures violation under the Fourth Cause of the Complaint). Each violation is addressed separately below.

A. AML Violation

The FINRA Sanction Guidelines do not specifically address violations of Conduct Rule 3011. However, in substance, the rules requiring firms to implement written AML procedures are supervisory requirements. Accordingly, the Hearing Officer has considered the guideline for deficient written supervisory procedures in determining the appropriate remedial sanction in this case.³⁸ The Guidelines recommend a fine of \$1,000 to \$25,000 and, in egregious cases, suspension of the responsible individual in any or all capacities for up to one year.³⁹

For two consecutive years, in violation of the AML independent testing requirements, Schaefer prepared the firm's AML testing report and had Pou, his administrative assistant, sign it. Pou never conducted any AML testing or reviews. The Hearing Officer concludes that Schafer should be fined \$10,000 for his failure to implement independent AML testing.

B. Creation and Submission of Inaccurate Documentation Violation

There is no specific guideline for the creation and submission of inaccurate documentation violation as described in the Second Cause of Action. The guideline for forgery or falsification of records in violation of Rule 2110 is the most similar. It recommends a fine of \$5,000 to \$100,000, and a suspension for up to two years where

³⁸ FINRA Sanction Guidelines 109 (2007), available at www.finra.org/sanctionguidelines.

³⁹ *Id.*

mitigating factors exist, or a bar in egregious cases.⁴⁰ In determining the appropriate sanction, the adjudicator is to consider the nature of the *forged* or falsified document and whether the respondent has a good faith, but mistaken, belief of express or implied authority.⁴¹

Schaefer's action in creating the compliance meeting attendance lists, and presenting them to the FINRA staff as originals, is a serious violation. Rather than inform the FINRA staff that the documents no longer existed, Schaefer created substitute lists by cutting and pasting employee signatures onto new documents and presenting them to FINRA as if they were copies of Dillon Scott's original books and records. In addition, when he created the new documents, he included the name of an individual on two lists who was not employed by Dillon Scott at the time of the compliance meetings. The Hearing Officer finds that Schaefer should be fined \$20,000 and suspended in all capacities for one year for violating Rule 2110 by creating inaccurate, substitute compliance attendance sheets and submitting them to FINRA.

C. Fingerprinting Violation

The Guidelines do not address violations of Section 17(f)(2) of the Securities Exchange Act and SEC Rule 17f-2. Accordingly, the Hearing Officer has considered the guideline for late filing of forms or amendments for Forms U4 or U5 in determining the appropriate remedial sanction in this case.⁴² The Guidelines recommend a fine of \$5,000 to \$50,000.⁴³ Schaefer failed to have Pou fingerprinted from September 2005 until February 2008, during which time Pou had regular access to the firm's original books and records, as

⁴⁰ *Id.* at 39.

⁴¹ *Id.*

⁴² *Id.* at 73.

⁴³ *Id.*

well as the authority to write checks on behalf of the firm. The Hearing Officer finds that Schaefer should be fined \$5,000 for violating Rule 2110 by causing a violation of Section 17(f)(2) of the Securities Exchange Act and SEC Rule 17f-2.

D. Supervisory Control Procedures Violation

The Guidelines do not specifically address violations of Conduct Rule 3012. The most similar guideline is for Rule 3010, relating to deficient written supervisory procedures.⁴⁴ Accordingly, the Hearing Officer has considered that guideline in determining the appropriate remedial sanction in this case. As noted above, the Guidelines recommend a fine of \$1,000 to \$25,000 and, in egregious cases, suspension of the responsible individual in any or all capacities for up to one year.⁴⁵ From September 2006 until January 2009, Schaefer, as president and CCO of Dillon Scott, failed to ensure that the firm established written supervisory control procedures as required by Rule 3012. For this violation, the Hearing Officer concludes that Schaefer should be fined \$7,500.

VII. Order

Greg Scott Schaefer violated Conduct Rules 3011 and 2110 for his failure to implement independent AML testing. He violated Conduct Rule 2110 for creating and submitting inaccurate compliance attendance lists. He also violated Conduct Rule 2110 by causing a violation of Section 17(f)(2) of the Securities Exchange Act, and Rule 17f-2 promulgated thereunder, for his failure to promptly fingerprint a Dillon Scott employee who had regular access to the firm's book and records. Lastly, Schaefer violated Conduct Rules 3012, 2110, and 2010 for his failure to establish, maintain, and enforce supervisory control procedures at Dillon Scott. Schaefer is suspended in all capacities for one year for creating

⁴⁴ *Id.* at 109.

⁴⁵ *Id.*

and submitting inaccurate compliance attendance lists, as alleged in the Second Cause of the Complaint, and fined a total of \$42,500 (\$10,000 for the AML violation under the First Cause of the Complaint, \$20,000 for the creation and submission of inaccurate documentation to FINRA violation under the Second Cause of the Complaint, \$5,000 for the fingerprinting violation under the Third Cause of the Complaint, and \$7,500 for the supervisory control procedures violation under the Fourth Cause of the Complaint). If this Default Decision becomes the final disciplinary action of FINRA, Schaefer's suspension shall begin on Monday, May 17, 2010, and end at the close of business on Monday, May 16, 2011, and the fines shall be due and payable if and when he re-enters the securities industry.


Maureen A. Delaney
Hearing Officer

Copies to: Greg Scott Schaefer (*via overnight courier and first-class mail*)
Lara C. Thyagarajan, Esq. (*via electronic and first-class mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

GREG S. SCHAEFER (CRD No. 1939626),

Respondent.

DISCIPLINARY PROCEEDING
No. 20080120347-01

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Greg S. Schaefer ("Schaefer") was President and Chief Compliance Officer at member firm Dillon Scott Securities ("DSS" or the "Firm") (BD No. 118755) from at least November 2002 until at least August 2009.
2. During 2006 and 2007, Schaefer, who also was the Firm's anti-money laundering chief compliance officer ("AMLCO"), failed to ensure the conduct of an independent AML test of the Firm's AML compliance programs, failed to establish written supervisory control procedures, failed to ensure that an employee's fingerprints were submitted to CRD and created and submitted inaccurate substitute compliance meeting attendance sheets to FINRA staff during the course of FINRA's examination of DSS. Accordingly, Schaefer violated NASD Conduct Rules 3012, 3011 and 2110. In addition, Schaefer violated Conduct Rule 2110 by causing the Firm to violate

Section 17(f)(2) of the Securities Exchange Act and Rule 17f-2, promulgated thereunder.

RESPONDENT AND JURISDICTION

3. Schaefer first became registered as a general securities representative ("GSR") through his association with another member firm in or about March 1991. Between 1991 and 2002, when Schaefer began his employment with DSS, he was registered with 17 member firms.
4. DSS filed a Uniform Notice for Termination of Registration ("Form BDW") on or about August 24, 2009 requesting termination of its SEC registration and withdrawal from FINRA membership. DSS's SEC registration was formally terminated on or about October 23, 2009. The Firm's FINRA membership was cancelled for non-payment of assessment fees on or about October 7, 2009.
5. Schaefer was registered as a GSR and as a general securities principal ("GSP") at DSS from on or about May 28, 2002 until on or about October 7, 2009.
6. Currently, Respondent is not associated with any member firm. However, FINRA retains jurisdiction over Respondent pursuant to Article V, Section 4 of its By-Laws.

FIRST CAUSE OF ACTION

Failure to Implement NASD AML Testing Requirement ***(Violation of NASD Conduct Rules 3011 and 2110)***

7. The Department realleges and incorporates by reference paragraphs 1-5, above.
8. NASD Conduct Rule 3011, adopted on April 24, 2002 and amended on October 22, 2002, requires all member firms to "develop and implement a written anti-money laundering program reasonably designed to achieve and monitor the firm's compliance with the requirements of the Bank Secrecy Act (31 U.S.C. § 5311, *et*

seq.), and the implementing regulations promulgated thereunder by the Department of the Treasury.”

9. The Rule requires that a firm’s anti-money laundering program, *inter alia*; “[p]rovide for annual (on a calendar-year basis) independent testing for compliance to be conducted by member personnel or by a qualified outside party, unless the member does not execute transactions for customers or otherwise hold customer accounts or act as an introducing broker with respect to customer accounts (e.g., engages solely in proprietary trading or conducts business only with other broker-dealers), in which case such "independent testing" is required every two years (on a calendar-year basis).”

10. As outlined in NASD IM-3011-1:

“Independent testing may not be conducted by:

- (1) a person who performs the functions being tested,
- (2) the designated anti-money laundering compliance person, or
- (3) a person who reports to a person described in either (1) or (2) above

....”

11. In 2006 and 2007, DSS was a fully disclosed, introducing broker dealer. As such, it was required to comply with NASD Conduct Rule 3011(c).
12. In 2006 and 2007, Schaefer was the person responsible for establishing, maintaining and implementing DSS’s AML compliance procedures under NASD Conduct Rule 3011 and was the designated AMLCO. Accordingly, pursuant to IM-3011-1, he was not qualified to personally perform DSS’s independent test. Additionally, no person reporting directly to Schaefer at DSS was permitted to perform the Firm’s independent test. Also during 2006 and 2007, DSS needed to have an independent

person perform the *Independent Test* because the firm did not meet the criteria outlined in IM-3011-1 that would have permitted a person who was not independent to perform the test.

13. During 2006 and 2007, DSS's written supervisory procedures ("WSPs") contained conflicting provisions governing the Firm's AML testing requirement.
 - a. The section of DSS's WSPs labeled "Program to Test AML Programs" identified, by name, an independent third party who would be responsible for performing the Firm's independent AML test. Notwithstanding this provision of the Firm's AML procedures, the Firm never retained the named independent third party – or any other outside vendor – to conduct its AML testing.
 - b. Another section of the Firm's same WSPs, bearing the same title stated that the firm's AML test would be performed either by an independent third party or by Firm personnel.

The DSS 2006 AML Test

14. Rather than use an independent third party to perform the Firm's AML test, in 2006 Schaefer personally prepared a one-page, two paragraph "2006 AML Independent Review (Dillon Scott)" (the "DSS 2006 AML Report"), which the Firm represented to FINRA Staff as documentation of the its 2006 independent AML test.
15. The DSS 2006 AML Report bore the signature line of an employee of DSS, EP. In 2006 and 2007, EP worked as a non-registered, administrative assistant at DSS and at all times reported directly to Schaefer. EP did not personally conduct any AML testing that led to the formation of the conclusions set forth in the DSS 2006 AML Report. Rather, Schaefer drafted the DSS 2006 AML Report and presented it to EP, who signed off on the Report.

16. EP did not conduct any of his own reviews in connection with the DSS 2006 AML Report. In fact, EP was not qualified to conduct the Firm's testing because he was not independent and did not have adequate training in or understanding of AML.

The DSS 2007 AML Test

17. DSS's 2007 AML testing occurred in the same manner as the 2006 AML testing at the Firm. Schaefer provided EP with certain documents; Schaefer prepared a written report and EP did not conduct his own reviews to determine whether the content of the report was accurate.
18. EP signed the 2007 DSS AML Report on or about November 19, 2007. The Report was nearly identical to the previous year's Report.
19. In 2007, Schaefer was the Firm's AMLCO and EP continued to report directly to him.

By virtue of the foregoing, Schaefer violated NASD Conduct Rules 3011(c) and 2110.

SECOND CAUSE OF ACTION
Creation and Submission to FINRA of Inaccurate, Substitute
Compliance Meeting Attendance Sheets
(Violation of NASD Conduct Rule 2110)

20. The Department realleges and incorporates by reference paragraphs 1-18, above.
21. On or about August 19, 2008, FINRA's Staff requested that DSS produce the Firm's Annual Compliance Meeting and Continuing Education Attendance Lists for the period September 5, 2006 through July 30, 2008. During this period, DSS employed approximately 10 individuals who were registered with FINRA.
22. On August 19, 2008, an employee of DSS delivered purportedly responsive documents to the FINRA Staff, which included, *inter alia*:
- a. two 2007 Continuing Education Attendance Lists;
 - b. one 2006 Annual Compliance Meeting Attendance List; and

c. one 2007 Anti-Money Laundering Meeting Attendance List.

(hereinafter the "Four Lists")

23. The Four Lists bore signatures, purportedly of those who attended the meetings, and were represented by the Firm to the FINRA Staff as copies of the actual attendance sheets.

24. In fact, the Four Lists were created by Schaefer long after the actual meetings they ostensibly documented, and the signatures of the purported attendees were copied from other documents and affixed to the Lists.

25. Schaefer's recreations were both misleading to the FINRA Staff and inaccurate.

Notably, two of the Four Lists were inaccurate in that they included the signature of an individual, JB, who did not attend the meetings because he was not yet employed by the Firm at the time of the meetings.

By failing to inform the FINRA Staff that the lists were recreations at the time the documents were produced to the Staff and for providing documents that contained the aforementioned inaccuracies, Schaefer failed to observe high standards of commercial honor and just and equitable principles of trade in violation of NASD Conduct Rule 2110.

THIRD CAUSE OF ACTION

Failure to Fingerprint

(Violation of NASD Conduct Rule 2110 by causing violation of Section 17(f)(2) of the Securities Exchange Act of 1934 and Rule 17f-2, promulgated thereunder)

26. The Department realleges and incorporates by reference paragraphs 1-24, above.

27. Section 17(f)(2) of the Securities Exchange Act requires broker-dealers to fingerprint their partners, directors, officers and employees. SEC Rule 17f-2 provides certain exemptions to the fingerprinting requirement. However, Rule 17f-2(a)(1)(i)(B)

expressly excludes from exemption persons who regularly have access to the keeping, handling or processing of (1) securities; (2) monies; or (3) the original books and records relating to the securities or monies.

28. From at least October 2006 through late 2008, pursuant to the firm's WSPs, Schaefer was the person responsible for ensuring compliance with fingerprinting requirements.
29. From at least September 2005 until February 2008, Schaefer permitted EP, an administrative assistant, to have regular access to the Firm's original books and records including order tickets, trade blotters, customer files and financial records. Also, during that time, EP maintained the Firm's check book, wrote checks on behalf of the Firm and maintained an ink stamp of Schaefer's signature which he used to sign Firm checks.
30. Schaefer did not cause the Firm to submit EP's fingerprints to CRD until February 2008, after the examination leading to this complaint had commenced.

By virtue of the foregoing conduct, Schaefer violated NASD Conduct Rule 2110 by causing the Firm to violate Section 17(f)(2) of the Securities Exchange Act of 1934 and Rule 17f-2 promulgated thereunder.

FOURTH CAUSE OF ACTION

Failure to Establish Supervisory Control Procedures **(Violation of NASD Conduct Rules 3012 and 2110)**

31. The Department realleges and incorporates by reference paragraphs 1-29, above.
32. NASD Conduct Rule 3012(a) requires each member firm to "establish, maintain and enforce written supervisory control policies and procedures ("SCPs")." Such SCPs must include "procedures that are reasonably designed to review and supervise the customer account activity conducted by member's branch office managers, regional

or district sales managers, or any other person performing a supervisory function ...
[as well as] procedures reasonably designed to review and monitor:

- a. all transmittals of funds (e.g., wires or checks, etc.) or securities from customers to third party accounts (i.e., a transmittal that would result in a change of beneficial ownership); from customer accounts to outside entities (e.g., banks, investment companies, etc.); from customer accounts to locations other than a customer's primary residence (e.g., post office box, "in care of" accounts, alternate address, etc.); and between customers and registered representatives, including the hand-delivery of checks;
- b. customer changes of address and the validation of such changes of address; and
- c. customer changes of investment objectives and the validation of such changes of investment objectives."

33. DSS also was required to include in its SCPs, a "means or method of customer confirmation, notification, or follow-up that can be documented ... [as well as] procedures that are reasonably designed to provide heightened supervision over the activities of each producing manager who is responsible for generating 20% or more of the revenue of the business units supervised by the producing manager's supervisor."

34. From at least September 2006 through at least January 9, 2009, the Firm failed to establish, maintain or enforce any SCPs.

35. As President and Chief Compliance Officer at DSS, Schaefer was directly responsible for the establishment, maintenance and enforcement of DSS's SCPs.

By virtue of the foregoing, Schaefer violated NASD Conduct Rules 3012 and 2110.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed.
- B. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

Date: November 16, 2009

FINRA DEPARTMENT OF ENFORCEMENT



Lara Thyagarajan, Senior Regional Counsel
David Jaffe, AVP and Regional Chief Counsel
FINRA Department of Enforcement
One Liberty Plaza
New York, NY
Phone: 212-858-4176; Fax: 212-858-4770
e-mail: lara.thyagarajan@finra.org