

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

|                         |   |                        |
|-------------------------|---|------------------------|
| IN THE MATTER OF:       | ) |                        |
|                         | ) |                        |
| STONEGATE FUNDS LLC and | ) |                        |
| DAVID GARCIA,           | ) |                        |
|                         | ) |                        |
| RESPONDENTS.            | ) | Docket No. E-2021-0049 |
|                         | ) |                        |

**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 Stonegate Funds LLC and David Garcia a/k/a David Foxx a/k/a David Fox (“Garcia” or “Respondent”) (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 Enforcement Section alleges that Respondents engaged in acts and practices in violation of Sections 101, 102, 201, and 301 of the Act by soliciting an investment in a Forex account while not properly registered in Massachusetts and making false and misleading statements in connection with such solicitation.

The Enforcement Section seeks an order: 1) finding as fact the allegations set forth below; 2) finding that all of the sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors; 3) requiring

Respondents to permanently cease and desist from further conduct in violation of the Act; 4) censuring Respondents; 5) requiring Respondents to pay restitution to fairly compensate investors for those losses attributable to the alleged wrongdoing; 6) requiring Respondents to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing; 7) permanently barring Respondents from associating with or acting as a registered investment adviser, an investment adviser required to be registered, an investment adviser exempt from registration, or a person relying on an exclusion from the definition of investment adviser in any capacity in Massachusetts; 8) permanently barring Respondents from associating with or acting as a broker-dealer or broker-dealer agent in Massachusetts; 9) permanently barring Respondents 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 Respondents 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 for the protection of Massachusetts investors.

## **II. SUMMARY**

In 2018, David Garcia (“Garcia”), then going by the name David Foxx, met a resident of Quincy, Massachusetts (“Mass. Investor”) through an immigration attorney in Miami, Florida, who had previously worked with Garcia. Garcia represented to Mass. Investor to have experience with, and skills related to, forex options trading, and offered to trade Mass. Investor’s funds in exchange for a share of the profits.

In June and July 2016, Mass. Investor sent Garcia \$75,000 to use for investment. While Garcia only transferred \$40,000 of these funds to an account capable of engaging in

forex options trading, he nonetheless provided Mass. Investor with a falsified account statement in August 2018 which showed the full \$75,000 was invested and had earned approximately \$6,000 or 8%. Mass. Investor made two additional investments with Garcia: \$25,000 in September 2018 and \$25,000 in November 2018. Garcia transferred only \$29,000 of the additional \$50,000 to an account capable of engaging in forex options trading. Garcia failed to profit with what funds he did use to trade forex options, and in fact, by the end of 2018, had lost substantially all of the funds invested by Mass. Investor.

What trading Garcia did conduct was in an account in the name of Stonegate Funds LLC (“Stonegate”). In his communications with brokerage firms, Garcia claimed that Stonegate was a marketing and branding company, and that funds for investment came from company profits. Stonegate Funds LLC has no legitimate business operations and its sole source of funds was those provided by Mass. Investor.

The Enforcement Section takes this action to recover investor funds that Respondent Garcia obtained through fraudulent means and to prevent further harm to Massachusetts investors.

### **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. The Enforcement Section brings this proceeding in accordance with Sections 101, 102, 301, 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, 2017, to the present.

#### **V. RESPONDENTS**

6. David Garcia a/k/a David Foxx a/k/a David Fox (“Garcia”) is an individual with a last known address in Miami, Florida. David Garcia has never been registered in any capacity in the securities industry in Massachusetts.

7. Stonegate Funds LLC (“Stonegate”) was a limited liability company incorporated under the laws of the State of Florida on May 30, 2017, with a main office at Garcia’s last known address in Miami, Florida. Garcia formed Stonegate and was its owner and resident agent prior to Stonegate being declared inactive on September 30, 2019.

#### **VI. STATEMENT OF FACTS**

##### **A. Background**

8. Garcia formed Stonegate in Miami, Florida on May 30, 2017.

9. Garcia stated, both to Division investigators and in account opening documents filed with TD Ameritrade and other brokerage firms, that Stonegate generated income from marketing and branding in media platforms worldwide, and the funds invested were from Stonegate’s income.

10. Garcia refused to identify any customers to whom Stonegate provided marketing and branding services. Garcia further refused to identify any platforms on which he provided marketing and branding services.

11. On information and belief, Stonegate did not provide marketing and branding services to anyone on any platform.

12. Garcia is not and has never been registered in any capacity in the securities industry in Massachusetts or any other jurisdiction.

13. Garcia stated to Division investigators that he took the Series 3 and Series 7 exams in the early 2000s. He further stated to Division investigators he was unable to get licensed due to his criminal record.

14. The Financial Industry Regulatory Authority Central Registration Depository has no entry for anyone bearing Garcia's social security number.

#### **B. Stonegate's Receipt of Funds For Futures and Forex Options Trading**

15. In 2018, Garcia was introduced to a resident of Quincy, Massachusetts ("Mass. Investor") by an immigration attorney Garcia previously worked with in Miami, Florida.

16. Mass. Investor later transferred a total of \$75,000 to Garcia over three separate transactions.

17. On or about June 15, 2018, Mass. Investor transferred Garcia \$25,000 by wire transfer.

18. On or about July 12, 2018, Mass. Investor transferred a further \$25,000 to Garcia by wire transfer.

19. On or about July 16, 2018, Mass. Investor transferred a further \$25,000 to Garcia by wire transfer.

20. Garcia told Mass. Investor that he invested the \$75,000 in forex options.
21. Of the \$75,000, Garcia transferred only \$40,000 to an account capable of engaging in forex options trading.
22. Garcia considered Mass. Investor to be his business partner. Garcia represented to Oanda, a forex trading platform where Garcia had an account, that he was the only owner of Stonegate Funds.
23. On August 8, 2018, Garcia provided Mass. Investor with a purported account statement indicating that the funds invested on Mass. Investor's behalf had earned a total return of approximately \$6,000, or 8%, in the less than two (2) months since the first transfer of funds.
24. Garcia did not invest the entirety of Mass. Investor's funds in forex options.
25. Garcia did not make \$6,000 investing Mass. Investor's funds by August 8, 2018.
26. Mass. Investor made two additional investments after receiving the August 8, 2018, statement. Mass. Investor first transferred an additional \$25,000 to Stonegate on or about September 7, 2018, then transferred another \$25,000 on or about November 7, 2018. After the November 7, 2018, transfer, Mass. Investor had total investments of \$125,000 with Stonegate.

### **C. Stonegate's Bank Account Activity**

27. On or about August 8, 2017, Garcia opened an account at Bank of America, ending in 8620, in the name of Stonegate Funds LLC (the "Stonegate BoA Account").
28. Garcia was the only signatory for the Stonegate BoA Account.
29. From account opening until November 3, 2017, there was no activity in the Stonegate BoA Account.

30. From account opening until June 15, 2018, the balance of the Stonegate BoA Account never exceeded \$1,000 and was frequently negative.

31. At no point during this time span did the Stonegate BoA Account have revenue or expenses consistent with media marketing and branding.

32. From June 15, 2018, until May 9, 2019, inclusive, the sole source of revenue in the Stonegate BoA Account was funds received from Mass. Investor, directly or indirectly. On May 9, 2019, the Stonegate BoA Account was closed following a sustained negative balance.

#### **D. Stonegate's Oanda Forex Account**

33. On or about July 7, 2018, Garcia opened an account in the name of Stonegate at Oanda (the "Oanda Account"), identifying himself as the sole owner.

34. In account opening documents, Garcia stated that Stonegate "provide[s] brand awareness thru [sic] our marketing platform & campaings [sic]."

35. Garcia further stated that no individual would have a beneficial interest in the funds deposited in the Oanda Account, the funds were solely company profits, Stonegate does not accept funds from third parties for the purpose of trading, and that he would not be using the account to trade on behalf of others.

#### **E. Stonegate's TD Ameritrade Account**

36. On or about September 13, 2018, Garcia opened an account at TD Ameritrade in the name of Stonegate (the "TD Account").

37. The account application indicated Stonegate's intent to write uncovered options, create spreads, purchase options, and write covered puts and covered calls. TD considers this activity advanced options activity, which requires a margin account.

38. On or about October 9, 2018, Garcia signed a margin/options upgrade form for the TD Account.

**F. Stonegate's Use Of Mass. Investor's Funds**

**i. Stonegate Diverted Funds Intended for Investment for Garcia's Personal Use.**

39. On June 15, 2018, prior to the receipt of the first \$25,000 transfer from Mass. Investor, the Stonegate BoA Account had a balance of -\$352.70. The Stonegate BoA Account received no other deposits prior to July 12, 2018.

40. In the interim, Garcia made PayPal and Square transfers to third parties, withdrew cash at ATMs, purchased more than \$8,000 of certified checks, and made numerous personal expenditures, including at restaurants, movie theaters, convenience stores, gas stations, grocery stores, and on food delivery and ride shares.

41. Of the \$25,000 Mass. Investor invested with Stonegate, only \$4,500 made it to any platform providing Forex trading, namely Oanda. This occurred on July 10, 2018, twenty five (25) days after Stonegate received the investment funds.

42. On July 12, 2018, the Stonegate BoA Account had an opening balance of \$336.43, prior to receipt of a further \$25,000 investment from Mass. Investor.

43. On July 12 and 13, 2018, with no other deposits made, Garcia made PayPal and Square transfers to third parties, made purchases at Big Lots and a coin-operated laundry, paid his T-Mobile bill, and paid for ride share services together totaling roughly \$375, and incurred \$45 in wire transfer fees.

44. On July 13, 2018, Garcia transferred \$19,500 from the Stonegate BoA Account to the Oanda Account.



45. As of July 13, 2018, Garcia had transferred only \$24,000 of the \$50,000 in funds Stonegate received from Mass. Investor.

46. On July 16, 2018, Mass. Investor transferred an additional \$25,000 to [Garcia / Stonegate], increasing the balance of the Stonegate BoA Account to \$30,413.33.

47. On July 18, 2018, Garcia transferred \$16,000 from the Stonegate BoA Account to the Oanda Account.

48. Of the \$75,000 Garcia received from Mass. Investor in June and July 2018, he transferred only \$40,000, or approximately 53%, to the Oanda Account. He transferred no funds to any other Forex platform.

49. Between July 17 and August 2, 2018, inclusive, the only deposit into the Stonegate BoA Account was a \$300 ATM cash deposit. The Stonegate BoA Account ended August 2, 2018, with a balance of \$253.80.

50. In the interim, in addition to purchases at restaurants, on ride shares, and at car part stores, Garcia purchased a certified check for \$7,118, spent more than \$1,200 at a local Nissan dealership, and withdrew more than \$1,300 from ATMs. Garcia further spent more than \$2,000 at Best Buy, The Home Depot, Wal-Mart, and at furniture stores.

**ii. Stonegate Provided Mass. Investor With Falsified Account Statements.**

51. At first, Garcia experienced some small amount of success trading forex using the funds provided by Mass. Investor, making total profits after financing costs of \$410.46 between June 15 and August 1, 2018, a return of roughly 1% of the funds actually transferred to the Oanda Account.

52. This return is, however, significantly less than the \$6,118.16 return on \$75,000 invested Garcia represented to Mass. Investor in a September 30, 2018, “Forex Account P/L Quarterly Report / Transactions” document (the “P/L Statement”).

53. The account number listed on the P/L Statement is the account number for the Oanda Account.

54. The P/L Statement represented that Mass. Investor’s investment was in a sub-account in Mass. Investor’s name. No such sub-account exists.

55. Garcia provided a separate document purporting to be account statements with inconsistent dates (the “Account Statement”). For the majority of the Account Statement it claims to represent the account balance and profit or loss figures for the same non-existent sub-account as the P/L Statement, this time for October 1, 2019, however the Account Statement heading indicates it is “ACCOUNT STATEMENTS 06-01-2018 TO 10-01-2018.”

56. The Account Statement claims the account remains active but has an illiquid balance of approximately \$60,000, inconsistent profit and loss amount and percentage, and an unrealized loss of approximately \$75,000.

57. In reality, the Oanda Account, following the withdrawal of \$26,072 on or about October 8, 2018, had a balance of roughly \$0.80.

**iii. Stonegate was Not Profitable and Garcia Looted Funds Intended for Forex Trading.**

58. From August 3 through September 6, 2018, inclusive, Garcia withdrew funds from Stonegate’s Oanda account whenever the Stonegate BoA Account’s balance ran low because of Garcia’s personal expenditures.

59. These funds were not Stonegate’s portion of trading profits.

60. Between August 2 and September 7, 2018, inclusive, Stonegate withdrew a total of \$9,940 despite total trading profits never exceeding \$700 throughout that time.

61. The Oanda Account generally had a trading loss of several thousand dollars during this time with the Oanda Account having net trading losses of approximately \$5,000 on September 7, 2018.

**iv. Based On Stonegate's Falsified Account Documents, Mass. Investor Made Further Investments.**

62. On September 7, 2018, Mass. Investor wired \$25,000 to the Stonegate BoA Account. Prior to the receipt of these funds, the balance in the Stonegate BoA Account was \$418.06.

63. Between September 7, 2018, and October 9, 2018, inclusive, the Stonegate BoA Account received no further deposits.

64. During the same time period, Garcia withdrew nearly \$8,000 in cash, transferred \$10,000 to the Oanda Account on October 4, and spent approximately \$6,500 on personal expenses. The Stonegate BoA Account had an ending balance of \$1,034.92 on October 9, 2018.

**v. Garcia Moved Mass. Investor's Funds To TD Ameritrade**

65. The only funds Garcia ever deposited into the Oanda Account were a portion of the funds Garcia received from Mass. Investor to invest in Forex.

66. Garcia did not return any funds he withdrew from the Oanda Account to Mass. Investor.

67. On October 10, 2018, Garcia withdrew \$26,072, all but \$0.80 of the funds in the Oanda Account.

68. The following day, Garcia transferred \$25,000 to the TD Account.

69. By October 23, 2018, the balance of the Stonegate BoA Account was \$3.94, after Garcia withdrew \$280 in cash and made a number of personal expenditures including on food, clothing, and a Pro-Tech massager.

70. Mass. Investor wired an additional \$25,000 to the Stonegate BoA Account on November 7, 2018. Prior to the receipt of these funds the balance in the Stonegate BoA Account was \$130.31.

71. Garcia transferred \$19,000 to the TD Account on November 9, 2018, spending the remainder of the funds, approximately \$6,000, on personal expenses.

72. At no point did Garcia transfer any funds back to Mass. Investor.

**vi. After Stonegate Transferred Mass. Investor's Funds to TD Ameritrade, Garcia Continued to Loot Funds Intended for Forex Trading.**

73. Prior to the transferring \$25,000 from the Oanda Account, the TD Account had a balance of \$0.

74. Garcia withdrew a total of \$900 in October 2018, replenishing the Stonegate BoA Account when its balance fell. Garcia primarily (or entirely?) used the funds in the Stonegate BoA Account for personal expenses during this time.

75. Garcia continued to experience no substantial trading success but nonetheless continued to use what investment funds remained after his unsuccessful trades to fund his personal expenses, withdrawing a total of \$4,750 from the TD Account when the Stonegate BoA account balance ran low or went negative.

76. The Enforcement Section takes this action to notify the investing public and prevent further harm to Massachusetts investors resulting from Garcia's fraudulent investment schemes.

77. On information and belief, Garcia's actions are ongoing, and represent a threat of continuing investor harm.

## **VII. VIOLATIONS OF LAW**

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

78. Section 101 of the Act provides in pertinent part:

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly

(2) to make any untrue statement of 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.

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

80. The conduct of Respondents, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 101.

### **Count 2 – Violations of MASS. GEN. LAWS ch. 110A, § 102**

81. 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 the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise

(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.

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

83. The conduct of Respondents, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 102.

**Count 3 – Violations of MASS. GEN. LAWS ch. 110A, § 301**

84. Section 301 of the Act provides:

It is unlawful for any person to offer or sell any security in the commonwealth unless:--.

- (1) the security is registered under this chapter;
- (2) the security or transaction is exempted under section 402; or
- (3) the security is a federal covered security.

MASS. GEN. LAWS ch. 110A, § 301.

85. Section 401(l) of the Act provides:

“Security” means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a “security,” or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. “Security” does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period.

MASS. GEN. LAWS ch. 110A, §401(l).

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

87. The conduct of Respondents, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 301.

### **VIII. 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.

### **IX. 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].”

### **X. RELIEF REQUESTED**

The Enforcement Section of the Division requests that an order be entered:

- A. Finding as fact the allegations set forth in Section VI of the Complaint;
- B. Finding that all of the sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors;
- C. Requiring Respondents to permanently cease and desist from further conduct in violation of the Act in the Commonwealth;

- D. Censuring Respondents;
- E. Requiring Respondents to pay restitution to fairly compensate investors for those losses attributable to the alleged wrongdoing;
- F. Requiring Respondents to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing;
- G. Permanently barring Respondents from associating with or acting as a registered investment adviser, an investment adviser required to be registered, an investment adviser exempt from registration, or a person relying on an exclusion from the definition of investment adviser in any capacity in Massachusetts;
- H. Permanently barring Respondents from associating with or acting as a broker-dealer or a broker-dealer agent in Massachusetts;
- I. Permanently barring Respondents 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 Respondents in such amount and upon such terms and conditions as the Director or Presiding Officer may determine; and

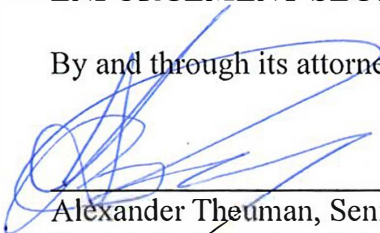
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- K. Taking any such further action which may be necessary or appropriate in the public interest for the protection of Massachusetts investors.

**MASSACHUSETTS SECURITIES DIVISION  
ENFORCEMENT SECTION**

By and through its attorneys,



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