

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

_____ )	
IN THE MATTER OF: )	
_____ )	CONSENT ORDER
FIDELITY CO-OPERATIVE BANK )	
_____ )	E-2014-0073
_____ )	

**I. INTRODUCTION**

This Consent Order (“Order”) is entered into by the Massachusetts Securities Division and Respondent Fidelity Co-operative Bank (hereinafter “Respondent”) to resolve any issues with the Enforcement Section of the Massachusetts Securities Division (hereinafter “Enforcement Section” and “Division”) arising out of an investigation initiated by the Division on April 30, 2014 concerning Respondent’s banking relationship with TelexFREE.

On September 17, 2014, Respondent submitted an Offer of Settlement (“Offer”) to the Division for the purpose of settlement only and with the express understanding that it will not be used in any proceeding for any purpose unless accepted by the Division. Solely for the purpose of reaching resolution, Respondent neither admits nor denies the statements of facts or allegations set out herein, and consents solely for the purpose of these proceedings to the entry of an Order by the Division, consistent with Respondent’s Offer, hereby settling the claims brought with prejudice. The Division accepted Respondent’s Offer.

**II. JURISDICTION AND AUTHORITY**

1. The Massachusetts Securities Division is a division of the Office of the Secretary of the Commonwealth with jurisdiction over matters relating to securities, as provided for by the Massachusetts Uniform Securities Act (hereinafter the “Act”). The Act

authorizes the Division to regulate: 1) the offers, sales, and purchases of securities; 2) those individuals and entities offering and/or selling securities; and 3) those individuals and entities transacting business as investment advisers within the Commonwealth.

2. The Division instituted this action pursuant to the enforcement authority conferred upon it by § 407A of the Act and MASS. GEN. LAWS ch. 30A, 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. The proceeding was brought in accordance with §§ 101 and 407A of the Act and its Regulations. Specifically, the acts and practices set forth herein occurred within the Commonwealth of Massachusetts.

### **III. RELEVANT TIME PERIOD**

4. Except as otherwise expressly stated, the conduct described herein occurred during the approximate time period of August 2013 through April 2014 (hereinafter the "Relevant Time Period").

### **IV. RESPONDENT**

5. Fidelity Co-operative Bank (hereinafter "Fidelity Bank") is a banking institution established on January 1, 1888 with seven locations in Massachusetts and headquarters located at 675 Main Street, Fitchburg, Massachusetts 01420.

### **V. STATEMENTS OF FACT**

6. Fidelity Cooperative Bank is a 126 year old mutually owned community bank that has branches in Central Massachusetts. Its three major business lines are consumer banking, residential mortgages, and commercial banking.

7. Fidelity Bank's commercial banking focuses on small to mid-size local commercial businesses.
8. According to Fidelity Bank's website, located at [www.Fidelitybankonline.com](http://www.Fidelitybankonline.com), Fidelity Bank had total assets of \$565 million as of December 31, 2013.
9. James Merrill (hereinafter "Jim Merrill"), brother of Fidelity Bank President, John Merrill (hereinafter "Merrill"), and Carlos Wanzeler (hereinafter "Wanzeler"), operated TelexFREE Inc., TelexFREE LLC, and all related TelexFREE entities (hereinafter "TelexFREE"), throughout the Relevant Time Period.
10. On April 15, 2014 the Division filed an Administrative Complaint (Dkt. # E-2014-0004) charging TelexFREE of running an illegal pyramid scheme in violation of Section 101 of the Act.
11. According to the Answer filed by TelexFREE's Chapter 11 bankruptcy Trustee with the Division on August 5, 2014, "the nature of the business of TelexFree and its related entities constituted an illegal pyramid scheme . . ."
12. On July 23, 2014, a federal grand jury indicted TelexFREE principals Jim Merrill and Wanzeler on nine counts of wire fraud and conspiracy to commit wire fraud.
13. Beginning in August 2013, TelexFREE opened three deposit accounts at Fidelity Bank.
14. The Division alleges that Fidelity Bank's account opening process in 2013 was inadequate—with training, experience, and oversight insufficient to handle the large TelexFREE deposit accounts.
15. In early 2014, after closing the TelexFREE accounts, Fidelity Bank revamped and improved its account opening process.

16. Fidelity Bank opened two accounts for TelexFREE on August 8, 2013 with initial deposits totaling \$7,123,784.58.
17. Fidelity Bank opened a third TelexFREE account on September 12, 2013 with additional deposits of \$2,951,337.12.
18. Fidelity Bank accepted TelexFREE business, using systems, such as remote deposit capture, that helped TelexFREE deposit funds more conveniently.
19. TelexFREE made significant deposits at Fidelity Bank received from TelexFREE's offer and sale of fraudulent securities.
20. According to the Division's investigation, TelexFREE deposited funds in Fidelity Bank accounts between August 8, 2013 and December 26, 2013—proceeds received from victims of the TelexFREE fraud.
21. As a result of deposit activity, on November 27, 2013, Merrill asked Fidelity Bank's compliance and BSA officer to review TelexFREE account activity.
22. An internet search conducted by Fidelity Bank's compliance and BSA officer at that time alerted him to the fact that Brazilian authorities had shuttered a company named TelexFREE due to allegations of being a pyramid scheme.
23. Fidelity Bank's compliance and BSA officer's search also uncovered other questions raised about the TelexFREE business model, and he subsequently notified Merrill of these facts.
24. The compliance and BSA officer also reported his findings and his concern to an outside compliance consultant used by Fidelity Bank to assist with compliance and Bank Secrecy Act issues.

25. Based on the information provided by Fidelity Bank's compliance and BSA officer, the outside consultant advised Fidelity Bank that TelexFREE was a high risk customer due to the account balance and large volume of wires, and the TelexFREE accounts would, "[...] require the appropriate monitoring level for a high risk customer."

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26. At that time, Fidelity Bank determined to close the TelexFREE accounts.
27. On December 3, 2013, pursuant to its customary procedures, Fidelity Bank notified TelexFREE that it should close all of its accounts at the Bank by December 31, 2013.
28. From November 27, 2013 to December 27, 2013, Fidelity Bank continued to provide deposit services for TelexFREE—and continued to conduct limited banking for TelexFREE after December 31, 2013.
29. Fidelity Bank also opened personal accounts for TelexFREE principals Wanzeler and Jim Merrill (hereinafter "Personal Accounts"), some of which were opened after Fidelity Bank's internal review of the TelexFREE accounts.
30. As identified by the United States Attorney's Office, Jim Merrill and Wanzeler transferred \$10,454,000 out of Fidelity Bank, in multiple transactions using personal accounts, to various other financial institutions after November 27, 2013.
31. These transfers included a December 30, 2013 transfer by Wanzeler of \$3,500,000 from his personal account at Fidelity Bank to an overseas bank account held in Singapore at the Oversea-Chinese Banking Corporation.
32. Through the use of corporate and personal accounts at Fidelity Bank, TelexFREE and its principals caused further harm to Massachusetts victims of the TelexFREE scheme.

## VI. ORDER

Respondent consents to the entry of this Order.

### **IT IS HEREBY ORDERED:**

Respondent Fidelity Bank in full settlement of these matters, and solely for the purpose of resolution of the allegations resulting from the Division's investigation neither admits nor denies the statement of facts and allegations set out herein, makes the following representations, and agrees to the undertakings herein as part of this Order:

- A. Respondent Fidelity Bank agrees to permanently cease and desist from conduct in violation of the Act and Regulations in the Commonwealth.
- B. Within 14 calendar days following the date of this Order, executed pursuant to Respondent's Offer, Respondent Fidelity Bank agrees to establish an escrow account in the amount of \$3,500,000.00 (hereinafter "Massachusetts Victim Relief Fund"). The terms of the Massachusetts Victim Relief Fund must be approved by the Division, and require that all interest earned on the account be retained by the Massachusetts Victim Relief Fund for distribution. Respondent Fidelity Bank shall distribute the aforementioned Massachusetts Victim Relief Fund pursuant to the terms of Section VI C.
- C. Respondent Fidelity Bank agrees within 45 days of this Order to retain an Independent Claims Administrator not unacceptable to the Division. Within 120 days of the date of this Order, the Independent Claims Administrator shall determine an independent plan of distribution (hereinafter "Massachusetts Distribution Plan"), not unacceptable to the Division, for identifying, calculating, and distributing payments to Massachusetts victims (hereinafter "Massachusetts Victims"). Massachusetts Victims shall include

all individuals residing in Massachusetts who invested in TelexFREE and are determined by the Independent Claims Administrator to have valid claims (hereinafter "Final Approved Claims"). The Independent Claims Administrator shall administer the Massachusetts Distribution Plan within a reasonable period not unacceptable to the Division. Respondent Fidelity Bank shall submit to the Division copies of all monthly account statements generated for the Massachusetts Victim Relief Fund. Respondent Fidelity Bank shall incur all costs related to the Independent Claims Administrator and Massachusetts Distribution Plan.

- D. At the request of the Respondent Fidelity Bank, the Division's staff may extend, for good cause shown, any of the procedural dates set forth above.
- E. Respondent Fidelity Bank agrees that if Fidelity Bank fails to comply with any of the terms set forth in this Order, the Enforcement Section may take appropriate action pursuant to Sections 101, 407A and 408 of the Act. Additionally, Fidelity Bank agrees that, after a fair hearing and the issuance of an appropriate order finding that Fidelity Bank has not complied with this Order, the Enforcement Section may move to have the Order declared null and void, in whole or in part, and re-institute the administrative proceeding and associated investigation that had been brought against Fidelity Bank.

**WILLIAM FRANCIS GALVIN  
SECRETARY OF THE COMMONWEALTH**

~~By: \_\_\_\_\_~~  
By:

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Bryan J. Lantagne, Esq.  
First Deputy-Secretary of State  
Director-Massachusetts Securities Division  
Massachusetts Securities Division  
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Dated: September 22<sup>nd</sup>, 2014