

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

IN THE MATTER OF:

INFINEX INVESTMENTS, INC.,

Docket No. E-2017-0092

RESPONDENT.

CONSENT ORDER

I. PRELIMINARY STATEMENT

This Consent Order (the “Order”) is entered into by the Massachusetts Securities Division (the “Division”) and Infinex Investments, Inc. (“Infinex”) with respect to the investigation by the Enforcement Section of the Division (the “Enforcement Section”) into whether Infinex’s activities and conduct violated the Massachusetts Uniform Securities Act, MASS. GEN. LAWS ch. 110A (“Act”), and the corresponding regulations promulgated thereunder at 950 MASS. CODE REGS. 10.00 – 14.413 (“Regulations”).

On July 13, 2018, Infinex submitted an Offer of Settlement (the “Offer”) to the Division. Infinex neither admits nor denies the Statement of Facts set forth in Section V below and the Violations of Law set forth in Section VI below, and consents solely for the purpose of these proceedings to this Order by the Division, consistent with the language and terms of the Offer, settling this investigation (Docket No. E-2017-0092), as well as related matters (Docket Nos. E-2017-0091 and E-2017-0093), hereby with prejudice.

II. JURISDICTION

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 Offer was made and this Order is entered in accordance with the Act. Specifically, the acts and practices investigated by the Enforcement Section took place in Massachusetts.

III. RELEVANT TIME PERIOD

3. Except as otherwise expressly stated, the conduct described herein occurred during the period of January 1, 2010 to present (“Relevant Time Period”).

IV. RESPONDENT

4. Infinex Investments, Inc. is a broker-dealer and investment adviser with headquarters in Connecticut. Infinex has a Financial Industry Regulatory Authority (“FINRA”) Central Registration Depository (“CRD”) number of 35371. Infinex has been registered as a broker-dealer in Massachusetts since December 12, 1994 and notice-filed as an investment adviser in Massachusetts since November 14, 2006.

V. STATEMENT OF FACTS

A. Networking Arrangements

5. Infinex has entered into networking agreements with approximately 30 banks in Massachusetts (collectively, the “Partner Banks”).

6. Networking agreements between Infinex and the Partner Banks allow Infinex representatives to conduct securities business on bank premises in exchange for providing Partner Banks with a percentage of the commissions generated by Infinex and its representatives.

7. The relationship between Infinex and the Partner Banks enables Infinex representatives to work directly with banking customers, many of whom are elderly.
8. Pursuant to the networking agreements, Partner Banks typically receive between eighty and ninety percent of the commissions generated by the brokerage business Infinex and its representatives conduct on Partner Bank premises.
9. The Infinex representatives operating on Partner Bank premises are employees of the Partner Banks.
10. Consistent with regulatory requirements, Partner Banks directly compensate the Infinex representatives operating on their premises using a compensation plan approved by Infinex.

B. Infinex Supervisory Failures at Partner Banks

11. Infinex is solely responsible for the supervision of its registered representatives, including those representatives conducting business on the premises of Partner Banks.
12. Infinex utilizes a centralized supervisory process out of its main office in Meridan, Connecticut (the “Home Office”).
13. Infinex primarily supervises its representatives through the principal group, which falls under the oversight of the Operations department.
14. Infinex customer transactions are sent to the principal group at the Home Office for approval. The principal group reviews transactions to ensure compliance with Infinex policies and procedures.
15. The Office of Supervisory Jurisdiction (“OSJ”) for all Infinex locations in New England is located in the Home Office.

16. One individual (“Supervisor One”) supervises all Infinex representatives conducting business at the Partner Banks located in eastern Massachusetts.

17. Supervisor One testified to the Enforcement Section that he is responsible for overseeing 50 Infinex representatives in Massachusetts and 180 Infinex representatives in total.

18. Supervisor One testified to the Enforcement Section that he spends “maybe ten percent” of his week in a compliance function.

19. Supervisor One is compensated via a base salary plus a percentage of the net revenue generated by the representatives he supervises.

20. Supervisor One is responsible for conducting some of the available trainings with Infinex representatives regarding customer relations and product offerings.

21. Supervisor One also serves on several committees which review and approve products prior to their sale by Infinex.

22. Supervisor One acts as a liaison between Infinex representatives and these departments on an as-needed basis.

23. During the course of its investigation, the Enforcement Section uncovered several instances in which Infinex failed to reasonably supervise its representatives doing business on Partner Bank premises.

C. Investor Complaints

a. Massachusetts Investor One

24. In March 2017, the Enforcement Section received a complaint from a resident of South Yarmouth, Massachusetts (“Massachusetts Investor One”), alleging that a

registered representative of Infinex (“Infinex Representative One”) sold her a product through one of the Partner Banks without revealing that it was an annuity product.

25. Massachusetts Investor One is a 71 year old retiree and self-described “homemaker;” her husband was a retired barber and was alive at the time of Massachusetts Investor One’s transactions with Infinex.

26. Massachusetts Investor One stated to the Enforcement Section, that her investment objective was to invest \$700,000, the proceeds from the sale of their commercial property in Newton, in a manner that would preserve the principal and allow her and her husband to live off the interest.

27. Massachusetts Investor One also stated to the Enforcement Section that she instructed Infinex Representative One that she did not want to invest in an annuity product.

28. In September 2014, Infinex Representative One sold Massachusetts Investor One a variable annuity product that was intended to provide income as requested by Massachusetts Investor One’s application, but also exposed the principal to market risk.

29. This annuity product accounted for approximately half of Massachusetts Investor One’s liquid net worth.

30. Prior to investing in this annuity product, Massachusetts Investor One’s investment experience was primarily in mutual funds; she also held one other variable annuity at the time of purchase. That annuity accounted for approximately 10% of her net worth.

31. Infinex Representative One filled out the annuity application form and provided the completed document to Massachusetts Investor One and her husband for their signatures.

32. During the two years that Massachusetts Investor One held the variable annuity, approximately \$57,000 was withdrawn from the annuity on an automatic monthly basis.

33. In July 2016, after expressing concerns relating to the United Kingdom's exit from the European Union, Massachusetts Investor One directed Infinex Representative One to liquidate the product.

34. At the time of liquidation, Massachusetts Investor One stated to the Enforcement Section that she learned that her withdrawals had not been from income generated on the annuity, but from the principal.

35. At the time of liquidation, Massachusetts Investor One incurred market losses of \$22,423.16.

b. Massachusetts Investor Two

36. In March 2017, the Enforcement Section received a complaint from a resident of Springfield, Massachusetts ("Massachusetts Investor Two") that alleged that representatives of Infinex located at one Partner Bank ("Partner Bank One") sold him an annuity without disclosing that it was not a banking product.

37. Massachusetts Investor Two is a 78 year old retiree with limited investment experience.

38. Infinex representatives at Partner Bank One operate under a d/b/a which does not reference Infinex in its title.

39. Massachusetts Investor Two stated to the Enforcement Section that Infinex never disclosed to him that he was purchasing a product through a broker-dealer.

40. Massachusetts Investor Two further stated to the Division that he was unaware at the time of purchase that the product was not FDIC-insured.

41. The annuity product purchased by Massachusetts Investor One had a 7-year surrender term beginning at 9%.

42. Infinex representatives provided a pre-filled form to Massachusetts Investor Two for his signature in a process that Massachusetts Investor Two described to the Enforcement Section as “rushed” and which gave him little time to review the documents.

43. Massachusetts Investor Two stated to the Enforcement Section that he signed the documents due in part to his belief he was working with Partner Bank One, with which he had a long-standing relationship at that time.

44. In February 2016, one year prior to Massachusetts Investor Two’s purchase, two separate branch audits conducted at Partner Bank One identified a lack of signage clearly disclosing Partner Bank One’s relationship with Infinex.

45. One of the Partner Bank One branch audits stated that the location of the investment office “does not comply with standard requirements.”

46. The same branch audit, while noting that the office “must be identified with proper signage,” failed to identify any such signage at the branch.

47. Notwithstanding these issues, the branch audit did not formally identify any deficiencies or make recommendations relating to proper signage.

48. The second Partner Bank One branch audit found that there was no dedicated investment office at the location, and the Infinex representative used the office to conduct banking activities.

49. The same branch audit also noted that the branch did not have proper Infinex signage on display.

50. Notwithstanding these issues, the branch audit did not formally identify any deficiencies.

c. Massachusetts Investor Three

51. In March 2017, the Enforcement Section received a complaint from a resident of Arlington, Massachusetts (“Massachusetts Investor Three”), who alleged that he was sold a non-traded REIT by an Infinex registered representative (“Infinex Representative Two”), who was operating out of one of the Partner Banks.

52. Massachusetts Investor Three is 54 years old and works as a supermarket clerk.

53. In September 2011, when Massachusetts Investor Three purchased the non-traded REIT, he also purchased a fixed annuity with a 7 year surrender period.

54. The REIT in question was an industrial REIT, which held industrial properties and generated income through rental payments.

55. Massachusetts Investor Three had only limited investment experience, primarily through fixed annuity products.

56. Infinex policies and procedures do not provide guidelines for representatives to follow relating to investor experience in evaluating recommendations relating to non-traded REITs.

57. The account application forms for the non-traded REIT purchased by Massachusetts Investor Three do not bear a stamp indicating whether the purchase was approved by Infinex.

58. The REIT account application incorrectly states that Massachusetts Investor Three had savings worth approximately \$750,000. In fact, Massachusetts Investor Three's savings were worth approximately \$75,000 at that time.

59. Infinex Representative Two testified to the Enforcement Section that that the applications for the non-traded REIT product and the annuity product were filled out separately.

60. Notwithstanding Infinex Representative Two's testimony, the application for the fixed annuity product was identical to that of the non-traded REIT product, including the misstated value of Massachusetts Investor Three's savings account.

61. The Infinex record of the transactions filed the applications with the wrong checks; the \$10,000 check for the REIT product was filed with the annuity application while the \$54,000 check for the annuity product was filed with the REIT application.

62. Notwithstanding the mismatched checks in Infinex's records, the applications were submitted to the carriers with the correct checks, and both products were issued promptly.

63. Despite the error with both the REIT and the annuity applications, the products were sold to Massachusetts Investor Three without any request for clarification by Infinex.

64. Infinex Representative Two is compensated via a "forgivable draw" which grants commissions each month if production exceeds \$4,000 in that month.

65. The non-traded REIT sold to Massachusetts Investor Three generated a gross commission of \$700.

66. The fixed annuity sold to Massachusetts Investor Three generated a gross commission of \$2,900.

67. Infinex Representative Two moved to a different Partner Bank after the Partner Bank he worked at was acquired by another depository institution which had a networking agreement with a separate broker-dealer.

68. Infinex Representative Two assumed that Massachusetts Investor Three's account had been acquired by the broker-dealer that had purchased the assets from his former Partner Bank.

69. Infinex Representative Two had no further communication with Massachusetts Investor Two until that investor contacted the Infinex Representative Two in 2017.

70. Despite Infinex Representative Two's assumption, Infinex had always sent customer account statements to Massachusetts Investor Three; those statements indicated that all but \$698.33 had been distributed to Massachusetts Investor Three regarding the non-traded REIT. On December 20, 2017, Massachusetts Investor Three received \$698.33, which reflected the final distribution of the non-traded REIT.

71. Infinex has not created written policies and procedures to reflect the FINRA rules related to the transfer of accounts between Partners Banks.

d. Massachusetts Investor Four

72. In March 2017, the Enforcement Section received a complaint from a resident of Taunton, Massachusetts ("Massachusetts Investor Four"), alleging that he was sold a non-traded REIT product by Infinex Representative Two.

73. Massachusetts Investor Four is a 75 year old retiree.
74. In April 2014, Massachusetts Investor Four received a letter from Infinex Representative Two stating "...how important safety and preservation [was] to [Massachusetts Investor Four's] portfolio."
75. In May 2014, Massachusetts Investor Four invested \$50,000 in a non-traded REIT product on the recommendation of Infinex Representative Two.
76. The REIT purchased by Massachusetts Investor Four is a health care REIT, which generates income from its health care-related property holdings.
77. Massachusetts Investor Four had no prior experience investing in REITs or similarly structured products.
78. Infinex Representative Two is compensated via a "forgivable draw" which grants monthly commissions if production exceeds \$4,000 in a month.
79. The gross commission for the non-traded REIT sold to Massachusetts Investor Three by Infinex Representative Four was \$3,500.
80. After purchasing the REIT, a FINRA rule change required the REIT to reflect a reduced valuation; in this case the reduction was \$5,460.00. Massachusetts Investor Four has received \$9,650 in distributions from this REIT.
81. Infinex approved the sale of the non-traded REIT investment to Massachusetts Investor Four.

VI. VIOLATIONS OF LAW

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

82. Section 204 of the Act provides, in pertinent part:

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).

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

VII. ORDER

IT IS HEREBY ORDERED:

- A. Infinex shall permanently cease and desist from further conduct in violation of the Act and Regulations;
- B. Infinex is censured by the Division;
- C. Infinex shall provide rescission and/or restitution to fairly compensate the Massachusetts investors identified in this Order for their losses, subject to the following terms:
 - a. Infinex shall make written offers of rescission and/or restitution to the Massachusetts investors identified in this Order by the Enforcement Section. The offers shall include, but not be limited to, commissions, fees, penalties, and losses incurred by the Massachusetts investors identified in this Order;
 - b. Prior to making any offer or returning any funds pursuant to this Section, and within thirty (30) days of the entry of the Order, Infinex shall provide to the Enforcement Section an accounting in the form of a spreadsheet (the

“Accounting”) of all rescission and/or restitution offers to be made pursuant to Section VII(C). The Accounting will include the names and addresses of all recipients of rescission and/or restitution, as well as the total amount owed by Infinex under the Accounting, and the amount that Infinex proposes to offer to each Massachusetts investor. The Accounting shall not be unacceptable to the Enforcement Section;

- c. The proposed written offers to Massachusetts investors to provide rescission and/or restitution per Section VII(C)(a) shall not be unacceptable to the Enforcement Section, and a draft of the proposed written offers shall be provided to the Enforcement Section together with the Accounting;
- d. Within thirty (30) days of receiving written or electronic notice that the Accounting, together with the proposed written offers of rescission and/or restitution, are not unacceptable to the Enforcement Section, Infinex shall make written offers of rescission and/or restitution to Massachusetts investors, per Section VII(C)(a);
- e. The written offers of rescission and/or restitution shall remain open to Massachusetts investors for at least ninety (90) days (“Offer Period”);
- f. Within ten (10) days following the expiration of the Offer Period, Infinex shall make payments to all Massachusetts investors who accepted written offers of rescission and/or restitution; and
- g. Within thirty (30) days following the date that Infinex makes rescission and/or restitution payments, Infinex shall provide the Enforcement Section

with a final accounting (the “Final Accounting”) and certification of the disposition of the payments made pursuant to Section VII(C)(f). The Final Accounting shall be in a form not unacceptable to the Enforcement Section and include: (1) the name and address of each recipient of rescission;(2) the amount paid to each individual that accepted the offer of rescission and/or restitution; (3) the date of each payment; (4) evidence of all payments made; (5) the date and amount of any returned payment(s); (6) a description of any effort to locate a prospective recipient of an offer of rescission and/or restitution whose payment was returned, or to whom payment was not made due to factors beyond Infinex’s control; and (7) the balance of any undistributed funds, if any. Infinex shall cooperate with requests for information in connection with the Final Accounting and provide supporting documentation to the Enforcement Section upon request.

D. Infinex shall retain, within thirty (30) days of the entry of the Order, the services of an independent consultant (“Independent Compliance Consultant”) not unacceptable to the Enforcement Section. The Independent Compliance Consultant’s compensation and expenses shall be paid exclusively by Infinex. Infinex will require the Independent Compliance Consultant to conduct a comprehensive review of Infinex’s policies, procedures, training, and/or processes as guided and informed by the allegations in this Order. The comprehensive review shall include, but not be limited to, a review of Infinex’s supervisory structure, Infinex’s supervision of Infinex representatives on Partner Bank premises, email monitoring and review procedures, Infinex’s use of d/b/a’s

substantially similar to Partner Bank names, all REIT sales practices, all annuity sales practices, training of Infinex representatives on REIT product sales and recommendations, and training of Infinex representatives on annuity product sales and recommendations, subject to the following terms:

- a. Within one hundred twenty days (120) of the entry of the Order, the Independent Compliance Consultant shall submit a report to the Enforcement Section containing the finds of the comprehensive review (the "Report"). The Report shall include, but not be limited to, a description of the review performed, the conclusions reached, and the recommendations for changes in or improvements to the policies and procedures of Infinex, as well as a procedure for implementing the recommended changes in or improvements to those policies and procedures;
- b. The Report's recommendations shall not be unacceptable to the Enforcement Section, provided that the Enforcement Section shall not unreasonably withhold its approval of those recommendations; and
- c. If the recommendations are not unacceptable to the Enforcement Section, Infinex shall promptly adopt all recommendations contained in the Report.

E. Within five (5) business days of the entry of the Order, Infinex shall pay an administrative fine in the amount of \$125,000 (USD) to the Commonwealth of Massachusetts. In determining to resolve this matter in the manner set forth herein, and in determining the appropriate administrative fine, the Enforcement Section considered Infinex's cooperation with the investigations. Payment shall be: (1) made by United

States postal money order, certified check, bank cashier's check, bank money order, or wire transfer; (2) made payable to the Commonwealth of Massachusetts; and (3) either hand-delivered or mailed to One Ashburton Place, Room 1701, Boston, Massachusetts 02108, or wired per Division instructions; and (4) submitted under cover letter or other documentation that identifies Infinex making the payment and the docket number of the proceedings. Additionally, Infinex shall provide the Enforcement Section with notice twenty-four (24) hours prior to the payment;

F. Infinex shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any amounts that it shall pay pursuant to the Order;

G. Infinex shall not seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to, any payments made pursuant to any insurance policy, with regard to any amount that it shall pay pursuant to the Order;

H. For good cause shown, the Enforcement Section may extend any of the procedural dates set forth above. Infinex shall make any requests for extensions of the procedural dates set forth above in writing to the Enforcement Section; and

I. Upon issuance of the Order, if Infinex fails to comply with any of the terms set forth in the Order, the Enforcement Section may take all appropriate action. Additionally, after a fair hearing and the issuance of an order finding that Infinex has not complied with the Order, the Enforcement Section may move to have the Order declared null and void, in whole or in part, and re-institute the associated investigation that had been brought against Infinex.

VIII. NO DISQUALIFICATION

This Order waives any disqualification in the Massachusetts laws, or rules or regulations thereunder, including any disqualifications from relying upon the registration exemptions or safe harbor provisions to which Infinex or any of its affiliates may be subject. This Order is not intended to be a final order based upon violations of the Act that prohibit fraudulent, manipulative, or deceptive conduct. In addition, this Order is not intended to form the basis of any disqualifications under Section 3(a)(39) of the Securities Exchange Act of 1934, Rule 506 of Regulation D under the Securities Act of 1933, Section 204(a)(2) of the Uniform Securities Act of 1956, or Section 412(d) of the Uniform Securities Act of 2002.

WILLIAM FRANCIS GALVIN
SECRETARY OF THE COMMONWEALTH

By: 

Bryan J. Lantagne

Director

Massachusetts Securities Division

One Ashburton Place, Room 1701

Boston, MA 02108

Date: July 16th, 2018