

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

_____ )		
IN THE MATTER OF: )		
REALTY CAPITAL SECURITIES, LLC )		
_____ )		Docket No.
RESPONDENT )		E-2015-0034

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SECRETARY OF THE COMMONWEALTH  
SECURITIES DIVISION

**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”) files this complaint (the “Complaint”) in order to commence an adjudicatory proceeding against the above-named Respondent, Realty Capital Securities, LLC (“Respondent”), for violations of MASS. GEN. LAWS ch. 110A, the Massachusetts Uniform Securities Act (the “Act”), and 950 MASS. CODE REGS. 10.00–14.413 (the “Regulations”). The Complaint alleges that Respondent violated the Act and Regulations by fraudulently fabricating shareholder proxy votes in the Commonwealth.

The Enforcement Section seeks an Order: (1) revoking Respondent’s broker-dealer registration in the Commonwealth; (2) requiring Respondent to permanently cease and desist from further conduct in violation of the Act and Regulations in the Commonwealth; (3) imposing an administrative fine on Respondent in such amount and upon such terms and conditions as the Director or Presiding Officer may determine; (4) censuring Respondent;

and (5) taking any such further actions which may be in the public interest and necessary and appropriate for the protection of Massachusetts investors.

## **II. SUMMARY**

In an era of expansive and complex corporate structures, a shareholder's right to vote by proxy is a sacrosanct right to participate in the democratic process of the capital markets. Through fraudulent actions, including fabricating numerous shareholder votes, Realty Capital Securities, LCC (hereinafter "RCS"), a Massachusetts-registered broker-dealer, eviscerated this fundamental right of shareholders. The Enforcement Section's investigation has uncovered a pattern of RCS employees masquerading as shareholders to cast proxy votes in favor of management proposals. Such fraudulent actions, set amidst pending multi-million dollar transactions between Apollo Global Management (hereinafter "Apollo") and RCS affiliates, RCS Capital Corporation and American Realty Capital, call into question the integrity of all proxy votes solicited by RCS.

Specifically, the Enforcement Section has identified at least two fabricated shareholder proxy votes concerning Business Development Corporation of America (hereinafter "BDCA"), an American Realty Capital (hereinafter "AR Capital")-sponsored investment fund. In one such instance, on June 23, 2015, Christopher Tenaglia (hereinafter "Tenaglia"), a registered representative of RCS, placed a telephone call to a contracted proxy solicitation firm (hereinafter "Proxy Firm"). After confirming a BDCA shareholder (hereinafter "BDCA Shareholder One") had yet to vote in the 2015 BDCA Annual Meeting of Stockholders (hereinafter "2015 Annual Meeting"), Tenaglia indicated he had BDCA Shareholder One on the telephone ready to vote. Instead of conferencing in BDCA Shareholder One, Tenaglia telephonically conferenced in Eric

Ovesen (hereinafter “Ovesen”), another registered representative of RCS. Ovesen, acting in concert with Tenaglia, used a contrived accent and impersonated BDCA Shareholder One to vote BDCA shares in favor of BDCA management.

In addition to the 2015 Annual Meeting, RCS employees also fabricated votes for the 2015 BDCA Special Meeting of Stockholders (hereinafter “2015 Special Meeting”). On September 29, 2015, Conor Hobert (hereinafter “Hobert”), a registered representative of RCS, placed a telephone call to Proxy Firm. Hobert indicated he had a BDCA shareholder (hereinafter “BDCA Shareholder Two”) on the telephone ready to vote. Instead of conferencing in BDCA Shareholder Two, Hobert telephonically conferenced in Tenaglia. Tenaglia, acting in concert with Hobert, used a contrived accent and impersonated BDCA Shareholder Two to vote BDCA shares in favor of BDCA management. According to information obtained by the Enforcement Section, RCS employees, facing intense pressure from management, replicated this fraudulent action over numerous proxy votes.

According to testimony obtained by the Enforcement Section, BDCA Shareholder One never voted shares in the 2015 Annual Meeting. In fact, according to BDCA Shareholder One’s testimony, BDCA Shareholder One never voted shares in any BDCA shareholder proxy. According to an affidavit obtained by the Enforcement Section, BDCA Shareholder Two did not vote via telephone on September 29, 2015. In fact, BDCA Shareholder Two never voted shares in the 2015 Special Meeting. When questioned by the Enforcement Section about these shareholder proxy votes, Tenaglia refused to answer any questions, asserting his rights against self-incrimination.

Despite being a wholesale broker-dealer, RCS conducted proxy solicitation services for all AR Capital sponsored funds. RCS employees, however, never received any training with respect to proxy solicitation. When questioned about the training provided to RCS employees, an RCS employee stated, “I mean there is no script. . . .It’s kind of you do whatever you want.” The lack of training and oversight at RCS was only compounded by the pressure that RCS employees faced when told to solicit proxy votes. According to testimony, an “unofficial strategy” of RCS employees was to “steamroll” shareholders into voting in favor of management at all costs.

Not only did RCS employees face intense pressure to obtain votes, RCS employees also faced thinly-veiled threats regarding continued employment at RCS. As pressure grew RCS employees were even told that their own personal wellbeing was at stake. Oversight at RCS simply consisted of management level individuals seeking constant updates on the progress of proxy votes.

A review of proxy data for the 2015 Annual Shareholder meeting further demonstrates the tremendous pressure placed on untrained RCS employees. Out of the approximately 23,000 shareholders who cast votes in the 2015 Annual Meeting, approximately 42% of all votes were solicited telephonically by RCS employees. The Enforcement Section, however, identified a disproportionately high volume of shareholder proxy votes solicited by telephone on June 23 and June 24, 2015, including BDCA Shareholder One’s fabricated proxy votes. In this two-day period, preceding an attempt by the Board of Directors to reconvene the 2015 Annual Meeting, which had been postponed on multiple occasions for lack of quorum, 2,615 shareholders cast proxy

votes. Of the 2,615 shareholders who cast proxy votes, 2,332 shareholders were solicited via telephone—approximately 89% of all proxy votes cast in that period.

Unlike many corporate proxy votes consisting only of board of director elections or other routine matters, the 2015 Annual Meeting and the 2015 Special Meeting set forth proposals directly affecting shareholder rights. In particular, the 2015 Special Meeting proposals involved restructuring BDCA’s investment advisory agreement as a necessary prerequisite for the consummation of any AR Capital and Apollo transaction. The 2015 Annual Meeting notably altered BDCA’s investment advisory agreement and put in motion key changes necessary for AR Capital to secure management control. Based on its investigation, the Enforcement Section believes that the extent of RCS employees fabricating proxy votes extends beyond the scope of this Administrative Complaint to include other shareholder proxy votes across multiple AR Capital investment funds.

### **III. JURISDICTION AND AUTHORITY**

1. As provided for by the Act, the Massachusetts Securities Division has jurisdiction over matters relating to securities.
2. The Enforcement Section brings this action pursuant to the enforcement authority conferred upon it by § 407A of the Act, wherein the Massachusetts Securities Division has the authority to conduct an adjudicatory proceeding to enforce the provisions of the Act and its Regulations.
3. This proceeding is brought in accordance with §§ 101, 204, and 407A of the Act and its Regulations. Specifically, the acts and practices constituting violations occurred in the Commonwealth.

4. The Division specifically 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 between February, 21 2008 and the current date (the “Relevant Time Period”).

#### **V. RESPONDENT**

6. Realty Capital Securities, LLC (hereinafter “RCS”) is a limited liability company registered in Delaware. According to the Financial Industry Regulatory Authority’s (hereinafter “FINRA”) Central Registration Depository (hereinafter “CRD”), RCS maintains a principal place of business located at One Beacon Street, 14<sup>th</sup> Floor, Boston, Massachusetts 02108. According to the CRD, the Division registered RCS as a broker-dealer on February 21, 2008.

#### **VI. ALLEGATIONS OF FACT**

##### **A. Introduction**

7. On July 2, 2015, the Enforcement Section first met with a concerned Realty Capital Securities, LLC employee (hereinafter “RCS Employee One”) regarding various activities of Realty Capital Securities, LLC (hereinafter “RCS”).
8. RCS Employee One detailed, among other topics, proxy solicitation conducted by RCS.
9. Specifically, RCS Employee One provided an account of potentially fabricated shareholder proxy votes for the 2015 Annual Meeting of Stockholders proxy solicited

by the Board of Directors for Business Development Corporation of America (hereinafter “2015 Annual Meeting”).

10. RCS Employee One detailed how RCS employees, impersonating shareholders, fabricated shareholder proxy votes in favor of management proposals.
11. Through the Enforcement Section’s investigation, the Enforcement Section uncovered fabricated shareholder proxy votes solicited by RCS employees, for multiple Business Development Corporation of America (hereinafter “BDCA”) shareholder meetings.
12. Upon information and belief, RCS employees have fabricated numerous shareholder proxy votes across multiple American Realty Capital II, LLC<sup>1</sup> (hereinafter “AR Capital”) sponsored investment funds.

**B. RCS, as an Affiliated Entity with Overlapping Management, Served as the Wholesale Broker-Dealer for AR Capital Sponsored Funds**

**i. The interrelated management and structure of RCS and affiliated entities**

13. RCS is a broker-dealer, registered throughout the Relevant Time Period by the Massachusetts Securities Division, an office of the Secretary of the Commonwealth of Massachusetts.
14. RCS is a subsidiary of RCS Capital Corporation (hereinafter “RCAP”), a publically traded holding company (NYSE: RCAP) for various subsidiary businesses and firms.
15. According to the RCAP website ([www.RCScapital.com](http://www.RCScapital.com)), RCS “is an industry-leading distributor of a highly diversified suite of quality alternative investment offerings.

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<sup>1</sup> According to a press release issued by American Realty Capital II, LLC, on or about February 9, 2012 American Realty Capital II, LLC changed its name to AR Capital, LLC.

RCS has a well-established reputation for being one of the most trusted, respected, sophisticated and innovative wholesale broker-dealers in the industry.”

16. RCS Employee One testified, “RCS itself is basically just a sales organization. We distribute and sell, you know, 12 or 15 funds, depending on how many we have up and running.”

17. BDCA is a non-traded investment fund sponsored by AR Capital.

18. According to the first definitive BDCA prospectus (hereinafter “BDCA Prospectus”), filed on January 27, 2011, “[RCS] is indirectly owned by [AR Capital].”

19. When asked to describe the relationship between RCS and AR Capital, RCS Employee One stated:

. . . when I started, we were all one in the same . . . just like technically worked for different companies, but I mean, all of our . . . get-togethers, sales meetings, stuff like that is always with those guys. . . . I think more recently there has been more separation, but. . . I mean, in New York, they all share the same office space. You know, it’s like they go to the same kitchen to get food and drinks. **I mean, it’s all the same company to me.**

(Emphasis added).

20. According to the BDCA Prospectus, BDCA is managed by BDCA Adviser, LLC (hereinafter “BDCA Adviser”) a Securities and Exchange Commission (hereinafter “SEC”)-registered investment adviser.

21. According to the BDCA Prospectus, BDCA Adviser is wholly owned by American Realty Capital II Advisors, LLC (hereinafter “AR Capital Advisor”).

22. AR Capital Advisor is indirectly majority-owned by Nicholas S. Schorsch (hereinafter “Schorsch”) and William M. Kahane.



23. According to the BDCA Prospectus, Schorsch served as the Chief Executive Officer and Chairman of BDCA.
24. According to an 8-K filed with the SEC on November 24, 2014, Schorsch resigned as Chief Executive Officer of BDCA, effective as of November 19, 2014.
25. According to an 8-K filed with the SEC on December 30, 2014, Schorsch resigned as Director and Chairman of the Board of BDCA, effective as of December 29, 2014.
26. According to the RCS website ([www.rcsecurities.com](http://www.rcsecurities.com)), Michael Weil (hereinafter “Weil”), “serves as Chairman of Realty Capital Securities and President and Chief Operating Officer at [AR Capital].”
  - ii. **BDCA is a business development company replete with fees and complex features**
27. BDCA elected to be treated as a business development company (hereinafter “BDC”).
28. According to information contained on a PowerPoint presentation, titled “Investing in America’s Growth,” made available on the AR Capital website ([www.americanrealtycap.com](http://www.americanrealtycap.com)), a BDC is a pass-through entity in which 90% of taxable income and capital gains are distributed from investments primarily in privately held or small publicly traded U.S. companies.
29. From January 1, 2014 through November 7, 2014, RCS identified 162 Massachusetts BDCA accounts.
30. Upon information and belief, additional Massachusetts residents invested in BDCA during the offering period.
31. According to the BDCA Prospectus, an investment in BDCA included fees as high as seven percent to soliciting broker-dealers and fees as high as three percent to RCS.

32. The BDCA Prospectus also contains other management and incentive fees, some of which would be potentially applicable in the event of a BDCA liquidation event, including the listing of BDCA.
33. According to the BDCA Prospectus, a BDCA investor could elect to opt in to a Dividend Reinvestment Plan (hereinafter “DRIP”).
34. According to the BDCA Prospectus, “[p]articipants in our [DRIP] are free to elect or revoke reinstatement in the [DRIP] within a reasonable time as specified in the plan.”
35. Furthermore, according to the BDCA Prospectus, “[y]our reinvested distributions will purchase shares at a price equal to 95% of the price that shares are sold in the offering at the closing immediately following the distribution payment date.”
36. Pursuant to the most recent BDCA prospectus, filed with the SEC on July 1, 2015, BDCA continues to offer a DRIP.
37. According to client account documentation provided by RCS, certain Massachusetts investors opted into the DRIP.
38. The DRIP program constitutes an offer, purchase, or sale of a security.

**C. Despite RCS’s Primary Role as a Wholesale Broker-Dealer, RCS Provided Proxy Solicitation Services for AR Capital Sponsored Funds**

**i. Despite retaining a professional proxy services firm, RCS received significant compensation for providing proxy solicitation for AR Capital sponsored funds**

39. According to RCS Employee One, RCS provides proxy services for all AR Capital sponsored funds.

40. RCS solicited shareholder proxy votes for the 2015 Annual Meeting and 2015 Special Meeting of Stockholders solicited by the Board of Directors for BDCA to take place on September 30, 2015 at 11:00 A.M. (hereinafter “2015 Special Meeting”).
41. Despite the fact that RCS solicited shareholder proxy votes for both the 2015 Annual Meeting and the 2015 Special Meeting, BDCA contracted with an independent proxy services firm (hereinafter “Proxy Firm”) to provide proxy services, including solicitation.
42. The 2015 Special Meeting proxy statement (hereinafter “2015 Special Meeting Proxy Statement”) identifies an estimated fee of \$375,000.00 for proxy solicitation services to be paid by Apollo Global Management, LLC (hereinafter “Apollo”) and AR Capital to RCS and American National Stock Transfer, LLC<sup>2</sup> (hereinafter “2015 Special Meeting Compensation”).
43. According to the 2015 Special Meeting Proxy Statement, 2015 Special Meeting Compensation included out-of-pocket expenses.
44. Upon information and belief, RCS was compensated for soliciting shareholder proxy votes for all AR Capital sponsored investment funds.
45. According to Proxy Firm, from April 22, 2015 to the present, Proxy Firm was contracted to provide proxy services for at least eighteen AR Capital sponsored funds.

**ii. RCS created a culture in which untrained RCS employees were expected to solicit shareholder proxy votes by any means necessary**

46. According to the RCS website, Steve Rokoszewski (hereinafter “Rokoszewski”), Executive Vice President for RCS, “is responsible for the

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<sup>2</sup> According to the RCAP website, American National Stock Transfer, LLC is an RCAP subsidiary.

hiring, training, and the ongoing management of all the Realty Capital Securities internal wholesalers.”

47. RCS Employee One described that RCS internal wholesalers are involved with proxy solicitation.

48. RCS Employee One described how RCS employees, including internal wholesalers, would be provided with a spreadsheet of investors to call regarding a respective proxy vote.

49. When asked by the Enforcement Section if RCS Employee One received any training with respect to telephonic proxy solicitation at RCS, RCS Employee One stated, “No, zero.”

50. RCS Employee One further elaborated, “I mean, there is no script. There is no formal training. It’s kind of you do whatever you want.”

51. RCS Employee One further explained, “[s]o I think it’s just like **when the heat is on**, I think **there is more pressure to get more people involved**. So, you know, some of the desk managers or the business development guys in all of the offices will politely be asked to assist in the process.” (Emphasis added).

52. When asked to elaborate on what was meant by “when the heat is on,” RCS Employee One testified:

I guess there is **more of a demand from the higher-ups to just get it done**. There is more emails going around asking for **updates every hour or every minute . . .** I believe it all starts with, you know, sort of the partners of the firm trying to get something done and get it done quickly. You know, they’re always used to like an **accelerated time line** for everything. So, you know, then the heat is on. John Paliotta out of Texas, which then kind of comes down through Steve Rokoszewski in Boston and all the other desk managers, including like Chris Tenaglia in the Boston office, where from there it’s just like, you know, **cracking the**

**whip on everyone to, you know, focus solely on that or, ‘Make sure that we get this done.’**

(Emphasis added).

53. When directly asked if there was internal pressure to solicit shareholder proxy votes, RCS Employee One testified, “[o]h, yeah, definitely.”

54. RCS Employee One further elaborated on tactics used by RCS employees when soliciting shareholder proxy votes, explaining that an “unofficial strategy” of RCS employees would be to “basically **steamroll them, run them over, get, you know, whatever you can do to get them to vote, you know, votes at all cost, whatever.**” (Emphasis added).

55. When RCS Employee One conveyed concerns to a supervisor, the supervisor told RCS Employee One “to basically suck it up and do my job.”

**iii. RCS employees faced immense internal pressure to solicit shareholder proxies for the 2015 Annual Meeting**

56. According to documents provided by RCS Employee One, on August 5, 2015 James Mulligan (hereinafter “Mulligan”), a Massachusetts-registered representative of RCS, e-mailed “Boston Internals” (hereinafter “August 5, 2015 Mulligan E-mail”).

57. Upon information and belief, “Boston Internals” includes all internal wholesalers in RCS’s Boston office.

58. The August, 5 2015 Mulligan E-mail includes a forwarded email from John Paliotta, a Massachusetts-registered representative of RCS (hereinafter “Paliotta”).

59. Paliotta, was the only RCS employee with access to Proxy Firm data systems.

60. Upon information and belief, Paliotta was in charge of proxy solicitation at RCS.

61. According to Paliotta's e-mail, "[t]onight we will finish the BDCA proxy. Currently we're sitting at 65.518% and we need 66.667% by tonight. **Shares needed 1,880,000**" (hereinafter "August 5, 2015 Paliotta E-mail") (Emphasis in original).
62. Upon information and belief, the August 5, 2015 Paliotta E-mail was in reference to the 2015 Annual Meeting. In particular, the August 5, 2015 Paliotta E-mail indirectly referenced Proposal 7 and Proposal 8 for the 2015 Annual Meeting which required a two-thirds majority vote.
63. According to the August 5, 2015 Mulligan E-mail:

As a Team we need to finish this today. We need each and everyone of you regardless of excuse and circumstance to focus on this all day today. This is a priority. Proxy ends today and tomorrow you can focus 100% on your territory. This isn't for [Paliotta], **this is for Roko<sup>3</sup> and your own personal wellbeing**. Roko needs us to get this done today. **I want to be copied on the results email each hour Chris. Please do not put yourself in a position where I am asking you why you are not working on Proxy.** Let's go get this done.

(Emphasis added)

64. A review of proxy solicitation records produced by Proxy Firm further highlights the pressure placed on RCS employees to solicit shareholder proxies.
65. In total, from May 11, 2015 through August 17, 2015, 23,313 shareholders submitted proxy votes for the 2015 Annual Meeting.
66. Of the 23,313 shareholders who submitted votes for the 2015 Annual Meeting, 9,781 shareholders were solicited via telephone from May 11, 2015 through August 6, 2015.

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<sup>3</sup> According to testimony, Stephen Rokoszewski is commonly referred to by RCS employees as "Roko."

67. In total, approximately 42% of all shareholders who submitted votes in the 2015 Annual Meeting were solicited via telephone.
68. The 2015 Annual Meeting scheduled for June 15, 2015 was adjourned for lack of quorum.
69. The Board of Directors for BDCA scheduled to reconvene the 2015 Annual Meeting again on multiple dates, including June 24, 2015.
70. In a two-day period, from June 23, 2015 through June 24, 2015 2,615 shareholders submitted proxy votes for the 2015 Annual Meeting.
71. Of the 2,615 shareholders who submitted proxy votes, 2,332 shareholders were solicited via telephone.
72. The 2,332 shareholders solicited via telephone accounted for approximately 89% of all shareholders who submitted proxy votes from June 23, 2015 through June 24, 2015.
73. The 2,332 shareholders solicited via telephone accounted for approximately 24% of all shareholders who submitted proxy votes via telephone.
74. From June 23, 2015 through June 24, 2105, RCS employees fabricated proxy votes for at least one shareholder.

**iv. RCS employees faced immense internal pressure to solicit shareholder proxy votes for the 2015 Special Meeting**

75. According to documents provided by RCS Employee One, on September 28, 2015, an email was sent from Rokoszewski's RCS e-mail account (hereinafter "September 28, 2015 Rokoszewski E-mail") to various RCS employees, including Paliotta and Tenaglia.

76. In the September 28, 2015 Rokoszewski E-mail, Rokoszewski commented:

Gents[.] As we shift to proxy – everyone should have their lists and their goal for the night. **Please send hourly updates on closes so we can all see the progress.** A few focused afternoons/evenings and this is done.  
Thanks. Roko

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(Emphasis added).

77. According to e-mails provided by RCS Employee One, RCS employees across the country provided at least ten 2015 Special Meeting proxy vote updates to Rokoszewski in a period of less than three hours.

78. According to an e-mail provided by RCS Employee One, less than twenty-four hours after the September 28, 2015 Rokoszewski E-mail, an e-mail was sent from Rokoszewski's RCS e-mail account to three Boston RCS employees (hereinafter "September 29, 2015 Rokoszewski E-mail"). The September 29, 2015 Rokoszewski E-mail contained a "high" importance label.

79. The September 29, 2015 Rokoszewski E-mail stated, "[w]e need to close this out tomorrow and I noticed that all of you had zeros yesterday. I need to ask you to step up today and double the expectation. We haven't asked for any real participation until now and I need you guys to participate."

80. According to RCS Employee One, "[w]hen [Rokoszewski] gets involved like that, it usually means that he is on it and it needs to get done and an all-hands-on-deck kind of situation. So I imagine, you know, the partners or Apollo were upset it was taking long, so . . . individuals like myself would get reprimanded over email to participate."



81. Upon information and belief, RCS employees were threatened that if they did not participate in proxy solicitations RCS employees could receive a call from Weil and face potential employment termination.

82. RCS Employee One provided further testimony concerning the culture of proxy solicitation at RCS stating:

I'm not really sure what it is, but, I mean, **it was almost sort of indentured servitude** to the point where, you know, these -- you know, I . . . would just say, "No, I'm not coming in Saturday. I'm not coming in Sunday," but these other poor kids would just -- you know, 22-year-olds would just be forced to come in and work Saturdays and Sundays and just have no summer. You know, I don't know -- **I don't know if they all cracked or if they couldn't get it done so they were told to just do it this way.**

(Emphasis added).

**D. RCS Employees Impersonated Shareholders to Obtain Shareholder Votes for the 2015 Annual Meeting**

**i. BDCA 2015 Annual Meeting materials**

83. On May 20, 2015, the BDCA board of directors (hereinafter "Board of Directors") filed the 2015 Annual Meeting Proxy Statement and notice of annual meeting (hereinafter "2015 Annual Meeting Notice") with the SEC.

84. The 2015 Annual Meeting proxy card (hereinafter "2015 Annual Meeting Proxy Card") provided shareholders with three possible ways of voting—by internet, by telephone, and by mail.

85. According to testimony, RCS employees would also solicit proxy votes via telephone.

86. The 2015 Annual Meeting Proxy Card contained nine proposals—seven of which proposed amendments to various provisions of the BDCA charter, one proposing

amendments to the investment advisory agreement between BDCA and BDCA Advisor, and one concerning the election of BDCA directors.

87. RCS Employee One commented, “different things that are being voted on here . . . in my mind, make it less shareholder friendly and basically secures control over the company more definitely.”
88. Upon information and belief, all proposals solicited by the Board of Directors would affect the rights of shareholders upon the listing of BDCA.
89. The amendment proposed by the Board of Directors concerning the investment advisory agreement between BDCA and BDCA Adviser provided, among other changes to incentive fees.
90. The 2015 Annual Meeting Proxy Statement additionally provided, “BDCA Adviser is wholly-owned by AR Capital, LLC which is majority-owned by [Schorsch] and [Kahane].”
91. According to the 2015 Annual Meeting Proxy Statement, Proposals 1 through 6, and Proposal 9 required the approval of a majority outstanding shares as of the record date.
92. According to the 2015 Annual Meeting Proxy Statement, Proposal 7 and Proposal 8 required the approval of two-thirds of all outstanding shares as of the record date.
93. The 2015 Annual Meeting Proxy Card emphasized the significance of the 2015 Annual Meeting stating, “**Your Vote is Important!**” (Emphasis in Original).
94. The 2015 Annual Meeting Notice provided, “[w]hether you own a few shares or many shares and whether you plan to attend the Annual Meeting in person or not, **it is**

**important that your shares be voted** on matters that come before the Annual Meeting.” (Emphasis added).

95. The 2015 Annual Meeting Notice further provided, “You are cordially invited to attend the Annual Meeting. **Your vote is important.**” (Emphasis added).

96. According to an 8-K filing made by the BDCA Board of Directors on August 17, 2015 (hereinafter “2015 BDCA Annual Meeting 8-K”), the 2015 Annual Meeting was adjourned for a lack of quorum on multiple occasions.

97. With greater specificity, the 2015 BDCA Annual Meeting 8-K stated, “[t]he Annual Meeting was reconvened on June 17, 2015, June 19, 2015, June 24, 2015, July 1, 2015 and August 17, 2015” (hereinafter “Rescheduled Annual Meetings”).

98. Upon information and belief, RCS employees faced greater pressure to telephonically solicit shareholder proxy votes on days immediately before the Rescheduled Annual Meetings.

**ii. RCS employees fabricated BDCA Shareholder One’s 2015 Annual Meeting proxy votes**

99. On October 8, 2015, Proxy Firm produced to the Enforcement Section an audio recording of proxy votes purportedly cast by a BDCA shareholder (hereinafter “BDCA Shareholder One”) in the 2015 Annual Meeting via a telephone call on June 23, 2015 at 4:31 P.M. Eastern Standard Time (hereinafter “Fabricated RCS BDCA Shareholder Call One”).

100. According to a transcript of Fabricated RCS BDCA Shareholder Call One, there are three separate voices on Fabricated RCS BDCA Shareholder Call One.

101. According to RCS Employee One, two of the three voices on Fabricated RCS BDCA Shareholder Call One are RCS employees.
102. Upon information and belief, one individual on Fabricated RCS BDCA Shareholder Call One is a representative of Proxy Firm (hereinafter “Proxy Firm Representative One”).
103. RCS Employee One recognized Christopher M. Tenaglia (hereinafter “Tenaglia”) as the second individual on Fabricated RCS BDCA Shareholder Call One.
104. Tenaglia is a Massachusetts-registered representative of RCS.
105. RCS Employee One further recognized Eric S. Ovesen (hereinafter “Ovesen”) as the third individual on Fabricated RCS BDCA Shareholder Call One.
106. Ovesen is a Massachusetts-registered representative of RCS.
107. RCS Employee One testified:
- Enforcement Section:** Did you recognize any of the voices on the recording?  
**RCS Employee One:** Yes.  
**Enforcement Section:** Did you recognize any RCS employee’s voice on the recording?  
**RCS Employee One:** Yes, two of them.  
**Enforcement Section:** Who did you recognize?  
**RCS Employee One:** Chris Tenaglia was the guy that gave them the account number in the beginning of the call and Eric Ovesen was the guy impersonating the shareholder with the accent that could barely speak English
108. When asked “[h]ow certain are you that it is Chris Tenaglia and Eric Ovesen on that recording?”, RCS Employee One stated, “100 percent.”
109. According to a transcript of Fabricated RCS BDCA Shareholder Call One, Tenaglia states, “[o]k, I have [BDCA Shareholder One] on the other line. He really can’t speak English, so if you can just be kind of clear, that would be great.”

110. According to the Fabricated RCS BDCA Shareholder Call One:

**Proxy Firm Representative One:** Yes, hello. Is that [BDCA Shareholder One]?

**Ovesen:** Yes, Sir.

**Proxy Firm Representative One:** Thank you. I will record your vote today. This line is recorded to ensure the accuracy of your vote. For the security of this account, could you please state your full name and mailing address.

**Ovesen:** [BDCA Shareholder One], [BDCA Shareholder Account Address].

111. Ovesen, as identified by RCS Employee One, in a contrived accent, proceeded to vote with the Board of Directors and management on all proposals.

112. Following Fabricated RCS BDCA Shareholder Call One, on Tuesday, June 23, 2015 at [4:32 P.M. Eastern Standard Time] an email was sent from Tenaglia's RCS email account with the Subject: "RE: BDCA voted !!!!" (hereinafter "Fabricated RCS BDCA Shareholder One Email")

113. Fabricated RCS BDCA Shareholder One Email included information pertaining to BDCA Shareholder One highlighted in green.

114. According to testimony from RCS Employee One, RCS employees would sometimes send e-mails confirming shareholder proxy votes.

115. On October 29, 2015, the Enforcement Section also obtained sworn testimony from BDCA Shareholder One.

116. When asked by the Enforcement Section if BDCA Shareholder One's voice was on Fabricated RCS BDCA Shareholder Call One, BDCA Shareholder One responded, "[a]bsolutely not."

117. When asked by the Enforcement Section if BDCA Shareholder One's recognized any voice on Fabricated RCS BDCA Shareholder Call One, BDCA Shareholder One responded, "[n]o."

118. When asked by the Enforcement Section if BDCA Shareholder One's has ever had a conversation with any individual who is associated with Realty Capital Securities in relation to any proxy vote, BDCA Shareholder One stated, "[n]o."
119. When asked by the Enforcement Section if BDCA Shareholder One's has ever had a conversation with any individual who is associated with Proxy Firm, BDCA Shareholder One stated, "[n]o."
120. When asked by the Enforcement Section if his testimony was that he spoke English, BDCA Shareholder One responded, "[a]bsolutely. I've been in [medical profession] for 15 years in this country [...]"
121. On November 2, 2015 the Enforcement Section obtained sworn testimony from Tenaglia.
122. According to sworn testimony in response to Enforcement Section questions:  
**Enforcement Section:** Would you recognize your own voice on the recording?  
**Tenaglia:** Five and twelve.<sup>4</sup>  
**Enforcement Section:** Do you recognize your voice on the recording?  
**Tenaglia:** Five and twelve.  
**Enforcement Section:** Is your voice one of the voices on the recording?  
**Tenaglia:** Five and twelve.
123. When asked if Tenaglia called BDCA Shareholder One, Tenaglia stated, "Five and twelve."
124. When asked if Tenaglia "fabricated shareholder proxy votes," Tenaglia stated, "Five and twelve."

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<sup>4</sup>On November 2, 2015, the Enforcement Section and counsel for Tenaglia stipulated to the following on the record: **Enforcement Section:** "Counsel, if it's your client's intent to invoke his Fifth [Amendment to the United States Constitution] and Twelfth [Article 12 to the Massachusetts Declaration of Rights] rights today, if we could stipulate that he just say five and twelve, that would be fine." **Counsel:** "Yes, we can stipulate to that, five and twelve."

125. Upon information and belief, RCS outbound phone records reflect further irregularities regarding shareholder proxy votes cast in the 2015 Annual Meeting.

126. Upon information and belief, RCS outbound phone records do not reflect the locations and time stamps for certain shareholder votes as identified by Proxy Firm.

**E. RCS Employees Impersonated Shareholders to Obtain Shareholder Proxies for the 2015 Special Meeting**

**i. BDCA 2015 Special Meeting materials**

127. On September 7, 2015, the Board of Directors filed the 2015 Special Meeting Proxy Statement and notice of special meeting (hereinafter “2015 Special Meeting Notice”) with the SEC.

128. The 2015 Special Meeting proxy card (hereinafter “2015 Special Meeting Proxy Card”), provided three possible manners of voting—by internet, by telephone, and by mail.

129. According to testimony, RCS employees would also solicit proxy votes via telephone.

130. The 2015 Special Meeting Proxy Card contained two BDCA Board of Director proposals.

131. As summarized by RCS Employee One, “[t]his one is mostly because of the Apollo Global Management coming into the picture and buying 60 percent of AR Capital.”

132. Upon information and belief, all proposals solicited by the Board of Directors would affect the rights of shareholders.

133. Upon information and belief, all proposals solicited by the Board of Directors were necessary for a proposed transaction with Apollo.
134. The 2015 Special Meeting Proxy Card emphasized the significance of the 2015 Special Meeting, stating “**Your Vote is Important!**” (Emphasis in original).
135. According to a letter accompanying the 2015 Special Meeting Proxy Statement, BDCA Chief Financial Officer, Treasurer, and Secretary stated, “**It is important that your shares be represented at the Special Meeting. If you are unable to attend the Special Meeting in person, I urge you to complete, date and sign the enclosed proxy card and promptly return it in the envelope provided, vote your shares by telephone, or vote via the Internet. Your vote is important.**” (Emphasis in original).
136. The 2015 Special Meeting Notice provided, “**This is an important meeting. To ensure proper representation at the meeting, please complete, sign, date and return the proxy card in the enclosed, self-addressed envelope, vote your shares by telephone, or vote via the Internet.**” (Emphasis in original).
137. According to the 2015 Special Meeting Proxy Statement, filed on September 7, 2015, Proposal 1 and Proposal 2 required the approval of a majority of outstanding shares as of the record date.
138. According to the 2015 Special Meeting Proxy Statement, “[i]n addition to the solicitation of proxies by the use of the mail, proxies may be solicited in person and by telephone or facsimile transmission by: (i) the directors, officers or employees of the Company or by the officers or employees of the Adviser (without special compensation therefor), or (ii) by Realty Capital Securities, LLC and American



National Stock Transfer, LLC, our former dealer manager and transfer agent, who has also been engaged by Apollo and the Adviser to solicit proxies on our behalf at an estimated fee of \$375,000, plus out-of-pocket expenses.”

139. On September 17, 2015, Board of Directors filed a letter (hereinafter “2015 Special Meeting Action Letter”), stating, “**ACTION REQUESTED[.]**” (Emphasis in original).

140. In particular, the 2015 Special Meeting Action Letter stated, “[r]ecently, you received proxy materials regarding a very important matter that requires your attention related to your Business Development Corporation of America investment. **Your voice is important in this proxy vote process** and the scheduled Special stockholder meeting on September 30, 2015 is quickly approaching.” (Emphasis in original).

**ii. RCS employees fabricated BDCA Shareholder Two’s 2015 Special Meeting proxy votes**

141. On November 6, 2015, Proxy Firm produced an audio recording to the Enforcement Section of proxy votes purportedly cast by a BDCA shareholder (hereinafter “BDCA Shareholder Two”) in the 2015 Special Meeting via telephone call on September 29, 2015 at 6:46 P.M. Eastern Standard Time (hereinafter “Fabricated RCS BDCA Shareholder Call Two”).

142. According to Fabricated RCS BDCA Shareholder Call Two, there are three separate voices on Fabricated RCS BDCA Shareholder Call Two.

143. Upon information and belief, one individual on Fabricated RCS BDCA Shareholder Call Two is a representative of Proxy Firm (hereinafter “Proxy Firm Representative Two”).
144. The second individual on Fabricated RCS BDCA Shareholder Call Two identifies himself as “Connor.”
145. RCS Employee One identified “Connor” as Conor K. Hobert (hereinafter “Hobert”).
146. Hobert is a Massachusetts-registered representative of RCS.
147. RCS Employee One, testified to witnessing Hobert place Fabricated RCS BDCA Shareholder Call Two.
148. According to Fabricated RCS BDCA Shareholder Call Two, Hobert states, “[t]his is Conor I have [BDCA Shareholder Two] on the other line...can I bring him up?”
149. According to Fabricated RCS BDCA Shareholder Call Two:

**Proxy Firm Representative Two:** Hello [BDCA Shareholder Two]?

**Hobert:** Hey [BDCA Shareholder Two] you there?

**Tenaglia:** Yes Sir.

**Proxy Firm Representative Two:** ...very good, [BDCA Shareholder Two], my name is [Proxy Firm Representative Two], I’m a representative of [Proxy Firm] I will record your vote regarding the upcoming special meeting of stockholders for Business Development Corporation of America. [BDCA Shareholder Two] please be aware that this telephone line is recorded to ensure the accuracy of your vote. For the security of this account could you please provide me with your full name and mailing address?

150. Tenaglia, as identified by RCS Employee One, in a contrived accent, proceeded to vote with the Board of Directors and management on all proposals.

151. According to Fabricated RCS BDCA Shareholder Call Two, however, Tenaglia misrepresents that the address of record for [BDCA Shareholder Two] is [BDCA Shareholder Two] home address.
152. According to the Enforcement Section's investigation, BDCA Shareholder Two's account address used on Fabricated RCS BDCA Shareholder Call Two is BDCA Shareholder Two's business address.
153. On November 10, 2015 the Enforcement Section obtained a sworn affidavit (hereinafter "Affidavit") from BDCA Shareholder Two.
154. According to the Affidavit, BDCA Shareholder Two did not telephonically vote any shares on September 29, 2015 in the Special Meeting of Stockholders of Business Development Corporation of America to be held on September 30, 2015.
155. According to the Affidavit, BDCA Shareholder Two never voted, by any means, in the Special Meeting of Stockholders of Business Development Corporation of America to be held on September 30, 2015.
156. On November 2, 2015, the Enforcement Section obtained sworn testimony from Tenaglia.
157. According to testimony under oath:
- Enforcement Section:** Did [BDCA Shareholder Two] vote in the September 30<sup>th</sup> special meeting?
- Tenaglia:** Five and twelve.
- Enforcement Section:** Did you vote [BDCA Shareholder Two's] BDCA shares in the September 30<sup>th</sup> special meeting?
- Tenaglia:** Five and twelve.
- Enforcement Section:** Did you have authorization to vote [BDCA Shareholder Two's] BDCA shares in the September 30<sup>th</sup> special meeting?
- Tenaglia:** Five and twelve.
- Enforcement Section:** Did you fabricate [BDCA Shareholder Two's] vote for purposes of voting shares in the September 30<sup>th</sup> special meeting?

**Tenaglia:** Five and twelve.

**Enforcement Section:** Did another RCS employee also assist with fabricating [BDCA Shareholder Two's] vote for proposals of voting shares in the September 30<sup>th</sup> special meeting?

**Tenaglia:** Five and twelve.

158. When asked if Tenaglia “fabricated shareholder proxy votes,” Tenaglia testified, “Five and twelve.”

159. When questioned further about Fabricated RCS BDCA Shareholder Call Two, RCS Employee One testified, “[i] think there was some giggles about it or something. I don’t know if that was because of the accent or not.”

**F. RCS Used Broker-Dealer Authorization to Cast Shareholder Proxy Votes**

160. In addition to fabricated proxy votes, RCS Employee One also provided information to the Enforcement Section regarding recent RCS efforts to obtain documentation from broker-dealer agents to facilitate voting of client shares.

161. Upon information and belief, RCS solicited broker-dealer agents to confirm authority to vote shares on behalf of clients via a letter (hereinafter “Broker-Dealer Authority Letter”).

162. Upon information and belief, RCS employees would have a conversation with broker-dealer agents and inform the broker-dealer agents that certain broker-dealer agent client accounts had not voted. RCS employees typically would inform broker-dealer agents that RCS employees could call clients directly to solicit proxy votes, or the broker-dealer agent could vote on behalf of the client, thereby avoiding a call to the shareholder by RCS employees.

163. Upon information and belief, RCS employees would send a Broker-Dealer Authority Letter to broker-dealer agents.

164. Upon information and belief, RCS never verified if broker-dealer agents had authority to vote client shares.
165. According to a document provided by RCS Employee One, on at least two occasions RCS received a letter from a broker-dealer agent (hereinafter “Broker-Dealer Agent”) who purported to maintain authorization to vote proxies for client accounts.
166. On one occasion, RCS received a letter, provided by RCS Employee One, from Broker-Dealer Agent which purported to “have authority to vote proxies for [clients].” (hereinafter “May 20, 2015 Broker-Dealer Authority Letter”)
167. Contained within the May 20, 2015 Broker-Dealer Authority Letter was a list of sixty-five client account numbers.
168. Upon information and belief, on May 20, 2015, all sixty-five client accounts voted for management on all proposals.
169. According to Proxy Firm data following the 2015 Annual Meeting, only fifty of the client accounts were solicited for votes on May 20, 2015.
170. According to information produced by Proxy Firm, fifteen client accounts voted separately after May 20, 2015 via paper proxy or internet vote.
171. Upon information and belief, RCS never verified if Broker-Dealer Agent had authority to vote client shares in the 2015 Annual Meeting.
172. On a separate occasion, RCS received a letter, provided by RCS Employee One, from Broker-Dealer Agent, which purported to “have authority to vote proxies for [clients].” (hereinafter “September 30, 2015 Broker-Dealer Authority Letter”)

173. According to the 2015 Special Meeting Proxy Statement, broker-dealer agents did not have discretion to vote client shares unless clients provided express instructions to the broker-dealer agent.

174. Upon information and belief, RCS never verified if Broker-Dealer Agent had authority to vote client shares in the 2015 Special Meeting.

## **VII. VIOLATIONS OF LAW**

### **A. COUNT I – Violations of MASS. GEN. LAWS. ch. 110A, § 101**

175. Section 101 of the Act states that:

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

- (1) to employ any device, scheme, or artifice to defraud,
- (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.

176. The Enforcement Section herein re-alleges and restates the allegations of fact set forth in paragraphs 1 through 174 above.

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

### **B. COUNT II – Violations of MASS. GEN. LAWS. ch. 110A, § 204**

178. Section 204 of the Act provides in pertinent part:

(a) 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).

179. The Enforcement Section herein re-alleges and restates the allegations of fact set forth in paragraphs 1 through 174 above.

180. The conduct of Respondent, as described above, constitutes violations of MASS.

GEN. LAWS. ch. 110A, § 204(a)(2)(G).

**C. COUNT III – Violations of MASS. GEN. LAWS. ch. 110A, § 204**

181. Section 204(a)(2)(J) of the Act provides in pertinent part:

(a) 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).

182. The Enforcement Section herein re-alleges and restates the allegations of fact set forth in paragraphs 1 through 174 above.

183. The conduct of Respondent, as described above, constitutes violations of MASS.

GEN. LAWS. ch. 110A, § 204(a)(2)(J).

## VIII. STATUTORY BASIS FOR RELIEF

184. Section 407A of the Act, entitled “Violations; Cease and Desist Orders; Costs,”

provides in pertinent part:

(a) If the secretary determines, after notice and opportunity for a 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 affirmative action, including the imposition of an administrative fine, the issuance of an order for accounting, disgorgement or rescission or any other relief as in his judgment may be necessary to carry out the purposes of [the Act]. . . .

185. The Enforcement Section re-alleges and restates the allegations of fact set forth in paragraphs 1 through 174 above.

186. Respondent, directly and indirectly, engaged in the acts, practices, and courses of business set forth in the Complaint above, and it is the Enforcement Section’s belief that Respondent will continue to engage in acts and practices similar in subject and purpose, which constitute violations, if not ordered to cease and desist.

## IX. PUBLIC INTEREST

For any and all of the reasons set forth above, it is in the public interest and will protect Massachusetts investors to provide the relief request in Section X below.

## X. RELIEF REQUESTED

Wherefore, the Enforcement Section of the Division requests that the Director or Presiding Officer take the following actions:

A. Revoke Respondent’s broker-dealer registration in the Commonwealth;



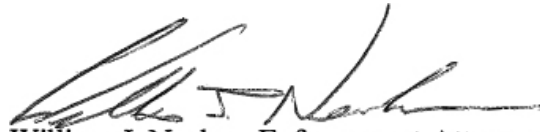
- B. Require Respondent to permanently cease and desist from further conduct in violation of the Act and Regulations in the Commonwealth;
- C. Find as fact the allegations set forth in paragraphs 1 through 174, inclusive of the Complaint;
- D. Impose an administrative fine on Respondent in such amount and upon such terms and conditions as the Director or Presiding Officer may determine;
- E. Censure Respondent; and
- F. Take any such further actions which may be in the public interest and necessary and appropriate for the protection of Massachusetts investors.

**MASSACHUSETTS SECURITIES DIVISION  
ENFORCEMENT SECTION**

By and through its attorneys,



Anthony R. Leone, Senior Enforcement Attorney



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Dated: November 12, 2015