

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

)	
IN THE MATTER OF:)	
NICK PALKY,)	
RESPONDENT.)	Docket No. E-2022-0105
)	

CONSENT ORDER

I. PRELIMINARY STATEMENT

This Consent Order (the “Order”) is entered into by the Massachusetts Securities Division (the “Division”) and Nick Palky (“Palky”) with respect to the above-captioned investigation by the Division into conduct engaged in by Palky in violation of the Massachusetts Uniform Securities Act, Mass. Gen. Laws c. 110A (the “Act”), and the regulations promulgated thereunder at 950 Code Mass. Regs. 10.01-14.413 (the “Regulations”). Specifically, Palky defrauded at least one client into liquidating money market fund holdings then misappropriating those funds for his own personal use.

On March 19, 2023, Palky submitted an Offer of Settlement (the “Offer”) to the Division. Palky admits the facts set forth in Sections III through VI and the violations of law set forth in Section VII below, and consents to the entry of this Order by the Division, consistent with the language and terms of the Offer, settling the above-captioned investigation (E-2022-0105) with prejudice.

II. JURISDICTION

1. The Division has jurisdiction over matters relating to securities pursuant to the Act, codified at Chapter 110A of the Massachusetts General Laws.
2. The Offer was made and this Order is entered in accordance with the Act and with Section 10.10 of the Regulations.
3. The acts and practices that were the subject of the Division's above-captioned investigation occurred in Massachusetts within the meaning of Section 414 of the Act.

III. RELEVANT TIME PERIOD

4. Except as otherwise expressly stated, the conduct described herein occurred during the approximate time period of 2001 to the present (the "Relevant Time Period").

IV. RESPONDENT

5. Nick Palky ("Palky"), is an individual with a last known address in Simi Valley, California. Palky was a Massachusetts resident until 2016 and has a Financial Industry Regulatory Authority ("FINRA") Central Registration Depository ("CRD") number of 1635869. He first registered in the securities industry in Massachusetts on April 6, 1987, and was most recently registered in Massachusetts as a broker-dealer agent of Investors Capital Corp. (CRD No. 30613) from November 7, 2012, to July 27, 2015. Palky has not been registered in any capacity in the securities industry since July 27, 2015.

V. OTHER RELEVANT ENTITIES

6. Massachusetts Financial Services Company ("MFS") is a professional corporation organized in Delaware on January 7, 1982. It has a principal place of business located at 111 Huntington Avenue, Boston, Massachusetts 02199.

7. Putnam Investment Management, LLC (“Putnam”) is a limited liability company organized in Delaware on January 2, 2001. It has a principal place of business located at 100 Federal Street, Boston, Massachusetts 02110.

8. FMR LLC (“Fidelity Investments”) is a limited liability company organized in Delaware on August 8, 2007. It has a last known principal place of business located at 245 Summer Street, Boston, Massachusetts 02210.

VI. STATEMENT OF FACTS

A. Background

9. Palky, also known as Nikhil Palkhiwala and Nick Palkhiwala, was born in India and immigrated to the United States in 1979. Shortly thereafter, Palky moved to Boston, Massachusetts where he briefly attended Boston University.

10. While living in Massachusetts, Palky was active in the financial services industry, acting as a registered broker-dealer agent and investment adviser representative, a tax advisor, and an economics professor at Bunker Hill Community College.

11. Palky first registered in the securities industry in Massachusetts on April 6, 1987 and was registered with Investors Capital Corp. (“ICC”) from February 17, 1994, to December 31, 2009, and from November 7, 2014, to July, 27, 2015.

B. Palky Defrauded Massachusetts Client by Convincing the Client to Liquidate Money Market Fund Holdings and Transferring the Proceeds to Himself Without Client Authorization

12. In or about 2001, a United States citizen and Denmark resident (the “Client”) was introduced to Palky while in Massachusetts by the Client’s sister, a Massachusetts resident and client of Palky.

13. Shortly after meeting the Client, Palky began providing the Client with financial services, including securities advice and tax advisory services.
14. At all times Palky provided financial services to the Client, Palky was located in Massachusetts.
15. Palky opened investment accounts on behalf of the Client with MFS and Putnam.
16. On January 5, 2009, Palky sent a check writing application to Putnam (the “Putnam Check Writing Application”) on behalf of the Client. Palky forged the Client’s signature on the Putnam Check Writing Application, which was accompanied by Palky’s Medallion Guaranteed Signature.
17. On May 20, 2009, Palky sent a check writing application to MFS (the “MFS Check Writing Application”) on behalf of the Client. Palky forged the Client’s signature on the MFS Check Writing Application, which was accompanied by Palky’s Medallion Guaranteed Signature.
18. The Putnam and MFS Check Writing Applications were both approved and the check books were delivered to Palky’s address in Woburn, Massachusetts, giving Palky the ability to write checks on the Client’s behalf from the MFS and Putnam accounts.
19. On October 4, 2014, Palky informed the Client that the Client’s MFS account contained investments valued at roughly \$115,000 (USD) and the Client’s Putnam account contained investments valued at roughly \$165,000 (USD), for a total value of approximately \$280,000 (USD). Palky also informed the Client that he would begin transferring the Client’s investments into money market funds.
20. Shortly thereafter, Palky hatched a scheme to transfer client funds without authorization. Palky first recommended that the Client liquidate the money market funds

held in the Client's MFS and Putnam accounts. Palky then made regular withdrawals of funds from the Client's MFS and Putnam accounts without authorization to do so. Palky deposited these funds into his personal accounts and used them for personal expenses.

21. On January 4, 2016, a check made payable to Palky in the amount of \$20,000 (USD) was drawn from the Client's MFS account ("Check 1"). Check 1 was not signed by the Client but contained a forgery of the Client's signature.

22. Palky wrote Check 1 without the Client's knowledge or authorization and forged the Client's signature.

23. On January 4, 2016, Palky deposited Check 1 into Palky's Cambridge Saving Bank account ending in 7112 (the "Palky Bank Account").

24. On January 6, 2016, a check made payable to Palky in the amount of \$30,000 (USD) was drawn from the Client's Putnam account ("Check 2"). Check 2 was not signed by the Client but contained a forgery of the Client's signature.

25. Palky wrote Check 2 without the Client's knowledge or authorization and forged the Client's signature.

26. On January 7, 2016, Palky deposited Check 2 into the Palky Bank Account.

27. On May 15, 2016, a check made payable to Palky in the amount of \$30,000 (USD) was drawn from the Client's MFS account ("Check 3"). Check 3 was not signed by the Client but contained a forgery of the Client's signature.

28. Palky wrote Check 3 without the Client's knowledge or authorization and forged the Client's signature.

29. On May 16, 2016, Palky deposited Check 3 into the Palky Bank Account.

30. On May 22, 2016, a check made payable to Palky in the amount of \$45,000 (USD) was drawn from the Client's Putnam account ("Check 4"). Check 4 was not signed by the Client but contained a forgery of the Client's signature.
31. Palky wrote Check 4 without the Client's knowledge or authorization and forged the Client's signature.
32. On May 23, 2016, Palky deposited Check 4 into the Palky Bank Account.
33. On July 21, 2016, a check made payable to Palky in the amount of \$64,648.74 (USD) was drawn from the Client's Putnam account ("Check 5"). Check 5 was not signed by the Client but contained a forgery of the Client's signature.
34. Palky wrote Check 5 without the Client's knowledge or authorization and forged the Client's signature.
35. On July 22, 2016, Palky deposited Check 5 into the Palky Bank Account.
36. On August 21, 2016, a check made payable to Palky in the amount of \$45,232.12 (USD) was drawn from the Client's MFS account ("Check 6"). Check 6 was not signed by the Client but contained a forgery of the Client's signature.
37. Palky wrote Check 6 without the Client's knowledge or authorization and forged the Client's signature.
38. On August 22, 2016, Palky deposited Check 6 into the Palky Bank Account.
39. From January 4, 2016, through August 22, 2016, Palky, without the Client's knowledge or authorization, withdrew a total of \$95,232.12 (USD) from the Client's MFS account and deposited the entire amount into the Palky Bank Account.

40. From January 6, 2016, through July 22, 2016, Palky, without the Client's knowledge or authorization, withdrew a total of \$139,680.74 (USD) from the Client's Putnam account and deposited the entire amount into the Palky Bank Account.

41. In total, Palky misappropriated \$234,912.86 (USD) of the Client's funds and deposited the entirety into the Palky Bank Account.

C. Palky Further Misled the Client by Misrepresenting the Status of the Client's Accounts

42. On August 17, 2016, the Client e-mailed Palky asking Palky to transfer her funds held at Putnam and MFS to her separately managed accounts held at Merrill Lynch.

43. In response, Palky e-mailed the Client refusing to send any funds to a third-party and suggested he retain management of the Client's funds. Palky further represented doing so for other clients—despite not being registered in the securities industry since July 2015.

44. Despite these representations, Palky had already withdrawn all funds from the Client's MFS and Putnam accounts.

45. Palky eventually transferred the Client's funds from the Palky Bank Account to his account at Fidelity Investments.

46. In 2018, Palky moved to Simi Valley, California where he purchased a home in cash. Since moving to California, Palky has had no sources of income.

47. Instead, Palky uses the Client's funds and any associated investment gains from these funds to pay for all his basic living expenses.

D. Palky Acted as an Unregistered Broker-Dealer Agent while Defrauding the Massachusetts Client

48. Palky's Massachusetts broker-dealer agent registration with ICC terminated on July, 27, 2015.

49. As of July 28, 2015, Palky was no longer registered as a broker-dealer agent in Massachusetts and was not permitted to engage in broker-dealer services in Massachusetts.

50. Despite no longer holding any Massachusetts registrations, beginning in 2016 Palky effected transactions in the Client's MFS and Putnam accounts and transferred any proceeds from the sale to the Palky Bank Account.

VII. VIOLATIONS OF LAW

Count I - Mass. Gen. Laws c. 110A, § 101

51. Section 101 of the Act provides:

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 c. 110A, § 101.

52. Palky's acts and practices, as described above, constitute violations of Section 101 of the Act.

Count II - Mass. Gen. Laws c. 110A, § 102

53. Section 102 of the Act provides:

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

....

- (1) to employ any device, scheme, or artifice to defraud the other person,
- (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 c. 110A, § 102.

54. Palky's acts and practices, as described above, constitute violations of Section 102 of the Act.

Count II – Mass. Gen. Laws c. 110A, § 201(a)

55. Section 201(a) of the Act provides, in pertinent part:

It is unlawful for any person to transact business in this commonwealth as a broker-dealer or agent unless he is registered under this chapter.

Mass. Gen. Laws c. 110A, § 201(a).

56. Palky's acts and practices, as described above, constitute violations of Section 201(a) of the Act.

VIII. ORDER

IT IS HEREBY ORDERED:

- A. Palky shall permanently cease and desist from committing further violations of the Act;
- B. Palky is hereby censured by the Division;
- C. Palky shall not seek registration in the Commonwealth as, and not associate with or act in the Commonwealth as (i) a broker-dealer; (ii) a broker-dealer agent; (iii) an investment adviser; (iv) an investment adviser representative; (v) a Securities and Exchange Commission registered investment adviser; (vi) an investment adviser exempted from registration; (vii) a person relying on an exclusion from the definition of "broker-

dealer” or “investment adviser” in any capacity; (viii) an issuer; (ix) an issuer-agent; and (x) a partner, an officer, a director, or a control person of any of the foregoing;

D. Palky shall, within sixty (60) days of the entry of this Order, pay restitution directly to the Client’s estate in the amount of \$234,912.86 (USD) plus 1% per annum from August 2016 totaling \$250,608.46 (USD);

E. Palky shall, within five (5) days of the entry of this Order, pay an administrative fine in the amount of \$100,000 (USD). Payment shall be:

- i. Made by United States Postal Service postal money order, certified check, bank cashier’s check, bank money order, or wire transfer;
- ii. Made payable to the Commonwealth of Massachusetts;
- iii. Mailed to One Ashburton Place, Room 1701, Boston, Massachusetts 02108, or wired per the Division’s instructions; and
- iv. Submitted under cover letter or other documentation that identifies Palky as the entity making the payment and that bears the docket number of this matter (Docket No. E-2022-0105).

Additionally, Palky shall provide the Division with notice twenty-four (24) hours prior to making the payment;

F. Palky shall not claim, assert, or apply for a tax deduction or tax credit with regard to any local, state, or federal tax for any amount that he shall pay in accordance with this Order;

G. Palky 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 he shall pay in accordance with this Order;


H. If Palky is the subject of a voluntary or involuntary bankruptcy petition under Title 11 of the United States Code within three hundred sixty-five (365) days after the entry of this Order, Palky shall provide written notice to the Division within five (5) days after the date of the petition;

I. Any fine, penalty, and/or money that Palky pays in accordance with this Order is intended by Palky and the Division to be a contemporaneous exchange for new value given to Palky pursuant to 11 U.S.C. § 547(c)(1)(A) and is, in fact, a substantially contemporaneous exchange pursuant to 11 U.S.C. § 547(c)(1)(B); and

J. Upon entry of this Order, if Palky fails to comply with any of said terms, the Division may institute an action to have the settlement agreement and Order declared null and void.

K. The Division, for good cause shown, may extend any of the procedural deadlines set forth above.

**WILLIAM FRANCIS GALVIN
SECRETARY OF THE COMMONWEALTH**

By: 
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Dated: March 20, 2023