

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

Department of Enforcement,

Complainant,

v.

Henry Clay Smith II  
CRD No. 1736102,

Respondent.

Disciplinary Proceeding  
No. 2019062898303

**COMPLAINT**

The Department of Enforcement alleges:

**SUMMARY**

1. Between November 20, 2013, and December 18, 2020, Respondent Henry Clay Smith II, the chief executive officer and chief compliance officer of Supreme Alliance, LLC, failed to develop a written Identity Theft Prevention Program reasonably designed to detect, prevent, and mitigate identity theft in connection with opening or maintaining customer accounts as required by Regulation S-ID, the SEC's Identity Theft Red Flags Rule. While the firm had some skeletal procedures related to identity theft, the firm failed to develop policies and procedures reasonably designed to identify or detect red flags of identity theft, and the firm's procedures for responding to suspected identity theft were not tailored to its business.

2. Smith also failed to implement the skeletal identity theft procedures the firm had in place. Specifically, in or about early 2018 an unknown hacker accessed Smith's firm email account. From April 18, 2018, through August 30, 2018, the hacker caused approximately 15,000 emails to be forwarded from Smith's firm email account to an unknown, outside email

address. Approximately 200 attachments to the emails accessed and forwarded by the hacker contained customers' non-public personal information, including social security numbers, drivers' license numbers, and dates of birth. Smith knew, or should have known, of the breach at least by April 18, 2018, when he began to receive undeliverable mail messages in his firm email account that referenced the outside email address, and later when the firm's email vendor informed Smith that his email account had been compromised. After Smith became aware of the email breach that exposed Supreme Alliance customers' identifying information to an unauthorized third party, Smith failed to take reasonable steps to mitigate the identity theft as required by Regulation S-ID and the firm's procedures. For example, Smith failed to report the breach to the authorities or to notify customers that their information had been stolen.

3. By failing to develop an identity theft prevention program reasonably designed to detect, prevent, and mitigate identity theft in connection with opening or maintaining customer accounts, and by failing to implement the firm's Identity Theft Prevention Program, Smith caused Supreme Alliance to violate Regulation S-ID, and, therefore, Smith violated FINRA Rule 2010.

4. Smith's failure to develop and implement an identity theft prevention program, including written procedures, also constitutes a violation of NASD Rule 3010(a) and (b) and FINRA Rules 3110(a) and (b) and 2010. Smith was responsible for the firm's supervisory system, including its written supervisory procedures. Smith, however, failed to establish, maintain, and enforce a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with Regulation S-ID.

5. Separately, in April 2019, Smith instructed a firm registered representative (RR) to transmit Supreme Alliance customer account documentation from RR's personal email to

Smith's personal email. Because these email communications were not sent using Supreme Alliance's email system, the firm failed to retain a record of the communications, as required under Section 17(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 17a-4 thereunder. By instructing RR to use personal email to send customer account documentation to his personal email account and by not providing copies of the emails to the firm, Smith caused the firm to violate its recordkeeping obligations under Section 17(a) of the Exchange Act and Exchange Act Rule 17a-4. Based on the foregoing, Smith violated FINRA Rules 4511 and 2010.

6. In May 2019, Smith instructed RR to provide false and misleading information to FINRA staff in response to a FINRA Rule 8210 request issued to RR regarding RR's use of personal email to conduct firm securities business. Specifically, although RR emailed Smith customer account documents from RR's personal email address to Smith's personal email address, Smith directed RR to conceal that information from FINRA staff. By directing RR to provide false and misleading information to FINRA staff, Smith violated FINRA Rule 2010.

7. During FINRA's investigation, Smith also provided false information pursuant to FINRA Rule 8210. When asked to provide a list of all email addresses that had received communications related to securities business from RR's personal email address, Smith responded that RR had "not used . . . private email for business," and he did not provide any email addresses in response to the request. Smith's response was false because, upon Smith's instruction, RR had used a personal email account to send customer account documents to Smith's personal email account.

8. Smith also provided false on-the-record testimony pursuant to FINRA Rule 8210 about whether Smith directed RR to transmit customer account documents using non-firm email accounts. Smith repeatedly lied by falsely stating that he never directed RR to email customer

account documents from RR's personal email address to Smith's personal email address. In addition, Smith repeatedly lied by falsely testifying that he never instructed RR to provide false and misleading responses to FINRA staff.

9. By providing false written responses to FINRA in response to FINRA Rule 8210 requests and by also providing false testimony to FINRA taken pursuant to FINRA Rule 8210, Smith violated FINRA Rules 8210 and 2010.

### **RESPONDENT AND JURISDICTION**

10. Smith entered the securities industry in 1987 when he became associated with a FINRA member firm. Since October 1998, Smith has been registered with FINRA as a General Securities Representative and General Securities Principal through his association with Supreme Alliance. At various times after October 1998, Smith became registered with FINRA as a Compliance Officer, Investment Banking Representative (terminated), Investment Company and Variable Contracts Products Representative, and Operations Professional. Smith became the CEO and CCO of Supreme Alliance in 2012.

11. Smith is subject to FINRA's jurisdiction for purposes of this proceeding because (1) he is currently associated with a FINRA member; and (2) the Complaint charges him with misconduct committed while he was registered with a FINRA member.

### **FACTS**

12. Rule 201 of Regulation S-ID, in relevant part, requires registered broker-dealers to "develop and implement a written Identity Theft Prevention Program (Program) that is designed to detect, prevent, and mitigate identity theft in connection with the opening of a covered account or any existing covered account."

13. Covered accounts include consumer accounts that permit multiple payments or transactions, such as retail brokerage accounts, credit card accounts, margin accounts, checking or savings accounts, or any other accounts with a reasonably foreseeable risk to customers from identity theft.

14. A firm's Program must include "reasonable policies and procedures" to identify red flags of identity theft relevant to the firm's business, detect those red flags, respond appropriately to any red flags detected, and ensure the firm's Program remains up-to-date with respect to identity theft risks.

**Supreme Alliance's Identity Theft Prevention Program and supervisory system were unreasonable.**

15. Smith, as CEO and CCO, was responsible for developing and implementing Supreme Alliance's Program.

16. Smith, as CEO and CCO, was also responsible for establishing, maintaining, and enforcing the firm's supervisory system and written supervisory procedures (WSPs).

17. Although not formally titled an Identity Theft Prevention Program, Supreme Alliance had written procedures in place to respond to red flags of identity theft. The firm's procedures provided:

[s]hould the Firm suspect that an incident of identity theft has occurred or if it is notified by a customer that they suspect an identity theft, the designated principal or his/her designee shall contact the Firm's legal department and compliance department. These departments shall commence an investigation and determine if an identity theft may have occurred. If the investigation determines that one may have occurred, Compliance and Legal shall notify the appropriate law enforcement agencies. (This includes the local Sheriff, the FBI, and Secret Service. The FTC serves as a clearinghouse for complaints against credit reporting agencies and credit grantors, referrals, and resources for assistance for victims of identity theft. They should be notified if the suspected victim requests this type of assistance. Refer to "Title 18 USC 1028" and to "Identity Theft and Assumption Deterrence Act of 1998".)

18. The firm's procedures also provided, "[i]f required by state law, states will be notified if customer information is stolen making it subject to potential identity theft."

19. The firm's Program, however, failed to include policies and procedures for the identification and detection of red flags of identity theft.

20. Moreover, the policies and procedures in the firm's Program for responding to red flags of identity theft consisted merely of generic policies and procedures and were not tailored to the firm's actual business model.

21. For example, although the Program provided that the firm's legal department would take an active role in investigating incidents of suspected identity theft, Supreme Alliance did not have a legal department.

**Smith failed to implement Supreme Alliance's Program after learning that his firm email account was breached.**

22. Smith, in his position as CEO and CCO of Supreme Alliance, regularly received emails containing identifying information relating to Supreme Alliance customers because registered representatives emailed account documentation containing sensitive customer information, such as social security numbers and dates of birth, to Smith for approval.

23. Smith was aware that, should such identifying information be disclosed to unauthorized third parties, the customers would be at a heightened risk of identity theft.

24. Beginning on April 18, 2018, Smith began to receive notifications in his firm email account alerting him that email messages sent from his firm account could not be delivered to a certain external email address.

25. On April 18, 2018, Smith received eight such undeliverable notifications.

26. Between April 18, 2018 and August 30, 2018, Smith received 120 undeliverable notifications.

27. On August 30, 2018, Smith forwarded one of the undeliverable messages to the firm's outside email vendor, informing the vendor that he had received more than 100 such messages.

28. On that same date, the vendor informed Smith there was an automated rule set up on his firm email account that blind-copied all emails he received to the external email address.

29. The email vendor further informed Smith that, since Smith had not set up the rule, Smith's Supreme Alliance email account likely had been compromised.

30. Between April 18, 2018, the date Smith first received undeliverable notifications, and August 30, 2018, the date Smith was informed of the email breach, more than 15,000 emails were blind copied from Smith's firm email account to the unauthorized external email address.

31. The blind copied emails included approximately 200 email attachments containing identifying information relating to Supreme Alliance customers, including customers' social security numbers, account numbers, driver's license numbers, and dates of birth.

32. Even after learning that emails sent to him were being forwarded to an unauthorized third-party email address, Smith, as CEO and CCO of Supreme Alliance, made no effort to implement the firm's Program. For example, Smith failed to notify authorities and the firm's affected customers. Moreover, Smith never took steps to determine whether applicable state laws required the firm to notify states of the potential identity theft, despite the firm's Program requiring such notification.

**Smith directed RR to use RR's personal email account to send customer account documents to Smith's personal email account.**

33. In April 2019, during FINRA's exam of the firm, Smith, RR's supervisor, contacted RR and instructed RR to send him customer blotters.

34. At that time, RR was traveling and unable to access the blotters remotely. RR was, however, able to access scanned images of customer account documents, which could be used to recreate the customer blotters.

35. Despite the fact that the firm's written supervisory procedures provided that business and internal email should be sent via the firm's email system, Smith instructed RR to use a personal email account to send the customer account documents to Smith's personal email account.

36. RR complied with Smith's instructions and sent customer account documents from a personal email account to Smith's personal email account.

37. Given that RR did not transmit the email using the firm's email system and neither RR nor Smith otherwise retained the email, the firm had no record of the communication.

**Smith instructed RR to provide false and misleading information to FINRA.**

38. On May 9, 2019, FINRA staff issued RR a request for information and documents pursuant to FINRA Rule 8210. A copy of the request was sent to Smith.

39. The request sought, among other things, information about RR's use of non-firm email accounts to transmit communications relating to Supreme Alliance business, and instructed RR to provide a list of all email accounts that had received securities related communications from those non-firm email accounts.

40. On May 15, 2019, RR sent a text message to Smith regarding RR's response letter to FINRA, which stated in relevant part, "They know I sent things to my gmail while I was in Arizona. These were a few clients that I forwarded on to your gmail for the blotter. I'm not sure what to say. I don't want to tell them I forwarded to your gmail." "I'm stuck between a rock and a hard place."

41. Shortly thereafter, Smith replied by instructing RR to “[j]ust say you sent stuff to your Gmail.[.] and when you returned home you printed and mailed me the garden [sic] copies [emoji omitted].” “Ok!” “??” “The [h]ard copies.”

42. RR replied, “Perfect, I knew you would [sic] the answer.”

43. Smith continued, “Say you were in Arizona and emailed the stuff to [y]our Gmail...and when you got home you printed everything and mailed me the [h]ard copies[.]” “Hehehe[.]”

44. RR asked Smith, “Do I have to explain why I did it?”

45. Smith answered “No.” After RR said “K[.]”, Smith continued, “You were tired.[.] didn’t feel like [REDACTED] with it[.]” “The reason you mailed me the hard copies is not important.”

46. On May 15, 2019, at Smith’s direction, RR responded to FINRA’s Rule 8210 request by stating “Occasionally, I could not get my documents to print through Outlook but could forward them to my . . .gmail.com account and print them to mail to Henry Smith.”

47. RR’s response concealed that, in April 2019, RR used a personal email account to transmit Supreme Alliance customer account information to Smith’s personal email account, at Smith’s direction.

**Smith provided a false response to FINRA’s Rule 8210 Request.**

48. On May 9, 2019, FINRA staff issued Smith, as CCO for Supreme Alliance, a request for information and documents pursuant to FINRA Rule 8210. The request sought, among other things, a list of email addresses that had received securities-related communications from RR’s personal email address.

49. Although Smith was aware that RR had sent Supreme Alliance customer account documents from a personal email address to his personal email address, Smith did not provide his personal email address to FINRA staff in response to this request.

50. Instead, on May 15, 2019, Smith responded to FINRA's Rule 8210 request on behalf of Supreme Alliance by stating that RR "has not used [RR's] private email address for business."

**Smith provided false testimony to FINRA during on-the-record testimony.**

51. On April 14, 2020, FINRA staff sent Smith a request pursuant to FINRA Rule 8210 to provide on-the-record testimony.

52. Pursuant to that request, Smith appeared and provided testimony on April 28, 2020.

53. During his testimony, Smith testified that he never instructed RR to use a personal email address to send customer account information to his personal email address.

54. This testimony was false because, in April 2019, Smith instructed RR to use a personal email account to send customer documents to Smith's personal email account.

55. During his testimony, Smith also testified that he never instructed RR to provide false and incomplete information to FINRA staff pursuant to a FINRA Rule 8210 request.

56. This testimony was false because, in May 2019, Smith instructed RR to conceal the fact that RR had sent customer account documents to Smith's personal email address and, instead, tell FINRA staff that RR had mailed hard copy documents to Smith.

## **FIRST CAUSE OF ACTION**

### **Causing Supreme Alliance to Violate Regulation S-ID (Violation of FINRA Rule 2010)**

57. The Department of Enforcement realleges and incorporates by reference all prior paragraphs.

58. Supreme Alliance was required under Regulation S-ID to “develop and implement a written Identity Theft Prevention Program designed to detect, prevent, and mitigate identity theft in connection with” customer accounts.

59. Smith, as Supreme Alliance’s CEO and CCO, was responsible for developing and implementing Supreme Alliance’s Identity Theft Program.

60. Smith, as Supreme Alliance’s CEO and CCO, failed to include in the firm’s Program reasonable policies and procedures to detect, prevent, and mitigate identity theft, including reasonable policies and procedures to identify and respond appropriately to red flags of identity theft.

61. On April 18, 2018, Smith began receiving notifications that emails transmitted from his firm email account could not be delivered to a third-party email account that was unknown to him.

62. Although Smith did not recognize the third-party email recipient of the undeliverable emails, he did not elevate the issue to the firm’s email vendor until August 30, 2018.

63. Moreover, once he became aware that emails received by his firm email account were being automatically forwarded to an unauthorized third party email account, Smith failed to implement any of the procedures set forth in the firm’s Identity Theft Prevention Program to

mitigate the risk of identity theft resulting from the unauthorized disclosure of Supreme Alliance customers' identifying information.

64. Smith's failure, as the firm's CEO and CCO, to include in the firm's Program reasonable policies and procedures to detect, prevent, and mitigate identity theft caused Supreme Alliance to violate Regulation S-ID.

65. Smith's failure, as the firm's CEO and CCO, to implement the firm's Program, caused Supreme Alliance to violate Regulation S-ID.

66. Causing the firm to violate Regulation S-ID is a violation of FINRA Rule 2010.

67. Based on the foregoing, Smith violated FINRA Rule 2010.

### **SECOND CAUSE OF ACTION**

#### **Failure to Supervise Supreme Alliance's Compliance with Regulation S-ID (Violation of NASD Rule 3010 and FINRA Rules 3110 and 2010)**

68. The Department of Enforcement realleges and incorporates by reference all prior paragraphs.

69. NASD Rule 3010(a) and FINRA Rule 3110(a) (which superseded NASD Rule 3010(a) on December 1, 2014) require that FINRA members establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD and FINRA rules.

70. NASD Rule 3010(b) and FINRA Rule 3110(b) (which superseded NASD Rule 3010(b) on December 1, 2014) require each member to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD and FINRA rules.

71. A violation of NASD Rule 3010 or FINRA Rule 3110 also constitutes a violation of FINRA Rule 2010.

72. At all relevant times, Smith, as CEO and CCO, was responsible for establishing, maintaining, and enforcing the firm's supervisory system and WSPs.

73. Smith failed to establish, maintain, and enforce a supervisory system, including WSPs, reasonably designed to achieve compliance with Regulation S-ID.

74. Smith failed to tailor the firm's policies and procedures for identifying and responding to red flags of identity theft to the firm's business.

75. Moreover, upon being put on notice of an email breach that exposed Supreme Alliance customers' identifying information to an unauthorized third party, Smith failed to implement any of the procedures set forth in the firm's Program.

76. Based on the foregoing, Smith violated NASD Rule 3010(a) and (b) and FINRA Rules 3110(a) and (b) and 2010.

### **THIRD CAUSE OF ACTION**

#### **Causing Supreme Alliance to Maintain Inaccurate Books and Records (Violation of FINRA Rules 4511 and 2010)**

77. The Department of Enforcement realleges and incorporates by reference all prior paragraphs.

78. FINRA Rule 4511 requires each member firm to "make and preserve books and records as required under the FINRA rules, the Exchange Act and applicable Exchange Act rules," including Rule 17a-3 and 17a-4 of the Exchange Act.

79. Exchange Act Rule 17a-4(b)(4) requires that every member or broker-dealer preserve all original communications received and copies of all communications sent by the

member or broker-dealer relating to its business for three years. This requirement encompasses email communications.

80. A violation of FINRA Rule 4511 constitutes a violation of FINRA Rule 2010.

81. In April 2019, while registered through Supreme Alliance, Smith, the CEO and CCO of the firm, instructed RR to send customer account documents from RR's personal email to Smith's personal email so that Smith could use the documents to create a blotter.

82. Because the email communications were not sent from or to a Supreme Alliance email address, the firm failed to retain a record of the communication, as required under Exchange Act Rule 17a-4.

83. By instructing RR to use personal email to conduct Supreme Alliance business, Smith caused Supreme Alliance to violate Section 17(a) of the Exchange Act and Rule 17a-4 thereunder and FINRA Rule 4511.

84. As a result of the foregoing conduct, Smith violated FINRA Rules 4511 and 2010.

#### **FOURTH CAUSE OF ACTION**

##### **Instructing RR to Provide False and Misleading Information to FINRA Staff (Violation of FINRA Rule 2010)**

85. The Department of Enforcement realleges and incorporates by reference all prior paragraphs.

86. Instructing a registered representative to provide false and misleading information to FINRA staff in response to a FINRA Rule 8210 request is a violation of FINRA Rule 2010 because such conduct is unethical and inconsistent with high standards of commercial honor and just and equitable principles of trade.

87. In May 2019, Smith instructed RR to provide false and misleading information to FINRA staff in response to a FINRA Rule 8210 request issued to RR regarding the use of personal email accounts to send communications related to securities business.

88. Specifically, the staff requested that, if RR used an email address to send communications related to securities business, RR “state the reason why and how often RR used [the personal email address] to send communication related to securities business” and that RR “provide a list of all email addresses that received communication related to securities business from” that personal email address.

89. Despite knowing that RR had used a personal email account to send customer documents to Smith’s personal email account, Smith instructed RR to respond to the staff’s request by stating that RR forwarded customer account documents to RR’s personal email account, printed hard copies of the documents, and mailed the hard copies to Smith.

90. RR did as Smith instructed and responded to FINRA staff by stating “Occasionally, I could not get my documents to print through Outlook but could forward them to my [personal email] account and print them to mail to Henry Smith. Upon doing so, I would immediately delete them off of that gmail account. I felt it was important to get them to him in a timely manner, rather than taking time to figure out why it was not working and and (sic) waste another day getting them to him.”

91. RR also failed to provide Smith’s personal email account as one which had received communications related to securities business from RR’s personal email account.

92. RR’s response was false and misleading because RR failed to disclose that (at Smith’s instruction) RR emailed Smith customer account documents from RR’s personal email address to Smith’s personal email address.

93. By instructing RR to provide false and misleading information to FINRA staff, Smith violated FINRA Rule 2010.

### **FIFTH CAUSE OF ACTION**

#### **Providing False Response to Information Request Issued Pursuant to FINRA Rule 8210 (Violation of FINRA Rules 8210 and 2010)**

94. The Department of Enforcement realleges and incorporates by reference all prior paragraphs.

95. FINRA Rule 8210(a) provides that FINRA staff has the right to require a person associated with a member or any other person subject to FINRA's jurisdiction to "provide information orally [or] in writing . . . with respect to any matter involved in the investigation."

96. Providing false or misleading information to FINRA in response to a request for information made pursuant to FINRA Rule 8210 violates FINRA Rule 8210.

97. A violation of FINRA Rule 8210 also constitutes a violation of FINRA Rule 2010.

98. On May 9, 2019, FINRA staff issued Smith, as CCO for Supreme Alliance, a request for information and documents pursuant to FINRA Rule 8210. The request sought, among other things, a list of email addresses that had received securities-related communications from RR's personal email address.

99. Although Smith was aware that RR had sent Supreme Alliance customer account documents from RR's personal email address to his personal email address, Smith did not disclose this to FINRA staff.

100. Instead, on May 15, 2019, Smith falsely responded to FINRA's Rule 8210 request on behalf of Supreme Alliance by stating that RR "has not used [RR's] private email address for business."

101. As a result of the foregoing, Smith violated FINRA Rules 8210 and 2010.

### **SIXTH CAUSE OF ACTION**

#### **Providing False Testimony Requested Pursuant to FINRA Rule 8210 (Violation of FINRA Rules 8210 and 2010)**

102. The Department of Enforcement realleges and incorporates by reference all prior paragraphs.

103. Providing false testimony during on-the-record testimony taken pursuant to FINRA Rule 8210 is a violation of FINRA Rule 8210.

104. A violation of FINRA Rule 8210 also constitutes a violation of FINRA Rule 2010.

105. On April 28, 2020, Smith appeared for and provided false on-the-record testimony to FINRA in response to a request issued pursuant to FINRA Rule 8210.

106. Smith testified that he never instructed RR to use RR's personal email to send customer account documentation to him.

107. Smith's testimony was false because, in April 2019, Smith instructed RR to email customer documentation to him from a personal email account.

108. Smith also repeatedly testified that he did not direct RR to provide false information to FINRA in response to the FINRA Rule 8210 request regarding RR's use of personal email.

109. Smith's testimony was false because, in May 2019, Smith instructed RR to tell FINRA staff that RR had mailed hard copy documents to Smith, when RR had actually emailed the documents from a personal email account to Smith's personal email account.

110. As a result of the foregoing, Smith violated FINRA Rules 8210 and 2010.

## RELIEF REQUESTED

WHEREFORE, the Department of Enforcement respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and
- C. order that Respondent bears such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

## FINRA DEPARTMENT OF ENFORCEMENT

Date: April 7, 2021



---

Suzanne H. Bertollett, Senior Counsel  
Authorized House Counsel  
Member Georgia Bar Only  
Tino Lisella, Director  
David B. Klafter, Chief Counsel  
Authorized House Counsel  
Member of NY and NJ Bars Only  
FINRA Department of Enforcement  
5200 Town Center Circle  
Tower 1, Suite 200  
Boca Raton, FL 33486  
561.443.8127/suzanne.bertollett@finra.org  
561.443.8034/tino.lisella@finra.org  
561.443.8110/david.klafter@finra.org