



NOW THEREFORE, in connection with the investigation, the Division determined that the Respondent has engaged and is about to engage in acts or practices constituting violations of the Act and/or the Prior Act and hereby includes in this Order to Cease and Desist a statement of the civil penalty and costs of the investigation sought, a statement of the reasons for the Order,

7. Respondent, as an investment adviser representative, is associated with an investment advisor



On April 11, 1994, Debra [redacted] Schuck's firm titled "Financial

Advice Agreement" representing that Michael D. Kennedy, working for Michael D

Kennedy/Investment Counsel, is the agent for clients MRT and HET, is a professional

14. On March 16, 2005, the Division received a letter from Respondent in which he acknowledged that he "failed to pay the RIA fee for this office" and that he is "in the process

register for 2005.

15. On April 12, 2005, the Division noted in its files that Respondent's application for registration as an investment adviser and an investment adviser representative is being held in pending status until the Division receives a complete application.

16. Regarding client DHS:

open a Schwab IRA account.

- b. On or about June 3, 2005, client GJH and Kennedy signed an "Investment Advisory Agreement" in which client GJH "appoint[ed] Michael R. Kennedy/Investment Counsel as advisor."
- c. The letterhead on the Investment Advisory Agreement dated June 3, 2005, between client GJH and Respondent reads: "Michael R. Kennedy/Investment Counsel." The letterhead also includes the following statements: "Registered Investment Advisor

U.S. GOVERNMENT PRINTING OFFICE: 1964 O - 354-100 (Investment Adviser Registration)

F



Cathryn W. Kennedy" as of December 31, 2005. In the cover letter accompanying these documents, Kennedy stated that his client contract had not changed.

28 Defendant's letterhead on his cover letter on his and his wife's Statement of Financial

Condition, and on his Investment Advisory Agreement that the Division received from

Defendant's letterhead on his cover letter on his and his wife's Statement of Financial

32. Regarding prospective client MEP:

- a. Kennedy sent a letter to prospective client MEP dated August 25, 2006, that included “information you requested and that we promised you.”

“Michael R. Kennedy/Investment Counsel” and includes the following statements:

“Registered Investment Advisor State of S.C.” and “Investment Portfolio

Management for Businesses and Individuals.”

of the and some foreign countries. In this letter Kennedy identified the following

[REDACTED]

25 During the onsite audit, Division personnel asked Kennedy if he understood that he was not

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ii Respondent produced only three of the quarterly fee statements sent to clients:

Kennedy stated that many of the documents that he could not provide had been

documents more than three years old.

- i. Kennedy gave Division personnel a business card that reads “Michael R. Kennedy Investment Counsel” and includes the following statement: “Registered Investment Advisor State of S.C.”



1. ~~Q. What is the purpose of the act of the investment adviser registration~~

e. Supervises employees who perform any of the foregoing.

48. Pursuant to S.C. Code Ann. § 35-1-404(a) of the Act and S.C. Code Ann. § 35-1-420(1) of

the Prior Act, it is unlawful for an individual to transact business in South Carolina as an investment adviser representative unless that individual is registered in South Carolina as an investment adviser representative or is exempt from registration.



at noon on the forty-fifth day after a completed application is filed, unless the registration is denied.

54. Pursuant to S.C. Code Ann. § 35-1-404(c) of the Act, the registration of an investment adviser representative is not effective while the investment adviser representative is not employed by or associated with an investment adviser registered under the Act.

55. Pursuant to S.C. Code Ann. § 35-1-411(c) of the Act, subject to Section 222 of the Investment Advisers Act of 1940, an investment adviser registered or required to be registered under the Act shall make and maintain the accounts, correspondence, memoranda, papers, books, and other records required by rule or order issued under the Act.

56. Pursuant to S.C. Code Ann. § 35-1-590 of the Prior Act, subject to Section 222 of the Investment Advisers Act of 1940, licensed investment advisers shall make and keep such

67 § 35-1-590 correspondence, memoranda, papers, books, and other records of the

list concerning the purchase, sale, receipt or delivery of a particular security and of

any modification or cancellation of any such order or instruction;

- d. All bills or statements or copies of such bills or statements, paid or unpaid, relating to the investment adviser's investment advisory business;

All bills, statements, financial statements, and internal audit working papers relating to

including the ones listed in paragraph 57 above, shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on the record. During the first two years, these books

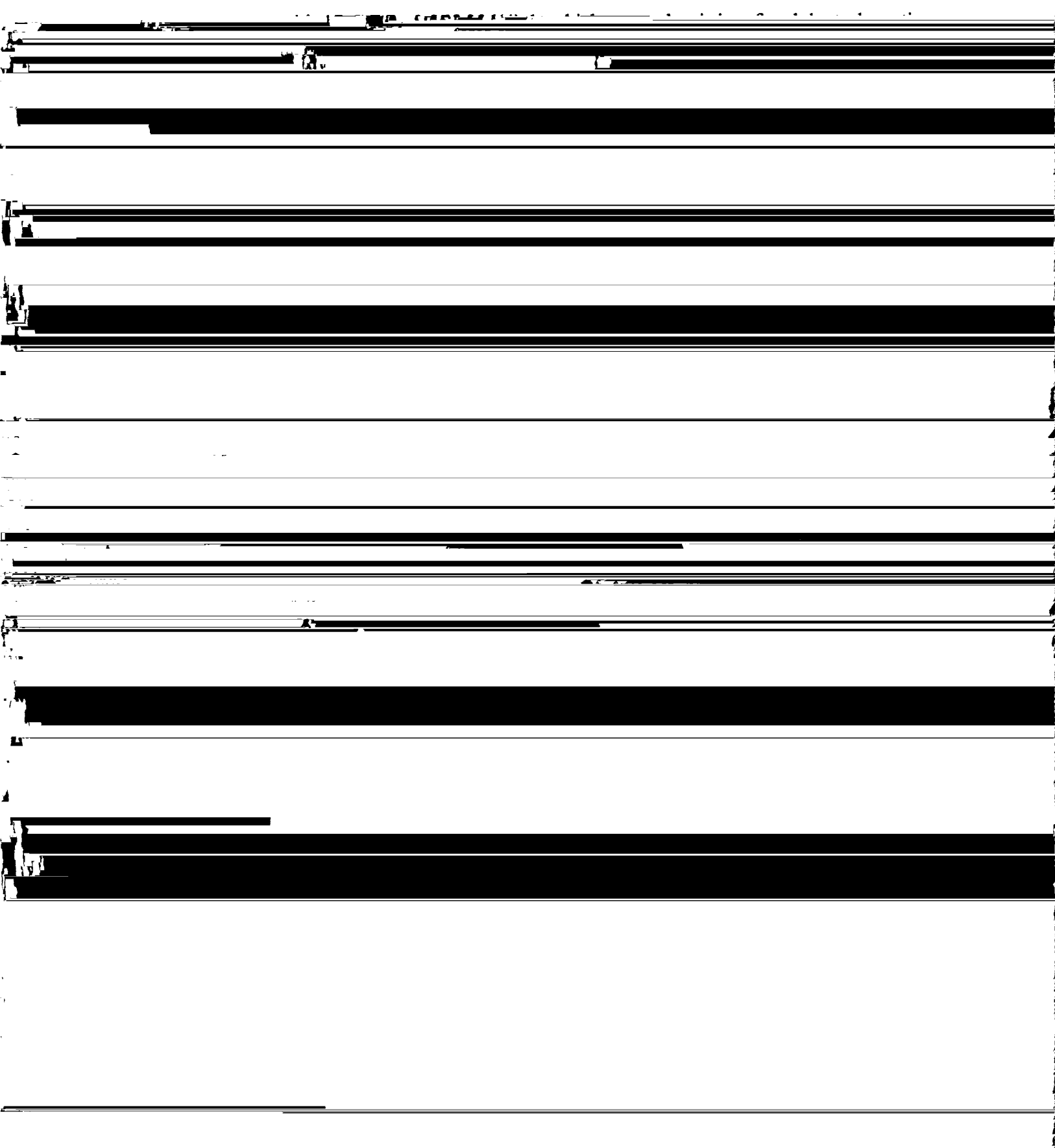
and records shall be maintained and preserved in the principal office of the investment

59. Pursuant to S.C. Code Ann. § 35-1-501 of the Act and S.C. Code Ann. § 35-1-1210 of the Prior Act, it is unlawful for a person, in connection with the offer, sale, or purchase of a

b. Pursuant to S.C. Code Ann. § 35-1-502(b) of the Act, a rule adopted under the Act may define an act, practice, or course of business in connection with giving investment advice regarding securities as fraudulent, deceptive, or manipulative.

investment advisers and investment advisers representative shall observe high standards

iii. Publishing, circulating, or distributing any advertisement that does not comply



provision or suspension of registration, imposition of administrative fines, or such

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representing the nature of the services being offered or fees to be

charged for such services, or omitting to state a material fact necessary to make the statements made regarding qualifications, services, or fees, in light of the circumstances under which they are made, not misleading;

... Distribution of the information in a form that does not comply

iii. Exercising its conduct or control, indirectly or through or by any other person

which would be unlawful for such person to do directly under the provisions of this Act or any rule or order thereunder.

67. Pursuant to S.C. Code Ann. § 25-1-602(e)(1) of the Act, the Commissioner may conduct



**DIVISION'S DETERMINATION**

65. WHEREAS, based on the foregoing, the Division has determined that Respondent has

violated the Act or a rule adopted or order issued under the Act as follows:

constituting a violation of the Act or a rule adopted or order issued under the Act as follows:

Respondent violated the Act or a rule adopted or order issued under the Act as follows:

prospective client in 2006 while not being registered as an investment adviser or investment adviser representative, and by holding himself out as providing

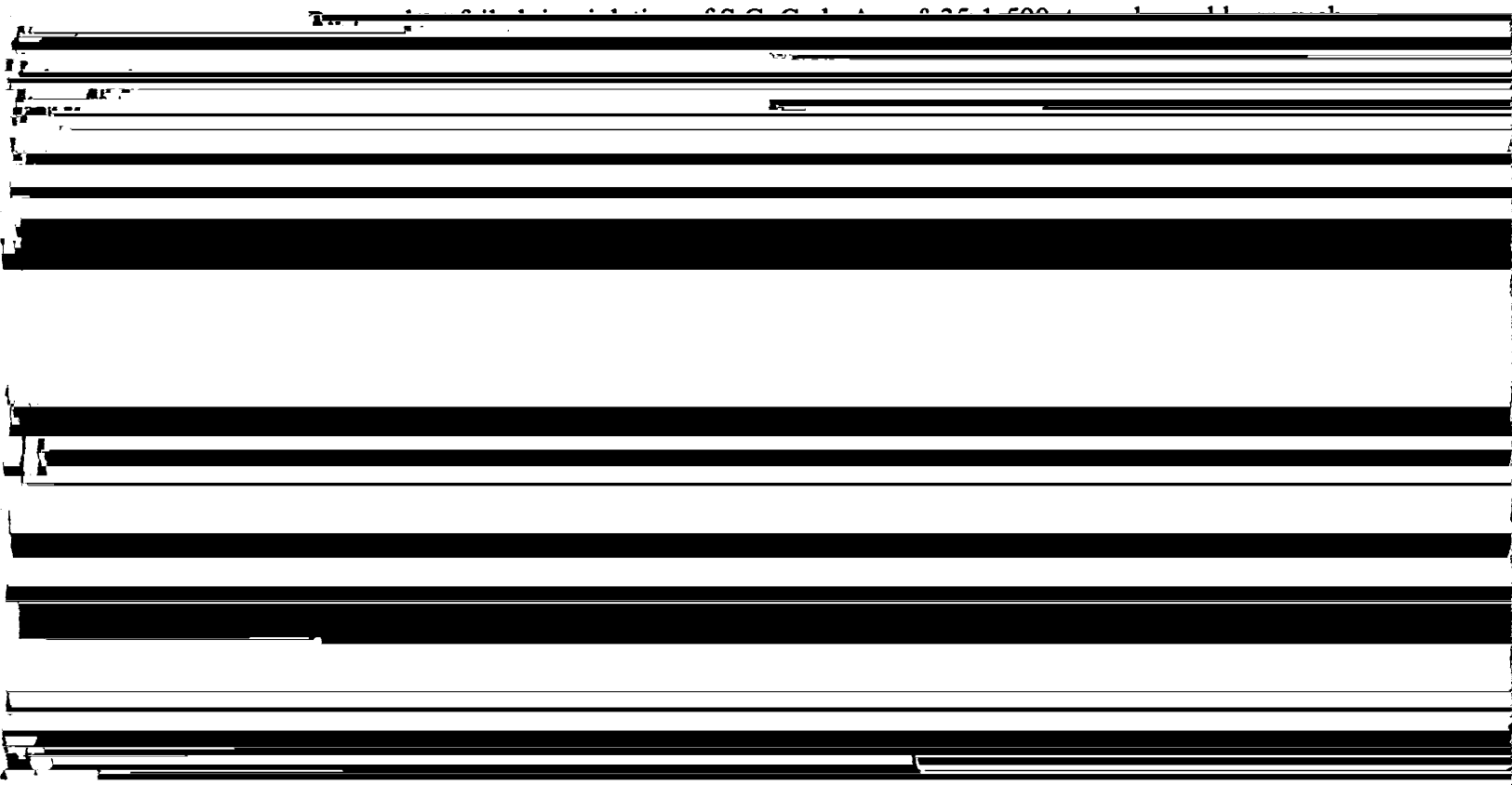
~~in 2006 while not being registered as an investment adviser or~~

g. Respondent is likely to violate S.C. Code Ann. §§ 35-1-403(a) and 404(a) because he is not registered as an investment adviser and investment adviser representative in 2007 he still has investment advisory clients and discretionary authority over existing



- c. Respondent was not registered as an investment adviser and investment adviser representative pursuant to S.C. Code Ann. §§ 35-1-440 and 35-1-460 from January 1, 2005 through August 9, 2005;
- d. Respondent has violated S.C. Code Ann. §§ 35-1-420(1) by placing orders to trade securities in client accounts in 2005 while not being registered as an investment adviser or investment adviser representative, by managing securities accounts of portfolios of clients in 2005 while not being registered as an investment adviser or investment adviser representative, by accepting new investment advisory clients in 2005 while not being registered as an investment adviser or investment adviser representative, and by holding himself out as providing investment advice in 2005

while not being registered as an investment adviser or investment adviser representative;



...the source of business that expected and would

operate as a fraud or deceit upon prospective and existing advisory clients and



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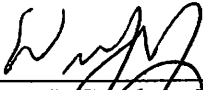
the actual cost of the investigation

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ORDER DOES NOT PRECLUDE THE FILING OF PRIVATE CAUSES OF ACTION OR  
THE FILING OF CRIMINAL CHARGES UNDER S.C. CODE ANN. § 35-1-508 OF THE  
ACT OR S.C. CODE ANN. § 35-1-1590 OF THE PRIOR ACT.

**IT IS SO ORDERED.**

This 18<sup>th</sup> day of June, 2007

  
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