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

IN THE MATTER OF:	)	
CHARLES C. KULCH,	)	
RESPONDENT.	)	Docket No. E-2017-0079

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 Charles C. Kulch ("Kulch" or "Respondent") 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 Respondent has engaged in acts and practices in violation of Sections 101 and 204 of the Act and the corresponding Regulations by effecting transactions of real estate investment trusts ("REITs") and variable annuities in client accounts without regard to the suitability of the investment, and failing to properly calculate client liquid net worth ("LNW"), allowing purchases of REITs in excess of stated limits.

The Enforcement Section seeks an order: 1) finding as fact the allegations set forth below; 2) finding that each of the sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors; 3) requiring Respondent Kulch to permanently cease and desist from further conduct in violation of the Act; 4) censuring Respondent Kulch; 5) requiring Respondent Kulch to pay restitution to fairly compensate investors for those losses attributable to the alleged wrongdoing; 6) requiring Respondent Kulch to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing; 7) permanently barring Respondent Kulch from associating with or acting as a registered investment adviser, an investment adviser required to be registered, an investment adviser exempted from registration, or a person relying on an exclusion from the definition of investment adviser in any capacity in Massachusetts; 8) permanently barring Respondent Kulch from associating with or acting as a broker-dealer or a broker-dealer agent in Massachusetts; 9) permanently barring Respondent Kulch from associating with or acting as an issuer, an issuer-agent, or any entity or individual exempt, excluded, or required to be registered as such in Massachusetts; 10) imposing an administrative fine on Respondent Kulch in such amount and upon such terms and conditions as the Director or Presiding Officer may determine; and 11) taking any such further action which may be necessary or appropriate in the public interest and for the protection of Massachusetts investors.

II. SUMMARY

For nearly a decade, Charles C. Kulch, then a registered representative of NEXT Financial Group, Inc. ("NEXT"), profited handsomely by over-concentrating his customers in illiquid, risky, and, conveniently, high commission products such as non-traded real estate investment trusts ("REITs") and variable annuities. Kulch perpetrated a deceptively simple scheme: 1) acquire a new customer; 2) convince the customer non-traded REITs were a suitable long-term investment; and 3) buy as many shares of non-traded REITs as he was able. By disregarding or circumventing established concentration limits, Kulch generated hundreds of thousands of dollars in commissions at the expense of Massachusetts investors.

Non-traded REITs and other alternative investments are illiquid and risky products. As such, NEXT policies at the time limited non-traded REIT purchases to 5% of a customer's liquid net worth for any single product and 20% of a customer's liquid net worth for all alternative investments in the aggregate. Kulch was well aware of these limits and yet he constantly disregarded or circumvented the constraints NEXT placed on the purchase of non-traded REITs by its customers.

For example, in the case of one investor from Attleboro, Massachusetts, Kulch executed three simultaneous non-traded REIT transactions on the same day the customer opened his NEXT account. That customer had a stated liquid net worth of $730,000 and each transaction was in the amount of $42,000. Kulch listed the percentage of the customer's liquid net worth as 5.4% for each transaction, which clearly exceeds the 5% limit set by NEXT. On its face, Kulch initiated the transactions without regard for NEXT's concentration limits. Although NEXT required Kulch to provide a detailed explanation as to why any amount more than 5% is appropriate, Kulch lazily provided four words: "future retirement income stream." This explanation does not form a complete sentence; much less provide a detailed explanation as to how over-concentrating an individual in illiquid products is appropriate.

To make matters worse, Kulch's lack of attention to detail led to other, more concerning issues. First, simple arithmetic reveals that a $42,000 transaction does not represent 5.4% of $730,000; it represents 5.75%. Second, even though Kulch executed these transactions simultaneously, they are properly entered sequentially, and each subsequent transaction must account for the customer's change in liquid net worth after the prior transaction as non-traded REITs are illiquid. After the first $42,000 non-traded REIT transaction is executed, that $42,000 is no longer a liquid asset, having been converted from cash to a non-traded REIT, and is therefore not counted toward a customer's liquid net worth for any subsequent transaction. Therefore, after the first transaction is executed in the amount of $42,000, the customer's liquid net worth for the second transaction should then be listed as $688,000, not $730,000, and the second purchase would represent 6.1% of the investor's then Liquid Net Worth. Following the same logic, after the second transaction is executed in the amount of $42,000 the customer's liquid net worth for the third transaction should be $646,000, not $730,000, and the third purchase would represent 6.5% of the investor's then liquid net worth.

Unsurprisingly, Kulch failed to account for the change in customer liquid net worth after each transaction. For that reason, Kulch was then able to fraudulently represent the third $42,000 purchase of an illiquid product as 5.4% of a customer's liquid net worth (5.75% if the math had been done correctly) when in actuality, it represented 6.5%. By making such misrepresentations, Kulch was able to vastly inflate his commissions by over-selling non-traded REITs to trusting customers at an average commission rate of approximately 6.5%.

In addition to REITs and other risky investments, Kulch recommended that many of these same customers diversify their holdings with the purchase of variable annuities. Variable annuities have two defining features: 1) a multi-year surrender period during which a customer cannot withdraw money without paying a fee; and 2) high commissions for the registered representative, in this instance, Kulch.

While NEXT put policies in place to protect investors from schemes like Kulch's, Kulch took steps to manipulate the calculation of key figures NEXT monitored, circumventing such policies, and rendering them meaningless. Instead, Kulch perpetrated his scheme and generated nearly one million dollars in commissions from the sale of REITs and variable annuities between 2010 and 2015.

The Enforcement Section of the Division brings this action to protect Massachusetts investors from the dishonest sales practices of Kulch and to provide relief for the harm done to those Massachusetts investors by Kulch.

III. JURISDICTION AND AUTHORITY

1. As provided for by the Act, the Division had 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 section 407A of the Act, wherein the Division has the authority to conduct an adjudicatory proceeding to enforce the provisions of the Act.

3. This proceeding is brought in accordance with Sections 101, 204, and 414 of the Act.

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.

V. RESPONDENT

6. Charles C. Kulch ("Kulch") is a natural person and resident of New Hampshire. Kulch has a Financial Industry Regulatory Authority ("FINRA") Central Registration Depository ("CRD") number of 2371584, and was registered as a broker-dealer agent and investment adviser representative of NEXT Financial Group, Inc. from 2006 until June 2020. Kulch first registered as a broker-dealer agent in Massachusetts in 1999 and was registered as an investment adviser representative in Massachusetts from 2003 until 2006. Kulch also offers tax and insurance services through various other entities.

VI. RELATED ENTITIES

7. NEXT Financial Group, Inc. ("NEXT") is a broker-dealer and investment adviser with headquarters in Texas. NEXT has a FINRA CRD number of 46214. NEXT has been registered in Massachusetts as a broker-dealer since 1999 and notice filed as an investment adviser in Massachusetts since 2000.

8. Kulch Financial Services, Inc. ("KFS") is a New Hampshire corporation formed on August 14, 2003, with a principal place of business in Nashua, New Hampshire. Kulch is the sole owner and President of KFS. KFS is a registered branch office of NEXT.

9. Investors Capital Corporation ("ICC") was a Massachusetts corporation formed on July 7, 1992, with a principal place of business in El Segundo, California. ICC had a FINRA CRD number of 30613. ICC was registered in Massachusetts as a broker-dealer from 1992 until 2016 and notice filed as an investment adviser in Massachusetts from

2003 until 2016. Prior to joining NEXT, Kulch was registered in Massachusetts with ICC as a broker-dealer agent from 1999 until 2006, and as an investment adviser representative from 2005 until 2006.

VII. STATEMENT OF FACTS

A. BACKGROUND

i. The Enforcement Section's Investigation

10. In June 2017, the Division received a call from a Massachusetts retiree and veteran ("Massachusetts Complainant") regarding his dealings with Kulch. In response, the Enforcement Section requested information and documents from Kulch's employer, NEXT, in July 2017.

11. Massachusetts Complainant, then in his 50s, met Kulch in 2004. Around that time, Massachusetts Complainant received flyers for seminars held by Kulch in Tyngsboro and Chelmsford, Massachusetts. At these seminars, Kulch solicited investments in new products from prospective customers, who were served wine and hors d'oeuvres.

12. According to Kulch, he began holding seminars in 1999 and held his last seminar in 2016. From 2011 until Kulch stopped holding seminars, he held approximately 100 seminars annually.

13. The vast majority of Kulch's seminars were held in restaurants and other locations in New Hampshire, with 20 to 30 held in Massachusetts.

14. Seminar mailers were sent to residents of Massachusetts and New Hampshire who were within a certain age range.

15. Given his lack of relevant experience, Massachusetts Complainant relied on Kulch for sound investment advice in connection with his retirement assets. Kulch assured Massachusetts Complainant that he was better than others in the field. Massachusetts Complainant decided to rely fully on Kulch's recommendations and allowed Kulch to direct the investment of his portfolio.

16. At the time of their initial meeting, Massachusetts Complainant was seeking conservative investments that would increase in value over time. Kulch sold Massachusetts Complainant variable annuities and non-traded REITs.

17. Prior to Kulch recommending those investments to him, Massachusetts Complainant had no experience with REITs or other alternative investments.

18. Massachusetts Complainant was unaware of the high commissions Kulch earned in connection with certain investments, including variable annuities and non-traded REITs. Furthermore, Massachusetts Complainant did not fully understand the nature of the alternative investments sold to him by Kulch.

19. By 2008, Kulch had heavily concentrated Massachusetts Complainant's portfolio in variable annuities, non-traded REITs, and other alternative investments.

20. By 2008, had Kulch executed over $500,000 worth of alternative investment purchases, including over $300,000 worth of non-traded REIT purchases, in Massachusetts Complainant's accounts. These purchases represented over 25% of Massachusetts Complainant's liquid net worth, and nearly the entirety of his account holdings with NEXT.

21. Massachusetts Complainant met with Kulch in January 2017 to discuss why his portfolio was flat at a time of strong market performance. Following that meeting,

Massachusetts Complainant transferred a substantial portion of his portfolio to another firm in Massachusetts. However, Massachusetts Complainant was unable to transfer certain assets because the new firm was unable to custody certain alternative investments.

22. In October 2017, the Enforcement Section expanded the scope of its investigation to determine the scope of Kulch's sale of REITs and other high-commission products to Massachusetts investors.

23. According to Kulch, he provides financial services to approximately 600 households under the name Kulch Financial Services, insurance services to approximately 900 households under the name Kulch Insurance Group, and tax services to approximately 500 households under the name Kulch Associates, Inc.

24. The Enforcement Section's investigation, which included the sworn testimony of Kulch, uncovered a scheme of unsuitable recommendations made by Kulch to Massachusetts investors, a scheme enabled by Kulch's incorrect calculations, as well as manipulative calculations and order entry practices.

25. Kulch's manipulative behavior, enabled by NEXT's failure to enforce its own policies and procedures in any meaningful way, allowed Kulch to perpetrate this scheme for years to the detriment of Massachusetts investors.

ii. <u>General Suitability</u>

26. All NEXT customers are required to complete an Account Information Form ("AIF") listing their home address, date of birth, place of employment, annual income, net worth, investment experience, investment risk tolerance, investment objective, and liquidity needs.

27. All information customers provide on the AIF is entered into NEXT's Commission & Compliance Broker-Dealer Software system ("Compliance Software").

28. All Office of Supervisory Jurisdiction ("OSJ") Managers and Home Office Principals ("HOPs") have access to all relevant customer information through the Compliance Software.

29. Under the Act and the Regulations, all broker-dealers have a responsibility to recommend products that the broker-dealer has "reasonable grounds to believe … is suitable for the customer based upon a reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer."

iii. Non-Traded Real Estate Investment Trust Suitability

30. NEXT classifies non-traded REIT products as alternative investments.[1]

31. Despite this internal classification, account statements sent to NEXT customers classified non-traded REITs as "equities" until 2014, when this classification, without notice to customers, was changed to alternative investments.

32. All NEXT customers who purchase an alternative investment, including non-traded REITs, must complete an Alternative Investment Disclosure Form ("AIDF") listing, among other things, the investment horizon for the particular illiquid product, and the percentage of the customer's liquid net worth the investment constitutes.

[1] Non-traded REITs are generally considered an illiquid investment, which means that they cannot be sold readily in the market. Investors usually must wait until the non-traded REIT becomes publically traded or another liquidity event occurs to achieve liquidity. These liquidity events may not occur for 10 years or more after the initial investment. Furthermore, because non-traded REITs are not publically traded, share valuation is difficult. Non-traded REITs are also generally associated with higher than average commissions. In comparison, publically traded REITs are listed on an exchange such as the New York Stock Exchange or NASDAQ. Since they are traded on exchanges, publically traded REITS are generally liquid, meaning they can be sold readily in the market. Also, publicly traded REITs are easy to value by referencing their current value on an exchange.

33. The AIDF requires the registered representative to provide his or her basis for recommending the product.

34. NEXT Written Supervisory Procedures ("WSPs") require OSJ Managers and HOPs to review and approve every REIT sale, including comparing the information provided on the AIF and AIDF and conducting "any other research deemed necessary in order to confirm the suitability of each transaction."

35. In addition to these requirements, NEXT maintains specific alternative investment guidelines, which state, in relevant part: "alternative investments should not exceed 20% of a customer's liquid net worth; no more than 5% of a customer's liquid net worth should be placed in any single investment program; and alternative investments should not be sold to customers over the age of 80."[2]

36. For non-traded REIT transactions occurring between March 2013 and December 2015, NEXT WSPs required customers to have a "risk tolerance of high or speculative on *both* the AIF and AIDF." (emphasis added).

37. For non-traded REIT transactions occurring between March 2013 and December 2014, NEXT WSPs required any Supervising Registered Principal who approved a recommendation that did not meet alternative investment suitability criteria to submit a written statement confirming the product's suitability for the customer.

38. NEXT defines liquid net worth as "a [customer's] net worth minus assets that cannot be converted to cash within 30 days, such as real estate, business equity, personal property, automobiles, and expected inheritances."

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[2] For transactions executed after December 2015, the single investment program limit was increased from 5% to 10%.

39. NEXT WSPs further provide that "liquid net worth generally excludes … non-traded REITs."

40. Kulch has previously stated that he understands that non-traded REITs are not a liquid asset.

41. Before December 2014, NEXT WSPs provided that "if the customer's holdings exceed 20% of the customer's liquid net worth (or if the investment comprises more than 5% of the customer's liquid net worth), the registered person is required to provide a detailed, written explanation on the disclosure form setting forth why that amount is suitable for the customer."

42. When a registered principal determines that a transaction does not comply with alternative investment guidelines, NEXT WSPs require registered principals to obtain a further explanation "expounding upon the registered persons [sic] rationale for recommendation and/or suitability."[3]

43. Lastly, NEXT WSPs acknowledge that "even if a customer has signed a document stating that he/she meets…suitability requirements" the burden is on the registered person to "provide an explanation of how a customer has met those specific suitability requirements."

44. In December 2014, following an internal review, NEXT removed the requirement that a registered representative provide a written explanation of a product's suitability if liquid net worth thresholds were exceeded, and instead adopted a policy that the thresholds should not be exceeded.

[3] This requirement was withdrawn in December 2014.

B. SALES PRACTICE VIOLATONS

i. Kulch Effected Unsuitable Non-Traded REIT Transactions in the Accounts of Dozens of Massachusetts Investors

45. Over a period of approximately 10 years, Kulch recommended and sold hundreds of non-traded REITs to Massachusetts investors. Many of these sales were unsuitable and in violation of liquid net worth concentration limits.

46. Specifically, Kulch created a system whereby he would execute simultaneous REIT transactions for the same customer, without regard for the impact each purchase would have on that customer's stated liquid net worth. Often, these purchases occurred on the same day the customer opened an account with Kulch and NEXT.

47. Kulch created such a system in order to circumvent transaction and holding limits placed on non-traded REITs. As a result, Kulch was able to generate substantial commissions for himself.

48. Between 2010 and 2015, Kulch executed 300 non-traded REIT purchases in the accounts of over 100 Massachusetts customers.

49. Between 2010 and 2015, Kulch executed 49 non-traded REIT transactions that openly violated NEXT WSPs, representing nearly 25% of all non-traded REIT purchases he executed in Massachusetts customer accounts during this period.

50. Of those 49 transactions, Kulch sold three REIT products to investors who were over the age of 80 at the time of the transaction, in violation of NEXT WSPs.

51. The remaining 46 transactions show that Kulch sold his customers risky, highly illiquid, non-traded REIT products in an amount that exceeded a permissible percentage of that customer's liquid net worth, as prescribed by NEXT WSPs.

52. Between 2010 and 2015, Kulch executed additional non-traded REIT transactions that, while on their face did not violate NEXT WSPs, had key calculations performed incorrectly. When these incorrect calculations are done correctly, these transactions violate NEXT WSPs.

53. Between 2010 and 2015, Kulch sold more than $5,750,000 worth of non-traded REITs to his Massachusetts customers. Kulch collected more than $375,000 in commissions related to those purchases.

54. Kulch's scheme continued for years without any meaningful review or approval of his non-traded REIT transactions by NEXT. In fact, NEXT approved such transactions in violation of its own WSPs.

ii. Massachusetts Customer One

55. Massachusetts Customer One is a retired, 68-year-old resident of Attleboro, Massachusetts.

56. Massachusetts Customer One opened an account with NEXT on December 7, 2009. Kulch was the agent of record on this account.

57. Massachusetts Customer One had an annual income of $17,000, a net worth of $730,000, and a liquid net worth of $730,000, as stated on an AIF dated December 7, 2009.

58. On December 7, 2009, Kulch simultaneously effected three transactions in Massachusetts Customer One's account for three different non-traded REIT products, each in the amount of $42,000. Kulch submitted a separate AIDF for each transaction to NEXT.

59. On December 7, 2009, Kulch sold Massachusetts Customer One $42,000 of Behringer Harvard Multifamily REIT 1, a non-traded REIT.

60. On the same day, December 7, 2009, Kulch sold Massachusetts Customer One $42,000 of Cole Credit Property Trust III, Inc., a non-traded REIT.

61. Also on the same day, December 7, 2009, Kulch sold Massachusetts Customer One $42,000 of Strategic Storage Trust Inc., a non-traded REIT.

62. On the AIDF for all three transactions, Massachusetts Customer One's liquid net worth is listed as $730,000.

63. On the AIDF for all three transactions, the percentage of Massachusetts Customer One's liquid net worth is listed as 5.4%.

64. The amount invested in each of the three non-traded REITs ($42,000) is 5.75% of Massachusetts Customer One's liquid net worth prior to the purchases ($730,000), not 5.4%.

65. On the AIDF for all three transactions, Massachusetts Customer One's total percentage invested in all alternative investments, including the current transaction, is listed as 17.5%.

66. The total amount invested in the three non-traded REITs ($126,000) is 17.26% of Massachusetts Customer One's liquid net worth prior to the purchases ($730,000).

67. The total amount invested in the three non-traded REITs ($126,000) is 19.5% of Massachusetts Customer One's liquid net worth at the time the third purchase is made ($646,000).

68. Both NEXT WSPs and the AIDF require the broker to explain, in detail, why the investment is suitable if the investment amount constitutes more than 5% of the customer's liquid net worth.

69. The entire explanation Kulch provided on each of the three identical AIDFs reads "future retirement income stream."

70. Kulch failed to provide, and did not have, a detailed explanation as to why each product met suitability considerations required by NEXT for Massachusetts Customer One.

71. In violation of NEXT WSPs, each REIT transaction constituted more than 5% of Massachusetts Customer One's liquid net worth, and Kulch did not provide a detailed explanation for the transaction. Yet, the transaction was executed by Kulch and approved by NEXT.

72. Kulch collected a commission in the amount of 6.3% of the purchase price for each investment, equal to $2,646, for a total commission on the three purchases of $7,938.

73. Kulch further failed to account for the impact each simultaneous REIT purchase had on Massachusetts Customer One's liquid net worth.

74. For all three transactions, Kulch improperly calculated Massachusetts Customer One's liquid net worth and the percentage of liquid net worth each REIT investment represented. He also miscalculated the percentage of Massachusetts Customer One's assets committed to alternative investments as shown in the chart below:

Transaction Number	Investment Amount	AIDF Liquid Net Worth	AIDF Liquid Net Worth %	AIDF Total AI %	Correct Liquid Net Worth	Correct Liquid Net Worth %	Correct Total AI %

1	$42,000.00	$730,000.00	5.4%	17.5%	$730,000.00	5.75%	5.75%
2	$42,000.00	$730,000.00	5.4%	17.5%	$688,000.00	6.1%	12.2%
3	$42,000.00	$730,000.00	5.4%	17.5%	$646,000.00	6.5%	19.5%

75. Kulch executed the first transaction in the amount of $42,000. The customer's stated liquid net worth was $730,000. Simple math reveals that the first purchase constitutes 5.75% of Massachusetts Customer One's liquid net worth, not 5.4%.

76. Massachusetts Customer One's liquid net worth as stated on the subsequent AIDFs was also inaccurate as a result of Kulch's calculation errors.

77. Per NEXT WSPs, alternative investments are one item that should be subtracted from net worth to calculate liquid net worth. As Kulch executed each purchase of an illiquid investment, all subsequent transactions should have accounted for that customer's decreased liquid net worth.

78. Before the relevant REIT transactions, Massachusetts Customer One had a stated liquid net worth of $730,000.

79. After the first REIT transaction was executed in the amount of $42,000, per NEXT WSPs, the value of that investment should have been subtracted from Massachusetts Customer One's liquid net worth.

80. Massachusetts Customer One's liquid net worth for the second REIT transaction should have been $688,000.

81. Using Massachusetts Customer One's correctly calculated liquid net worth, Massachusetts Customer One's second REIT purchase would have constituted 6.1% of the customer's liquid net worth, not 5.4%, as Kulch listed, or 5.75% if the math had been performed correctly using the inaccurate liquid net worth.

82. After the first and second transactions were executed in the amount of $42,000 each, per NEXT WSPs, the value of each investment should have been subtracted from Massachusetts Customer One's liquid net worth.

83. Massachusetts Customer One's liquid net worth for the third REIT transaction should have been $646,000.

84. Using Massachusetts Customer One's correctly calculated liquid net worth, Massachusetts Customer One's third REIT purchase would constitute 6.5% of the customer's liquid net worth, not 5.4%, as Kulch listed, or 5.75% if the math had been performed correctly using the inaccurate liquid net worth.

85. Since Kulch did not properly calculate Massachusetts Customer One's liquid net worth, Kulch inaccurately listed Massachusetts Customer One's liquid net worth on at least two AIDFs.

86. Furthermore, because Kulch improperly calculated the percentage of Massachusetts Customer One's liquid net worth, Kulch also improperly calculated the percentage Massachusetts Customer One had committed to alternative investments.

87. Nonetheless, in violation of NEXT WSPs, these transactions were executed by Kulch and approved by NEXT.

iii. Massachusetts Customer Two

88. Massachusetts Customer Two is a 68-year old printer from Dunstable, Massachusetts.

89. Massachusetts Customer Two opened an account with NEXT on November 2, 2012. Kulch was the agent of record on this account.

90. Massachusetts Customer Two had an annual income of $62,000, a net worth of $377,200, and a liquid net worth of $134,000, as stated on an AIF dated November 2, 2012.

91. On November 19, 2012, Kulch sold Massachusetts Customer Two two different non-traded REIT products, each in the amount of $6,700. Kulch submitted a separate AIDF for each transaction to NEXT.

92. On November 19, 2012, Kulch sold Massachusetts Customer Two $6,700 of Steadfast Income REIT Inc., a non-traded REIT.

93. On the same day, November 19, 2012, Kulch sold Massachusetts Customer Two $6,700 of WP Carey CPA 17 Global REIT, a non-traded REIT.

94. Seven days later, on November 26, 2012, Kulch sold Massachusetts Customer Two two different non-traded REIT products, each in the amount of $6,700. Kulch submitted a separate AIDF for each transaction to NEXT.

95. On November 26, 2012, Kulch sold Massachusetts Customer Two $6,700 of Northstar Real Estate Income Trust, a non-traded REIT.

96. On that same day, November 26, 2012, Kulch sold Massachusetts Customer Two $6,700 of Cole Credit Property Trust IV Inc., a non-traded REIT.

97. The AIDFs for all four transactions do not list Massachusetts Customer Two's liquid net worth.

98. On all four AIDFs, Massachusetts Customer Two's percentage of liquid net worth for these investments is listed as 5%.

99. On the AIDF for all four transactions, Massachusetts Customer Two's total percentage invested in all alternative investments, including the current transaction, is listed as 20%.

100. While executing this series of REIT purchases, Kulch failed to account for the impact each REIT purchase made on Massachusetts Customer Two's liquid net worth.

101. For three of the four REIT transactions, Kulch improperly calculated Massachusetts Customer Two's liquid net worth and the percentage of liquid net worth three of the four REIT investments represented. He also miscalculated the percentage of Massachusetts Customer Two's assets committed to alternative investments, as shown in the chart below:

Transaction Number	Investment Amount	AIDF Liquid Net Worth	AIDF Liquid Net Worth %	AIDF Total AI %	Correct Liquid Net Worth	Correct Liquid Net Worth %	Correct Total AI %
1	6,700.00	$134,000.00	5%	20%	$134,000.00	5%	5%
2	6,700.00	$134,000.00	5%	20%	$127,300.00	5.26%	10.52%
3	6,700.00	$134,000.00	5%	20%	$120,600.00	5.56%	16.67%
4	6,700.00	$134,000.00	5%	20%	$113,900.00	5.88%	23.52%

102. The first transaction was executed in the amount of $6,700. The customer's stated liquid net worth was $134,000.

103. Per NEXT WSPs, alternative investments should be subtracted from net worth to calculate liquid net worth. As Kulch executed each purchase of an illiquid investment, all subsequent transactions should have accounted for Massachusetts Customer Two's decreased liquid net worth.

104. After the first transaction was executed in the amount of $6,700, per NEXT WSPs, the value of that investment should have been subtracted from Massachusetts Customer Two's liquid net worth.

105. Massachusetts Customer Two's liquid net worth for the second transaction should have been $127,300.

106. Using Massachusetts Customer Two's correctly calculated liquid net worth, Massachusetts Customer Two's second REIT purchase would constitute 5.26% of the customer's liquid net worth, not 5%, as Kulch listed.

107. After the first and second transactions were executed in the amount of $6,700 each, per NEXT WSPs, the value of each investment should have been subtracted from Massachusetts Customer Two's liquid net worth.

108. Massachusetts Customer Two's liquid net worth for the second transaction should have been correctly represented as $120,600.

109. Using Massachusetts Customer Two's correctly calculated liquid net worth, Massachusetts Customer Two's third REIT purchase would constitute 5.56% of the customer's liquid net worth, not 5%, as Kulch listed.

110. Lastly, after the first, second, and third transactions were executed in the amount of $6,700 each, per NEXT WSPs, the value of each investment should have been subtracted from Massachusetts Customer Two's liquid net worth.

111. Massachusetts Customer Two's liquid net worth for the third transaction should have been represented as $113,900.

112. Using Massachusetts Customer Two's correctly calculated liquid net worth, Massachusetts Customer Two's fourth REIT purchase would constitute 5.88% of the customer's liquid net worth, not 5%, as Kulch listed.

113. Both NEXT WSPs and its AIDFs require the broker to explain, in detail, why the investment is suitable if the investment amount constitutes more than 5% of the customer's liquid net worth.

114. The entire explanation Kulch provided on the AIDF for Steadfast Income REIT Inc. reads "Steadfast reit will close to new investors next year. This is a good addition to other reits and other investments for client."

115. The entire explanation Kulch provided on the AIDF for WP Carey CPA 17 Global reads "CPA (WP Carey) has a long history of successful reit offerings. This is a nice addition for client investment."

116. The entire explanation Kulch provided on the AIDF for Northstar Real Estate Income Trust reads "Northstar offers a nice 8% dividend for clients. Good addition for client investments."

117. The entire explanation Kulch provided on the AIDF for Cole Credit Property Trust IV Inc. reads "Cole is a solid company offering nice dividend to clients, good addition for client."

118. Kulch failed to provide, and did not have, a detailed explanation as to why any of these products met suitability considerations required by NEXT for Massachusetts Customer Two's REIT purchases.

119. In violation of NEXT WSPs, three of these four REIT transactions represented more than 5% of Massachusetts Customer Two's liquid net worth and Kulch did not provide a detailed explanation for those transactions. Yet, the transactions were executed by Kulch and approved by NEXT.

120. Kulch's calculation that the particular investment constituted 5% of Massachusetts Customer Two's liquid net worth was inaccurate for three of four transactions. Kulch's failure to correct this issue led to additional miscalculations and inaccuracies on future AIDFs.

121. Kulch did not provide detailed explanations explaining why these transactions were suitable for Massachusetts Customer Two.

122. Furthermore, because Kulch improperly calculated the percentage of Massachusetts Customer Two's liquid net worth that three of the four REIT investments constituted, Kulch also improperly calculated the percentage of liquid net worth that Massachusetts Customer Two had committed to alternative investments.

123. At the time of the fourth non-traded REIT purchase, Massachusetts Customer Two's correct liquid net worth was $113,900.

124. Including the fourth non-traded REIT purchase, Massachusetts Customer Two purchased a total of $26,800 of non-traded REITs.

125. The correct aggregate amount of non-traded REITs, as a percentage of liquid net worth, held in Massachusetts Customer Two's account was 23.52%.

126. In violation of NEXT WSPs and without any explanation, Kulch executed transactions that resulted in Massachusetts Customer Two committing more than 20% of his liquid net worth to alternative investments.

127. Since Kulch did not properly calculate Massachusetts Customer Two's liquid net worth, he inaccurately listed Massachusetts Customer Two's liquid net worth, the percentage of liquid net worth that three of four investments constituted, and the

percentage of the customer's liquid net worth committed to alternative investments on at least three AIDFs.

128. Kulch generated between 5.85% and 6.75% in commissions for each purchase. Kulch received $1,688 in commissions for all four purchases.

129. Nonetheless, in violation of NEXT WSPs, these transactions were executed by Kulch and approved by NEXT.

iv. <u>Massachusetts Customer Three</u>

130. Massachusetts Customer Three is a 58-year old engineer from Tyngsborough, Massachusetts.

131. Massachusetts Customer Three opened an account with NEXT on September 13, 2010. Kulch was the agent of record on this account.

132. Massachusetts Customer Three had an annual income of $100,000, a stated net worth of $1,500,000, and a stated liquid net worth of $125,000, as listed on an AIF dated September 13, 2010.

133. That same day, September 13, 2010, Kulch executed two transactions for Massachusetts Customer Three to purchase two different REIT products in the amounts of $10,000 and $15,000. Kulch submitted a separate AIDF for each transaction.

134. On September 13, 2010, Kulch sold Massachusetts Customer Three $10,000 of Strategic Storage, a non-traded REIT.

135. On the same day, September 13, 2010, Kulch sold Massachusetts Customer Three $15,000 of Cole Credit Property Trust, a non-traded REIT.

136. The AIDFs for both transactions list Massachusetts Customer Three's liquid net worth as $125,000.

137. On the AIDF for the Strategic Storage transaction, Massachusetts Customer Three's percentage of liquid net worth is listed as 8%.

138. On the AIDF for the Strategic Storage transaction, Massachusetts Customer Three's total percentage invested in all alternative investments, including the current transaction, is listed as 8%.

139. Both NEXT WSPs and the AIDF require the broker to explain, in detail, why the investment is suitable if the investment amount constitutes more than 5% of the customer's liquid net worth.

140. The entire explanation Kulch provided on the AIDF for Strategic Storage transaction reads "have other investments within stock market. Also like the income stream feature and potential for capital gains."

141. On the AIDF for the Cole Credit Property Trust transaction, Massachusetts Customer Three's percentage of liquid net worth for this investment is listed at 12%.

142. On the AIDF for the Cole Credit Property Trust transaction, Massachusetts Customer Three's total percentage invested in all alternative investments, including the current transaction, is listed as 20%.

143. The entire explanation Kulch provided on the AIDF for Cole Credit Property Trust reads "like reit for income potential and the type of property holdings."

144. Kulch failed to provide, and did not have, a detailed explanation as to why either of these investments met suitability considerations required by NEXT.

145. In violation of NEXT WSPs, both REIT transactions were worth more than 5% of Massachusetts Customer Three's liquid net worth, and Kulch did not provide a detailed

explanation for either transaction. Yet, the transactions were executed by Kulch and NEXT.

146. Kulch generated 6.3% in commissions for each purchase. Kulch received $1575 in commissions for both purchases.

147. Kulch further failed to account for the impact the simultaneous REIT purchases had on Massachusetts Customer Three's liquid net worth.

148. As the total investments in alternative investments as a percentage of liquid net worth field shows 8% for the Strategic Storage transaction, and 20% for the Cole transaction, for the purposes of paragraphs 149-160 it will be assumed that the Strategic Storage REIT was purchased first.

149. For the Cole Credit Property Trust purchase, Kulch improperly calculated Massachusetts Customer Three's liquid net worth and the percentage of liquid net worth that the Cole Credit Property Trust investment represented. He also improperly calculated the percentage of Massachusetts Customer Three's assets committed to alternative investments, as shown in the chart below:

Transaction Number	Investment Amount	AIDF Liquid Net Worth	AIDF Liquid Net Worth %	AIDF Total AI %	Correct Liquid Net Worth	Correct Liquid Net Worth %	Correct Total AI %
1	$10,000.00	$125,000.00	8%	8%	$125,000.00	8%	8%
2	$15,000.00	$125,000.00	12%	20%	$115,000.00	13%	21.74%

150. The first transaction was executed in the amount of $10,000. Massachusetts Customer Three's stated liquid net worth was $125,000.

151. Per NEXT WSPs, alternative investments are one item that should be subtracted from net worth to calculate liquid net worth. As Kulch executed each purchase of an

illiquid investment, all subsequent transactions should have accounted for that customer's decreased liquid net worth.

152. After the first transaction was executed in the amount of $10,000, per NEXT WSPs, the value of that investment should have been subtracted from Massachusetts Customer Three's liquid net worth.

153. As a result, Massachusetts Customer Three's liquid net worth for the Cole Credit Property Trust transaction should have been correctly represented as $115,000.

154. Using Massachusetts Customer Three's correctly calculated liquid net worth, Massachusetts Customer Three's second REIT purchase would constitute 13% of the customer's liquid net worth, not 12%, as Kulch listed.

155. Using Massachusetts Customer Three's correctly calculated liquid net worth, Massachusetts Customer Three's correct aggregate non-traded REIT purchases, as a percentage of liquid net worth, was 21.74%.

156. Massachusetts Customer Three's liquid net worth was inaccurate for the Cole Credit Property Trust transaction. Kulch's failure to properly calculate Massachusetts Customer Three's liquid net worth led to additional miscalculations and inaccuracies on future AIDFs.

157. Kulch did not provide a detailed explanation as to why this transaction, which exceeded the 5% threshold, was suitable for Massachusetts Customer Three.

158. Furthermore, because Kulch improperly calculated the percentage that the Cole Credit Property Trust investment constituted of Massachusetts Customer Three's liquid net worth, Kulch also improperly calculated the aggregate percentage Massachusetts Customer Three had committed to alternative investments.

159. In violation of NEXT WSPs and without any explanation, Kulch executed transactions that resulted in Massachusetts Customer Three committing more than 20% of his liquid net worth to alternative investments.

160. Since Kulch did not properly calculate Massachusetts Customer Three's liquid net worth, Kulch inaccurately listed Massachusetts Customer Three's liquid net worth, the percentage of liquid net worth that the Cole Credit Property Trust investment constituted, and the percentage of the customer's liquid net worth committed to alternative investments on at least one AIDF.

161. Nonetheless, in violation of NEXT WSPs, these transactions were executed by Kulch and approved by NEXT.

v. <u>Massachusetts Customer Four</u>

162. Massachusetts Customer Four is an 80-year old retired EKG Technician from Burlington, Massachusetts.

163. Massachusetts Customer Four opened an account with NEXT on June 26, 2013. Kulch was the agent of record on this account.

164. Massachusetts Customer Four had an annual income of $35,000, a net worth of $89,714, and a liquid net worth of $79,966, as stated on an AIF dated June 26, 2013.

165. On November 29, 2013, Kulch executed a transaction to purchase $4,000 of Phillips Edison/ARC Shopping Center REIT, a non-traded REIT, for Massachusetts Customer Four's account.

166. One week later, on December 6, 2013, Kulch executed a transaction to purchase $4,000 of Inland Real Estate Income Trust, Inc., a non-traded REIT, for Massachusetts Customer Four's account.

167. Massachusetts Customer Four signed the AIDF for each transaction on October 11, 2013.

168. Kulch signed the AIDF for each transaction on November 11, 2013.

169. On the AIDF for the Phillips Edison/ARC transaction, Massachusetts Customer Four's percentage of liquid net worth invested is listed as 5%.

170. On the AIDF for the Phillips Edison/ARC transaction, Massachusetts Customer Four's total percentage invested in alternative investments, including the current transaction, is 5%.

171. On the AIDF for the Inland transaction, Massachusetts Customer Four's percentage of liquid net worth invested is listed as 5%.

172. On the AIDF for the Inland transaction, Massachusetts Customer Four's total percentage invested in alternative investments, including the current transaction, is 10%.

173. On the AIDF for the Inland transaction, Kulch failed to account for the effect of the Phillips Edison/ARC transaction on Massachusetts Customer Four's liquid net worth.

174. Massachusetts Customer Four's correct liquid net worth at the time of the Inland transaction was $75,966.

175. The correct percentage of liquid net worth invested for the Inland transaction was 5.27%.

176. The correct total percentage invested in alternative investments at the time of the Inland transaction was 10.53%.

177. Both NEXT WSPs and the AIDF require the broker to explain, in detail, why the investment is suitable if the investment amount constitutes more than 5% of the customer's liquid net worth.

178. The entire explanation Kulch provided on the AIDF for the Inland transaction was "[t]he potential for dividend income and gains."

179. Kulch failed to provide, and did not have, a detailed explanation as to why the Inland investment met suitability considerations required by NEXT.

180. In violation of NEXT WSPs, the Inland REIT transaction constituted more than 5% of Massachusetts Customer Four's liquid net worth, and Kulch did not provide a detailed explanation for this transaction. Yet, the transaction was executed by Kulch and approved by NEXT.

181. Since Kulch did not properly calculate Massachusetts Customer Four's liquid net worth, Kulch inaccurately listed Massachusetts Customer Four's liquid net worth, the percentage of liquid net worth that the Inland investment constituted, and the percentage of the customer's liquid net worth committed to alternative investments on at least one AIDF.

182. Nonetheless, in violation of NEXT WSPs, this transaction was executed by Kulch and approved by NEXT.

183. Kulch received $252 in commission for each of the two products, for a total commission of $504, at an average commission percentage of 6.3%.

vi. <u>Massachusetts Customer Five</u>

184. Massachusetts Customer Five is an 81-year old retired machinist from Dracut, Massachusetts.

185. Massachusetts Customer Five opened an account with NEXT on or before October 13, 2011. Kulch is the agent of record on Massachusetts Customer Five's account.

186. Documents produced by NEXT did not include the initial AIF for Massachusetts Customer Five. AIDF forms provided indicate that on October 13, 2011, a $50,000 investment constituted 10% of Massachusetts Customer Five's liquid net worth.

187. On December 7, 2011, Kulch executed a transaction to purchase $50,000 of CPA 17 Global, a non-traded REIT.

188. Nine days later, on December 16, 2011, Kulch executed a transaction to purchase $50,000 of Cole Credit Property Trust III, a non-traded REIT.

189. Massachusetts Customer Five and Kulch both signed the AIDF for Cole on October 13, 2011.

190. Massachusetts Customer Five and Kulch both signed the AIDF for CPA 17 Global on November 22, 2011.

191. On the AIDF for the Cole transaction, Massachusetts Customer Five's percentage of liquid net worth invested is listed as 10%.

192. On the AIDF for the Cole transaction, Massachusetts Customer Five's total percentage invested in alternative investments, including the current transaction, is 20%.

193. On the AIDF for the CPA 17 Global transaction, Massachusetts Customer Five's percentage of liquid net worth invested is listed as 10%.

194. On the AIDF for the CPA 17 Global transaction, Massachusetts Customer Five's total percentage invested in alternative investments, including the current transaction, is 20%.

195. On the AIDF for the CPA 17 Global transaction, Kulch failed to account for the effect of the Cole transaction on Massachusetts Customer Five's liquid net worth.

196. Massachusetts Customer Five's correct liquid net worth at the time of the CPA 17 Global transaction is approximately $450,000.

197. The correct percentage of liquid net worth of the CPA 17 Global transaction was approximately 11.11%.

198. The correct total percentage invested in alternative investments at the time of the CPA 17 Global transaction was approximately 22.22%.

199. Since Kulch did not properly calculate Massachusetts Customer Five's liquid net worth, Kulch inaccurately listed Massachusetts Customer Five's liquid net worth, the percentage of liquid net worth that the CPA 17 Global investment constituted, and the percentage of the customer's liquid net worth committed to alternative investments on at least one AIDF.

200. Since Kulch inaccurately listed the total percentage invested in alternative investments on at least one AIDF, Kulch was not properly subjected to the heightened scrutiny this concentration required under NEXT WSPs.

201. Kulch received $6,075 in total commissions for the two purchases, for an average commission percentage of 6.08%.

vii. <u>Kulch Recommended Unsuitable Variable Annuity Products to the Same Customers for Whom He Recommended REITs</u>

202. Over the same period of approximately 10 years, Kulch recommended and sold hundreds of variable annuity products to Massachusetts investors.

203. Specifically, Kulch created a system whereby he would pair variable annuities with REITs in an attempt to diversify a customer's portfolio.

204. Both non-traded REITs and variable annuities carry commissions that are, on average, higher than other mainstream investment products.

205. NEXT WSPs state that "variable annuities are subject to heightened scrutiny by supervisors" because, among other reasons, certain NEXT customers complained that "they did not fully understand the product..., they didn't realize withdrawals could affect their principal..., they did not realize there would be surrender charges..., too much of their portfolio was invested in annuities..., [and] their age or liquidity needs made a deferred annuity inappropriate."

206. Between 2010 and 2015, Kulch executed over two hundred variable annuity transactions in the accounts of nearly one hundred Massachusetts customers, almost all of whom also purchased REITs sold by Kulch.

207. Between 2010 and 2015 Kulch sold over $10,000,000 of variable annuity products to his Massachusetts customers.

208. Between 2010 and 2015, Kulch collected nearly $600,000 in commissions related to these purchases. Kulch's commissions averaged 5.75% of the purchase price of each variable annuity purchase.

209. Kulch's sales strategy continued for years in the absence of any meaningful review of his transactions by NEXT. Instead, NEXT continually approved Kulch's variable annuity sales.

vi. <u>Massachusetts Customer One</u>

210. On December 7, 2009, the same day Kulch invested Massachusetts Customer One in three separate REIT products, totaling $126,000, Kulch also invested Massachusetts Customer One in $280,000 of Prudential's Apex II Variable Annuity.

211. As required by NEXT policies, Kulch filed a Variable Annuity Disclosure Form ("VADF") in connection with this purchase.

212. The VADF lists Massachusetts Customer One's liquid net worth as $730,000, and states that Massachusetts Customer One's total investments in variable products as a percentage of liquid net worth, including the current purchase, is 17.4%.

213. $280,000 is 38.36% of $730,000, not 17.4%.

214. Further, NEXT policies state that "[l] iquid net worth is a client's net worth minus assets that cannot be converted to cash within 30 days" and that liquid net worth includes variable annuities net of surrender charges. Non-traded REITs are not considered part of an individual's liquid net worth.

215. Kulch failed to account for the effect of purchasing the three non-traded REIT products when filing this VADF. Massachusetts Customer One's correct liquid net worth at the time of the variable annuity purchase was $604,000, and the correct percentage of liquid net worth was 46.35%.

216. In the alternative, Kulch failed to account for the variable annuity's surrender charge when he filed the AIDFs for Massachusetts Customer One's three REIT purchases.

217. The VADF states that the year one surrender charge for the variable annuity purchased is 8.5%. The year one surrender charge for this variable annuity purchase is $23,800.

218. The correct liquid net worth prior to the three REIT purchases was $706,200.

219. The first REIT purchased ($42,000) represents 5.94% of Massachusetts Customer One's then liquid net worth ($706,200).

220. The second REIT purchased ($42,000) represents 6.32% of Massachusetts Customer One's then liquid net worth ($664,200).

221. The third REIT purchased ($42,000) represents 6.75% of Massachusetts Customer One's then liquid net worth ($622,200).

222. Customer One's aggregate holdings of Alternative Investments, at the time of the third REIT purchase, represent 20.25% of Massachusetts Customer One's then liquid net worth.

223. In either instance, Kulch inaccurately filed at least three disclosure forms with NEXT.

vii. Massachusetts Customer Six

224. In 2007, Massachusetts Customer Six was a retired, 89 year-old resident of Winchester, Massachusetts.

225. Massachusetts Customer Six opened an account with NEXT on January 11, 2007. Kulch was the agent of record on this account.

226. Massachusetts Customer Six was infirm and in poor health. As a result, Massachusetts Customer Six granted power of attorney to her son. Massachusetts Customer Four's son also opened an account with NEXT on January 11, 2007. Kulch was the agent of record on this account.

227. Massachusetts Customer Six had an annual income of $15,000 and a liquid net worth of $200,000, as stated on an AIF dated January 11, 2007.

228. Massachusetts Customer Six collected her annual income through a pension benefit and Social Security benefits.

229. As stated on the AIF, Massachusetts Customer Six's risk tolerance was listed as Conservative/Growth.

230. As stated on the AIF, one of Massachusetts Customer Six's investment objectives was listed as "Tax Advantages" despite already being in the 0-15% tax bracket, the lowest federal tax bracket.

231. Massachusetts Customer Six's son informed Kulch of his mother's poor health and liquidity needs given the risk of upcoming medical expenses.

232. On January 11, 2007, the same day Massachusetts Customer Six became a NEXT customer, Kulch recommended that Massachusetts Customer Six roll over approximately $126,000 from six separate annuities at Ameriprise Financial into American Skandia LifeVest II (ASL II), a variable annuity product.

233. NEXT WSPs at the time contained no specific guidance on acceptable concentration levels, or the maximum age at which a client should be recommended a variable annuity.

234. NEXT WSPs in effect at the time, dated June 2006, warned that "[v]ariable annuity purchases have been one of the NASD's main areas of complaint during the last five years." The WSPs then list several allegations levied against representatives including (1) "Their age or liquidity needs made a deferred annuity inappropriate", (2) "Too much of their portfolio was invested in annuities", and (3) "They were switched out of an annuity that was suitable."

235. The fees and expenses of the product were not disclosed to Massachusetts Customer Six's son by Kulch.

236. In September 2007, Kulch further recommended that Massachusetts Customer Six's remaining assets be added to the annuity product. Massachusetts Customer Six

added approximately $67,000 to her annuity, which comprised the rest of her remaining liquid net worth.

237. Despite Kulch's awareness that selling a variable annuity to an 89 year old, placing an individual's entire liquid net worth into variable annuity products, and switching an individual from one variable annuity product to another could all subject him to regulatory scrutiny, Kulch recommended that Massachusetts Customer Six sell out of several variable annuity products, and invest her entire liquid net worth into American Skandia Life II, a different variable annuity.

238. The annuity declined in value from 2007 to 2010. As a result, Massachusetts Customer Six suffered approximately $46,000 in losses, equal to roughly one quarter of Massachusetts Customer Six's liquid net worth.

239. As a result, Massachusetts Customer Six's son struggled to pay for Massachusetts Customer Six's health needs.

240. Massachusetts Customer Six passed away in 2012.

241. Kulch collected a commission in the amount of $1,200 in relation to the sale of the variable annuity product to Massachusetts Customer Six.

VIII. VIOLATIONS OF LAW

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

242. Section 101 of the Act provides in 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 a material fact or to omit to state a material fact necessary in order to make the statements made, in 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.

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

244. The conduct of Respondent Kulch, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 101.

Count 2 – Violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G) and 950 MASS. CODE REGS. 12.204(1)(b)(8)

245. Section 204(a)(2)(G) of the Act provides:

> The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:
>
> (G) has engaged in any unethical or dishonest conduct or practices in the securities, commodities or insurance business[.]
>
> MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G).

246. Section 12.204(1)(b)8 of the Regulations provides:

> Each agent shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business. Acts and practices, including, but not limited to the following, are considered contrary to such standards and constitute dishonest and unethical practices which are grounds for imposition of an administrative fine, censure, denial, suspension or revocation of a registration, or such other appropriate action:
>
> 8. Engaging in conduct specified in 950 CMR 12.204(1)(a)…4…
>
> 950 MASS. CODE REGS. 12.204(1)(b)(8).

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

248. The conduct of Respondent Kulch, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G) and 950 MASS. CODE REGS. 12.204(1)(b)(8).

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 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 the allegations set forth in Section VII of the Complaint;

B. Finding that each of the sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors;

C. Requiring Respondent Kulch to permanently cease and desist from further conduct in violation of the Act in the Commonwealth;

D. Censuring Respondent Kulch;

E. Requiring Respondent Kulch to pay restitution to fairly compensation investors for those losses attributable to the alleged wrongdoing;

F. Requiring Respondent Kulch to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing;

G. Permanently barring Respondent Kulch from associating with or acting as a registered investment adviser, an investment adviser required to be registered, an investment adviser exempted from registration, or a person relying on an exclusion from the definition of investment adviser in any capacity in Massachusetts;

H. Permanently barring Respondent Kulch from associating with or acting as a broker-dealer or a broker-dealer agent in Massachusetts;

I. Permanently barring Respondent Kulch from associating with or acting as an issuer, an issuer-agent, or any entity or individual exempt, excluded, or required to be registered as such in Massachusetts;

J. Imposing an administrative fine on Respondent Kulch in such amount and upon such terms and conditions as the Director or Presiding Officer may determine; and

K. Taking any such further action which may be necessary or appropriate in the public interest for the protection of Massachusetts investors.

MASSACHUSETTS SECURITIES DIVISON
ENFORCEMENT SECTION

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