

**FINRA  
OFFICE OF HEARING OFFICERS**

**Department of Enforcement,**

**Complainant,**

**v.**

**William Scholander,  
CRD No. 2938044,**

**and**

**Talman Harris,  
CRD No. 3209947,**

**Respondents.**

**Disciplinary Proceeding  
No. 2009019108901**

**Hearing Officer \_\_\_\_\_**

**COMPLAINT**

The Department of Enforcement alleges:

**SUMMARY**

1. In November 2009, Respondents William Scholander ("Scholander") and Talman Harris ("Harris"), along with two other individuals, Ronen Zakai ("Zakai") and Maureen Gearty ("Gearty"), entered into a consulting agreement with Deer Consumer Products, Inc. ("DEER"), pursuant to which DEER was to pay them \$350,000 to perform financial advisory services.

2. DEER paid them \$350,000 in December 2009, although no actual financial advisory services were provided, and they used the money to start a New York branch of First Merger Capital, Inc. ("First Merger") in January 2010.

3. Between February and November 2010, while registered with First Merger, Scholander and Harris and registered representatives working under their direction recommended the purchase of over \$2.8 million of DEER stock to approximately 130 customers. Neither Scholander and Harris nor registered representatives working under their direction disclosed to the customers the consulting agreement with DEER or the \$350,000 payment from DEER. As a result, Scholander and Harris violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and FINRA Rules 2020 and 2010.

4. At the time that they entered into the consulting agreement with DEER and received the \$350,000 payment from DEER pursuant to the agreement, Scholander and Harris were employed by and registered with Seaboard Securities, Inc. ("Seaboard"). Scholander and Harris failed to disclose their outside business activity to Seaboard, in violation of NASD Rule 3030 and FINRA Rule 2010.

5. In April 2010, Scholander and Harris entered into a written agreement with Mark Simonetti ("Simonetti"), First Merger's owner, President, and Director, and Gearty, under which First Merger paid \$350,000 to Gearty for branch expenses and commissions earned by Scholander, Harris and Gearty in February and March 2010. On the day that Gearty received the \$350,000 payment from First Merger, she wired \$100,000 each to Scholander and Harris for their shares of the expenses and commissions. Scholander and Harris's actions caused the books and records of the firm to be false or misleading because they failed to accurately reflect the commissions that Scholander, Harris, and Gearty earned, resulting in violations of NASD Rule 3110 and FINRA Rule 2010.

## **RESPONDENTS**

6. William Scholander, CRD No. 2938044, has been registered with 13 different firms since first registering with FINRA in 1998. He was registered as a general securities representative with Seaboard from March 11, 2009 to February 9, 2010 and with First Merger from February 11, 2010 to March 31, 2011. He is currently registered as a general securities representative with another FINRA member firm.

7. Talman Harris, CRD No. 3209947, has been registered with 16 different firms since first registering with FINRA in 1998. He was registered with Seaboard from March 11, 2009 to February 9, 2010 and with First Merger from February 11, 2010 to March 31, 2011. He was registered as a general securities representative throughout his employment with First Merger and as a general securities principal from February 25, 2011, until the termination of his employment with the firm. He is currently registered with another FINRA member firm as a general securities representative and a general securities principal.

## **FACTS**

### **Scholander and Harris' Relationship with BW and DEER**

8. Scholander and Harris met in the late 1990s when they both worked at the same firm.

9. In July 2003 and January 2004, respectively, Scholander and Harris registered with New York Global Securities, Inc. ("NYGS"), an entity affiliated with New York Global Group ("NYGG"). NYGG was controlled by BW. Through NYGG, BW promotes China-based companies in U.S. markets by helping them become listed on U.S. exchanges, acquiring financing, and introducing them to U.S. broker-dealers. NYGS was owned by BW's wife and one of her relatives through NYGG.

10. NYGS ceased operations and filed a Form BDW, effective June 2007, shortly before sanctions resulting from a FINRA disciplinary action were to become effective.

11. In 2007, Scholander and Harris formed William Scholander LLC (“the LLC”) to operate a branch office of a FINRA member firm. The LLC owned and operated a branch of Basic Investors, Inc. from July 2007 to October 2008 and a branch of Martinez-Ayme Securities (“Martinez-Ayme”) from October 2008 to March 2009, before opening as a branch of Seaboard in March 2009.

12. Each of the branch offices owned and operated by the LLC occupied the space that formerly served as the NYGS offices at 14 Wall Street in New York. The LLC subleased the office space from NYGG and it was located within NYGG’s suite.

13. One of the companies for which BW and NYGG provided services was DEER. DEER is a Nevada corporation based in China that designs and manufactures small kitchen appliances, primarily blenders and juice extractors.

14. DEER was created from a reverse merger with a predecessor entity on September 3, 2008. Following the reverse merger, DEER’s securities were quoted on the OTCBB under the symbol “DCPI.” On July 17, 2009, DEER stock began listing on NASDAQ under the symbol DEER. The company upgraded its listing to the NASDAQ Global Market on October 22, 2009.

15. Scholander and Harris were first introduced to DEER by BW in 2008, while they were registered with Martinez-Ayme. DEER representatives, accompanied by BW and the company’s attorney RN, gave presentations in a roadshow format at the 14 Wall branch.

16. Through the efforts of Scholander and Harris, Martinez-Ayme became the agent for a DEER private placement in early 2009. When they became registered with Seaboard in

March 2009, Scholander and Harris brought the deal with them, and Seaboard became the agent for a second portion of the DEER private placement.

17. BW and NYGG also provided services for SmartHeat, Inc. (“HEAT”), another Nevada corporation based in China. HEAT describes itself as a leading designer and manufacturer of clean technology plate heat exchangers.

18. During the time they were associated with Martinez-Ayme and Seaboard, Scholander and Harris repeatedly and specifically directed the brokers at the 14 Wall branch office to solicit customer purchases of DEER, HEAT and other stocks promoted by BW. Harris openly criticized brokers who recommended transactions in other securities.

19. BW visited the LLC’s 14 Wall branch office regularly and without an appointment. During his visits, BW promoted DEER and distributed information about the company to the registered representatives in the office.

20. Solicited transactions in stocks promoted by BW, particularly DEER, constituted the bulk of the activity of the 14 Wall branch office of Seaboard and accounted for most of the office’s revenue.

#### **Starting a First Merger Branch and the DEER Payment**

21. Zakai and Gearty met while working together at GunnAllen Financial, Inc. (“GunnAllen”). They met BW in 2008 when he visited their GunnAllen branch office along with representatives of DEER and another company BW promoted. At that time, BW offered Zakai the use of NYGG office space should he ever need it.

22. Zakai and Gearty left GunnAllen in late 2009 with the intention of starting or acquiring a broker-dealer.

23. In late 2009, Scholander and Harris met Zakai and Gearty when Zakai and Gearty inspected NYGG's offices at 14 Wall. Scholander and Harris were then registered with Seaboard. After discussions among them, Scholander and Harris decided to join Zakai and Gearty as co-owners of a new broker-dealer they intended to acquire. They anticipated owning the new broker-dealer with Scholander, Harris, and Zakai owning 33% each, and Gearty owning the remaining 1%.

24. Zakai and Gearty identified Simonetti's firm, Brentworth & Company Incorporated ("Brentworth"), as a potential broker-dealer to buy. Because of Zakai's disciplinary history, which included findings in an AWC in late September, 2009 that he did not have sufficient funds to pay a fine or immediately repay funds borrowed from a customer, the four of them decided that an entity controlled by Zakai and Gearty, RRZ Management, Inc. ("RRZ"), would purchase the firm. Under their plan, Scholander and Harris were to become co-owners of the firm with Zakai and Gearty once FINRA approved the sale to RRZ.

25. In November 2009, while the sale of Brentworth was pending, DEER agreed to pay Scholander, Harris, Zakai and Gearty \$350,000 for certain vaguely described consulting services. Under a draft of the agreement between DEER and Brentworth that was never signed, Brentworth was to "perform financial advisory services" to help DEER with a possible public offering of its securities, as DEER "may reasonably request."

26. Scholander, Harris, Zakai and Gearty needed about \$350,000 to start the new broker-dealer and viewed the agreement as way to get their new business started.

27. Pursuant to their agreement with DEER, in November 2009, Scholander and Gearty went to China and met with DEER representatives. While there, Scholander and Gearty did not provide financial advisory services.

28. Brentworth formally changed its name to First Merger Capital, Inc., on November 23, 2009. On December 2, 2009, Gearty formed a corporation in Delaware with the same name, First Merger Capital, Inc. Two days later, on December 4, 2009, she opened a bank account for the Delaware corporation for the purpose of receiving the \$350,000 payment.

29. DEER wired \$350,000 into the Delaware corporation bank account on December 17, 2009.

30. DEER did not disclose the payment in any SEC filings.

31. Scholander and Harris, who were registered at Seaboard in November and December 2009, did not notify Seaboard of their opportunity to enter into a financial consulting agreement with DEER, their participation in activities related to such an agreement, or their receipt of payment for such activities.

32. Through RRZ, Scholander, Harris, Zakai and Gearty rented an office at 40 Wall Street under a lease signed January 4, 2010. They used the \$350,000 received from DEER to pay rent and a deposit on the office space and purchase furniture, technology and other equipment.

33. The transfer of ownership of First Merger to RRZ was not approved when first submitted to FINRA. While the application was pending, Simonetti agreed that Scholander, Harris, Zakai and Gearty would own and operate a branch of the firm until the transfer was approved.

34. Gearty entered into an agreement with Simonetti on January 13, 2010 to operate the office at 40 Wall as a First Merger branch.

35. Scholander and Harris resigned from Seaboard in early February 2010 and registered with First Merger on February 11, 2010. They recruited and brought to First Merger most of the Seaboard brokers from the 14 Wall branch office, and Seaboard closed that branch.

36. Around the same time as or shortly after Scholander and Harris registered with First Merger and began operations at 40 Wall, BW moved NYGG's office to that building.

37. Between January 2010 and May 2011, when First Merger ceased operations, the 40 Wall branch was the only branch producing revenue for the firm. Effective May 4, 2010, the 40 Wall branch became the main office of First Merger and effective June 4, 2010, it became the only branch.

#### **First Merger's Solicited Purchases of DEER**

38. Soon after they began doing business at First Merger, Scholander and Harris began soliciting purchases of DEER. As was the case at Seaboard, they also directed the registered representatives they had recruited and who worked under their direction to aggressively solicit purchases of DEER.

39. The first customer purchases of DEER at First Merger occurred on February 18, 2010.

40. Between February 18, 2010 and November 2010, brokers at the First Merger 40 Wall branch sold over \$2.8 million in DEER securities to approximately 130 customers. Scholander and Harris were responsible for selling over \$1 million of the total DEER sold to approximately 34 customers.

41. As he had when the LLC's office was at 14 Wall, BW visited First Merger's office at 40 Wall on multiple occasions while Scholander, Harris and other First Merger registered representatives were soliciting purchases of DEER.

42. BW's sister became an owner of a reporting interest of DEER during that same time period.

43. When recommending DEER to their customers, neither Scholander nor Harris disclosed that DEER paid them, Zakai, and Gearty \$350,000 for consulting services that was used to open the First Merger New York office.

44. Because Scholander and Harris did not disclose to the brokers, who worked under their direction, that DEER paid them, Zakai and Gearty \$350,000 for consulting services that was used to open the First Merger New York office, and because DEER did not disclose the existence of the payment in any public filings, the brokers were unaware of the payment and did not disclose this material information to their customers when they solicited them to buy DEER.

#### **HEAT's CEO Directed Sales of HEAT By First Merger Customers**

45. In a July 7, 2009 press release, HEAT announced that its CEO and other officers had entered into lock-up agreements preventing their sale of shares of the company's stock they owned until January 2012.

46. In February 2010, RN, HEAT's counsel, referred four Chinese customers to First Merger. The customers allegedly were current and former HEAT employees.

47. RN handled all of the account opening matters, including obtaining customer signatures on new account documents and supporting documentation.

48. Scholander, Harris and Gearty were the registered representatives assigned to the accounts, and allegedly were to share equally the commissions generated. Gearty reviewed and signed the account applications as the registered representative.

49. James Altschul ("Altschul"), the Chief Compliance Officer at First Merger from January 4 to May 3, 2010, approved the new account documents, as well as the customers' subsequent sales of HEAT stock, as principal.

50. Neither Gearty nor Altschul spoke to the four customers or attempted to confirm the accuracy of the information about the accounts before signing the new account documentation. Nobody from First Merger ever had any direct contact with the customers during the time the accounts were open at First Merger.

51. On February 5, 2010, HEAT's CEO acquired power of attorney to control the sales of HEAT stock on behalf of the four First Merger customers. The HEAT shares held by the four customers were subject to an Amended and Restated Lock-Up Agreement dated February 5, 2010 ("Amended Agreement") that prohibited their sale until the occurrence of certain events not relevant to this action. The Amended Agreement also permitted the customers to sell HEAT in a controlled sale after January 1, 2010 [sic].

52. The four customers deposited collectively over 3.8 million shares of HEAT on February 18, 2010.

53. Pursuant to his powers of attorney, the CEO, through RN, directed Gearty to begin selling the HEAT shares from the four accounts beginning on February 24, 2010. He instructed her to sell shares in an amount equal to 5% of the total market volume each day, subject to price limitations, which was permitted under the controlled sale provisions of the Amended Agreement.

54. Gearty executed the sell transactions by directly entering them into the firm's order execution system.

55. In weekly emails to the HEAT CEO, but not to the customers, Gearty reported the number of shares sold and the amount of proceeds.

56. Between February 24 and August 13, 2010, the four customers sold over \$23 million of HEAT stock collectively, all on instructions from the CEO. The proceeds of the sales were wired to bank accounts in the customers' names.

57. The HEAT sales by the four customers generated over \$1.1 million in commissions for First Merger, amounting to approximately 75% of all commissions the firm earned from February to August 2010.

#### **The Payment to Gearty and Distribution of Commissions**

58. Scholander, Harris and Gearty participated in securities transactions in March 2010 for which they were entitled to commission compensation. The bulk of the commissions earned related to the sales of HEAT by the Chinese customers.

59. First Merger did not pay the commissions due directly to Scholander or Harris.

60. By agreement dated April 14, 2010, First Merger and Scholander, Harris, and Gearty agreed that \$350,000 in commissions and expenses would be paid directly to Gearty.

61. On or about April 16, 2010, First Merger wired \$350,000 to Gearty's personal bank account. The funds were not wired to a business account.

62. The same day, Gearty wired \$100,000 each to Scholander and Harris, \$60,000 to RRZ and \$40,000 to Zakai's wife, RS. Between April 19 and April 28, Gearty transferred an additional \$54,900, part of which went to a third party for Zakai's benefit and part to RS.

63. The commissions due Scholander, Harris and Gearty exceeded \$350,000 as of April 14, 2010.

64. The books and records of First Merger do not reflect specific and accurate commission payments to Scholander, Harris, or Gearty for commissions earned in February and March 2010. Unlike the payment of these commissions, the firm's records reflect payments in April 2010 to other registered representatives of the firm for commissions earned during these months.

65. Gearty did not retain any of the \$350,000 for commissions she earned as one of the registered representatives assigned to the Chinese customers' accounts.

### **FIRST CAUSE OF ACTION**

#### **Fraudulent Sales of DEER Violations of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 Thereunder, and FINRA Rules 2020 and 2010 (Scholander and Harris)**

66. The Department realleges and incorporates by reference paragraphs 1 through 65 above.

67. Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder are broad anti-fraud provisions. Rule 10b-5 makes it unlawful for any person to 1) employ any device, scheme, or artifice to defraud; 2) make any untrue statement of material fact or omit to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading; or 3) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

68. FINRA Rule 2020 provides that "[n]o member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance."

69. Between February 18, 2010 and November 2010, Scholander and Harris and brokers at the First Merger 40 Wall branch working under their direction solicited millions of dollars of purchases of DEER from First Merger customers.

70. Scholander and Harris knew at the time of the solicitations of the consulting agreement with DEER and that First Merger, the branch and they personally had benefited from the \$350,000 payment made by DEER pursuant to the agreement.

71. Scholander and Harris did not disclose the existence of the consulting agreement with DEER or the \$350,000 payment from DEER to any customers from whom they solicited a purchase of DEER stock. They also did not tell the registered representatives who worked under their direction of the existence of the consulting agreement with DEER or the \$350,000 payment from DEER. Accordingly, those representatives did not disclose this information to their customers. By their failure, Scholander and Harris caused the other registered representatives to fail to disclose the agreement and the payment.

72. The existence of the consulting agreement with DEER and the \$350,000 payment from DEER were material information about which a reasonable investor would have wanted to know.

73. Scholander and Harris' failure to disclose the existence of the consulting agreement with DEER and the \$350,000 DEER payment was intentional, or at a minimum, reckless.

74. Scholander and Harris therefore willfully violated Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 promulgated thereunder, FINRA Rule 2020 and, by virtue of those violations, FINRA Rule 2010.

## **SECOND CAUSE OF ACTION**

### **Outside Business Activities Violations of NASD Rule 3030 and FINRA Rule 2010 (Scholander and Harris)**

75. The Department realleges and incorporates by reference paragraphs 1 through 74 above.

76. NASD Rule 3030 provided that registered persons shall not be employed by, or accept compensation from, any other person as a result of any business activity, other than a passive investment, outside the scope of his or her relationship with the employer firm, unless prompt written notice to the member has been provided.

77. In 2009, Seaboard had an existing business relationship with DEER pursuant to which it had provided financial consulting and investment banking services.

78. Along with Zakai and Gearty, while registered with Seaboard, Scholander and Harris entered into a financial consulting agreement with DEER. At the time they knew they would directly or indirectly receive a financial benefit from that agreement.

79. Scholander performed services and Harris anticipated performing services pursuant to the consulting agreement with DEER, and they benefited financially from that agreement.

80. Neither Scholander nor Harris disclosed the agreement to Seaboard, in writing or otherwise.

81. By virtue of this conduct, Scholander and Harris violated NASD Rule 3030 and FINRA Rule 2010.

### **THIRD CAUSE OF ACTION**

#### **Causing the Firm to Create False or Misleading Books and Records Violations of NASD Rule 3110 and FINRA Rule 2010 (Scholander and Harris)**

82. The Department realleges and incorporates by reference paragraphs 1 through 81 above.

83. SEC Rule 17a-3(a)(19)(i) requires that FINRA members keep payment records, including a listing of each purchase and sale of securities for each associated person and the related amount of compensation paid to the associated person.

84. By arranging for a lump sum payment of \$350,000 of commissions and expenses to Gearty alone in a personal account, Scholander and Harris, acting with others, caused First Merger's books and records to be false or misleading in not reflecting the actual commission payments to each individual representative associated with the purchase and sale of the securities.

85. By virtue of this conduct, Scholander and Harris caused the firm to create and maintain inaccurate books and records in violation of NASD Rule 3110 and FINRA Rule 2010.

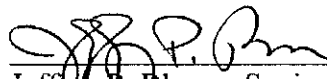
### **PRAYER FOR RELIEF**

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 Respondents bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.
- C. make specific findings that Respondents William Scholander and Talman Harris willfully violated Section 10(b) of the Exchange Act.

DATED: January 31, 2012

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeffrey P. Bloom", is positioned above a horizontal line.

Jeffrey P. Bloom, Senior Special Counsel

Michael Dixon, Senior Counsel

Department of Enforcement

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