

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

IN THE MATTER OF:)	
)	
FREDERICK V. MCDONALD, JR.,)	
COMMONWEALTH PAIN)	
MANAGEMENT CONNECTION, LLC,)	
KETTLE BLACK OF MA, LLC, and)	
US ADVISORY GROUP INC.,)	
)	
RESPONDENTS.)	Docket No. E-2017-0113

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”) in order to commence an adjudicatory proceeding against Respondents Frederick V. McDonald, Jr. (“McDonald”), Commonwealth Pain Management Connection, LLC (“CPMC”), Kettle Black of MA, LLC (“KBMA”), and US Advisory Group Inc. (“USAG”) (collectively “Respondents”) for violations of MASS. GEN. LAWS ch. 110A, the Massachusetts Uniform Securities Act (the “Act”), and the regulations promulgated thereunder at 950 MASS. CODE REGS. 10.00 – 14.413 (the “Regulations”). The Enforcement Section alleges that Respondents engaged in acts and practices in violation of Sections 101, 102, and 204 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 Respondents to permanently cease and desist from further conduct in violation of the Act; 4) censuring Respondents; 5) revoking Respondent McDonald's registration as an investment adviser representative in the Commonwealth; 6) revoking Respondent USAG's registration as an investment adviser in the Commonwealth; 7) permanently barring Respondent USAG from registering in the Commonwealth as, or conducting business in the Commonwealth as, an investment adviser required to be registered, an investment adviser exempt from registration, a federally covered adviser notice-filed in the Commonwealth, an entity relying on an exclusion from the definition of an investment adviser, a broker-dealer, an issuer of securities, or successor, partner, or affiliate of any of the above; 8) permanently barring Respondent McDonald from registering in the Commonwealth as, or associating in the Commonwealth with, a broker-dealer, broker-dealer agent, an investment adviser, investment adviser representative, Securities and Exchange Commission-registered investment adviser, investment adviser excluded from the definition of investment adviser, issuer, issuer agent, or a partner, officer, director, or control person of any of the above; 9) requiring Respondents to provide an accounting of losses attributable to the alleged wrongdoing; 10) requiring Respondents to make offers of rescission to all investors in Kettle Black of MA, LLC; 11) requiring Respondents to pay restitution to fairly compensate investors for all losses attributable to the alleged wrongdoing; 12) requiring Respondents to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing; 13) imposing an administrative fine on Respondents

in such amount and upon such terms and conditions as the Director or Presiding Officer may determine; and 14) 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 Frederick V. McDonald Jr. (“McDonald”), Commonwealth Pain Management Connection, LLC, Kettle Black of MA, LLC (“KBMA”) and US Advisory Group Inc. (“USAG”) for violations of the Act in connection with the offer and sale of interests in KBMA and related business ventures. Acting in his capacity as an investment adviser, McDonald repeatedly made recommendations to a high net worth client (“Investor A”) directing him to invest in marijuana projects without adequately disclosing McDonald’s controlling interest in the investment vehicle or the fees he would receive in connection with the projects. In a separate marijuana-related business venture, McDonald and others failed to disclose material risks to investors and repeatedly concealed material information from investors, business partners, and regulatory bodies in order to push through their project, which eventually collapsed.

McDonald first met Investor A in 2007 at a World Presidents’ Organization (“WPO”) retreat. Investor A eventually became an investment advisory client of McDonald later that year, executing an advisory agreement on December 5, 2007. While Investor A was a client, McDonald recommended that he invest in various marijuana projects across the nation, often giving Investor A only the barest of information, and using his position of trust to access Investor A’s funds to support his own projects. Specifically, McDonald began discussing investments in Massachusetts marijuana

dispensaries in December 2013, and convinced Investor A to liquidate assets in excess of \$1 million for the purpose of investing in Prime Wellness of MA, Inc. (“PWMA”).

On January 16, 2014, McDonald provided Investor A with a deposit agreement authorizing McDonald to receive Investor A’s money from a deposit agent for the purpose of pursuing a medical marijuana license. Investor A signed the agreement but was never provided any offering materials related to the project. Investor A eventually discovered that McDonald took \$200,000 from those funds to invest in Dixie Highway Partners, LP, another marijuana-related entity controlled and operated by McDonald, without Investor A’s knowledge or consent.

In 2014, after initially failing to obtain any licenses for a registered marijuana dispensary in connection with PWMA, McDonald, along with several partners, began actively working to secure medical marijuana licenses in Massachusetts using funds from a new investment vehicle: KBMA, a private securities offering in which McDonald and others raised \$8 million. McDonald and his partners intended to use a corporate structure in which funds would be transferred from KBMA to Commonwealth Pain Management Connection, LLC (“CPMC”), a for-profit company which, in turn, would contract with separate non-profit entities. The non-profit entities would hold the licenses and sell marijuana, while CPMC would receive a fee for the services it rendered. The CPMC structure required that a lease and license be received prior to the commencement of operations. These processes require complex applications and negotiations with multiple parties, can cost tens of thousands of dollars, and can be summarily denied at any point in the process for a variety of reasons including, but not limited to: a financial backer failing a background check, insufficient funding, or failing to obtain an approved site. McDonald

did not adequately disclose to investors the complexity of the process or the associated risks.

On June 23, 2014, CPMC Manager 1 and Revere Property Owner executed a Letter of Agreement to secure a site for a registered marijuana dispensary in Revere, Massachusetts, in exchange for equity rights in CPMC and other entities owned by CPMC Manager 1, as well as an \$18,000 per month salary. McDonald actively reviewed drafts of the Letter of Agreement and CPMC Manager 1 provided McDonald with the signed version in July 2014. CPMC Manager 1 continued to move forward with the venture with McDonald's assurances that money would be available as needed. A separate partner, who previously worked with McDonald, explained that McDonald was essential due to his relationship with Investor A who was allegedly ready to give \$750,000 to the project. However, at no point did Investor A agree to provide these funds.

Beginning in August 2015, McDonald provided a private placement memorandum ("KB PPM") to investors and started collecting funds for KBMA. However, a lack of transparency and communication between McDonald, CPMC Manager 1, and others led to funding issues and the venture failing to obtain a license or lease. Moreover, three separate individuals, who collectively raised nearly \$7.5 million, began to dispute the arrangement with Revere Property Owner. This dispute caused a collapse of the relationship between KBMA and the Revere Property Owner. To date, the venture has failed to open a single marijuana dispensary in Revere or elsewhere in Massachusetts. Consequently, investors have lost access to \$8 million in funds and have received no return on their investments.

McDonald's entire relationship with the emerging cannabis industry has been an improvised effort to learn as he goes, utilizing client funds and firm resources to experiment. He utterly failed to uphold the fiduciary duty he owed to Investor A and took advantage of his advisory relationship to pursue these projects. McDonald further failed to educate himself regarding the unique and complex licensing process in Massachusetts, which resulted in the distribution of offering documents that failed to adequately disclose to investors the risks or difficulties the investment could face. As a result, Investor A has lost nearly \$3 million based on McDonald's recommendations and investors in KBMA have lost access to a further \$8 million.

With this action, the Enforcement Section seeks to stop Respondents from continuing to engage in acts and practices that violate Massachusetts securities laws.

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 Division and its Enforcement Section bring this action pursuant to the authority conferred upon the Division by Section 407A of the Act, wherein the Division has the authority to conduct an adjudicatory proceeding to enforce the provisions of the Act and all regulations and rules promulgated thereunder.
3. This proceeding is brought in accordance with Sections 101, 102, 204, and 407A of the Act. Specifically, the acts and practices constituting violations occurred within the Commonwealth of Massachusetts and were directed towards Massachusetts investors.

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 approximate time period of January 1, 2007 to the present (the "Relevant Time Period").

V. RESPONDENTS

6. Frederick V. McDonald, Jr. (hereinafter "McDonald") is a registered investment adviser representative with US Advisory Group Inc. McDonald has a Financial Industry Regulatory Authority ("FINRA") Central Registration Depository ("CRD") number of 706872 and has been registered in the securities industry in Massachusetts since 1989. McDonald is the President and CEO of US Advisory Group Inc.

7. Commonwealth Pain Management Connection, LLC (hereinafter "CPMC") is a Delaware limited liability company with a principal place of business in Wakefield, Massachusetts. CPMC is a for-profit limited liability company assisting in the creation and operation of registered marijuana dispensaries in Massachusetts. It is currently managed by McDonald and CPMC Manager 1.

8. Kettle Black of MA, LLC (hereinafter "KBMA") is a Delaware limited liability company with a principal place of business in Wakefield, Massachusetts created for the purpose of facilitating investments in CPMC.

9. US Advisory Group Inc. (hereinafter "USAG") is a Massachusetts-registered investment adviser with headquarters in Beverly, Massachusetts. USAG has a FINRA

CRD number of 109291. USAG was an SEC-registered investment adviser between January 29, 1999 and October 21, 2016 and notice-filed with Massachusetts during that time. USAG has been registered in Massachusetts as an investment adviser since July 21, 2016.

VI. RELATED INDIVIDUALS

10. CPMC Manager 1 is a manager of CPMC. CPMC Manager 1 is a resident of Rhode Island and a member of the Rhode Island Bar. CPMC Manager 1 has worked with several entities throughout the Northeast to obtain medical marijuana licenses in several New England states. CPMC Manager 1 facilitated the license application for the entities connected to CPMC.

11. Revere Property Owner is the leaseholder of the Revere Property, as defined below. Revere Property Owner also intended to become a Class A shareholder of CPMC, but never signed the operating agreement due to a dispute over contractual terms.

12. Individual 1 is a resident of Massachusetts. Individual 1 was involved in the KBMA project from the early stages in a fundraising capacity. Individual 1 pled guilty to violating state lobbying laws in 2011.

13. Individual 2 is a resident of Massachusetts and a member of the Massachusetts Bar. Individual 2 was involved in the KBMA project from the early stages in a fundraising capacity.

14. Individual 3 is a resident of Massachusetts. Individual 3 was involved in the KBMA project from the early stages in a fundraising capacity.

VII. STATEMENT OF FACTS

15. In 2012, Massachusetts voters voted to enact a law eliminating state criminal and civil penalties relating to the use of medical marijuana and to allow qualifying patients to obtain marijuana produced and distributed by state-regulated centers.

16. The marijuana industry contains unique risk factors due, in part, to differences in its regulation and legal status at the state and federal level.

17. The sale or possession of marijuana is illegal under federal law; however, the United States Department of Justice has issued guidance known as the “Cole Memo” that allows states to create their own regulatory framework to support an intrastate cannabis industry.

18. Massachusetts is one of several states that elected to create its own medical marijuana regulatory framework codified at MASS. GEN. LAWS ch. 94I and 105 MASS. CODE REGS. 725.000.¹

19. The process for a registered marijuana dispensary (“RMD”) to obtain a license to sell medical marijuana in Massachusetts is complex. At the time of KBMA’s offering, the process required the disclosure of key personnel, financial backers, control people, and siting information to the Massachusetts Department of Public Health² (“DPH”).

20. The applicable regulations specifically require disclosure to the DPH of all individuals who contribute more than 5% of the initial capital.

21. The regulations further required that a proposed RMD provide its complete business plan and operating procedures to the DPH for review.

¹ 105 CMR 725.000 was effective during the offering period for KBMA. The current regulations applicable to registered sales of marijuana in Massachusetts are codified in 935 CMR 500.00.

² Current applicable regulations require disclosures to be made to the Cannabis Control Commission.

22. The DPH had broad authority to deny applications for a license. The bases for denying an application included: the provision of incorrect or misleading information in an application, a low evaluation score, a determination by the DPH that an applicant is deemed “not responsible,” a determination by the DPH that the application does not serve the needs of the Commonwealth, or any other grounds that “serves the purpose” of the applicable law and regulations.

23. During the application process, a series of background checks must be performed on various individuals and entities associated with the RMD.

24. Failing a background check can jeopardize the application process, and the DPH may prevent the application from proceeding until a problematic person is replaced or addressed in some manner in accordance with notice or direction from the DPH.

25. According to CPMC Manager 1, the DPH would not issue a license if an applicant does not address concerns raised by the background check.

26. The process for an application can be divided into several phases: an application of intent, a management and operations profile, the siting phase, a provisional licensing phase, and a final registration. The application of intent requires a \$1,500 application fee and a funding commitment signed under the pains and penalties of perjury. The management and operations profile requires a submission describing the operational structure of the RMD. The siting phase requires proof of control and ownership of an RMD site. Upon completion of the previous stages, a provisional certificate of registration is provided contingent upon a \$50,000 payment. The certificate of registration becomes a final registration certificate once the DPH inspects and certifies the site and business operations.

27. At any point during the licensing process, the DPH can require further information and deny an application based upon information the agency reviews.

28. Once the DPH grants an RMD a license, the RMD is subject to annual renewals that require an in-depth review of its operations. The DPH can deny the renewal, effectively shutting down an RMD for non-compliance.

29. As the marijuana industry has grown, new enterprises looking to obtain capital have engaged in various securities offerings, some involving registered investment advisers to secure funding.

a. McDonald and USAG Used Investor A's Funds to Finance Outside Business Ventures

i. USAG

30. McDonald conducts his investment advisory business through USAG.

31. According to the form ADV-II filed in January 2019, USAG's full legal name is US Advisory Group, LLC.

32. According to the form ADV-II filed in January 2019, US Advisory Group, LLC is a Massachusetts corporation with a principal place of business located at 152 Conant Street, Beverly, Massachusetts.

33. Despite stating on the form ADV-II that USAG is a Massachusetts corporation, Massachusetts corporate records indicate that the last filing made to the Corporations Division of the Office of the Secretary of the Commonwealth occurred on March 3, 2015. Furthermore, USAG was involuntarily dissolved by the Secretary of the Commonwealth on June 30, 2017.

34. McDonald is the President and CEO of USAG, which had six employees, including two broker-dealer agents.

35. USAG has over \$33 million of assets under management and approximately 57 clients. Approximately \$15 million of USAG's assets under management comes from four high net worth individuals.

36. In addition to conducting investment advisory activity through USAG, McDonald also used USAG resources, including staff members, to service his outside business activities.

37. McDonald communicated with all KBMA investors and conducted CPMC and KBMA business using a USAG e-mail address.

ii. Investor A

38. Investor A is a 78-year-old resident of California and an accredited investor.

39. Investor A first met McDonald in October 2007 at a World Presidents' Organization retreat.

40. Investor A signed an advisory agreement with USAG on December 5, 2007.³

41. USAG assessed Investor A an initial \$50,000 financial planning fee and annual asset management fees thereafter.

42. McDonald did not have discretionary authority to make trades on behalf of Investor A.

43. As Investor A's registered investment adviser, McDonald owed a fiduciary duty to Investor A.

³See Exhibit 1 for a timeline of events.

iii. McDonald Failed to Disclose Conflicts of Interests When Making Recommendations to Investor A

1. Amedica Corporation

44. In 2013, Investor A invested a total of \$850,000 in a pooled investment account on McDonald's recommendation. McDonald represented to Investor A that this investment was a direct investment in a company called Amedica. In reality, Investor A had become a general partner in Healthcare 2013, LP.

45. McDonald has repeatedly failed to provide Investor A with documents related to the Amedica investment, despite Investor A's requests.

46. The structure of the Amedica investment and McDonald's lack of communication resulted in significant financial confusion for Investor A.

2. Prime Wellness of CT

47. In early 2014, Investor A invested in Prime Wellness of CT, a company created by McDonald for the purpose of pursuing a marijuana license in Connecticut.

48. Investor A's shares of Prime Wellness of CT were eventually transferred to a company called Acreage Holdings, a holding company that trades in cannabis-related securities listed on Canadian stock exchanges.

3. Dixie Highway Partners, LP

49. In April 2011, McDonald sent Investor A a series of documents relating to proposed investments in Dixie Alternatives, GP and Dixie Alternatives, LP. Accompanying these documents was a letter from McDonald regarding potential investment opportunities in "Dixie Brands." The letter stated that McDonald and his associates intended to assist the company in going public in the summer of 2014.

50. The operating agreements of Dixie Alternatives, GP and Dixie Alternatives, LP state that both entities will be managed by St. John's Holdings LLC.

51. St. John's Holdings LLC is an entity solely owned and managed by McDonald and his family.

52. The operating agreements of Dixie Alternatives, GP and Dixie Alternatives, LP state that both entities intend to enter into investment advisory agreements with USAG and will pay USAG \$30,000 at the outset of the agreement and \$10,000 per year thereafter.

53. Beginning on June 10, 2014, Investor A made a series of investments in Dixie Highway Partners LP ("Dixie Highway") on McDonald's recommendation.⁴

54. Dixie Highway is a limited partnership, in which Kettle Black I GP, LLC ("KBGP") acted as the general partner.

55. KBGP is a Delaware limited liability company solely owned and controlled by McDonald.

56. Dixie Highway was created to invest in Dixie Brands, Inc., a Colorado-based company specializing in the manufacture and distribution of marijuana-infused products.

57. On June 10, 2014, Investor A invested \$400,000 in Dixie Highway.

58. On June 30, 2014, Investor A invested an additional \$100,000 in Dixie Highway.

59. On July 16, 2014, McDonald and USAG used \$200,000 of Investor A's funds intended for Kettle Black of MA, LP to invest in Dixie Highway without Investor A's knowledge.

⁴ Dixie Highway Partners, LP is a separate and distinct entity from Dixie Alternatives, GP and Dixie Alternatives, LP.

60. In total, McDonald directed the investment of over \$700,000 of Investor A's funds in Dixie Highway during the summer of 2014.

61. Investor A did not receive a subscription agreement for Dixie Highway (the "DH Subscription Agreement") until September 2014.

62. The DH Subscription Agreement states that Dixie Highway "entered into an Investment Advisory Agreement [(the "DH Advisory Agreement")] dated as of June 2, 2014 with [USAG], in its capacity as an investment adviser."

63. McDonald failed to disclose the relationship between Dixie Highway, KBGP, and USAG to Investor A. McDonald served as the manager for all these entities.

64. In connection with the DH Advisory Agreement, Dixie Highway paid USAG a fee of \$10,000 in 2014, and \$5,000 per year for 2015, 2016, and 2017.

65. The DH Subscription Agreement does not disclose the fees that USAG charged Dixie Highway for investment advisory services.

66. Pursuant to the DH Advisory Agreement, USAG, which is controlled by McDonald, charged a management fee to Dixie Highway, which is also controlled by McDonald but funded primarily by Investor A.

67. The DH Subscription Agreement attempts to disclaim liability for providing investment advice to Investor A on the basis that Investor A had consulted with his own advisers.

68. The DH Subscription Agreement was sent to Investor A nearly two months after he had invested in Dixie Highway.

69. At all times relevant to the Dixie Highway investments, McDonald, who owns and controls USAG, was Investor A's investment adviser.

70. The DH Subscription Agreement is the first time McDonald disclosed to Investor A that Investor A was entering into a partnership with McDonald.

71. McDonald provided all Dixie Highway-related documents to Investor A on USAG letterhead, fax cover sheets, and/or through USAG e-mail addresses.

72. Investor A relied on McDonald's representations when making investment decisions in McDonald's outside business activities, which were primarily marijuana-related investments.

4. Kettle Black of MA, LP

73. In late 2013, McDonald advised Investor A to invest in Prime Wellness of MA, Inc. ("PWMA").

74. PWMA is a Massachusetts non-profit corporation "created to provide a safe system for state approved medical marijuana patients to obtain access to medicine, education, other health and wellness services as well as provide a variety of community events."

75. McDonald recommended that Investor A liquidate a \$1 million annuity to fund his investment in PWMA.

76. As a non-profit entity, PWMA is not able to issue dividends to investors.

77. To ensure investors received dividends, PWMA contracted with a for-profit entity to provide operational services that would then provide a return to investors.

78. Wellness Connection of MA, LLC, was a "limited liability company created to provide financing and potential services to PWMA in order to enable PWMA to secure a dispensary license from the Department of Public Health."

79. McDonald explained the investment structure for PWMA in a presentation e-mailed to Investor A on December 4, 2013.

80. During December 2013, McDonald regularly communicated with Investor A to facilitate his PWMA investment.

81. On January 15, 2014, Investor A issued a check in the amount of \$500,000 made payable to Prime Wellness of MA, Inc.

82. On January 21, 2014, Investor A issued another check in the amount of \$325,000 made payable to Prime Wellness of MA, Inc.

83. On January 16, 2014, Investor A received a fax (the "January 16 Fax") instructing him to sign the last page of the included deposit agreement (the "Deposit Agreement") and return it to USAG.

84. The January 16 Fax was sent from a USAG fax number, it was signed by a USAG client services employee, and it included a cover sheet on USAG letterhead.

85. The Deposit Agreement attached to the January 16 Fax refers to an entity named Kettle Black of MA, LP ("KBLP"). The Deposit Agreement states in relevant part:

This deposit agreement (this "agreement"), dated as of the 2nd day of January, 2014, is by and among Kettle Black of MA, LP, a Delaware limited partnership (the "Partnership"), having an address at 301 Edgewater Place, Suite 410, Wakefield, MA 01880, [Investor A] (the "Subscriber") ...and John P. Glowik Jr. (the "Deposit Agent")...

... The general partner of the Partnership (the "General Partner") shall instruct the Subscriber to deliver to the Deposit Agent checks made payable to the order of "Prime Wellness of MA, Inc."

86. The general partner of KBLP was KBGP. Through KBGP, McDonald had sole control of KBLP.

87. Before McDonald sent the Deposit Agreement, McDonald did not disclose to Investor A that his investment in PWMA required him to become a limited partner in KBLP.

88. McDonald did not disclose to Investor A that he would be investing in an entity over which McDonald had sole control before sending the Deposit Agreement.

89. The Deposit Agreement further states that “all capitalized terms not herein defined shall have the meaning ascribed to them in that certain Confidential Private Offering Memorandum, dated January 2, 2014, as amended or supplemented from time-to-time, including all attachments, schedules and exhibits thereto[.]”

90. Investor A never received a copy of the referenced Confidential Private Offering Memorandum.

91. The Deposit Agreement states, in relevant part, that “the Partnership desires to sell interests totaling One Million and Fifty Thousand Dollars (\$1,050,000.00) and; ... the Subscriber wishes to invest in the Partnership.”

92. Investor A’s total investment into PWMA was \$825,000, representing nearly 80% of the total value to be raised through KBLP.

93. The Deposit Agreement states:

In the event that the General Partner advises the Deposit Agent in writing that no State-issued licenses to open and operate medical marijuana production facilities and/or dispensary facilities in Massachusetts pursuant to and in accordance with applicable State Law and regulation (the “Licenses”) have been awarded to Prime Wellness of MA (“PWMA”) (the “Termination Notice”), the Deposit Agent shall promptly return the funds paid by each Subscriber to said Subscriber without interest, deduction or offset...

...If by 3:00 P.M. eastern time on the Termination Date, the Deposit Agent has not received written notice from the General

Partner regarding the disbursement of the Deposit Funds then Deposit Agent shall promptly return the Deposit Funds to the Subscriber without interest, deduction or offset.

94. On February 6, 2014, McDonald, through a USAG client services employee, sent an investor update to all investors in KBLP (the "February 6 Announcement") stating that "the Massachusetts Department of Health and Human Services announced the license winners ... [and] we did not get any of those licenses, which left us stunned."

95. In the February 6 Announcement, McDonald stated:

Under the terms of our agreement, we can opt out of Kettle Black, and each of you can, if you chose to, but it does not make sense to do so until this runs its course. I personally believe, after listening to everyone, we have a very good chance of having at least two, and possibly all three licenses, but it simply is that we have to give this a little more time to know for sure.

96. In reliance on the February 6 Announcement, Investor A did not elect to withdraw his funds.

97. PWMA never obtained any licenses, even after appeal.

98. On July 16, 2014, a USAG client services employee sent a letter on USAG letterhead to Investor A, stating:

Enclosed please find a check (#1004) in the amount of \$575,000, payable to [Investor A]. These funds represent the return of escrow for your deposit to Prime Wellness of MA, Inc. As you may remember, you sent a total of \$825,000, of which \$575,000 was invested in Prime Wellness of MA and \$200,000 went into Dixie Highway Partners.

This check should be deposited at [Bank One] in the appropriate account. Reciprocally, a check should be written from the [Bank One] account in the amount of \$575,000 payable to [Custody Bank One] and sent to our office. Once the Kettle Black 1 GP check has cleared, we will overnight your [Bank One] check to [Custody Bank One] for deposit back into your managed account.

99. Pursuant to the terms of the Deposit Agreement, Investor A was entitled to the return of the \$825,000 invested in PWMA.

100. McDonald and USAG did not have authority to obtain Investor A's funds from the deposit agent, per the Deposit Agreement.

101. McDonald and USAG did not have authority to invest Investor A's money in Dixie Highway.

102. McDonald took \$200,000 from the funds Investor A intended to invest in PWMA and invested those funds in Dixie Highway.

103. Over the course of several years, McDonald failed to provide Investor A with appropriate offering documents, failed to disclose to Investor A that McDonald controlled the company in which Investor A was investing, and utilized Investor A's funds without proper authorization to do so.

104. As a result of McDonald's conduct, Investor A removed the majority of his accounts from USAG in 2017.

105. In total, Investor A has incurred \$3million in losses as a result of McDonald's conduct and recommendations.

b. McDonald and Partners Create KBMA

i. Overview

106. Beginning in early 2014, McDonald and several other individuals began collaborative efforts to obtain a license to open up to three RMDs in Massachusetts.

107. To achieve their objective of opening and managing RMDs, McDonald and his partners created a company called Commonwealth Pain Management Connection, LLC ("CPMC").

108. CPMC, which was controlled by McDonald and CPMC Manager 1, held all intellectual property and was intended to provide operating services to the RMDs.
109. Each RMD was organized as a non-profit entity that would contract with CPMC to obtain management services in exchange for fees.
110. The structure of the KBMA investment is described in Exhibit 2.
111. KBMA was the primary source of funding for CPMC.
112. KBMA consisted of approximately 150 Massachusetts investors who made their investments between August 2015 and December 2017.
113. KBMA's purpose, as stated in its private placement memorandum ("KB PPM"), was to raise \$8 million to invest in CPMC.
114. KBMA primarily raised funds through the work of McDonald, Individual 1, Individual 2, and Individual 3.
115. The KB PPM specifically states that it was to provide services to Wellness Connection of MA, Inc. ("Wellness MA").
116. The Management and Operations Profile submitted to the Department of Public Health on October 23, 2015, specifically states that "[Wellness MA] has not identified a company that it intends to utilize."
117. No formal agreement to provide services was in effect between CPMC and Wellness MA at the time KBMA was raising funds.
118. McDonald remained the sole manager of KBMA until May 2017.
119. In May 2017, McDonald resigned as manager of KBMA and Individual 2 assumed management responsibilities.

ii. Material Omissions in the Kettle Black Private Placement Memorandum

120. At the time the KB PPM was prepared and provided to prospective investors, McDonald was the sole manager, president, secretary, and treasurer of KBMA.

121. KBMA investors received the KB PPM prior to investing in KBMA.

122. The KB PPM is a 150-page document that discusses, among other things, the structure, key personnel, and risk factors of an investment in KBMA.

123. The KB PPM states that investments in KBMA contain a high degree of risk and identifies multiple risk factors, including changing federal and state laws and the strong lobbying opposition facing the industry.

124. The KB PPM fails to disclose the complex nature of the licensing process or the specific issues that could result in an RMD's failure to acquire its license.

125. The KB PPM specifically fails to disclose that the DPH requires the disclosure of certain financial backers or that the existence of a backer unacceptable to the DPH could result in a delay or denial of a license.

126. CPMC Manager 1 stated he was not aware of the identities of any investors. For that reason the investors never underwent the background checks required by the DPH.

127. The KB PPM further fails to disclose that adequate funding must be available at specific points in the application process or that the failure to obtain such funding could result in a delay or denial of a license.

128. The KB PPM further fails to disclose that the ability to obtain a final registration certificate is conditional on having an appropriate site for the RMD and that, due to local zoning ordinances, there may be as few as one or even no sites appropriately zoned for an RMD in any given city or region.

129. The KB PPM further fails to disclose that the failure to obtain a lease on the contemplated property in Revere, Massachusetts would prevent the opening of any RMD in Revere, Massachusetts because, at the time of the offering, the Revere Property was the only possible location to open an RMD in Revere.

130. The KB PPM further fails to disclose that the license requires an annual renewal with the DPH and failure to obtain such a renewal could adversely impact the investment.

131. During the application process, McDonald and his partners deliberately took actions to omit Individual 1 and others from offering documents provided to investors and application documents filed with the DPH. Individual 1 has a criminal record that made him ineligible to participate in marijuana ventures under the then-existing regulations.

132. Upon information and belief, Individual 1 received Class A shares of CPMC and cash payments in exchange for his fundraising efforts on behalf of KBMA.

133. The application to the DPH specifically omitted the involvement of Individual 1.

134. Individual 2 acted as an agent and fundraiser on behalf of CPMC.

135. Upon information and belief, Individual 2 received Class A shares of CPMC and cash payments in exchange for his fundraising efforts on behalf of KBMA.

136. Upon information and belief, Individual 3 received Class A shares of CPMC and cash payments in exchange for his fundraising efforts on behalf of KBMA.

137. Individual 1, Individual 2, and Individual 3 never registered as issuer-agents in Massachusetts.

138. McDonald did not disclose to KBMA investors that Individual 1 and Individual 2 were Class A shareholders of CPMC.

139. The participation of Individual 1 in CPMC fundraising and his equity stake in CPMC could have resulted in the denial of a license due to his criminal background.

140. CPMC intentionally withheld the identity of Individual 1 from KBMA investors and the DPH application.

iii. CPMC Manager 1 Entered into an Agreement with Revere Property Owner

141. In or around April 2015, CPMC Manager 1 began to negotiate an agreement to obtain a lease for the only properly zoned RMD site in Revere, Massachusetts (the “Revere Site”).

142. These negotiations culminated in a letter of agreement (the “Letter of Agreement”) between Revere Property Owner and CPMC Manager 1 that set forth the terms and conditions by which they would seek an RMD license.

143. The Letter of Agreement provided the property owner with certain rights with respect to companies connected to the RMD. Specifically, it provided Revere Property Owner with an initial 22.5% equity stake in CPMC that could increase to 32.5% in the event that CPMC obtained an adult-use license at a later date. The Letter of Agreement also provided for various other equity rights in related companies and a salary of \$18,000 per month.

144. CPMC Manager 1 and Revere Property Owner signed the Letter of Agreement on June 24, 2015, and provided it to McDonald in mid-July.

145. CPMC Manager 1 and McDonald e-mailed and communicated separately regarding the material terms of the Letter of Agreement prior to CPMC Manager 1 and Revere Property Owner signing the Letter of Agreement.

146. While the KB PPM states that CPMC contemplates entering into a lease agreement with Revere Property Owner, it omits the existence of the Letter of Agreement and the material terms therein including, among other things, the salary, reimbursement of fees, and equity changes.

147. McDonald began providing the KB PPM to investors beginning in August 2015.

**iv. The Breakdown of the Relationship between KBMA, CMPC,
and Revere Property Owner**

148. KBMA experienced significant funding issues and delays during the period it was applying to receive a medical marijuana license. As a result of these issues, KBMA did not raise the represented amount until the summer of 2016.

149. Upon information and belief, McDonald, Individual 1, Individual 2, and Individual 3, misrepresented funding levels to CPMC Manager 1.

150. Disputes between Revere Property Owner and KBMA began in 2016.

151. Around that time, Individual 1, Individual 2, Individual 3, and others began to interact directly with Wellness MA on behalf of KBMA in an attempt to renegotiate various agreements, representing themselves as advisors to KBMA.

152. Between December 2016 and May 2017, McDonald transferred funds back-and-forth from CPMC and KBMA accounts on multiple occasions.

153. Upon information and belief, funds are now currently held in accounts belonging to KBMA and CPMC.

154. After months of disputes, the arrangement with Revere Property Owner was terminated.

155. The termination of the arrangement with Revere Property Owner prevented the RMD from obtaining a site in Revere and subsequently a license to operate an RMD.

156. Since investing in KBMA, investors have seen no return and have lost access to nearly \$8 million.

VIII. VIOLATIONS OF LAW

COUNT I - Violations of MASS. GEN. LAWS ch. 110A § 101(2)

157. Section 101 of the Act provides, in the pertinent part:

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 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).

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

159. The conduct of Respondents, as described in Section VII, constitutes violations of MASS. GEN. LAWS. ch. 110A, § 101.

COUNT II - Violations of MASS. GEN. LAWS ch. 110A § 101(3)

160. Section 101 of the Act provides, in the pertinent part:

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).

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

162. The conduct of Respondents McDonald and USAG, as described in Section VII, constitutes violations of MASS. GEN. LAWS. ch. 110A, § 101.

COUNT III - Violations of MASS. GEN. LAWS ch. 110A § 102

163. Section 102 of the Act provides, in the pertinent part:

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.

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

165. The conduct of Respondents McDonald and USAG, as described in Section VII, constitutes violations of MASS. GEN. LAWS. ch. 110A, § 102.

COUNT VI - Violations of MASS. GEN. LAWS ch. 110A § 204(a)(2)(G)

166. Section 204 of the Act provides, in the 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 [...] (2) the applicant or registrant [...]:

(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).

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

168. The conduct of Respondent McDonald, as described in Section VII, constitutes violations of MASS. GEN. LAWS. ch. 110A, § 204.

COUNT V - Violations of MASS. GEN. LAWS ch. 110A § 204(a)(2)(G)

169. Section 204 of the Act provides, in the 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 [...] (2) the applicant or registrant [...]:

(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).

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

171. The conduct of Respondent USAG, as described in Section VII, constitutes violations of MASS. GEN. LAWS. ch. 110A, § 204.

COUNT VI - Violations of MASS. GEN. LAWS ch. 110A § 204(a)(2)(J)

172. Section 204 of the Act provides, in the 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 [...] (2) the applicant or registrant [...]:

The secretary may by order deny, suspend, or revoke any registration if he finds (1) that the order is in the public interest and (2) that the applicant or registrant

(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).

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

174. The conduct of Respondent USAG, as described in Section VII, constitutes violations of MASS. GEN. LAWS. ch. 110A, § 204.

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:

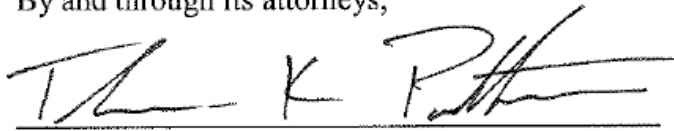
A. Finding as fact all allegations set forth in Section VII of the Complaint;

- 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 Respondents to permanently cease and desist from further conduct in violation of the Act and the Regulations in the Commonwealth;
- D. Censuring Respondents;
- E. Revoking Respondent McDonald's registration as an investment adviser representative in the Commonwealth;
- F. Revoking Respondent USAG's registration as an investment adviser in the Commonwealth;
- G. Permanently barring Respondent USAG from registering in the Commonwealth as, or conducting business in the Commonwealth as, an investment adviser required to be registered, an investment adviser exempt from registration, a federally covered adviser notice-filed in the Commonwealth, an entity relying on an exclusion from the definition of an investment adviser, a broker-dealer, an issuer of securities or a successor, partner, or affiliate of any of the above;
- H. Permanently barring Respondent McDonald from registering in the Commonwealth as, or associating in the Commonwealth with a broker-dealer, broker-dealer agent an investment adviser, investment adviser representative, Securities and Exchange Commission registered investment adviser, investment adviser excluded from the definition of investment adviser, issuer, issuer agent, or a partner, officer, director, or control person of any of the above;
- I. Requiring Respondents to provide an accounting of all losses attributable to the alleged wrongdoing;

- J. Requiring Respondents to make offers of rescission to all investors in Kettle Black of MA, LLC;
- K. Requiring Respondents to pay restitution to fairly compensate investors for all losses attributable to the alleged wrongdoing;
- L. Requiring Respondents to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing;
- M. Imposing an administrative fine on Respondents in such amount and upon such terms and conditions as the Director or Presiding Officer may determine; and
- N. 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 and through its attorneys,



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Dated: April 17, 2019

Exhibit 1

Exhibit 1 – Timeline of Events

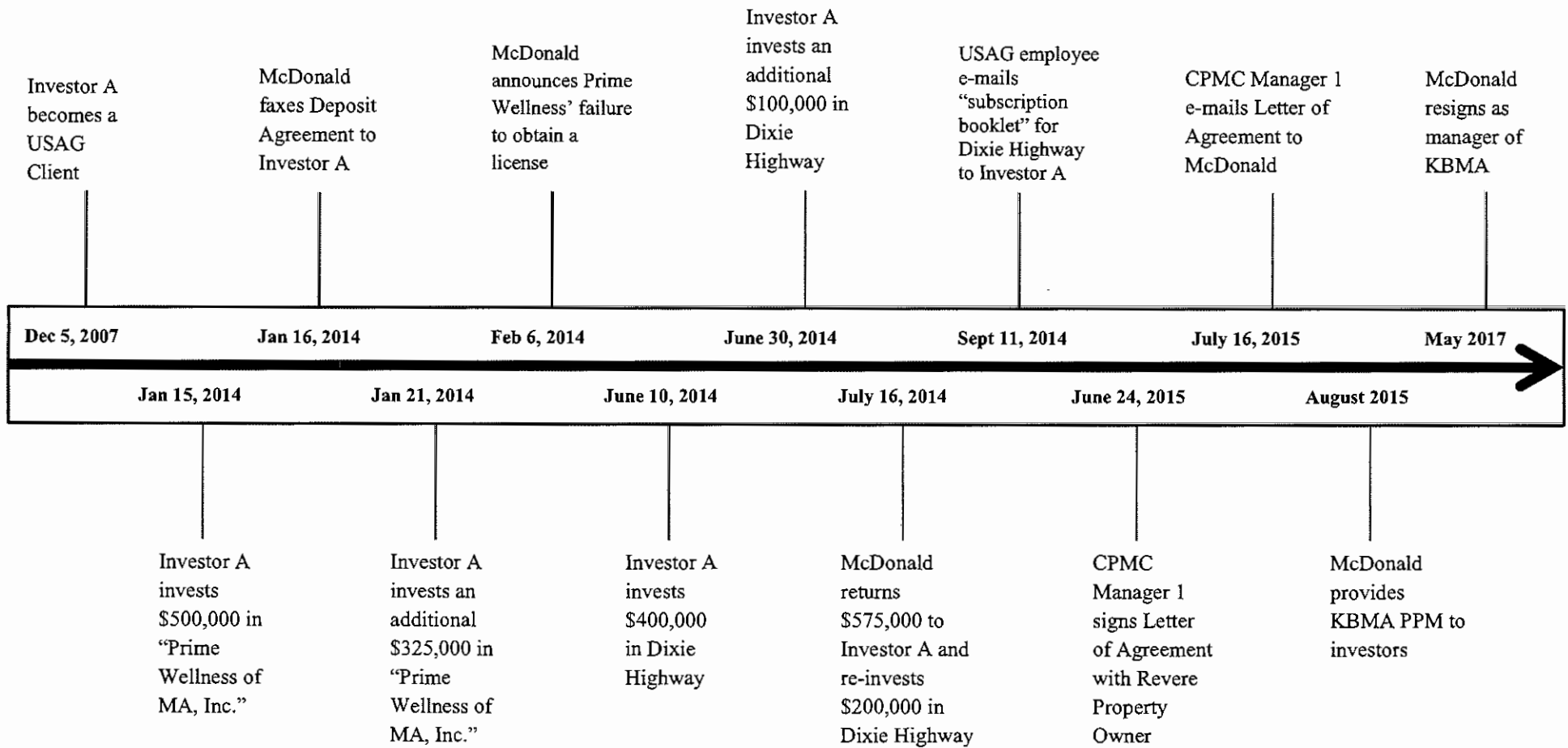


Exhibit 2

Exhibit 2 – Proposed Investment Structure

