

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

IN THE MATTER OF:)	
)	
SUSAN J. BARROWS,)	
)	
RESPONDENT.)	Docket No. E-2018-0147
)	

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 Susan J. Barrows (“Respondent” or “Barrows”) 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 Sections 101 and 301 of the Act and Regulations.

The Enforcement Section seeks an order: 1) finding as fact the allegations set forth below; 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 Respondent to permanently cease and desist from further conduct in violation of Sections 101 and 301 of the Act and the Regulations in the Commonwealth; 4) censuring Respondent; 5) requiring Respondent to provide an accounting for those losses attributable to the alleged

wrongdoing; 6) requiring Respondent to provide restitution to fairly compensate investors for those losses attributable to the alleged wrongdoing; 7) requiring Respondent to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing; 8) imposing an administrative fine on Respondent in such amount and upon such terms and conditions as the Director or Presiding Officer may determine; and 9) taking any such further action which may be necessary or appropriate in the public interest for the protection of Massachusetts investors.

II. SUMMARY

The Enforcement Section brings this action against Respondent Susan Jeanne Barrows (“Barrows”) for actively participating in a nationwide cryptocurrency scam. Barrows, masquerading as a member of Nexus One – a company that never existed – received hundreds of thousands of dollars into her personal bank accounts and bank accounts registered to her d/b/a, E-Vest Miners. After receiving these funds, Barrows purchased anonymously held assets in an attempt to conceal the money she stole from dozens of investors in the Commonwealth and at least five other states.

Barrows is a 62-year-old resident of Florida whose innocent appearance belies her true nature, allowing her to convince investors to trust her before she accepts their investments with no intent to return their money. Capitalizing on the growing interest in the seemingly sophisticated cryptocurrency market, Barrows solicited investments in unregistered securities on behalf of multiple false companies that guaranteed investors profits by utilizing propriety trading software that purportedly could never fail.

Despite the trappings of a modern scheme, this scam is nothing more than a garden variety fraud. The scheme is tried and true: an individual poses as a customer of

the sham company and convinces an unwitting victim that the company is legitimate by citing his or her personal experience. The victim then receives multiple e-mails from the company that appear professional at first glance, but upon closer inspection contain mistakes and inconsistencies. Then an individual from the “deposit department” explains how to make a deposit and refers the victim to a bank account. In reality, the account belongs to an individual perpetuating the scam, not to the fraudulent company. Once the “company” receives the funds, the fraudsters peddle every conceivable excuse as to why the victim cannot withdraw funds, despite the massive profits showing in the account. The scammers maintain this façade just long enough to ensure the money is difficult to trace and then go silent – taking all hope of recovering the money with them.

In this instance, Barrows is the individual “From the Deposit Department” who stole \$20,000 from a Massachusetts resident and attempted to hide that money by purchasing anonymously held assets such as Bitcoin – from localbitcoins.com user “Guillermex” – and precious metals – from a California company named Monarch Metals Brokers. Guillermex and Monarch Metals Brokers’ bank records reveal that Barrows is part of a much larger network of scams that span the globe. The scam network, through which Barrows defrauded at least one Massachusetts investor, involves dozens of individuals and companies and tens of millions of dollars stolen from investors around the country.

With this action, the Enforcement Section of the Division seeks to stop Barrows from defrauding 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 407A 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, 301, 407A, and 414 of the Act and its Regulations.
4. The Enforcement Section reserves the right to amend this Complaint and 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 approximate time period of January 1, 2018 to the present (the “Relevant Time Period”).

V. RESPONDENT

6. Susan J. Barrows (“Barrows”) is an individual with a last known address in the state of Florida. Barrows is not registered in any capacity in the securities industry in Massachusetts.

VI. RELATED PARTIES

7. Nexus Investment Ltd. (“Nexus One”) purports to be a limited company allegedly headquartered at 500 S Mill Avenue, Tempe, Arizona 85281. The Enforcement Section’s

search of multiple corporate record databases did not reveal any filings related to Nexus One.

8. CryptoBit Markets (“CryptoBit”) purports to be the successor entity to Nexus One. The Enforcement Section’s search of multiple corporate record databases did not reveal any filings related to CryptoBit Markets.

VII. STATEMENT OF FACTS

A. Background

9. In December 2018, the Division received a complaint from a 67-year-old Massachusetts resident (“Massachusetts Victim”) concerning Nexus One.

10. Massachusetts Victim resides in Marlborough, Massachusetts and is a self-employed entrepreneur.

11. In connection with Nexus One, Massachusetts Victim initiated three wire transfers to a Suntrust Bank account owned and controlled by Barrows.

12. Barrows is a 62-year-old resident of Florida.

13. On March 29, 2019, the Division issued and served a subpoena on Barrows. The subpoena required Barrows to appear before the Enforcement Section and give testimony on April 30, 2019.

14. On April 23, 2019, the Enforcement Section initiated contact with Barrows to determine if she intended to appear before the Division and testify in connection with this matter.

15. To accommodate Barrows’ requests, the Enforcement Section intended to take Barrows’ testimony via recorded video teleconference. Barrows and the Enforcement Section agreed that she would give testimony in this manner on May 31, 2019.

16. In the days leading up to May 31, 2019, Barrows did not respond to the Enforcement Section's numerous attempts to contact her to arrange for a notary public to meet her at her place of testimony.

17. On June 5, 2019, the Enforcement Section set a June 21, 2019 deadline for Barrows to testify in connection with the Enforcement Section's investigation.

18. As of the date of this filing, Barrows has not testified in connection with the Enforcement Section's investigation.

B. The Nexus One Auto Trader is an Investment Contract

19. Nexus One markets itself as a cryptocurrency trading platform.

20. The Nexus One platform's key feature is its "Auto Trader" software that purports to be proprietary trading software programmed to make investment decisions on behalf of customers who purchase a license.

a. Auto Trader Purchasers Invest Money in a Common Enterprise

21. In an e-mail to Massachusetts Victim, Nexus One stated that "[t]o be eligible to use the Auto Trader, you need to have a minimum deposit of \$300.00 which is the Basic investment plan/package on each wallets [sic] to enable trades to be commenced on your account."

22. On Monday, August 13, 2018, Massachusetts Victim received an e-mail from Nexus One with the subject line "Break Down" (the "August 13 E-mail"). Nexus One stated that "[g]etting the Auto Trader license key means our professional/expert traders will be trading on your behalf. On getting the license key, you will be advised to keep your Auto Trader on so we can trade on your account daily. All you have to do is login to view your profits/account balance."

23. Massachusetts Victim purchased the Auto Trader license intending to earn a profit by allowing the Auto Trader software to make trades. Massachusetts Victim made this purchase using fiat currency. In an August 24, 2018 e-mail from support@nexusonemarkets.com, Barrows confirmed receipt of Massachusetts Victim's wire transfers.

24. On information and belief, Massachusetts Victim is one of many Nexus One investors who have transferred investment funds to Barrows.

25. Investor funds are transferred to and commingled in bank accounts held in the name of or controlled by Barrows.

26. On information and belief, Nexus One and CryptoBit profit from soliciting additional investments, including through the sale of additional Auto Trader licenses.

27. On its website, CryptoBit states that it operates "the most liquid order book in the world, allowing users to easily exchange and convert cryptocurrencies with minimal slippage."

28. On its website, CryptoBit states that it provides "margin funding." CryptoBit further states that "[l]iquidity providers can earn interest by providing to traders wanting to trade with leverage. Funding is traded on an order book at various rates and periods."

29. On its website, CryptoBit states that "CryptoBit allows up to 3.3x leverage trading by providing traders with access to the peer-to-peer funding market."

b. Auto Trader Purchasers Reasonably Expect to Profit from the Efforts of Nexus One Employees

30. In the August 13 E-mail to Massachusetts Victim, Nexus One stated that "[a]ll you have to do is invest and we grow your coins by trading on your account to make profits and sell later for cash."

31. In the August 13 E-mail, Nexus One purported to have a “trading tool” that uses “software that predicts the market SWOT analysis. Meaning it detects strengths, and weaknesses, opportunities, and threats in the market so when down, we don’t trade on your account to avoid huge losses.”¹

32. In the August 13 E-mail, Nexus One claimed that an investor could earn a “Daily Guaranteed Profit” by using the Auto Trader software. The August 13 E-mail further states:

The guaranteed profits depends [sic] on the investment plan/package which you choose. For instance, you choose a Standard package which the daily profit is 7%. It means you will be getting 7% of your deposit daily. Starting with a \$3000 investment you are automatically a Silver account holder. You will be entitled to 8% daily profit of your investment, meaning 8% of \$3000 daily. This is always accurate except when our platform is under upgrade and when our platform is under upgrade, the daily profit will be a little lesser [sic].

33. In a separate e-mail to Massachusetts Victim, Nexus One included the following investment plans/packages:

INVESTMENT PACKAGE	MINIMUM DEPOSIT	MAXIMUM DEPOSIT	DAILY PROFIT
Basic	\$300.00	\$1,000.00	5%
Standard	\$1,000.00	\$2,000.00	7%
Silver	\$2,000.00	\$5,000.00	8%
Premium	\$5,000.00	\$20,000.00	10%
Ultimate	\$20,000.00	\$40,000.00	15%
Admin	\$40,000.00	\$80,000.00	30%
The Junior Shareholder	\$80,000.00	\$150,000.00	40%
Corporate (The Senior Shareholder)	\$150,000.00	No Limit	50%

¹ “SWOT” is an acronym for strengths, weaknesses, opportunities, and threats. A SWOT analysis is framework commonly used to determine a company’s competitive position in a given market.

c. Nexus One and Barrows Offered and Sold Unregistered Securities to at least One Massachusetts Investor

34. Nexus One and Barrows offered and sold an Auto Trader license to Massachusetts Victim.

35. A search of the Securities and Exchange Commission's ("SEC") EDGAR database did not reveal a single filing by Nexus One or CryptoBit.

36. A search of the Division's Corporate Finance database did not reveal a single filing by Nexus One or CryptoBit.

37. Neither Nexus One nor CryptoBit securities or offerings are registered with the Division or the SEC.

C. Nexus One and Barrows' Scheme to Defraud Investors

38. During the summer of 2018, Massachusetts Victim began corresponding with an individual going by the name Davis Lingard ("Solicitor One") through an online forum focused on cryptocurrency investments. Solicitor One used the e-mail address davislingardcrypto@gmail.com to correspond with Massachusetts Victim. The true identity of Solicitor One is currently unknown to the Enforcement Section.

39. In August 2018, Solicitor One directed Massachusetts Victim to a website called nexusonemarkets.com. Solicitor One kept in constant contact with Massachusetts Victim during the investing process. For example, when Massachusetts Victim questioned how Nexus One could guarantee a 10% return, Solicitor One responded that he had "never experienced any loss since [he] started dealing with the Nexus Platform." Solicitor One further replied that Massachusetts Victim should "go ahead and fund [his] account, so [he] will get to understand how the platform works..."

40. Nexus One primarily communicated with its investors using the e-mail address support@nexusonemarkets.com.

41. Five different names appeared at the bottom of the dozens of e-mails Massachusetts Victim received from support@nexusonemarkets.com.

42. Four of the five names that appeared at the bottom of e-mails Nexus One sent to Massachusetts Victim refer to public figures within the cryptocurrency and/or investment communities.

43. On information and belief, these four individuals are not associated with Nexus One in any capacity.

44. Of the five names that appear at the bottom of Nexus One e-mails, Barrows' is the only name that does not refer to a public figure in the cryptocurrency and/or investment communities.

45. After contacting Nexus One, Massachusetts Victim received the August 13 E-mail, which states, in relevant part:

How to fund your Account: All you have to do to fund your account is by clicking [sic] on deposit [on the website] to place a transaction. After placing your deposit, we will get back to you shortly with the deposit details which you have chosen to complete your transaction.

46. After Massachusetts Victim initiated a deposit through the website, Nexus One sent an e-mail to Massachusetts Victim on August 16, 2018 at 5:17 p.m. That e-mail states, in full:

Dear [Massachusetts Victim],

We are sorry for the delay. This is from the deposit department, we noticed you placed a deposit. Due to the current plethora [sic] in our banking system, you are required to complete your deposit of 5000.00 USD with the below Bank details of a personnel in the deposit department.

Bank Transfer
Bank Name: SunTrust Bank
Bank Address: 303 Peachtree Street Northeast, Atlanta, GA 30308, USA
Account Number: [xxxxxxxxx]2678
Account Name: Susan Barrows
Routing Number: 061000104
Swift Code: SNTRUS3A

Note: A copy of the transfer receipt should be sent to us for confirmation.

Susan Barrows
From Deposit Department

NexusOne

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47. On Thursday, August 16, 2018 at 6:31 p.m., Massachusetts Victim sent an e-mail to Nexus One stating “[w]ire transfer request has been initiated. Will confirm when completed and have a copy of transfer receipt sent.”

48. On Thursday, August 16, 2018 at 6:57 p.m., Nexus One sent an e-mail to Massachusetts Victim that states, in full:

Dear [Massachusetts Victim],

Noted. Kindly keep us updated so we can approve your deposit.

Susan Barrows
From Deposit Department

NexusOne

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49. On Friday, August 17, 2018 at 2:37 p.m., Nexus One sent an e-mail to Massachusetts Victim that states, in full:

Dear [Massachusetts Victim].

You are yet to deliver a copy of the transfer receipt for the confirmation of your place deposit.

Susan Barrows
From Deposit Department

NexusOne

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50. On Friday, August 17, 2018, Massachusetts Victim completed a wire transfer in the amount of \$5,000 to a Suntrust Bank account bearing the last four digits 2678. That account was solely owned and controlled by Barrows. On that same day, Massachusetts Victim sent an e-mail to Nexus One with a copy of a wire transfer receipt.

51. On Monday, August 20, 2018, after receiving the first of three wire transfers from Massachusetts Victim, Barrows completed a series of four Zelle² transfers to an individual named Fevzi Kardeseci (“Kardeseci”). Kardeseci’s Zelle account is associated with a Wells Fargo bank account bearing the last four digits 8580. This Wells Fargo bank account is solely owned and controlled by Kardeseci.

52. The four Zelle transfers from Barrows to Kardeseci were in the amount of \$2,000, \$1,000, \$1,000, and \$1,000, respectively.

53. After receiving the transfers, Kardeseci did not invest the funds in the Auto Trader license or other cryptocurrencies on behalf of Massachusetts Victim.

54. On Monday, August 20, 2018, Massachusetts Victim completed a second wire transfer in the amount of \$5,000 to a Suntrust Bank account bearing the last four digits 2678. That account was solely owned and controlled by Barrows.

² Zelle is digital payment network that enables individuals to in the United States to transfer money electronically from their bank account to another registered user’s bank account.

55. On Tuesday, August, 21, 2018, after receiving the second of three wire transfers from Massachusetts Victim, Barrows completed a wire transfer in the amount of \$4,800 to a Wells Fargo bank account bearing the last four digits 8580. This Wells Fargo bank account is solely owned and controlled by Kardesecei. The wire transfer included a memo line that reads “per discussion about trade.”

56. After receiving those transfers, Kardesecei did not invest the funds in the Auto Trader license or other cryptocurrencies on behalf of Massachusetts Victim.

57. On Thursday, August 23, 2018, Massachusetts Victim completed a third wire transfer in the amount of \$10,000 to a Suntrust Bank account bearing the last four digits 2678. That account was solely owned and controlled by Barrows.

58. On Friday, August, 24, 2018, after receiving the third and final wire transfer from Massachusetts Victim, Barrows completed a wire transfer in the amount of \$9,800 to a Bank of America bank account bearing the last four digits 2915. This Bank of America account is solely owned and controlled by Vending Services and More LLC. The only signatory on the account is an individual named Guillermo Cortes Florez (“Cortes”). The wire transfer included a memo line that reads “SJB FLORIDA PURCHASE TO GUILLERMEX NON REFUNDABLE.”

59. On information and belief, “Guillermex” refers to the username of an account on the website localbitcoins.com.³

³ According to its website, localbitcoins.com is a Finnish company that “allows users to post advertisements where they state exchange rate and payment methods for buying or selling bitcoins. [A user can] reply to these advertisements and agree to meet the person to buy bitcoins with cash, or trade directly with online banking.”

60. The localbitcoins.com profile page for the user Guillermex contains a header that lists a phone number. That phone number corresponds with a phone number listed on the signature card for a Regions Bank account for which Cortes is the sole signatory.

61. On information and belief, Cortes is the account owner of localbitcoins.com user name “Guillermex.”

62. After receiving the transfer, Cortes did not invest the funds in the Auto Trader license or other cryptocurrencies on behalf of Massachusetts Victim.

63. On August 20, 2018, in response to Massachusetts Victim’s first wire transfer, Nexus One sent the following e-mail to Massachusetts Victim:

Dear [Massachusetts Victim]:

Getting the license key means we will be trading on your behalf. You are advised to keep your Auto Trader on so we can trade on your account daily. All you have to do is login to view your profits/account balance daily.

License Key: 675755983218

[Nexus One Employee A]
From Software Developing Dept.

NexusOne

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64. After initiating two of three wire transfers totaling \$10,000, and submitting copies of wire receipts to Barrows evidencing those transfers, Massachusetts Victim’s wallet⁴ on nexusonemarkets.com appeared to contain large amounts of Nexusonecoin and Bitcoin.

⁴ A cryptocurrency wallet is a software program that stores the unique private key for each coin an individual owns.

65. On information and belief, Nexusonecoin does not exist and Massachusetts Victim's wallet did not contain any Bitcoin.

66. After Massachusetts Victim initiated three wire transfers totaling \$20,000, and submitted copies of wire receipts to Barrows evidencing those transfers, Nexus One sent an e-mail to Massachusetts Victim on August 24, 2018, stating, "[y]our 3 wire transfers was done [sic] correctly and successfully. What we meant in our notice is that if you want to deposit more funds, you will have to inform us to enable us confirm [sic] the payment details you have, before proceeding with a new wire transfer."

67. On August 30, 2019, in response to a question from Massachusetts Victim regarding how to withdraw funds, Nexus One sent an e-mail to Massachusetts Victim stating:

According to our breakdown mail on withdrawal of funds, Customers account [sic] are usually opened for withdrawal 30 days after deposit. On the 30th day, customers will be allowed to withdraw just their profits made, due to the fact that their invested capital will still be used in long term trading and you will be informed when to withdraw both capital and profits. For crucial/emergency withdrawals, you are advised to contact us for grant.

68. Despite asking for further explanation regarding the withdrawal of his principal and profits, including attempts to confirm that he may withdraw profits on September 20, 2018, Massachusetts Victim never received any additional information.

69. On September 4, 2018, Massachusetts Victim's wallet appeared to be holding Bitcoin, Ethereum, and Nexusonecoin. Massachusetts Victim's wallet showed significant gains despite the fact that Bitcoin's value had risen nominally and Ethereum's value had not risen. On information and belief, Massachusetts Victim's wallet did not contain Bitcoin, Ethereum, or Nexusonecoin.

70. Despite asking for further explanation regarding the gains in his account, Massachusetts Victim never received any additional information.

71. On September 10, 2018, Nexus One sent an e-mail to Massachusetts Victim that states, in full:

Dear [Massachusetts Victim],

This is to inform you that your Auto trader free trial version has expired and due to this, we lost three trades today. Therefore, you are required to purchase a new license key. To avoid more losses, we have deactivated your Auto Trader pending when you purchase a new subscription. The subscriptions are:

- 1) 90 days/3months subscription which costs \$1900.00
- 2) 180 days/6months subscription which costs \$2900.00
- 3) 360 days/1 year subscription which costs \$4900.00

Kindly get back to us as soon as you can.

72. Nexus One failed to disclose that the Auto Trader required a subscription and that failure to acquire a subscription would result in "lost trades." Furthermore, Nexus One stated in an e-mail to Massachusetts Victim on September 10, 2018 that it was "sorry for not bringing this to your notice as we have informed other customers about this earlier before but somehow, the notice failed to reach you and a few others."

73. After Massachusetts Victim requested to pay the Auto Trader subscription fee with the profits showing in his wallet, Nexus One stated on September 12, 2018 that the "fee can not [sic] be deducted from your current balance due to the fact that your account is not yet opened for withdrawal."

74. On September 13, 2018, Massachusetts Victim was no longer able to access the Nexus One website. Despite numerous attempts, Massachusetts Victim was not able contact Nexus One over the next 3 days.

75. On September 17, 2018, Massachusetts Victim received an e-mail from the e-mail address contactnexusonemarkets@gmail.com. That e-mail states, in relevant part:

Dear [Massachusetts Victim]

We want to apologize for the difficulties that you are currently facing in logging into your account, we have to inform you that NexusOne platform is undergoing some security upgrade and rebranding at the moment, after a series of board meeting [sic] with our Board of directors, we the NexusOne platform has [sic] decided to rebrand our platform, because of the numerous negative comments that we are getting from our competitors in the cryptocurrency business, so henceforth our new is [sic] CRYPTOBITMARKETS INVEST (www.cryptobitmarkets.com) and our new support mail is info@cryptobitmarkets.com, we promise to serve you better.

We need you to sign up and verify your account again, so we can reconfirm your account and also credit your cryptobit account.

76. After setting up an account with CryptoBit, Massachusetts Victim attempted to withdraw his principal and profits from his wallet.

77. Purported employees of CryptoBit stated that the company uses Capital First Bank (“Capital First”) in Turkey as an intermediary bank to disperse withdrawals.

78. Upon information and belief, Capital First does not exist.

79. Upon attempting to withdraw his funds through Capital First, a purported employee of Capital First stated to Massachusetts Victim that in order to withdraw funds, he was required to pay a “COT Code fee” in the amount of \$3,800 to satisfy the Turkish Tax Commission. CryptoBit then directed Massachusetts Victim to send the money for this fee to a BBVA Compass Bank account in the United States.

80. In response to Massachusetts Victim’s repeated requests for CryptoBit to intervene, CryptoBit stated in an e-mail that, “we advice [sic] you do want ever the Capital First Banks say you should do, our other clients who made withdrawals passed

through that same process in Capital First Bank and their money was wired to their local bank account successfully.”

81. After months of conversations and attempts to withdraw his principal investment and profits, Massachusetts Victim was not able to recover any funds. To date, Massachusetts Victim has received no investment profits and has not recovered any of his principal.

VIII. VIOLATIONS OF LAW

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

82. Section 101 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,
- (2) to make any untrue statement of 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, or
- (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.

83. The Enforcement Section re-alleges and re-states the allegations of fact set forth in Section VII above.

84. The conduct of Respondent, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 101(1).

Count II – Violations of MASS. GEN. LAWS ch. 110A, § 301

85. 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.

86. Section 401(k) of the Act provides:

“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 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 purchase, any of the foregoing. “Security” does not include any insurance or endowment policy or annuity contract under which and insurance company promises to pay money either in a lump sum or periodically for life or some other specified period.

MASS. GEN. LAWS ch. 110A, § 401(k).

87. Section 14.401 of the Regulations provides:

Investment Contract, as used in Section 401(k) of the Act, 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 of 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 of the enterprise, and the

offeree does not receive the right to exercise practical and actual control over the management of the enterprise.

950 MASS. CODE REGS. 14.401.

88. The Enforcement Section re-alleges and re-states the allegations of fact set forth in Section VII above.

89. The conduct of Respondent, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 301.

IX. 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.

X. 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].”

XI. RELIEF REQUESTED

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

A. Finding as fact all allegations set forth in Section VII 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 Respondent to permanently cease and desist from further conduct in violation of Sections 101 and 301 of the Act and the Regulations in the Commonwealth;
- D. Censuring Respondent;
- F. Requiring Respondent to provide an accounting for those losses attributable to the alleged wrongdoing;
- G. Requiring Respondent to provide restitution to fairly compensate investors for those losses attributable to the alleged wrongdoing;
- I. Requiring Respondent to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing;
- O. Imposing an administrative fine on Respondent in an amount and upon such terms and conditions as the Director or Presiding Officer may determine; and
- P. Taking any such further action which may be necessary or appropriate in the public interest for the protection of Massachusetts investors.

**MASSACHUSETTS SECURITIES DIVISION
ENFORCEMENT SECTION**

By and through its attorneys,



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Dated: July 11, 2019