

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

IN THE MATTER OF:)	
)	
SII INVESTMENTS, INC.,)	Docket No. E-2016-0128
)	
RESPONDENT.)	
)	

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 SII Investments, Inc. (“SII” or “Respondent”) 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 Respondent engaged in conduct in violation of the Act and Regulations.

The Enforcement Section seeks an order: 1) finding as fact the allegations set forth in Section VI of the Complaint; 2) finding that all the sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors; 3) requiring SII to permanently cease and desist from further conduct in violation of the Act and corresponding Regulations; 4) censuring SII; 5) requiring SII to provide an accounting of losses attributable to the alleged wrongdoing; 6) requiring SII to make written offers of

rescission to all Massachusetts residents who purchased securities sold in violation of the Act and Regulations; 7) requiring SII to disgorge all profits received from the alleged wrongdoing; 8) requiring SII to provide restitution to fairly compensate investors for losses attributable to the alleged wrongdoing; 9) requiring SII to retain an independent compliance consultant to review SII's Compliance Guide and recommend improvements regarding the calculation of liquid net worth in connection with the sale of non-traded real estate investment trusts; 10) imposing an administrative fine on SII in an amount and upon such terms and conditions as the Presiding Officer may determine; and 11) taking any such further action against SII, which may be in the public interest and necessary and appropriate for the protection of Massachusetts investors.

II. SUMMARY

For the last few years, SII has engaged in dishonest and unethical conduct and failed to supervise its agents by allowing systemic inflation of its clients' liquid net worth while maintaining contradictory and unclear rules related to the purchase of non-traded real estate investment trusts ("REITs"). REITs are companies which own and manage income-producing property (e.g., hotels, hospitals, and office buildings) or are involved in real estate financing. REITs are either publically traded, non-exchange traded, or privately traded. REITs provide investors with real estate exposure, but unlike other real estate investments, REITs are often entirely illiquid. REIT companies must distribute at least 90% of taxable income to investors; however, in instances where income does not meet distribution demand, REITs often resort to paying distributions out of borrowed money. As a result of these complicated characteristics, REITs have become a widely used and widely misunderstood investment vehicle.

Certain types of REITs hold additional risks for investors. Specifically, non-traded REITs are especially risky because they often feature limited redemption programs, high fees and commissions, and internal conflicts of interest. Unlike publicly traded REITs which are listed on national stock exchanges, market priced, and freely traded non-traded REITs often have limited redemption programs and minimum reporting requirements. Until recently, non-traded REITs were valued only sporadically, often maintaining an artificially high dividend rate. Furthermore, non-traded REITs typically pay high sales commissions and offer fees that range from 15 to 18 percent. At their core, non-traded REITs operate through an immensely complex affiliate and subsidiary structure rife with conflict. As a result of these strong conflicts of interests and complicated product structures, non-traded REITs are required to be sold by properly trained agents under comprehensive supervision.

The Enforcement Section's investigation of SII's non-traded REIT sales practices in Massachusetts revealed regulatory violations that were at odds with SII's own internal policies and procedures. On SII's suitability and disclosure form for non-traded REITs, the full value of annuity products are listed in the calculation of a client's liquid net worth, notwithstanding that in many cases annuities included in the calculation were subject to high surrender fees. SII's own internal Compliance Guide states "**There must not be any representation or implication that variable annuities are short-term, liquid investments. Presentations regarding liquidity or ease of access to investment values must be balanced by clear language describing the negative impact of early redemptions.**" Despite this, SII's suitability and disclosure forms for non-traded REITs list all annuity products as liquid regardless of any applicable surrender fees. SII failed to have proper policies and procedures in place that would have allowed its agents and sales

supervisors to adequately determine if an annuity product was illiquid. By including annuities subject to surrender fees as high as 10% in the calculation of a client's liquid net worth on suitability and disclosure forms, SII caused non-traded REITs to be sold by its agents in a manner not compliant with the Act.

Clearly stated on all of SII's forms and the prospectuses of the non-traded REITs is the Commonwealth of Massachusetts's policy which provides that **no more than 10% of a client's liquid net worth can be concentrated in one specific non-traded REIT and no more than 20% of a client's liquid net worth can be concentrated in non-traded REITs in general.** In addition, the Financial Industry Regulatory Authority ("FINRA") has stated that annuities with surrender fees are long-term and illiquid investments. By including these annuities in the calculation of a client's liquid net worth, SII inflated their clients' liquid net worth, thus allowing the firm and its agents to bypass both internal concentration limits and prospectus limits for client investments in non-traded REITs.

SII is obligated to establish, maintain, and enforce a supervisory system that complies with federal and state law. Unfortunately, SII's established policies and procedures contain contradictions regarding client purchases of non-traded REITs that render these policies and procedures meaningless. SII's own Compliance Guide provides that variable annuity products are long-term and illiquid investments. Furthermore, SII's internal policies and suitability and disclosure forms for non-traded REITs provide that a product that carries a "substantial penalty" should **not** be included in the calculation of a client's liquid net worth. However, none of SII's internal or training materials define what constitutes a "substantial penalty," and in testimony before the Enforcement Section, SII agents and a sales supervisor could not define with any specificity what the term meant or a time they

applied the definition when calculating a client's liquid net worth. SII's poorly designed policies and procedures resulted in thousands of dollars worth of non-traded REITs being sold by SII agents to unwitting clients.

In July 2016, a sixty-three year old nurse residing in Massachusetts ("Investor One") contacted the Division to complain about the suitability of the products she purchased through SII. During her initial meeting with SII agents, Investor One stressed that both herself and her daughter suffered from a variety of health problems and that she anticipated needing immediate access to her funds. In August 2012, Investor One met with SII agents again and purchased three annuities simultaneously which comprised approximately 72% of her net worth. All three annuities carried high initial surrender fees that decreased each year the annuity was held. The annuities also carried lock up periods of five to ten years. In 2014, Investor One met with SII agents again and they recommended another non-traded REIT that she purchased at their recommendation.

If SII agents had properly calculated the liquid net worth by excluding annuity products with surrender fees, Investor One's concentration in the non-traded REIT she purchased in 2014 would have far exceeded 10% of her liquid net worth. After investing in a non-traded REIT at SII, Investor One subsequently became unemployed and suffered from the medical issues she had disclosed to SII agents. With essentially all of her liquid net worth tied up in annuities and a non-traded REIT, Investor One was unable to access the majority of her funds without paying significant penalties. During the course of its investigation, the Enforcement Section subsequently identified other SII clients whose liquid net worth was inflated by the inclusion of annuity products with large surrender fees when purchasing non-traded REITs. On suitability and disclosure forms for non-traded REITs, SII agents

improperly listed net worth and liquid net worth of at least twenty clients as identical, despite the fact the two figures should have been different to reflect the applicable surrender fees that applied to the annuity products the clients owned.

SII failed to have an adequate system in place for the review of sales of non-traded REITs. The calculation of a client's liquid net worth included on SII's suitability and disclosure forms for non-traded REITs does not take into account what types of investments or accounts are subject to "substantial penalties" that should be excluded from the calculation. SII's sales supervisory review failed to flag any of the non-traded REIT purchases in Massachusetts for including annuities subject to surrender fees in the calculation of a client's liquid net worth. Instead, SII's compliance team simply rubber-stamped non-traded REIT sales without any meaningful review that would have shown that the purchases were at odds with SII's internal policy as well as the prospectuses of the annuity products the clients already owned. This failure led to inflated liquid net worth values on SII clients' non-traded REIT suitability and disclosure forms. SII's failure to maintain and enforce a reasonable supervisory system as required by federal and state securities laws resulted in the miscalculation of liquid net worth for client purchases of non-traded REITs and caused harm to 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 Sections 204, 407A, and 414 of the Act and Regulations, wherein the

Division has the authority to conduct an adjudicatory proceeding to enforce the provisions of the Act and Regulations.

3. 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

4. Except as otherwise expressly stated, the conduct described herein occurred during the approximate time period of January 1, 2011 to present (“Relevant Time Period”).

V. RESPONDENT

5. SII Investments, Inc. (“SII” or “Respondent”) is a broker-dealer and investment adviser with headquarters in Appleton, Wisconsin. SII has a FINRA Central Registration Depository number of 2225. SII has been registered as a broker-dealer in Massachusetts since January 8, 1997.

VI. ALLEGATION OF FACT

A. SII’s Sales of Non-Traded REITs in Massachusetts

6. From 2011 to 2016, SII sold ninety-three (93) non-traded REITs to Massachusetts residents with a value of approximately \$4,691,453.
7. During this period, SII received direct commissions of approximately \$27,162 for the sale of non-traded REITs to Massachusetts residents.
8. During this period, SII agents received commissions totaling approximately \$278,166 for the sale of non-traded REITs to Massachusetts residents.
9. In all of these transactions, SII’s suitability forms included variable and fixed indexed annuities in the calculation of client’s liquid net worth.

10. SII's Compliance Guide¹ states:

Investments in these products [non-traded REITs] are limited to no more than 10% of a client's liquid net worth in any one sponsor's REIT/DPP, with a maximum of 20% of liquid net worth allowed across all such products. For example, 5% of a client's liquid net worth may be invested in one sponsor's REIT/DPP, and an additional 5% may be invested in another REIT/DPP offered by that sponsor. However, no more than 10% of a client's net worth may be invested with one sponsor.
11. The 10% and 20% limits also appear on SII's suitability and disclosure forms for non-traded REIT products.
12. Liquid net worth concentration limits are also stated in the prospectuses for the non-traded REIT products that SII sold to clients.
13. For example, the Griffin Capital Essential Asset REIT prospectus states:

"It is recommended by the Massachusetts Secretary of State that Massachusetts investors not invest, in aggregate, more than 10% of their liquid net worth in this and other Direct Participation Programs."
14. The majority of client transactions for non-traded REITs that SII sold included variable and/or fixed annuity products in the calculation of a client's liquid net worth.
15. SII included annuities with pending surrender fees in the calculation of liquid net worth in at least ninety (90) client transactions for non-traded REITs.
16. Excluding annuities with pending surrender charges from the calculation of a client's liquid net worth would have resulted in an investment in the non-traded REIT of greater than 10% of the client's liquid net worth in at least fifteen (15) sales of non-traded REITs.

¹ SII's Compliance Guide operative from 2011 to 2016.

B. SII's Policies and Procedures Provide that Annuities with Surrender Charges Lack Liquidity

17. An annuity is an insurance contract designed to provide an individual with income for an established period of time, often beginning at retirement age.
18. Generally, an annuity is classified as variable if its value is based directly on the performance of securities. In a variable annuity, funds are invested in securities which tend to fluctuate with economic conditions.
19. Generally, a fixed annuity provides fixed-dollar income payments backed by the guarantees in the annuity contract. Guarantees are generally based on conservative assumptions, so that the company will be able to fulfill its promises and obligations regardless of economic conditions.
20. A surrender charge is a contractual charge imposed by an insurance company in the event of early policy cancellation or withdrawals above a certain amount.
21. Early surrender charges typically apply for variable annuity products and are imposed during the first five to fifteen years from the date the policy is issued.
22. Generally, surrender fees are charged at a percentage of the annuity value and decrease each year the annuitant owns the policy.
23. Because of the surrender period, variable annuities are generally designed to be long term investments.
24. FINRA classified annuities as illiquid in a Notice to Members in 1999².
25. SII's Compliance Guides in effect from 2011 to present states :

Liquid Net Worth is a client's net worth minus assets that cannot be converted quickly and easily into cash, such as real estate, business equity, personal property and automobiles, expected inheritances, assets

² NASD Notice to Members 99-35

earmarked for other purposes, and investments or accounts subject to substantial penalties if they were sold or if assets were withdrawn from them.

26. SII's Compliance Guide includes variable and fixed annuities on a list of what constitutes liquid products.
27. Certain SII clients who purchased non-traded REITs between 2011 and 2016 owned annuities with pending surrender charges prior to their purchase of non-traded REIT products.
28. One SII agent testified to the Enforcement Section that the SII Compliance Guide is "elusive" in whether the full value of the annuity product is included:
- Q. So does the compliance guide state that you have to take out the surrender charges when making this calculation?
- A. It's elusive as far as it says and it's very difficult to calculate what the surrender charges might be because you have different products, different times frames. So what I usually do is, go through the overall client experience and make sure that he is going to be adequately - adequate in the cash and adequate if he needs money.
29. One SII agent testified to the Enforcement Section that he included variable annuity products in the calculation of liquid net worth when they have a surrender fee:
- Q. Did they [clients] purchase annuity products through you, though?
- A. Yes.
- Q. And those were included in the calculation for liquid net worth, right?
- A. Yes.
- Q. Why were they included in this specific instance?
- A. Because that's — part of the liquid net worth is variable annuities and fixed annuities. That's why I included them.
30. The SII Compliance Guide also states:
- Generally, if a client can effect a public sale of a marketable security within a day and reasonably expect to have receipt of the proceeds of the sale on settlement date, then the asset should be considered liquid.

31. The section of SII's Compliance Guide relating to variable annuities specifically states:

There must not be any representation or implication that variable annuities are short-term, liquid investments. Presentations regarding liquidity or ease of access to investment values must be balanced by clear language describing the negative impact of early redemptions. Examples of this negative impact may be the payment of Contingent Deferred Sales Charges and tax penalties, and the fact that the investor may receive less than the original amount invested.
(Emphasis added).

32. One SII sales supervisor testified to the Division in regards to a non-traded REIT suitability form:

Q: So in Section 2, fixed index annuities and variable annuities are listed in the liquid net worth information. Would you say that that's a representation to clients that these products are mostly liquid?

A. Correct.

33. The SII Compliance Guide also provides in its section relating to fixed indexed annuities: "In general, annuities should not be referred to as short-term, liquid investments."

34. The SII Compliance Guide further states that variable annuity products lack liquidity:

Liquidity concerns, caused by surrender charges or IRS penalties for early withdrawals, generally make a variable product unsuitable for clients with short-term investment objectives. Although a benefit of the product is that earnings accrue on a tax-deferred basis a minimum holding period is often needed before the tax benefits outweigh the often-higher fees imposed on variable insurance products relative to alternative investments, for example, mutual funds. Generally speaking, it is not advisable for a client to invest a large portion of their net worth in a product that lacks liquidity.
(Emphasis added).

35. The SII Compliance Guide further states:

RAPs [Registered Associated Persons] facilitating transactions directly through the investment sponsor must provide a current prospectus to the client prior to accepting the transaction. Transactions facilitated through the clearing firm will be followed by a current prospectus mailed to the client's address of record. Prospectus information about important factors, **including fees and expenses and the lack of liquidity of the product**, should be discussed with the customer at the time the recommendation is made.
(Emphasis added).

36. Moreover, the section in SII's Compliance Guide related to prohibitions on Health Savings Accounts states: "Due to **their illiquid nature** annuities cannot be held in Health Savings Accounts." (Emphasis Added).

37. The Enforcement Section has identified at least twenty (20) other SII clients whose net worth and liquid net worth were listed as identical despite applicable surrender fees and penalties on annuities they held at the time of their non-traded REIT purchase.

C. SII Included Illiquid Annuities with Surrender Charges in Calculating Client's Liquid Net Worth for the Purchase of Non-Traded REITs

38. The SII Compliance Guide's definition of "liquid net worth" excludes products with "substantial penalties." The SII Compliance Guide states that:

Liquid Net Worth is a client's net worth minus assets that cannot be converted quickly and easily into cash, such as real estate, business equity, personal property and automobiles, expected inheritances, assets earmarked for other purposes, and investments or **accounts subject to substantial penalties if they were sold or if assets were withdrawn from them.**"
(Emphasis added).

39. SII's Compliance Guide neither defines "substantial penalty" nor provides clarification on what constitutes a "substantial penalty."

40. SII provided to the Enforcement Section that:

Determining a substantial penalty is subjective, however the firm would generally consider any penalty over 10% to be substantial. Examples may include private placements, restricted securities, private limited partnerships and non-traded REITs.

41. Despite this statement to the Enforcement Section, this definition appears nowhere in any SII Compliance Guide, Supervisory Manual, Written Supervisory Procedures, Invest Adviser Compliance Guide, non-traded REIT suitability and disclosure forms, or non-traded REIT communique forms.

42. As a result of SII's failure to define and make clear and understandable policies and procedures on what constitutes a "substantial penalty" for purposes of calculating liquid net worth for non-traded REIT purchases, SII sold at least ninety-three (93) non-traded REITs without any analysis of whether or not a "substantial penalty" applied to the purchase.

43. In testimony to the Enforcement Section, one SII agent appeared to have no understanding of what constituted a "substantial penalty":

Q. Would it be fair to say that if a product or asset carries a substantial penalty for selling it, SII would define it as illiquid?

A. SII would define it?

Q. Yes.

A. It's really basically -- I guess the way that explained it is really what I go by as far as I do include assets that would have penalties, but ensure that the client has sufficient cash reserves to meet emergencies.

Q. But I'm asking, you know, if one specific product has a very substantial penalty for selling it, would SII define it as illiquid?

A. They reference it in the exclusion in liquid net worth, but it's not -- it's not specific.

Q. How would the firm define what a substantial penalty is?

Counsel. You're asking him if he knows?

Q. Yes.

A. I don't know. I don't know where it's written, how they do that.

44. Additionally one SII sales supervisor testified to the Enforcement Section:
- Q. Would it be fair to say that if a product or asset carries a substantial penalty for selling it, SII would define it as illiquid?
- A. No.
45. The SII sales supervisor further testified to the Enforcement Section:
- Q. What is a substantial penalty as defined here?
- A. It doesn't specify.
- Q. What do you interpret substantial penalty to mean then?
- A. I don't know.
- Q. Would you know who would make that determination of what a substantial penalty is?
- A. I don't know.
46. At SII, annuities with any pending surrender fees are included in the calculation of a client's liquid net worth when purchasing a non-traded REIT in Massachusetts.
47. By failing to clearly define the term "substantial penalty," SII agents always include annuities with surrender fees up to 10% in the calculation of liquid net worth.
48. An SII agent testified to the Enforcement Section:
- Q. My question is with respect to the term substantial. Has a particular percentage been provided to the client as to what constitutes a substantial penalty as opposed to just a penalty related to the annuity product?
- A. I think every penalty is substantial.**
- Counselor: Well, the question is, has a presentation ever been presented to the client that defines what a substantial penalty is in terms of percentages?
- A. Yes.
- Q. Could you elaborate?
- A. Whatever the penalty that is applied by the company at any given time during that contract is a substantial penalty. Am I -- did I answer that?
(Emphasis added).
49. SII failed to enforce the "substantial penalty" provision by including annuity products in the calculation of a client's liquid net worth.

D. SII Failed to Supervise the Sale of Non-Traded REITs to Clients by Allowing the Inclusion of Illiquid Annuities with Surrender Charges in Clients' Liquid Net Worth Calculations in the Purchase of Non-Traded REITs

50. When new SII clients purchase a non-traded REIT, SII agents submit a new account form and suitability and disclosure form to a sales supervisor.
51. SII's Vice President of Sales Supervision testified to the Enforcement Section:
- Q. Generally, what does a RAP [Registered Associated Person] need to submit when a client purchases a REIT?
- A. A new account form has to be on file. They also need to do the suitability and disclosure form for REITs, DPPs.
52. An order for a non-traded REIT is also sent to a database that the SII compliance team could review if it matches a certain algorithm or search query:
- Q. What are the circumstances in which it would be reviewed by -- an order memorandum would be reviewed by compliance afterwards?
- A. I don't know exactly what their hits are for their surveillance reports, but I would say -- I wouldn't even speculate because I don't know the exact hits that -- I don't really know the inner workings of their surveillance reports.
- Q. Just so I have a general understanding, though, all the orders are submitted, they're filtered through, I guess, a compliance database where all of them are currently pending; is that correct?
- A. Yes.
53. The SII sales supervisor must review the order memorandum for non-traded REIT products. The sales supervisor has the option of raising queries to the agent or requesting additional information:
- Q. Yes. So the RAP [Registered Associated Person] submits an order, you know, to a sales supervisor, what exactly is reviewed in that process afterwards?
- Counsel. Can you clarify what product you're asking about?
- Q. Specifically non-traded REIT products.
- A. Okay. So the sales supervision principal will look at the new account form to determine what the client's suitability information is and then they will also look at the client's -- or the suitability and disclosure form.
54. The SII sales supervision team rubber-stamped non-traded REIT orders from Massachusetts clients between 2011 and 2016 without identifying any instances in

which liquid net worth was inflated in the suitability forms by the inclusion of annuity products with pending surrender fees.

55. The Enforcement Section was unable to identify a single instance where an annuity product with a pending surrender charge was excluded from the calculation of a client's liquid net worth for the purchase of a non-traded REIT in Massachusetts from 2011 to 2016.
56. SII failed to identify the contradictions in its compliance manuals in relation to the inclusion of annuity products in the calculation of a client's liquid net worth.
57. SII failed to have clear policies and procedures in place as to what constituted a "substantial penalty."
58. SII failed to train their agents and sales supervisors to review whether a product carried a "substantial penalty" when calculating a client's liquid net worth for non-traded REIT sales.
59. The SII sales supervision and compliance teams did not reject or inquire into non-traded REIT applications in which annuities with surrender fees as high as 10% were included in the calculation of a client's liquid net worth.
60. By including annuities with surrender fees in the calculation of a client's liquid net worth for the purchase of a non-traded REIT, SII inflated the liquid net worth of Massachusetts clients and thus bypassed the non-traded REIT concentration limits.
61. SII effected transactions in violation of the prospectuses of non-traded REITs by bypassing the 10% liquid net worth concentration limit by including annuities with surrender fees in the calculation of a client's liquid net worth.

62. SII's sales supervision and compliance teams did not inquire about instances in which a Massachusetts client's net worth and liquid net worth were listed as identical on non-traded REIT suitability and disclosure forms despite the fact that the client would not receive the full value of the amount listed if the client were to liquidate the products.

E. SII's Inclusion of Illiquid Annuities with Surrender Charges in the Calculation of Liquid Net Worth for the Purchase of a Non-Traded REIT Harmed Investor One

63. The Enforcement Section received a complaint in 2016 from an investor ("Investor One"), a sixty three (63) year old nurse and Massachusetts resident, regarding the suitability of annuity products and a non-traded REIT she purchased from SII.

64. Investor One first met with SII agents Agent One and Agent Two at Branch One in 2012.

65. Branch One is a Massachusetts corporation that is a "doing business as" ("DBA") of SII.

66. When she met Agent One and Agent Two, Investor One was fifty eight (58) years old and had a net worth of approximately \$583,997.

67. Investor One disclosed to Agent One and Agent Two that she suffered from various health problems.

68. Investor One expressed to Agent One and Agent Two that because of her health problems she had trouble reading and understating financial documents.

69. Agent Two testified to the Enforcement Section:

Q. So given the fact that she had [Health Problems], did she ever express concern to you about understanding specific financial documents or statements?

A. Yes.

Q. What did she state to you specifically?

A. She didn't understand her financial statements.

70. Investor One disclosed to Agent One and Agent Two that her financially dependent daughter also suffered from health problems.
71. At a meeting with Agent One and Agent Two, Investor One expressed the need to be able to access her money due to her age, difficulty understanding financial documents, and her financially dependent daughter's health problems.
72. Investor One's risk tolerance was listed as moderately conservative on her SII Account Opening documents.
73. On August 8, 2012, SII sold Investor One a fixed-indexed annuity issued by Great American Insurance Company ("Great American") for \$202,000.
74. The Great American annuity had a ten-year surrender period that applied immediately after purchase.
75. The surrender charge on the Great American annuity was 10% and decreased by 1% each year it was owned.
76. Agent One and Agent Two each received a commission of approximately \$6,135 for the sale of the Great American annuity to Investor One.
77. On August 8, 2012, Investor One purchased a fixed indexed annuity through Allianz at the recommendation of Agent One and Agent Two for \$161,000.
78. The Allianz annuity had an eight year surrender period that applied immediately after purchase.
79. The surrender charge on the Allianz annuity was 10%, which decreased 1% each year it was owned, before ending in the eighth year.

80. Agent One and Agent Two each received a commission of approximately \$5,765 for the sale of the Allianz annuity to Investor One.
81. On August 24, 2012 Investor One purchased a variable annuity issued by Transamerica at the recommendation of Agent One and Agent Two for \$114,000.
82. The Transamerica annuity had a five year surrender period that applied immediately after purchase.
83. The surrender charge on the Transamerica annuity was 8% for the first and second year of the policy. The surrender charges for the third and fourth years were 7% and 6%, respectively.
84. Agent One received a commission of \$1,835 and Agent Two received a commission of \$1,626 for the sale of the Transamerica annuity to Investor One.
85. In 2014, Investor One purchased a non-traded REIT issued by Griffin Capital at the recommendation of Agent One and Agent Two for \$50,000.
86. Agent One received a commission of approximately \$3,500 for the sale of the Griffin Capital non-traded REIT to Investor One.
87. At the time of the purchase of the Griffin Capital non-traded REIT, Investor One had a pending surrender charge of 8% in the Allianz annuity.
88. At the time of the purchase of the Griffin Capital non-traded REIT, Investor One had a pending surrender charge of 9% in the Great American annuity.
89. At the time of the purchase of the Griffin Capital non-traded REIT, Investor One had a pending surrender charge of 8% in the Transamerica annuity.
90. The suitability and disclosure form for Investor One's purchase of the Griffin Capital non-traded REIT included a calculation for liquid net worth.

91. The full value of Investor One's aforementioned annuity products was included in the calculation for Investor One's liquid net worth on the non-traded REIT suitability and disclosure form, despite each product carrying a surrender fee.
92. Agent One testified to the Enforcement Section:
- Q. Can you go, I'm sorry, into detail about how you calculated it [Liquid Net Worth]?
- A. Well, if you look at the line three quarters of the way down, I knew all her accounts and basically I just put the amounts in each slot.
- Q. So when you say the line three-quarters of the way down, you're referring to the cash equivalents and —
- A. Liquid net worth information, cash, fixed index, variable and marketable.
- Q. And all those products were liquid, you would say?
- A. (No verbal response.)
- Q. Would you consider the three annuities I just went over liquid?
- A. Yes.
93. Investor One's net worth and liquid net worth were listed as the same on suitability and disclosure forms for non-traded REIT products.
94. The prospectus for the Griffin Capital non-traded REIT states "It is recommended by the Massachusetts Secretary of State that Massachusetts investors not invest, in aggregate, no more than 10% of Liquid Net Worth in this and other DPPs [Direct Participation Programs]."
95. The prospectus for the Griffin non-traded REIT also states that no more than 20% of a client's liquid net worth can be invested in multiple non-traded REITS and DPPs.
96. The 10% liquid net worth concentration limits also appeared on SII's suitability and disclosure forms for the non-traded REIT purchased by Investor One.
97. By including annuity products with concurrent surrender fees, SII improperly inflated Investor One's liquid net worth.

98. A correct calculation of Investor One's liquid net worth would have shown that approximately 35.4% of Investor One's liquid net worth was invested in the Griffin Capital non-traded REIT excluding the value of the annuities she owned with pending surrender fees.
99. SII's sales supervision and compliance teams failed to determine if any of the annuities that Investor One owned carried a "substantial penalty" for the purpose of calculating her liquid net worth at the time of the Griffin Capital non-traded REIT sale.
100. Investor One's investment in the Griffin Capital non-traded REIT also tied up what little remained of Investor One's funds into yet another product with surrender penalties.
101. Investor One became unemployed in middle of 2014.
102. The majority of Investor One's net worth was tied up in annuities and a non-traded REIT.
103. As a result, Investor One suffered direct financial harm. Approximately 90% of Investor One's net worth was locked into products with surrender penalties.
104. Without incurring substantial surrender fees, Investor One was unable to access the funds needed to adequately care for herself and her daughter during her period of unemployment.
105. In order to access the full funds of her annuity products, Investor One would need to pay combined surrender fees of approximately \$41,790. In addition, her \$50,000 Griffin Capital REIT lacks liquidity and "may be difficult to sell" according to its prospectus.

VII. VIOLATIONS OF LAW

Count I: Violations of Section 204(a)(2)(G)

106. Section 204(a)(2)(G) of the Act provides in pertinent part:

(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(a)(2)(G).

107. Section 12.204(1)(a) of the Regulations provides in pertinent part:

(1) Dishonest and unethical practices in the securities business.

(a) Broker-Dealers. Each broker-dealer shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business. Acts and practices, including, but not limited to the following, are considered contrary to such standards and constitute dishonest or unethical practices which are grounds for imposition of an administrative fine, censure, denial, suspension or revocation of a registration, or such other appropriate action[.]

950 MASS. CODE REGS. §12.204(1)(a).

108. The Division herein re-alleges and restates the allegations of fact set forth in paragraphs 1 through 105 above.

109. The conduct of SII, as described above, constitutes violations MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G) and 950 MASS. CODE REGS. §12.204(1)(a).

Count II Violations of Section 204(a)(2)(J)

110. Section 204(a)(2)(J) of the Act provides in pertinent part:

(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:—

.....

(J) has failed reasonably to supervise agents, investment adviser representatives or other employees to assure compliance with this chapter[.]

MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J).

111. The Division herein re-alleges and restates the allegations of fact set forth in paragraphs 1 through 105 above.

112. The conduct of SII, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J).

VIII. STATUTORY BASIS FOR RELIEF

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

(a) If the secretary determines, after notice and opportunity for a 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 affirmative action, including the imposition of an administrative fine, the issuance of an order for accounting, disgorgement or rescission or any other 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 an order be entered:

- A) Finding as fact the allegations set forth in Section VI 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 SII to permanently cease and desist from further conduct in violation of the Act and corresponding Regulations;
- D) Censuring SII;
- E) Requiring SII to provide an accounting of losses attributable to the alleged wrongdoing;
- F) Requiring SII to make written offers of rescission to all Massachusetts residents who purchased securities sold in violation of the Act and Regulations;
- G) Requiring SII to disgorge all profits received from the alleged wrongdoing;
- H) Requiring SII to provide restitution to fairly compensate investors for losses attributable to the alleged wrongdoing;

- I) Requiring SII to retain an independent compliance consultant to review SII's Compliance Guide and recommend improvements regarding the calculation of liquid net worth in connection with the sale of non-traded real estate investment trusts;
- J) Imposing an administrative fine on SII in an amount and upon such terms and conditions as the Presiding Officer may determine; and
- K) Taking any such further action against SII, which may be in the public interest and necessary and appropriate for the protection of Massachusetts investors.

**MASSACHUSETTS SECURITIES DIVISION
ENFORCEMENT SECTION**

By and through its attorneys,



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Dated: September 20, 2017