UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70089 / July 31, 2013

INVESTMENT ADVISERS ACT OF 1940
Release No. 3637 / July 31, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15399

In the Matter of **A.R. Schmeidler & Co., Inc.** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 15(b)(4) OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTIONS 203(e) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940 AGAINST A. R. SCHMEIDLER & CO., INC., MAKING FINDINGS, IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 15(b)(4) of the Securities Exchange Act of 1934 ("Exchange Act") and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against A.R. Schmeidler & Co., Inc. ("ARS," "Company," or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 15(b)(4) of the Exchange Act and Sections 203(e) and 203(k) of the Advisers Act against A.R. Schmeidler & Co., Inc., Making Findings, Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

Summary

This matter involves the failure by ARS, a dually registered investment adviser and broker-dealer, to seek best execution in breach of its fiduciary duty under the Advisers Act in connection with certain of its advisory clients, and a failure to implement policies and procedures reasonably designed to prevent those violations.

ARS served as an investment adviser and introducing broker-dealer for certain clients who paid the Company both investment advisory fees and brokerage commissions. Beginning in 2007, ARS failed to seek best execution. As a result, ARS violated Section 206(2) of the Advisers Act.

ARS's failure to implement procedures reasonably designed to prevent its best execution violations further violated Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

Respondent

1. ARS is, and at all times relevant herein has been, a dually registered investment adviser and broker-dealer with the Securities and Exchange Commission. Founded in 1971, ARS was acquired by Hudson Valley Bank in 2004 and has operated as a subsidiary of Hudson Valley Bank since that acquisition. ARS's principal place of business is New York, New York.

Background

2. Since at least 2005, ARS has provided investment advisory services for clients. ARS's clients generally executed advisory agreements that included language authorizing ARS to, among other things, select brokers and dealers to execute trades. Unless clients specifically instructed ARS to utilize a particular broker-dealer, ARS selected itself as the broker-dealer and provided services as an introducing broker. In 2005, ARS engaged a new firm to provide certain execution, clearance and custody services (the "Clearing Firm"). At that time, ARS reduced the commission rate for accounts whose trades were executed through ARS as broker-dealer from 8 cents to 6 cents per share. Accordingly, clients of ARS whose trades were executed through ARS as broker-dealer generally paid a commission of 6 cents per share during the relevant time. The commission rate of 6 cents per share was applied consistently for all clients, regardless of whether they maintained taxable or non-taxable accounts.

[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

3. ARS and the Clearing Firm agreed to split the 6 cents per share commission between themselves as follows: In 2005 and 2006, ARS retained 80% of the commissions (or 4.8 cents per share) generated by taxable client accounts with the Clearing Firm retaining the remaining 20% (or 1.2 cents per share). The Clearing Firm retained 100% of the commissions generated by non-taxable accounts, including ERISA accounts. ARS retained none of these commissions.

4. In February 2007, ARS and the Clearing Firm renegotiated their agreement, with the result that ARS's share of the commissions charged to clients with taxable accounts increased to 90%, without altering the allocation of responsibilities between ARS as an introducing broker and the Clearing Firm as a clearing broker. This new amendment gave ARS an additional 0.6 cents per share of the commissions from taxable accounts—or a total of 5.4 cents per share (90%), rather than the previous 4.8 cents per share (80%). The Clearing Firm continued to retain 100% of the commissions generated by non-taxable accounts, including ERISA accounts. ARS retained none of the commissions generated by non-taxable accounts.

5. Upon entering the new amendment with the Clearing Firm, ARS did not conduct sufficient analysis to determine whether it properly sought best execution for trades executed on behalf of advisory clients with taxable accounts.[2]

6. Finally, although ARS's written policies and procedures governed how to discharge the Company's best execution obligations for advisory clients, the Company failed to implement such policies and procedures.

7. As a result of the conduct described above, ARS willfully violated Section 206(2) of the Advisers Act, which makes it unlawful for an adviser to engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any client, by failing to conduct a sufficient best execution analysis.[3]

8. Further, as a result of the conduct described above, ARS willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder,[4]

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[2] "[M]oney managers should periodically and systematically evaluate the execution performance of broker-dealers executing their transactions." *Interpretive Release Concerning Scope of Section 28(e) of the Securities Exchange Act of 1934 and Related Matters*, Exchange Act Release No. 34-23170, 51 Fed. Reg. 16004, *14 (Apr. 23, 1986).

[3] "[A] violation of Section 206(2) of the Advisers Act may rest on a finding of simple negligence." *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191 (1963)).

[4] A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "'also be aware that he is violating one of the Rules or Acts.'" *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

which requires investment advisers to implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.[5]

Undertakings

Respondent has undertaken to:

9. Engage a qualified independent consultant ("Independent Consultant") to assist ARS in developing and implementing policies and procedures reasonably designed to promote compliance with its duty to seek best execution for its advisory clients. Such engagement shall last until the aforementioned policies and procedures are completed and implemented.

10. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with ARS, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under the Order shall not, without prior written consent of the New York Regional Office, enter into any employment, consultant, attorney-client, auditing or other professional relationship with ARS, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

11. Certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertaking, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Robert Keyes, Division of Enforcement, Securities and Exchange Commission, 3 World Financial Center, Suite 400, New York, New York, 10281-1022, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

[5] "Proof of scienter is not required to establish a violation of Section 206(4) of the Advisers Act." *In the matter of Wunderlich Securities, Inc*., Investment Advisers Act Rel. No. 3211, 2011 WL 2098195, at *8 (May 27, 2011) (citing *SEC v. Steadman*, 967 F.2d 636, 647 (D.C. Cir. 1992)).

Accordingly, pursuant to Section 15(b)(4) of the Exchange Act and Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that**:**

A. ARS shall cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

B. ARS is censured.

C. ARS shall pay disgorgement and pre-judgment interest as follows:

(1) ARS shall pay disgorgement of $757,876.88 and pre-judgment interest of $78,688.57 (the "Disgorgement Fund") consistent with the provisions of this Subsection C. Within ten (10) days of the entry of this Order, ARS shall deposit the full amount of the Disgorgement Fund into an escrow account acceptable to the Commission staff and ARS shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. If timely deposit of the Disgorgement Fund is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

(2) ARS shall be responsible for administering the Disgorgement Fund. ARS shall pay applicable portions of the Disgorgement Fund to affected current and former advisory clients pursuant to a disbursement calculation (the "Calculation") that has been submitted to, reviewed and approved by the Commission staff in accordance with this Subsection C. If the total amount otherwise payable to a client is less than $25.00, ARS shall instead pay such amount to the Commission for transmittal to the United States Treasury as provided in this Subsection C.

(3) ARS shall, within sixty (60) days from the entry of this Order, submit a proposed Calculation to the Commission staff for its review and approval that identifies, at a minimum: (i) the name and account number of each affected advisory client; (ii) the exact amount of the payment to be made to such client; and (iii) a description of the client transactions ("Relevant Transactions") to which the client's payment relates. ARS also shall provide to the Commission staff such additional information and supporting documentation relating to the Relevant Transactions as the Commission staff may request for the purpose of its review. No portion of the Disgorgement Fund shall be paid to any client account directly or indirectly in the name of or for the benefit of ARS. In the event of one or more objections by the Commission staff to ARS's proposed Calculation and/or any of its information or supporting documentation, ARS shall submit a revised Calculation for the review and approval of the Commission staff and/or additional information or supporting documentation within ten (10) days of the date that ARS is notified of the objection, which revised Calculation shall be subject to all of the provisions of this Subsection C.

(4) ARS shall complete the transmission of all amounts otherwise payable to affected advisory clients pursuant to a Calculation approved by the Commission staff within one hundred and twenty (120) days of the entry of this Order, unless such time period is extended as provided in paragraph (9) of this Subsection C.

(5) If ARS does not distribute or return any portion of the Disgorgement Fund for any reason, including an inability to locate an affected advisory client or any factors beyond ARS's control, or if ARS has not transferred any portion of the Disgorgement Fund to a client because that client is due less than $25.00, ARS shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury after the final accounting provided for in this Subsection C is approved by the Commission. ARS may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account or by credit or debit card via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. Respondent may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and submitted under cover letter that identifies ARS as the Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Robert Keyes, Division of Enforcement, Securities and Exchange Commission, 3 World Financial Center, New York, New York 10281-1022.

(6) ARS shall be responsible for any and all tax compliance responsibilities associated with the Disgorgement Fund and may retain any professional services necessary. The costs and expenses of any such professional services shall be borne by ARS and shall not be paid out of the Disgorgement Fund.

(7) Within two hundred and ten (210) days after the date of entry of this Order, ARS shall submit to the Commission staff for its approval a final accounting and certification of the disposition of the Disgorgement Fund, which final accounting and certification shall be in a format to be provided by the Commission staff. The final accounting and certification shall include, but not be limited to: (i) the amount paid to each payee; (ii) the date of each payment; (iii) the check number or other identifier of money transferred; (iv) the date and amount of any returned payment; (v) a description of any effort to locate a prospective payee whose payment was returned or to whom

payment was not made for any reason; and (vi) any amounts to be forwarded to the Commission for transfer to the United States Treasury. ARS shall submit proof and supporting documentation of such payment (whether in the form of fee credits, cancelled checks, or otherwise) in a form acceptable to the Commission staff and under a cover letter that identifies ARS as the Respondent in these proceedings and the file number of these proceedings to Robert Keyes, Division of Enforcement, Securities and Exchange Commission, 3 World Financial Center, Suite 400, New York, New York, 10281-1022. ARS shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

(8) After ARS has submitted the final accounting to the Commission staff, the staff shall submit the final accounting to the Commission for approval and shall request Commission approval to send any remaining amount to the United States Treasury.

(9) The Commission staff may extend any of the procedural dates set forth in this Subsection C for good cause shown. Deadlines for dates relating to the Disgorgement Fund shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday the next business day shall be considered to be the last day.

D. ARS shall, within 10 days of the entry of this Order, pay a civil monetary penalty of $175,000 to the Securities and Exchange Commission. If timely payment of a civil penalty is not made, additional interest shall accrue pursuant to 31 USC § 3717. Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account or by credit or debit card via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. Respondent may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

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and submitted under cover letter that identifies ARS as the Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Robert Keyes, Division of Enforcement, Securities and Exchange Commission, 3 World Financial Center, New York, New York 10281-1022.

E. The civil monetary penalty may be distributed pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended ("Fair Fund distribution"). Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant

to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that Respondent is entitled to, nor shall Respondent benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

G. Respondent shall comply with the undertakings enumerated in Paragraphs 9-11 above.

By the Commission.

Elizabeth M. Murphy
Secretary