

**COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE SECRETARY OF THE COMMONWEALTH
SECURITIES DIVISION
ONE ASHBURTON PLACE, ROOM 1701
BOSTON, MASSACHUSETTS 02108**

IN THE MATTER OF:)

STEPHEN S. EUBANKS AND)
EUBIQUITY CAPITAL LLC,)

RESPONDENTS.)
_____)

Docket No. E-2016-0084

ADMINISTRATIVE COMPLAINT

I. PRELIMINARY STATEMENT

The Enforcement Section of the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth (the “Enforcement Section” and the “Division,” respectively) files this Administrative Complaint (the “Complaint”) to commence an adjudicatory proceeding against Stephen S. Eubanks (“Eubanks”) and Eubiquity Capital LLC (“Eubiquity Capital”) (collectively, the “Respondents”), for violations of MASS. GEN. LAWS ch. 110A, the Massachusetts Uniform Securities Act (the “Act”), and 950 MASS. CODE REGS. 10.00-14.413 (the “Regulations”). The Enforcement Section alleges that Eubanks, through Eubiquity Capital, engaged in a Ponzi scheme that took in at least \$529,000 from fifteen known investors, in violation of the Act and Regulations. The Enforcement Section further alleges that Respondents acted as unregistered investment advisers or investment adviser representatives, and that Respondents effectuated the offer and sale of unregistered securities, in violation of the Act and Regulations.

The Enforcement Section seeks an order: 1) finding as fact the allegations set forth below; 2) finding that all sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors; 3) requiring Respondents to permanently cease and

desist from violations of Sections 101, 102, 201, 204, and 301 of the Act and Regulations in the Commonwealth; 4) censuring respondents; 5) requiring Respondents to provide an accounting for those losses attributable to the alleged wrongdoing; 6) requiring Respondents to provide restitution to fairly compensate investors for those losses attributable to the alleged wrongdoing; 7) requiring Respondents to make rescission offers to all residents of the Commonwealth who purchased securities sold in violation of the Act; 8) requiring Respondents to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing; 9) permanently barring Respondents from associating or registering in the Commonwealth as a broker-dealer, broker-dealer agent, or as a partner, officer, director, or control person of a broker-dealer; 10) permanently barring Respondents from associating or registering in the Commonwealth as or with any state-registered investment adviser, Securities and Exchange Commission registered investment adviser, and investment adviser excluded from the definition of investment adviser; 11) permanently barring Respondents from associating or registering in the Commonwealth with any issuer of any securities or as an agent of any issuer of securities in the Commonwealth; imposing an administrative fine on Respondents in an amount and upon such terms and conditions as the Director or Presiding Officer may determine; and 12) taking any such further action which may be in the public interest and necessary and appropriate for the protection of Massachusetts investors.

II. SUMMARY

The Enforcement Section of the Division alleges that Stephen S. Eubanks (“Eubanks”), of Hingham, Massachusetts, is engaged in an ongoing Ponzi scheme that has taken in at least \$529,000 from Eubanks’ friends, neighbors, and their families over the past five years, including \$195,000 obtained from four Massachusetts investors.

Since at least October 2011, Eubanks has held himself out as a successful operator of a hedge fund managed through his limited liability company, Eubiquity Capital. Eubanks has taken in hundreds of thousands of dollars from at least fifteen known investors, promising victims that their money will be invested in stocks, options, and other securities. Instead, Eubanks has regularly spent substantial portions of his investors’ deposits for his own benefit. In total, Eubanks has misappropriated at least \$145,000 of investors’ funds to finance his own lifestyle, including vacations to Martha’s Vineyard, boat payments, partial repayment of a federal tax debt, payment of his monthly rent, and thousands of dollars of restaurant bills.

In order to conceal his scheme, Eubanks provides investors with false reports that their money is safely invested and generating substantial profits. In fact, Eubanks has realized significant losses on the portion of investors’ funds that he did invest in securities. When investors seek to withdraw their investments and realize their supposed gains, Eubanks pays them with funds solicited from other investors. In total, Eubanks has used at least \$140,000 of new investor money to repay earlier investors. Eubanks misrepresents to earlier investors that the payments represent the return of their own invested capital.

Eubanks’ scheme preys upon the trust placed in him by his investors, most of whom consider Eubanks to be a close and trusted friend. Eubanks’ known victims include long-time friends, neighbors, a college roommate, and even the elderly father of a college fraternity

brother. Other victims include supposed friends that Eubanks met in online chat rooms, from whom Eubanks has obtained at least \$87,000. Over the past six months alone, Eubanks has solicited at least \$75,000 from new investors in an attempt to prevent his Ponzi scheme from collapsing. Eubanks has invested \$0 of these new investors' deposits, using all of the funds to either repay earlier investors or pay for his own personal expenses.

In testimony given under oath before the Enforcement Section, Eubanks continued to try to conceal the nature of his activities in the Commonwealth. Eubanks initially claimed that he had taken money from only two investors. When confronted with contradictory evidence, Eubanks repeatedly revised his testimony, ultimately acknowledging the identities of thirteen investors.

Eubanks continues to present a substantial risk to the investing public. In his testimony, Eubanks insisted that investor funds were still being held in an account with TD Ameritrade. Eubanks estimated the current value of the TD Ameritrade account to be approximately \$200,000. In reality, the total value of Eubiquity Capital's TD Ameritrade brokerage account has been less than \$100 since at least January 1, 2016, and TD Ameritrade permanently closed the account over two weeks before Eubanks gave his false testimony. The Enforcement Section alleges that Eubanks has caused the complete loss of all his current investors' funds, and continues to deceive Massachusetts investors.

III. JURISDICTION AND AUTHORITY

1. As provided for by the Act, the Division has jurisdiction over matters relating to securities pursuant to chapter 110A of Massachusetts General Laws.
2. The Enforcement Section brings this action pursuant to the authority conferred upon the Division by Section 407A, 204, and 414 of the Act, wherein the Division has the authority to conduct an adjudicatory proceeding to enforce the provisions of the Act and the Regulations.
3. This proceeding is brought in accordance with Sections 101, 102, 201, 204, 301, 407A, and 414 of the Act and its Regulations.
4. The Enforcement Section reserves the right to amend this Complaint and/or bring additional administrative complaints to reflect information developed during the current and ongoing investigation.

IV. RELEVANT TIME PERIOD

5. Except as otherwise expressly stated, the conduct described herein occurred during the time period of October 1, 2011 to present (the "Relevant Time Period").

V. RESPONDENTS

6. Stephen S. Eubanks is an individual with a last known residential address in Hingham, Massachusetts. Eubanks has a Financial Industry Regulatory Authority ("FINRA") Central Registration Depository ("CRD") number of 2291133. Eubanks has never been registered as an investment adviser or investment adviser representative with the Division, the United States Securities and Exchange Commission ("SEC"), or any other state securities regulator. Eubanks has been the sole owner and manager of Eubiquity Capital since February 23, 2010.
7. Eubiquity Capital LLC is a limited liability company organized on February 23, 2010 in the Commonwealth of Massachusetts. Eubiquity Capital has made filings since February 23,

2010 with the Corporations Division of the Secretary of the Commonwealth of Massachusetts. Stephen Eubanks is the sole manager of Eubiquity Capital.

VI. STATEMENT OF FACTS

A. Introduction: Stephen S. Eubanks and Eubiquity Capital

8. In July 2016, the Division received an investigative referral from the National Futures Association (the "NFA"), containing information concerning Eubanks that it had discovered during an examination of a member firm.

9. In response to the NFA's referral, the Enforcement Section opened an investigation into the conduct of Eubanks and Eubiquity Capital.

10. Over the course of its investigation, the Enforcement Section learned that Eubanks has taken in at least \$529,000 from at least fifteen investors through Eubiquity Capital.

11. Four known residents of Massachusetts contributed a least \$195,000 of the \$529,000 invested with Eubanks and Eubiquity Capital.

1. Eubanks' Background

12. Eubanks has been employed in the securities industry for over twenty years.

13. Eubanks has worked as a registered broker-dealer agent for several major firms, including Smith Barney, UBS Financial Services, Bear Stearns, and Oppenheimer.

14. In April 2006, Eubanks was terminated as a broker-dealer agent of Oppenheimer in response to a customer complaint.

15. According to the CRD, Eubanks has been the subject of eleven customer complaints since 1997.

16. Customers have alleged that Eubanks churned their accounts, gave unsuitable investment advice, failed to disclose investment risks, and placed unauthorized trades, among other complaints.
17. In one case, Eubanks' former employer settled a customer's claim of unauthorized trading for \$190,000.
18. In 2007, Eubanks registered with the Division as a broker-dealer agent of Bright Trading, LLC.
19. On information and belief, agents of Bright Trading are authorized to trade only on their own account, using personal funds and additional capital extended by Bright Trading.
20. Eubanks placed trades for Bright Trading through an individual brokerage sub-account held by the firm at Goldman Sachs (the "Bright Trading Account").
21. While at Bright Trading, Eubanks was forbidden from using any other person's money to place trades through the Bright Trading Account.
22. Eubanks testified before the Division that he had never traded investors' funds in the Bright Trading Account.
23. Eubanks was terminated by Bright Trading on August 26, 2016.

2. Eubiquity Capital

24. On Eubiquity Capital's Certificate of Organization, Eubanks described the general character of the business/professional service to be rendered as "HEDGE FUND; CAPITAL MANAGEMENT." Eubanks signed the Certificate of Organization under the penalties of perjury.
25. Eubanks filed Annual Reports on behalf of Eubiquity Capital for the years 2011 through 2015.

26. Eubiquity Capital's Annual Reports for the years 2011 through 2013 also provided that that the general business of the LLC was "CAPITAL MANAGEMENT" and "HEDGEFUND [sic]."

27. Eubiquity Capital's Annual Reports for the years 2014 and 2015 provided that the general business of the LLC was "Capital Management," "Proprietary Trading," and a "DBA: 'Market Talk' Institutional IM Service."

28. Pursuant to a subpoena, Eubanks provided testimony under oath before the Division on October 20, 2016.

29. Eubanks testified to the Enforcement Section that Eubiquity Capital has invested funds for individuals other than himself.

30. Eubanks testified further that he pools investors' funds in a common Eubiquity Capital account.

31. In his testimony, Eubanks initially claimed that only two people had invested money with him.

32. When confronted with contradictory evidence, Eubanks revised his testimony, stating that Eubiquity Capital managed money for five investors over the lifetime of the LLC:

Q. I believe you testified earlier that there were only two people that you ever managed money for with Eubiquity Capital.

A. I made a mistake.

Q. How many people has Eubiquity Capital managed investments on their behalf?

A. I've never managed more than five people's money in a period of time.

Q. Does that mean you have never managed more than five people's money, more than five people at any given time or more than five people in the history of Eubiquity Capital, LLC?

A. Five total.

33. Upon further questioning, Eubanks continued to revise his testimony concerning the number of investors.

34. At one point, Eubanks stated that he was “a hundred percent positive” that there had never been more than ten Eubiquity Capital investors.

35. However, the Enforcement Section has identified at least fifteen individuals who have invested money with Eubanks through Eubiquity Capital, including thirteen acknowledged by Eubanks in his testimony.

B. Eubanks’ Scheme to Defraud

36. Between October 2011 and the present, Eubanks took in investments of at least \$529,000 from at least fifteen investors, including at least four current Massachusetts residents.

37. Eubanks recruited at least two investors from friends he had met through MrTopStep, LLC, an online company that provides investor education and market commentary.

38. Eubanks regularly frequented internet chat rooms operated by MrTopStep, LLC where he provided market commentary and held himself out as a sophisticated and capable investor.

39. Other investors included Eubanks’ neighbors, college roommate and the elderly father of a college fraternity brother.

40. Eubanks represented that he would invest his victims’ money in exchange for a percentage of any subsequent returns.

41. In reality, Eubanks often used substantial portions of his victims’ investments for his own benefit, often within days of the funds’ initial receipt.

42. In other instances, Eubanks used money from new investors to repay earlier investors.

43. Although Eubanks sometimes used investor capital to trade securities, trading records show that Eubanks incurred significant losses on these investments.

44. Despite these losses, Eubanks consistently told investors that their investments were secure and, in most cases, growing.

45. In several cases, Eubanks executed written investment contracts with investors outlining investment strategies, account management, and Eubanks' compensation.

46. Eubanks' standard investment contracts stated that investors' funds would be managed through brokerage accounts held with TD Ameritrade, Goldman Sachs,¹ Fidelity, and UBS.

1. Eubanks misappropriated investor funds

47. Eubanks operated brokerage accounts in the name of Eubiquity Capital with TD Ameritrade (the "Eubiquity Ameritrade Account"), UBS (the "Eubiquity UBS Account"),² and Fidelity (the "Eubiquity Fidelity Account") (collectively, the "Eubiquity Brokerage Accounts").

48. Eubanks maintains checking accounts in the name of Eubiquity Capital with Citizens Bank (the "Eubiquity Checking Account") and the Hingham Institution for Savings,³ as well as a Citizens Bank savings account in the name of Eubiquity Capital.

49. In addition to the Bright Trading Account, Eubanks also managed a retail brokerage account held in his own name with TD Ameritrade (the "Eubanks Ameritrade Account") (collectively, the "Eubanks Brokerage Accounts").

50. Eubanks also maintains a checking account in his own name with Citizens Bank (the "Eubanks Checking Account"), as well as a joint checking account with his wife, an individual savings account, and a \$39,114.00 line of credit used to finance the purchase of his boat.

51. Eubanks represented to at least one investor that he used the Eubanks Ameritrade Account to trade for "friends and family" investors with Eubiquity Capital.

52. Eubanks deposited checks from investors and received wire transfers of investors' funds in the Eubiquity Checking Account.

¹ Eubanks testified to the Division that the Goldman Sachs account was held through Bright Trading in his name.

² The Eubiquity UBS Account has been funded with no more than \$1,100 over the lifetime of the account.

³ Eubiquity Capital's checking account with the Hingham Institution for Savings has taken in a total of only \$1,739.00 over the lifetime of the account.

53. Upon information and belief, investors believed that their deposits would be invested in the Eubiquity Brokerage Accounts.

54. However, Eubanks regularly failed to transfer all investors' funds from the Eubiquity Checking Account to any of the Eubiquity Brokerage Accounts or even the Eubanks Brokerage Accounts.

55. Between October 2011 and December 31, 2012, Eubanks took in at least \$94,000 from four known investors.

56. Over the same period, Eubanks transferred a total of only \$38,200 to the Eubiquity Brokerage Accounts, and \$34,000 to the Eubanks Brokerage Accounts.

57. In 2013, Eubanks took in a total of at least \$90,000 from two known investors.

58. In the same year, Eubanks transferred only \$29,000 in total to the Eubiquity Brokerage Accounts, and \$33,000 to the Eubanks Brokerage Accounts.

59. In 2014, Eubanks took in at least \$225,000 from three known investors.

60. In the same year, Eubanks transferred only \$157,000 in total to the Eubiquity Brokerage Accounts, and \$41,000 to the Eubanks Brokerage Accounts.

61. In 2015, Eubanks took in at least \$45,000 from two known investors.

62. In the same year, Eubanks transferred \$0 to any of the Eubiquity Brokerage Accounts, and \$5,500 to any of the Eubanks Brokerage Accounts.

63. In 2016, Eubanks has taken in at least \$75,000 from three known investors to date.

64. In 2016, Eubanks has transferred \$0 to any of the Eubiquity Brokerage Accounts, and \$4,000 to any of the Eubanks Brokerage Accounts.

65. On October 20, 2016, Eubanks testified to the Enforcement Section that Eubiquity Capital funds were still held in the Eubiquity Ameritrade Account, and estimated that the current value of the account was \$200,000.

66. According to statements generated by TD Ameritrade, however, the Eubiquity Ameritrade Account has had a total net asset value of less than \$100 since at least January 31, 2016.

67. In fact, TD Ameritrade notified Eubanks by a letter dated August 26, 2016 that it terminating its business relationship with Eubanks.

68. TD Ameritrade closed all accounts associated with him and/or Eubiquity Capital on October 5, 2016.

69. Over the Relevant Time Period, Eubanks regularly used investor funds to pay for personal expenses.

70. For example, on July 15, 2012, the Eubiquity Checking Account had an end-of-day balance of \$7.07.

71. On the same day, the Eubanks Checking Account had a negative end-of-day balance of -\$3.77.

72. On July 16, 2012, Eubanks deposited into the Eubiquity Checking Account a \$10,000 check from a known investor ("Investor One") paid to the order of Eubiquity Capital.

73. On July 17, 2012, Eubanks wired \$2,000 from the Eubiquity Checking Account to the Eubiquity Ameritrade Account.

74. On the same day, Eubanks transferred a total of \$6,000 from the Eubiquity Checking Account to the Eubanks Checking Account.

75. Later that afternoon, Eubanks wired \$3,000 from the Eubanks Checking Account to the Bright Trading Account.

76. Eubanks did not transfer \$5,000 of Investor One's funds to any brokerage account or investment platform.

77. Over the following week, Eubanks used Investor One's funds to pay over \$3,500 of personal expenses, including but not limited to, Eubanks' monthly rent payment, and payments to Cigar City, Zendo Asian Bistro & Lounge, and Hingham Beer Works.

78. Citizens Bank records show that throughout the Relevant Time Period, Eubanks spent portions of at least twelve known investors' deposits on personal expenses.

2. Eubanks operated a Ponzi scheme, soliciting new investment money to repay earlier investors

79. Eubanks realized significant losses on the portions of investors' funds that he did invest in the Eubiquity Brokerage Accounts.

80. For example, in 2014, Eubanks transferred a total of \$132,000 of investors' funds to the Eubiquity Ameritrade Account.

81. By December 31, 2014, the total combined value of all investments held in the Eubiquity Ameritrade Account was -\$46.00.

82. The Eubiquity Ameritrade Account declined in value as a result of both cash withdrawals and significant trading losses.

83. Eubanks was unable to repay investors who sought to withdraw their investments using actual returns on their capital.

84. Instead, Eubanks repaid earlier investors using funds received from new Eubiquity Capital investors.

85. In 2015, Eubanks returned at least \$39,275 in purported capital returns to earlier investors using money received from new investors, or using additional investments solicited from an earlier investor.

86. For example, in 2015, one Eubiquity Capital investor (“Investor Two”) sought the return of some of his initial \$100,000 investment in order to pay for the costs of his retirement home.⁴

87. On information and belief, Eubanks spoke with Investor Two’s Power of Attorney by telephone and stated that he would be unable to immediately return the money requested.

88. Around this time, Eubanks approached a neighbor (“Investor Three”) and solicited him to make an investment with Eubiquity Capital.

89. On July 28, 2015, Investor Three and Eubanks executed a written investment contract.

90. The contract stated that Eubanks would invest money on Investor Three’s behalf, and that Eubanks would be compensated with 20% of the net profits realized on an initial investment of \$20,000.

91. On August 27, 2015, the Eubiquity Checking Account closed with a negative balance of -\$247.39.

92. On August 28, 2015, Eubanks deposited in the Eubiquity Checking Account a \$20,000 check from Investor Three, paid to the order of Eubiquity Capital, LLC.

93. On August 31, 2015, Eubanks wired \$9,975 from the Eubiquity Checking Account to Investor Two’s personal bank account.

94. Eubanks represented to Investor Two’s Power of Attorney that this transfer represented the partial return of Investor Two’s initial investment.

95. On the same day, Eubanks also wired \$4,000 from the Eubiquity Checking Account to the account of another Eubiquity Capital investor (“Investor Four”).

⁴ Investor Two’s affairs are managed by two of his sons, who have been given a Power of Attorney.

96. On information and belief, Eubanks represented to Investor Four that this transfer represented the partial return of Investor Four's initial \$40,000 deposit.

97. The Eubiquity Checking Account received no additional deposits besides Investor Three's \$20,000 check between August 28, 2015 and August 31, 2015.

98. In 2016, Eubanks has returned at least \$48,750 in purported capital returns to earlier investors using money received from new investors.

3. Eubanks made repeated misrepresentations to investors regarding the status of their investments

99. Throughout the Relevant Time Period, Eubanks provided investors with oral and written updates regarding the status of their investments.

100. In his testimony before the Division, Eubanks claimed that he provided quarterly reviews of gains and losses to Eubiquity Capital investors.

101. Eubanks testified that he provided these statements through either in-hand delivery or by e-mail.

102. At least some of the statements that Eubanks provided to investors were false.

103. In the fall of 2016, a known investor ("Investor Five") and his wife decided to purchase a new home.

104. In connection with his mortgage approval process, Investor Five requested a current accounting of his investment with Eubiquity Capital.

105. As recently as October 14, 2016, Eubanks provided Investor Five with a written summary of his trading activity for the third quarter of 2016.

106. The 2016 third quarter trading activity written summary represents that Eubanks realized profits of \$337.63 on behalf of Investor Five.

107. Upon information and belief, however, there was no trading activity in any of the Eubiquity Brokerage Accounts in the third quarter of 2016.

108. Eubanks also gave Investor Five a letter dated October 17, 2016 which purports to be a “summary of account with Eubiquity Capital, LLC.”

109. The October 17, 2016 written account summary states that Investor Five has earned “Total Realized Profits” of \$50,638.82 on his \$125,000 investment with Eubiquity Capital, for a total net asset worth of \$175,633.82.

110. Upon information and belief, the entirety of Investor Five’s investment has been used to pay Eubanks’ personal expenses, to repay earlier investors, or has been lost through trading activity.

111. Eubanks also e-mailed a fabricated statement to the attorney of another known investor (“Investor Six”) in connection with a regulatory examination conducted by the NFA.

112. In response to inquiries from the NFA, Investor Six asked Eubanks to provide satisfactory documentation and an accounting of his 2013 investment of \$50,000.

113. On June 22, 2015, Eubanks e-mailed to Investor Six’s attorney a .pdf of what Eubanks purported to be an end-of-month statement for a TD Ameritrade brokerage account (the “False Statement”).

114. The False Statement appears on its face to be a May 2016 end-of-month statement for a TD Ameritrade brokerage account held in the name of Eubiquity Capital.

115. TD Ameritrade did not generate a May 2016 statement for the Eubiquity Ameritrade Account because there was no activity in the account during that month.

116. The most recent statement generated for the Eubiquity Ameritrade Account showed a total net asset value of \$0 as of April 30, 2016.

117. The False Statement shows a total account value of \$74,048.03.

118. The values listed in the False Statement's purported portfolio summary are identical to the values listed on the Eubiquity Ameritrade Account's genuine April 2014 end-of-month statement.

119. Although genuine end-of-month statements for TD Ameritrade brokerage accounts indicate the number of the account for which the statement is produced, the False Statement does not include any such account number information.

120. On information and belief, Eubanks altered the date and removed the account number from the two-year-old April 2014 statement to produce the False Statement in 2016.

VII. VIOLATIONS OF LAW

A. Violations of MASS. GEN. LAWS ch. 110A, § 101(1)

121. Section 101(1) of the Act provides:

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly (1) to employ any device, scheme, or artifice to defraud[.]

MASS. GEN. LAWS ch. 110A, § 101(1).

122. The Enforcement Section realleges and incorporates the allegations of paragraphs 1 through 120 above.

123. The conduct of Respondents, as described above, constitutes violations of Mass. Gen. Laws ch. 110A, § 101(1).

B. Violations of MASS. GEN. LAWS ch. 110A, § 101(2)

124. Section 101(2) of the Act provides:

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading[.]

MASS. GEN. LAWS ch. 110A, § 101(2).

125. The Enforcement Section realleges and incorporates the allegations of paragraphs 1 through 120 above.

126. The conduct of Respondents, as described above, constitutes violations of Mass. Gen. Laws ch. 110A, § 101(2).

C. Violations of MASS. GEN. LAWS ch. 110A, § 101(3)

127. Section 101(3) of the Act provides:

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

MASS. GEN. LAWS ch. 110A, § 101(3).

128. The Enforcement Section realleges and incorporates the allegations of paragraphs 1 through 120 above.

129. The conduct of Respondents, as described above, constitutes violations of Mass. Gen. Laws ch. 110A, § 101(3).

D. Violations of MASS. GEN. LAWS ch. 110A, § 102(1)

130. Section 102(1) of the Act provides:

It is unlawful for any person who receives, directly or indirectly, any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise (1) to employ any device, scheme, or artifice to defraud the other person[.]

MASS. GEN. LAWS ch. 110A, § 102(1).

131. The Enforcement Section realleges and incorporates the allegations of paragraphs 1 through 120 above.

132. The conduct of Respondents, as described above, constitutes violations of Mass. Gen. Laws ch. 110A, § 102(1).

E. Violations of MASS. GEN. LAWS ch. 110A, § 102(2)

133. Section 102(2) of the Act provides:

It is unlawful for any person who receives, directly or indirectly, any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise (2) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.

MASS. GEN. LAWS ch. 110A, § 102(2).

134. The Enforcement Section realleges and incorporates the allegations of paragraphs 1 through 120 above.

135. The conduct of Respondents, as described above, constitutes violations of Mass. Gen. Laws ch. 110A, § 102(2).

F. Violations of MASS. GEN. LAWS ch. 110A, § 201

136. Section 201 of the Act provides:

(a) It is unlawful for any person to transact business in this commonwealth as a broker-dealer or agent unless he is registered under this chapter.

(b) It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered. The registration of an agent is not effective during any period when he is not associated with a particular broker-dealer registered under this chapter or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make him an agent, the agent as well as the broker-dealer or issuer shall promptly notify the secretary.

(c) It is unlawful for any person to transact business in this commonwealth as an investment adviser or as an investment adviser representative unless he is so registered under this chapter.

MASS. GEN. LAWS ch. 110A, § 201.

137. Section 401(b) of the Act provides the definition of “Agent”:

“Agent” means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities.

138. Section 401(f) of the Act provides the definition of “Issuer,” in pertinent part:

“Issuer” means any person who issues or proposes to issue any security[.]

139. Section 401(m) of the Act provides the definition of “Investment adviser,” in pertinent part:

“Investment adviser” means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a regular business, issues or promulgates analyses or reports concerning securities. “Investment adviser” also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as a part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation.

MASS. GEN. LAWS ch. 110A, § 401.

140. The Enforcement Section realleges and incorporates the allegations of paragraphs 1 through 120 above.

141. The conduct of Respondents, as described above, constitutes violations of Mass. Gen. Laws ch. 110A, § 201.

G. Violations of MASS. GEN. LAWS ch. 110A, § 204

142. Section 204 of the Act provides:

(a) The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:--

...

(G) has engaged in any unethical or dishonest conduct or practices in the securities commodities or insurance business[.]

MASS. GEN. LAWS ch. 110A, § 204.

143. The Enforcement Section realleges and incorporates the allegations of paragraphs 1 through 120 above.

144. The conduct of Respondents, as described above, constitutes violations of Mass. Gen. Laws ch. 110A, § 204.

H. Violations of MASS. GEN. LAWS ch. 110A, § 301

145. Section 301 of the Act provides:

It is unlawful for any person to offer or sell any security in the commonwealth unless:--

- (1) the security is registered under this chapter;
- (2) the security or transaction is exempted under section 402; or
- (3) the security is a federal covered security.

MASS. GEN. LAWS ch. 110A, § 301.

146. Section 401(k) of the Act provides the definition of "Security," in pertinent part:

"Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

MASS. GEN. LAWS ch. 110A, § 401.

147. Section 14.401 of the Regulations provides the definition of an "Investment Contract":

Investment Contract, as used in M.G. L. c. 110A, § 401(k), includes:

(1) any investment in a common enterprise with the expectation of profit to be derived through the essential managerial efforts of someone other than the investor. As used in 950 CMR 14.401, a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with and dependent upon the efforts and successes of those seeking the investment or a third party; and

(2) any investment by which an offeree furnishes initial value to an offeror, and a portion of this initial value is subject to the risks of the enterprise, and the furnishing of the initial value is induced by the offeror's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation, and the offeree does not receive the right to exercise practical and actual control over the management of the enterprise.

148. The Enforcement Section realleges and incorporates the allegations of paragraphs 1 through 120 above.

149. The conduct of Respondents, as described above, constitutes violations of Mass. Gen. Laws ch. 110A, § 301.

VIII. STATUTORY BASIS FOR RELIEF

Section 407A of the Act provides, in pertinent part:

(a) If the secretary determines, after notice and opportunity for hearing, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order issued thereunder, he may order such person to cease and desist from such unlawful act or practice and may take such affirmative action, including the imposition of an administrative fine, the issuance of an order for an accounting, disgorgement or rescission or any other such relief as in his judgment may be necessary to carry out the purposes of [the Act].

MASS. GEN. LAWS ch. 110A, § 407A.

IX. PUBLIC INTEREST

For any and all of the reasons set forth above, it is in the public interest and will protect Massachusetts investors for the Director to enter an order finding that such "action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this chapter [MASS. GEN. LAWS ch. 110A]."

X. RELIEF REQUESTED

The Enforcement Section of the Division requests that an order be entered:

- A. Finding as fact all allegations set forth in paragraphs 1 through 120, inclusive of the Complaint;
- B. Finding that all the sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors;
- C. Requiring Respondents to permanently cease and desist from violations of Sections 101, 102, 201, 204, and 301 of the Act and Regulations in the Commonwealth;
- D. Censuring Respondents;
- E. Requiring Respondents to provide an accounting for those losses attributable to the alleged wrongdoing;
- F. Requiring Respondents to provide restitution to fairly compensate investors for those losses attributable to the alleged wrongdoing;
- G. Requiring Respondents to make rescission offers to all residents of the Commonwealth who purchased securities sold in violation of the Act;
- H. Requiring Respondents to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing;
- I. Permanently barring Respondents from associating or registering in the Commonwealth as a broker-dealer, broker-dealer agent, or as a partner, officer, director, or control person of a broker-dealer;
- J. Permanently barring Respondents from associating or registering in the Commonwealth as or with any state-registered investment adviser, Securities and Exchange Commission

- registered investment adviser, and investment adviser excluded from the definition of investment adviser;
- K. Permanently barring Respondents from associating or registering in the Commonwealth with any issuer of any securities or as an agent of any issuer of securities in the Commonwealth;
 - L. Imposing an administrative fine on Respondents in an amount and upon such terms and conditions as the Director or Presiding Officer may determine; and
 - M. Taking any such further action which may be in the public interest and necessary and appropriate for the protection of Massachusetts investors.

**MASSACHUSETTS SECURITIES DIVISION
ENFORCEMENT SECTION**

By its attorneys,



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Dated: November 1, 2016

* Matthew Douglass is scheduled to be formally admitted to the Massachusetts Bar on November 16, 2016.