

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

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IN THE MATTER OF:	)	
	)	
SII INVESTMENTS, INC.,	)	
	)	
RESPONDENT.	)	Docket No. E-2016-0128

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**CONSENT ORDER**

**I. PRELIMINARY STATEMENT**

This Consent Order (the “Order”) is entered into by the Massachusetts Securities Division (the “Division”) and SII Investments, Inc. (“SII”) with respect to the administrative complaint (“Administrative Complaint”) filed by the Enforcement Section of the Massachusetts Securities Division (the “Enforcement Section”) against SII on September 20, 2017 that alleged violations of the Massachusetts Uniform Securities Act, MASS. GEN. LAWS ch. 110A (“Act”), and the corresponding regulations promulgated thereunder at 950 MASS. CODE REGS. 10.00 – 14.413 (“Regulations”).

On September 5, 2018, SII submitted an Offer of Settlement (the “Offer”) to the Division. SII neither admits nor denies the Statement of Facts set forth in Section V below and the Violation of Law set forth in Section VI below, and consents solely for the purpose of these proceedings to this Order by the Division, consistent with the language and terms of the Offer, settling this proceeding (Docket No. E-2016-0128), with prejudice.

## II. JURISDICTION

1. As provided for by the Act, the Division has jurisdiction over certain matters relating to securities. The Act authorizes the Division to regulate individuals offering and selling securities within the Commonwealth.

2. The Offer was made and this Order is entered in accordance with MASS. GEN. LAWS ch. 110A. Specifically, the acts and practices investigated took place in Massachusetts and were directed toward Massachusetts residents.

## III. RELEVANT TIME PERIOD

3. Except as otherwise expressly stated, the conduct described herein occurred during the time period of January 1, 2011 to December 31, 2016 (“Relevant Time Period”).

## IV. RESPONDENT

4. SII Investments, Inc. is a broker-dealer and investment adviser with headquarters in Appleton, Wisconsin. SII has a Financial Industry Regulatory Authority Central Registration Depository number of 2225. SII has been registered as a broker-dealer in Massachusetts since January 8, 1997.

5. In August 2017, SII’s assets were sold to another broker-dealer.

6. On July 10, 2018, SII filed with FINRA a Form BDW (*Uniform Request for Broker-Dealer Withdrawal*).

7. On August 8, 2018, the Division entered a Conditional Withdrawal Order in this matter pursuant to which SII’s withdrawal as a broker-dealer in Massachusetts shall become effective at such time as a final disposition is reached in this matter.

## V. STATEMENT OF FACTS

8. During the Relevant Time Period, SII's Massachusetts registered representatives recommended non-traded real estate investment trusts ("REITs") to certain investors located in the Commonwealth of Massachusetts (the "Investors").

9. Certain Investors elected to purchase non-traded REIT securities from SII (the "Non-Traded REIT Purchases").

10. The applicable prospectuses for many of the Non-Traded REIT Purchases contained guidelines concerning the Investors' maximum investment in the issuer and its affiliates. Some of these guidelines were based on the Investors' liquid net worth. For example, the prospectuses for some Non-Traded REIT Purchases stated: "It is recommended by the office of the . . . Massachusetts Securities Division that investors in . . . Massachusetts, [], not invest, in the aggregate, more than 10% of their liquid net worth in this and similar direct participation investments. For purposes of this recommendation, 'liquid net worth' is defined as that portion of net worth that consists of cash, cash equivalents and readily marketable securities." Other Non-Traded REIT Purchases were subject to a net worth guideline in the applicable prospectus.

11. SII's Compliance Guide stated:

Investments in these products [non-traded REITs] are limited to no more than 10% of a client's liquid net worth in any one sponsor's REIT/DPP, with a maximum of 20% of liquid net worth allowed across all such products. For example, 5% of a client's liquid net worth may be invested in one sponsor's REIT/DPP, and an additional 5% may be invested in another REIT/DPP offered by that sponsor. However, no more than 10% of a client's net worth may be invested with one sponsor.

12. SII's policies and procedures required SII's registered representatives to calculate the Investors' liquid net worth and net worth at the point of sale when recommending the purchase of a non-traded REIT.

13. SII's Compliance Guide stated:

Liquid Net Worth is a client's net worth minus assets that cannot be converted quickly and easily into cash, such as real estate, business equity, personal property and automobiles, expected inheritances, assets earmarked for other purposes, and investments or accounts subject to substantial penalties if they were sold or if assets were withdrawn from them.

14. SII's Compliance Guide included variable and fixed annuities on a list of what constituted liquid products.

15. The section of SII's Compliance Guide relating to variable annuities stated:

There must not be any representation or implication that variable annuities are short-term, liquid investments. Presentations regarding liquidity or ease of access to investment values must be balanced by clear language describing the negative impact of early redemptions. Examples of this negative impact may be the payment of Contingent Deferred Sales Charges and tax penalties, and the fact that the investor may receive less than the original amount invested.

16. SII's Compliance Guide did not define "substantial penalty" or provide clarification on what constitutes a "substantial penalty."

17. SII recommended the Non-Traded REIT Purchases without any analysis of whether or not a "substantial penalty" applied to the purchase.

18. Certain Investors reported owning annuities with pending surrender charges prior to their Non-Traded REIT Purchases. The practice of some of SII's registered representatives was to include the full value of any annuities held by the Investors in

calculating their liquid net worth, without regard to any applicable surrender charges associated with the annuities.

19. Surrender charges applicable to the annuities held by the Investors could equal up to 10% of the value of the Investors' annuity following the initial purchase. These surrender charges declined over time and typically would be eliminated after a period of seven years or less.

20. SII's written policies and procedures did not specifically require SII's registered representatives to deduct the value of any surrender charges applicable to a client's annuities when calculating the Investors' liquid net worth at the point of sale of their Non-Traded REIT Purchases.

21. By failing to exclude the value of any annuities from the calculation of the Investors' liquid net worth in connection with the Non-Traded REIT Purchases, SII's registered representatives did not properly calculate the liquid net worth of some Massachusetts clients.

## **VI. VIOLATION OF LAW**

22. 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).

23. As described above, SII's conduct violated MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J).

## VII. ORDER

### IT IS HEREBY ORDERED:

A. SII shall permanently cease and desist from conduct in violation of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J);

B. SII is censured by the Division;

C. SII shall hire a qualified independent consultant to determine if any Massachusetts investor identified by the Division purchased a non-traded REIT in an amount that exceeds SII's liquid net worth concentration limits for non-traded REITs (10% of a client's liquid net worth in any one sponsor's REIT, with a maximum of 20% of liquid net worth allowed across all such products), by failing to subtract from the client's liquid net worth the value of any annuity product used to support the investor's liquid net worth calculation, as disclosed by the investor at the point of sale (each such purchase is referred to as a "Rescission Eligible Purchase"). For each Rescission Eligible Purchase identified by the independent consultant, SII shall, within sixty (60) days of the entry of this Order, mail an offer of rescission to each investor that made such a Rescission Eligible Purchase, subject to the following terms:

1. The offer shall remain open for thirty (30) days from the date of mailing ("Offer Period"). Each offer of rescission shall offer to refund the investor's initial principal investment in the non-traded REIT minus any income received from the security, and/or any amount received for the sale of security or the value of the security as of May 8, 2018, as determined by the

independent consultant's analysis. Investors who accept the offer of rescission who still hold the non-traded REIT shares will be required to transfer their shares to SII in exchange for the refund of their initial principal investment. No later than ten (10) business days following the final day of the Offer Period described in this paragraph, SII shall notify the Division whether any offer of rescission has been accepted. SII shall bear all costs associated with the undertakings described in this paragraph;

2. The proposed written offers to Massachusetts investors to provide rescission shall not be unacceptable to the Enforcement Section, and a draft of the proposed written offers shall be provided to the Enforcement Section; and
3. Within thirty (30) days following the date that SII makes any rescission payment, SII shall provide the Enforcement Section with a final accounting (the "Final Accounting") and certification of the disposition of the payments. The Final Accounting shall be in a form not unacceptable to the Enforcement Section and include: (1) the name and address of each recipient of an offer of rescission, if any; (2) the amount paid to each individual that accepted the offer of rescission; (3) the date of each payment; (4) evidence of all payments made; and (5) the date and amount of any returned payment(s). SII shall cooperate with requests for information in connection with the Final Accounting and provide supporting documentation to the Enforcement Section upon request;

D. Within ten (10) business days of the entry of this Order, SII shall disgorge all commissions related to any Rescission Eligible Purchase resulting in an offer of rescission under Paragraph C above;

E. Within ten (10) business days of the entry of this Order, SII shall pay an administrative fine in the amount of \$50,000 to the Commonwealth of Massachusetts. Payment shall be: (1) made by United States postal money order, certified check, bank cashier's check, bank money order, or wire transfer; (2) made payable to the Commonwealth of Massachusetts; (3) either hand-delivered or mailed to One Ashburton Place, Room 1701, Boston, Massachusetts 02108 or wired per the Division's instructions; and (4) submitted under cover letter or other documentation that identifies the docket number of this proceeding;

F. SII shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal, or local tax for any amounts that SII shall pay pursuant to this Order;

G. SII shall not seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to, any payments made pursuant to any insurance policy, with regard to any amount that SII shall pay pursuant to this Order;

H. Upon issuance of the Order, if SII fails to comply with any of the terms set forth in the Order, the Enforcement Section may institute an action to have this agreement declared null and void. Upon issuance of an appropriate order and after a fair hearing, the Enforcement Section may re-institute an action against SII; and

I. At the request of the SII, the Division may extend any of the procedural dates set forth above.



## VIII. NO DISQUALIFICATION

This Order waives any disqualification in the Massachusetts laws, or rules or regulations thereunder, including any disqualification from relying upon the registration exemptions or safe harbor provisions to which SII or any of its affiliates may be subject. This Order is not intended to form the basis of any disqualification under federal securities laws, or rules or regulations thereunder, or the rules and regulations of self-regulatory organizations or various states' and U.S. Territories' securities laws, including but not limited to Section 3(a)(39) of the Securities Exchange Act of 1934, Rule 262(a) of Regulation A, Rules 504 or 506 of Regulation D under the Securities Act of 1933, the FINRA rules and regulations, or Section 204(a)(2) of the Uniform Securities Act of 1956 or Section 412(d) of the Uniform Securities Act of 2002.

## IX. WITHDRAWAL OF REGISTRATION

Pursuant to the Division's August 8, 2018 Conditional Withdrawal Order, SII's withdrawal as a broker-dealer in Massachusetts shall become effective upon the entry of this Order.

**WILLIAM FRANCIS GALVIN**  
**SECRETARY OF THE COMMONWEALTH**

By: 

Bryan J. Lantagne

Director

Massachusetts Securities Division

One Ashburton Place, Room 1701

Boston, MA 02108

Date: September 7<sup>th</sup>, 2018