

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

)	
IN THE MATTER OF:)	
)	
JAMES P. O'CONNELL and)	
CHARLES SCHWAB & CO., INC.,)	
)	
RESPONDENTS.)	Docket No. E-2021-0036
)	

ADMINISTRATIVE COMPLAINT

I. PRELIMINARY STATEMENT

The Enforcement Section and the Registration, Inspections, Compliance and Examinations Section of the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth (together, the "Division") file this Administrative Complaint (the "Complaint") to commence an adjudicatory proceeding against James Patrick O'Connell ("O'Connell") and Charles Schwab & Co., Inc. ("Schwab") (together, "Respondents") for violations of MASS. GEN. LAWS ch. 110A, the Massachusetts Uniform Securities Act (the "Act"), and the regulations promulgated thereunder at 950 MASS. CODE REGS. 10.00 – 14.413 (the "Regulations"). The Division alleges that Schwab has engaged in unethical and deceptive acts and practices by: (1) failing to have in place any policies or procedures to monitor adequately accounts on its platform for payments to known unregistered investment advisers and investment adviser representatives, and (2) enabling an unregistered adviser to receive payment for its unlawful services – including payments from depository accounts affiliated with Schwab – in violation of the Act and Regulations. The Division further alleges that O'Connell, a former investment adviser using Schwab's

custodial services, has engaged in acts and practices in violation of the Act and Regulations by: (1) providing investment advice while not registered in Massachusetts, (2) making unsuitable investment recommendations, including over-concentrating client accounts in a single industry sector, and recommending two senior clients sell real estate, purchase a condominium with 30-year variable interest financing, and invest the proceeds of the sale of the real estate with O'Connell, and (3) repeatedly making false statements to the Division in the course of its investigation.

The Division seeks an order: 1) finding as fact the allegations set forth below; 2) finding that all the sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors; 3) requiring Respondents to permanently cease and desist from further conduct in violation of the Act and Regulations; 4) censuring Respondents; 5) requiring Respondents to provide an accounting of all fees and transaction-related commissions received in connection with the alleged wrongdoing; 6) requiring Respondent Schwab to reimburse Massachusetts investors for all fees paid in connection with the alleged wrongdoing; 7) requiring Respondent Schwab to review its supervisory policies and procedures to ensure compliance with applicable state and federal securities laws; 8) requiring Respondent Schwab to engage an independent compliance consultant to review and establish written policies and procedures related to payments made from Schwab customer accounts, and the monitoring of customer accounts following the removal of a third-party advisor; 9) requiring Respondents to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing; 10) permanently barring Respondent O'Connell from associating with or acting as a(n) broker-dealer, broker-dealer agent, investment adviser, investment adviser representative,

Securities and Exchange Commission-registered investment adviser, investment adviser exempted from registration, a person relying on an exclusion from the definition of investment adviser in any capacity, issuer, issuer-agent, or as a partner, officer, director, or control person of any of the foregoing; 11) imposing an administrative fine on Respondents in such amount and upon such terms and conditions as the Director or Presiding Officer may determine; and 12) taking any such further action which may be necessary or appropriate in the public interest for the protection of Massachusetts investors.

II. SUMMARY

This action arises from a complaint received by the Division concerning potential exploitation of Massachusetts seniors by James Patrick O'Connell ("O'Connell"), an unregistered investment adviser representative in the Commonwealth. The Division's subsequent investigation revealed numerous regulatory violations by Charles Schwab & Co., Inc. ("Schwab"), including a complete blind spot in Schwab's compliance practices regarding payments to unregistered individuals for purported advisory services. Schwab, which served as the custodian for O'Connell's client accounts while he was registered as an investment adviser representative from 2007 to 2010, and again from 2013 to 2014, continued to allow O'Connell to receive payment of his investment advisory fees even while operating in an unregistered capacity and after Schwab removed him from its platform. Despite acknowledging in internal e-mails the risk Schwab faced from potentially permitting O'Connell to receive investment advisory fees while unregistered, Schwab took no steps to monitor O'Connell's client accounts. Moreover, even after 2014, when O'Connell's registration as an investment adviser representative expired for the second time, Schwab continued to facilitate payments by former clients to O'Connell. Between

January 1, 2015, and the present, O'Connell received at least \$46,000 in investment advisory fees, paid by check, with funds withdrawn from at least two Schwab brokerage accounts alone. In fact, Schwab's failures permitted O'Connell to continue to receive fees from Massachusetts residents and individuals in other states. As of the date of this action, Schwab continues to have no policies or procedures designed to monitor customer accounts following the removal of a third-party advisor to ensure compliance with Massachusetts law. Based on its investigation, the Division believes that issues related to Schwab's compliance failures, highlighted herein, extend beyond the scope of this administrative complaint.

O'Connell has continued to provide investment advice to a group of former clients while unregistered, in violation of Massachusetts securities laws. Many of these individuals are senior citizens, and their average age is 77 years old. In particular, O'Connell continues to charge individuals a one percent fee, payable monthly, and calculated based on the individual's total assets custodied at Schwab.

O'Connell has operated in an unregistered capacity on multiple occasions despite never ceasing to provide investment advice to his clients while his registration expired on multiple occasions. O'Connell first registered as an investment adviser representative in Massachusetts in 2007, when he also registered JP O'Connell Financial, LLC ("O'Connell Financial"), of which he was the sole employee, as an investment adviser. In what would become a habitual practice, on December 31, 2010, O'Connell failed to renew his and O'Connell Financial's registrations in Massachusetts. In November 2012, O'Connell and O'Connell Financial filed applications with the Division to re-register as an investment adviser representative and an investment adviser, respectively. The Division allowed these

registrations pursuant to a February 5, 2013, Consent Order (the “Consent Order”), which specifically stated that O’Connell and O’Connell Financial had violated Massachusetts law by conducting investment advisory business in Massachusetts while unregistered and required disclosure of prior registration violations to clients. Despite the existence of the Consent Order, on December 31, 2014, O’Connell once again allowed both his and O’Connell’s Financial’s registrations to expire. In January 2015, the Division notified O’Connell that continuing to provide investment advisory services while unregistered was unlawful and would subject him to enforcement actions. In response to the Division’s inquiry, O’Connell indicated that he was retiring from the investment advisory business. Despite his representations, O’Connell did not in fact retire at this time and continued to provide investment advisory services to his clients at least through April 2021—all while unregistered. O’Connell has collected at least \$125,000 in investment advisory fees from at least seven (7) clients since his registration expired at the end of 2014.

In addition to acting in an unregistered capacity, O’Connell made recommendations to his clients that were unsuitable given their current financial situations and investment objectives. Without consideration of individual client needs, O’Connell issued blanket recommendations to purchase and hold positions almost exclusively in communication infrastructure companies. O’Connell’s clients had anywhere between 95% and 100%, inclusive, of their non-cash or cash equivalent holdings allocated to four communication infrastructure companies. Such overconcentration of a portfolio in one specific market sector poses a substantial risk to any investor, but the risk of such overconcentration is especially acute here, given that most of O’Connell’s clients are seniors. Throughout the Division’s investigation, O’Connell has also repeatedly misrepresented the services he

continues to provide to former clients. In particular, O'Connell denied receiving payments from clients, despite checks with memo lines frequently reading some variation of [the preceding month] fees, and denying providing investment advice.

The Division brings this action to protect investors from the dishonest practices of Schwab and O'Connell, to provide relief for the harm done to those investors by O'Connell, and to address a compliance failure on the part of Schwab.

III. JURISDICTION AND AUTHORITY

1. As provided for by the Act, the Division has jurisdiction over matters relating to securities pursuant to chapter 110A of the Massachusetts General Laws.
2. The Division brings this action pursuant to the authority conferred upon the Division by Sections 407A and 414 of the Act, wherein the Division has the authority to conduct an adjudicatory proceeding to enforce the provisions of the Act and the Regulations.
3. This proceeding is brought in accordance with Sections 102, 201, 204, and 404 of the Act and the Regulations.
4. The Division reserves the right to amend this Complaint and bring additional administrative complaints to reflect information developed during the current and ongoing investigation.

IV. RELEVANT TIME PERIOD

5. Except as otherwise expressly stated, the conduct described herein occurred during the approximate time period of January 1, 2011, through the present (the "Relevant Time Period").

V. RESPONDENTS

6. James Patrick O'Connell ("O'Connell") is a natural person and resident of Gloucester, Massachusetts. O'Connell has a Financial Industry Regulatory Authority ("FINRA") Central Registration Depository ("CRD") number of 2529284, and was registered as an investment adviser representative of JP O'Connell Financial, LLC from June 6, 2007, until his registration expired on December 31, 2010, and was registered again with JP O'Connell Financial, LLC from February 5, 2013, until that registration expired on December 31, 2014.

7. Charles Schwab & Co., Inc. ("Schwab") is a corporation formed under the laws of California on April 1, 1971, with its principal place of business at 211 Main Street, San Francisco, California 94105. Schwab has a FINRA CRD number of 5393. Schwab has been registered as a broker-dealer in Massachusetts since July 31, 1981.

VI. RELATED PARTY

8. JP O'Connell Financial LLC ("O'Connell Financial") was an investment adviser and limited liability company with a principal place of business in Massachusetts. O'Connell Financial had FINRA CRD numbers of 143552 between June 6, 2007, and December 31, 2010, and 165719 between February 5, 2013 and December 31, 2014. On December 31, 2010, and on December 31, 2014, O'Connell Financial's investment adviser registrations in Massachusetts expired as a result of a failure to renew. O'Connell was the sole member and sole investment adviser representative of O'Connell Financial.

VII. STATEMENT OF FACTS

A. *Background.*

9. O'Connell registered with the Division as the sole investment adviser representative of O'Connell Financial, which registered with the Division at the same time, on June 6, 2007.

10. O'Connell Financial and O'Connell's registrations expired on December 31, 2010 due to O'Connell's failure to renew its registrations. Nevertheless O'Connell continued to conduct investment advisory business in Massachusetts while not registered.

11. On October 10, 2012, O'Connell filed a Uniform Application for Securities Industry Registration or Transfer ("Form U4") and O'Connell Financial filed a Uniform Application for Investment Adviser Registration ("Form ADV") with the Division to become registered as an investment adviser representative and an investment adviser (together, the "Applications").

12. The Division allowed the Applications pursuant to a February 5, 2013, Consent Order (the "Consent Order") entered into between O'Connell, O'Connell Financial, and the Division as a result of the unregistered activity of O'Connell and O'Connell Financial.

13. As part of the Consent Order, O'Connell and O'Connell Financial agreed that the Consent Order was a reportable event on Form U4 and Form ADV, respectively.

14. Despite the requirements of the Consent Order, O'Connell and O'Connell Financial failed to report the Consent Order on Form U4 and Form ADV.

15. On December 31, 2014, O'Connell and O'Connell Financial again failed to renew their investment adviser representative and investment adviser registrations.

16. On January 22, 2015, the Division sent a letter to O'Connell Financial noting that O'Connell Financial had not renewed its registration for calendar year 2015, and notified O'Connell Financial that "it is unlawful for any person to transact business in this commonwealth as an investment adviser or investment adviser representative unless he is so registered under this chapter."

17. On February 26, 2015, Division staff spoke with O'Connell, who stated that he had retired.

18. O'Connell never took any formal steps to terminate his registration or the registration of O'Connell Financial. Nonetheless, despite failing to renew his registration and the registration of O'Connell Financial for 2015 or any subsequent year, O'Connell continues to conduct investment advisory business in Massachusetts.

B. *O'Connell Provided Investment Advice for a Fee to Seniors in Massachusetts while Unregistered.*

19. In April 2021, the Division opened an investigation after receiving a complaint from an individual with management over her elderly Massachusetts relative's finances, which included copies of e-mails sent to the senior client, in which O'Connell discussed investment strategies and stated his fee for the month.

20. In further communications reviewed by the Division, O'Connell acknowledged that he was unregistered and that he had made the conscious decision not to stay registered for his seven (7) clients because "[i]t was too expensive to stay registered for just 7 clients".

21. From June 2017 through April 2021, O'Connell deposited checks totaling more than \$125,000 from at least seven (7) clients. The majority of deposited checks included memos indicating the check was for a monthly fee. One client regularly referred to the payments as being for management fees.

22. O'Connell sent regular e-mails to these seven (7) clients, providing his commentary on current market conditions based on his review of multiple sources.

23. In at least one e-mail, O'Connell indicated that "If I ever see a reason to sell, I'll inform you."

C. *O'Connell made Unsuitable Investment Recommendations to his Senior Clients.*

i. *O'Connell Made Unsuitable Real Estate Recommendations to his Senior Clients.*

24. Many of O'Connell's clients are seniors, and their average age is 77 years old, and depend on their investments for much, if not the entirety of their financial support. One client of O'Connell, a Massachusetts senior ("Client 1") sold their residence in 2000, when Client 1 was just a few months shy of turning 70, and purchased a condominium.

25. Rather than use the proceeds from the sale of their house to purchase the condominium, O'Connell recommended that Client 1 purchase the condominium using a 30-year variable interest rate mortgage, and invest the proceeds of the home sale through O'Connell instead.

26. If they do not accelerate payments, Client 1 will be a few months shy of 100 years old at the time the mortgage is paid.

27. O'Connell's recommendation to Client 1 to finance the purchase of the condominium with a 30-year variable interest rate mortgage and invest the proceeds through O'Connell constitutes unethical and deceptive practices under Massachusetts law given the client's age and investment profile.

ii. *O’Connell Over-concentrated his Clients’ Accounts in the Global Communication Infrastructure Sector.*

28. O’Connell recommended that his clients invest in Corning Incorporated (ticker: “GLW”), Ribbon Communications, Inc. (ticker: “RBBN”), Advanced Micro Devices, Inc. (ticker: “AMD”), and Qorvo, Inc. (ticker: “QRVO”) while he was registered as an investment adviser representative of O’Connell Financial.

29. O’Connell stated that all four of these companies are in the global communication infrastructure sector, and that these are the only four companies O’Connell followed.

30. Seven (7) recipients of an April 8, 2021 e-mail (the “April 8 E-Mail”) discussing the recent performance of GLW, RBBN, AMD, and QRVO, each of whom has made investment advisory fee payments to O’Connell while he was unregistered, hold some or all of these four stocks, all in the same industry.

31. Six (6) individuals, including two Massachusetts residents, have 100% of their non-cash or cash equivalent holdings at Schwab in these four (4) stocks, and the seventh has more than 95% of their non-cash or cash equivalent holdings at Schwab in these four (4) stocks.

32. An eighth individual, who received other e-mails from O’Connell, but not the April 8 E-Mail, has 100% of their non-cash or cash equivalent holdings at Schwab in these four stocks.

33. These holdings remained substantially the same from January 2014 through April 2020.

34. Despite not recommending or executing trades in these accounts, O’Connell continued to collect the same one percent advisory fee month after month.

35. In addition, in the April 8 E-Mail, O'Connell provided investment advice, stating to recipients that "If I ever see a reason to sell [these stocks] I will inform you immediately."

36. Upon information and belief, when making recommendations to clients to invest in the four stocks, O'Connell only considered the assets he was managing.

D. *O'Connell Repeatedly Made False Statements to the Division during Testimony while under Oath.*

37. On June 17, 2021, the Division obtained sworn testimony from O'Connell.

38. O'Connell repeatedly misrepresented his investment advisory activity.

39. When questioned by Division, O'Connell denied receiving any compensation whatsoever from the individuals he sent e-mails to, such as the recipients of the April 8 E-Mail.

40. Despite such denial, e-mail correspondence from O'Connell to Client 1, dated December 1, 2020, states "Nov fee... \$950.16." (the "December E-mail").

41. The amount stated as "Nov fee" computes to one percent of Client 1's brokerage account value,

42. O'Connell received and deposited a check from Client 1 for \$950.16 shortly after sending the December E-mail.

43. O'Connell testified to have receiving payments from Client 1 beginning "three or four years ago" (i.e., in 2017 or 2018).

44. On information and belief, O'Connell transitioned from direct withdrawal of fees through Schwab to requesting and receiving checks for fees from Client 1, and never ceased collecting investment advisory fees either time his registrations expired.

45. O'Connell has received monthly investment advisory fees from an additional six (6) individuals. All six (6) of these individuals, like Client 1, were former advisory clients of O'Connell and O'Connell Financial.

46. The Division has identified deposits to O'Connell's bank account from each of the seven (7) former clients, with memo lines indicating the payments were for fees.

47. In addition to fee emails, O'Connell has continued to send e-mail communications to former clients concerning commentary on market conditions that O'Connell prepares himself based on his review of multiple sources.

48. O'Connell's receipt of fees from former advisory clients for providing investment advice constitutes unregistered investment activity in the Commonwealth.

E. *Charles Schwab's Failure to Monitor Customer Accounts Following the Removal of an Unregistered Investment Adviser.*

49. During O'Connell's initial period of registration as an investment adviser representative with O'Connell Financial between June 6, 2007, and December 31, 2010, O'Connell Financial served as a third-party advisor for his client's accounts custodied at Schwab.

50. On September 11, 2012, a representative from the Schwab sales team spoke to O'Connell, who in connection with inquiring about registration, indicated he would be renewing his registration as soon as possible. The representative told O'Connell that Schwab gives investment advisers thirty (30) days to register.

51. A week later, on September 18, 2012, the Schwab advisor enrollment team, a compliance unit, became aware that O'Connell Financial had been unregistered since December 31, 2010, and directed that O'Connell Financial's account be closed "ASAP."

52. O'Connell Financial's account at Schwab was not closed "ASAP." Schwab internal e-mails sent on September 19, 2012, indicate internal compliance concern over Schwab's potential exposure resulting from fees collected by O'Connell Financial while O'Connell Financial was unregistered.

53. On or about September 19, 2012, Schwab also commenced an internal review to determine the total amount of fees collected by O'Connell Financial while the firm was unregistered.

54. Although Schwab recognized O'Connell was receiving advisory fees in violation of Massachusetts law, and despite an internal Schwab compliance team's direction that O'Connell Financial's account be closed "ASAP," O'Connell Financial's account remained open until December 17, 2012.

55. Almost two months later, on November 8, 2012, Schwab notified the 45 owners of the 78 accounts on which O'Connell Financial was the representative of record of its decision to remove O'Connell Financial from the Schwab platform.

56. Schwab also notified O'Connell Financial of this decision in a letter dated November 8, 2012. The letter notes that as a result of the termination of O'Connell Financial's Investment Manager Service Agreement with Schwab, "JP OConnell Financial, LLC is not able to draw fees directly from client accounts through the Schwab investment management fee system."

57. Effective December 17, 2012, more than a month after Schwab notified O'Connell Financial's clients of the imminent removal, and more than three months after Schwab became aware that O'Connell Financial had been unregistered beginning January 1, 2011,

Schwab removed O'Connell Financial from its advisor services platform due to a failure to maintain registration as an investment adviser.

58. O'Connell Financial's registration as an investment adviser expired on December 31, 2010, and the removal from Schwab's third-party advisor services platform occurred while O'Connell was seeking reinstatement of O'Connell Financial and O'Connell's registrations nearly two years later.

59. At least two (2) clients of O'Connell continued to pay him for investment advisory services using check writing capabilities that drew on their Schwab account balance—including one Massachusetts senior.

60. One client paid O'Connell from a Schwab account on a regular basis, beginning no later than August 2014.

61. Client 1, a Massachusetts resident, first issued a check to O'Connell, drawn on a Schwab account, for investment advisory services fees in July 2019.

62. O'Connell received investment advisory fees totaling more than \$46,000 from these two (2) investors, paid from their Schwab accounts, between August 2014 and May 2021.

i. Schwab's Failure to Maintain an Adequate Payment Monitoring System.

63. The automated review system Schwab used during the Relevant Time Period, and continues to use, marked payments for manual review for the following reasons:

- (1) The item was drawn on an account closed and/or blocked by either [Bank of New York Mellon¹ ("BNY")] or Schwab;
- (2) The item was drawn on an account with insufficient funds;
- (3) The item has a stop payment

¹ When a Schwab One check is presented through the Federal Reserve, Schwab uses Bank of New York Mellon ("BNY") for clearing.

assigned to it; (4) The item was considered unlocated;² or (5) The item was identified as requiring a signature review.

64. Beginning in May 2018, Schwab's automated system marked payments for manual review where "[t]he item originated from an account under review by Schwab's Senior and Vulnerable Invest ("SVI") Investigations' team requiring additional review."

65. While Schwab's Financial Crimes Risk Management Department surveils for certain money movement scenarios, this is not an automated review, and Schwab failed to flag any of the checks written to O'Connell.

66. As noted above, O'Connell Financial's and O'Connell's registrations initially expired due to a failure to renew at the end of 2010, yet O'Connell continued to provide investment advisory services following the expiration of these registrations.

67. On information and belief, O'Connell Financial continued to be a third-party advisor on Schwab's advisor services platform through December 2012, and continued to receive investment advisory fees during this time, drawn directly from Schwab accounts.

68. As noted above, Schwab was aware that O'Connell was unregistered no later than September 11, 2012, and Schwab permitted him to remain a third-party advisor while he sought to reinstate his registrations.

69. Following O'Connell Financial's removal from Schwab's platform, several of O'Connell's clients, including all seven (7) who paid O'Connell investment advisory fees into 2021, remained custodied at Schwab.

70. Despite internal concerns that O'Connell had received investment advisory fees paid directly from Schwab accounts during his initial unregistered period, and the fact that,

² An unlocated item is one where the account is not identified. Unlocated items occur when the check scanned in by the Federal Reserve was not a good image and the account number was obscured.

at the time Schwab removed him from the Schwab advisor services platform he remained unregistered in Massachusetts, Schwab took no steps to monitor these accounts beyond those taken for the accounts of all retail investors.

71. On February 5, 2021, Schwab received communications from a relative of Client 1, sharing concerns that O'Connell was financially exploiting Client 1. Schwab referred the matter to their Senior and Vulnerable Investor Investigation ("SVI") team, which opened an investigation.

72. Schwab's SVI investigator placed restrictions on the account requiring SVI to review all outbound fund requests while the investigation was ongoing. SVI concluded this investigation on March 9, 2021, and removed the restrictions.

73. Client 1 paid O'Connell for investment advisory fees on two occasions after Schwab removed the restrictions from her account. Schwab permitted both checks, containing memos reading "Fee" and "Fee 919+917," to be paid to O'Connell, using funds from Client 1's Schwab account.

74. Following these communications and its internal investigation, Schwab continued to take no action to prevent O'Connell from receiving fees for unregistered investment advisory activity through its platform.

75. By Schwab's own admission, the removal of a third-party advisor from an account triggers no specific monitoring procedures.

76. Schwab failed to have in place procedures adequate to review payee information on checks paid from Schwab accounts which were previously managed by registered investment advisers and investment adviser representatives.

77. Schwab failed to have in place procedures adequate to review memo information on checks drafted from Schwab accounts which were previously managed by registered investment advisers and investment adviser representatives.

VIII. VIOLATION(S) OF LAW

Count 1 – Violations of MASS. GEN. LAWS ch. 110A, § 102

78. Section 102 of the Act provides:

It is unlawful for any person who receives, directly or indirectly, any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or others

(1) to employ any device, scheme, or artifice to defraud the other person, or

(2) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.

MASS. GEN. LAWS ch. 110A, § 102.

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

80. The conduct of Respondent O’Connell, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 102.

Count 2 – Violations of MASS. GEN. LAWS ch. 110A, § 201(c)

81. Section 201(c) of the Act provides:

It is unlawful for any person to transact business in this commonwealth as an investment adviser or as an investment adviser representative unless he is so registered under this chapter.

MASS. GEN. LAWS ch. 110A, §201(c).

82. Section 401(m) of the Act provides in relevant part:

“Investment adviser” means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as the value of securities or as to the advisability of investing in,

purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

MASS. GEN. LAWS ch. 110A, §401(m).

83. The Division herein re-states and re-alleges that allegations of fact set forth in Section VII above.

84. The conduct of Respondent O’Connell, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 201(c).

Count 3 – Violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G)

85. 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).

86. Section 12.205(9)(a) of the Regulations provides:

(9) Fraudulent Practices/Dishonest or Unethical Practices.

(a) As used in 950 CMR 12.205(9), “adviser” refers to any person, including persons registered or excluded from registration under M.G.L. c. 110A, who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase and sale, whether through the issuance of analyses or reports or otherwise. It is a rebuttable presumption that such term includes all investment advisers and investment adviser representatives, as well as other persons who charge fees based on assets under management or portfolio performance for rendering investment advice.

950 MASS. CODE REGS. 12.205(9)(a).

87. Section 12.205(9)(c) of the Regulations provides in relevant part:

(9) Fraudulent Practices/Dishonest or Unethical Practices.

[...]

(c) The following practices are a nonexclusive list of practices by an adviser which shall be deemed “dishonest or unethical conduct or practices in the securities business” for purposes of M.G.L. c. 110A, §204(a)(2)(G):

1. Recommending to a client to whom investment supervisory, management or consulting services are provided, the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client’s overall portfolio, investment objectives, financial situation and needs, investment experience and other information known or acquired by the adviser after reasonable examination of the client’s records as may be provided to the adviser.

[...]

14. Entering into, extending or renewing any investment advisory contract, other than a contract for impersonal advisory services, unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee or the formula for computing the fee, the amount or the manner of calculation of the amount of the prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the adviser or its representatives and that no assignment of such contract shall be made by the adviser without the consent of the client.

950 MASS. CODE REGS. 12.205(9)(c)(1) and (14).

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

89. The conduct of Respondent O’Connell, as described above, constitutes violations of MASS. GEN. LAWS § 204(a)(2)(G) and 950 MASS. CODE REGS. 12.205(9)(c).

Count 4 – Violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G)

90. 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).

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

92. The conduct of Respondent Schwab, as described above, constitutes violations of MASS. GEN. LAWS § 204(a)(2)(G).

Count 5 – Violations of MASS. GEN. LAWS ch. 110A § 204(a)(2)(J)

93. Section 204(a)(2)(J) 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:

(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).

94. The Division herein re-alleges and re-states that allegations of fact set forth in Section VII above.

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

Count 6 – Violations of MASS. GEN. LAWS ch. 110A § 404

96. Section 404 of the Act provides:

It is unlawful for any person to make or cause to be made, in any document filed with the secretary or in any proceeding under this chapter, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

MASS. GEN. LAWS ch. 110A, § 404.

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

98. The conduct of Respondent O’Connell, as described above, constitutes violations of MASS. GEN. LAWS § 404.

IX. STATUTORY BASIS FOR RELIEF

Section 407A of the Act provides:

(a) If the secretary determines, after notice and opportunity for hearing, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order issued thereunder, he may order such person to cease and desist from such unlawful act or practice and may take such affirmative action, including the imposition of an administrative fine, the issuance of an order for an accounting, disgorgement or rescission or any other such relief as in his judgment may be necessary to carry out the purposes of [the Act].

MASS. GEN. LAWS ch. 110A, § 407A.

X. PUBLIC INTEREST

For any and all of the reasons set forth above, it is in the public interest and will protect Massachusetts investors for the Director to enter an order finding that such “action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this chapter [MASS. GEN. LAWS ch. 110A].”

XI. RELIEF REQUESTED

The Division requests that an order be entered:

- A. Finding as fact all allegations set forth in Section VII, inclusive of the Complaint;
- B. Finding that all sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors;
- C. Requiring Respondents to permanently cease and desist from further conduct in violation of the Act and Regulations;
- D. Censuring Respondents;
- E. Requiring Respondents to provide an accounting of all fees and transaction-related commissions received in connection with the alleged wrongdoing;
- F. Requiring Respondent Schwab to reimburse Massachusetts investors for all fees paid in connection with the alleged wrongdoing;
- G. Requiring Respondent Schwab to review its supervisory policies and procedures to ensure compliance with applicable state and federal securities laws;
- H. Requiring Respondent Schwab to engage an independent compliance consultant to review and establish written policies and procedures related to payments made from Schwab customer accounts, and the monitoring of customer accounts following the removal of a third-party advisor;
- I. Requiring Respondents to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing;
- J. Permanently barring Respondent O'Connell from associating with or acting as a(n) broker-dealer, broker-dealer agent, investment adviser, investment adviser representative, Securities and Exchange Commission-registered investment adviser, investment adviser

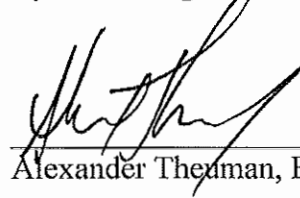
exempted from registration, a person relying on an exclusion from the definition of investment adviser in any capacity, issuer, issuer-agent, or as a partner, officer, director, or control person of any of the foregoing;

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

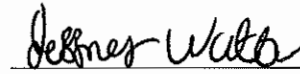
L. Taking any such further action which may be necessary or appropriate in the public interest for the protection of Massachusetts investors.

MASSACHUSETTS SECURITIES DIVISION

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