

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

IN THE MATTER OF:)

E.S. SCHWARTZ & COMPANY, INC.,)
EILEEN SIEGEL SCHWARTZ &)
LAWRENCE PAUL SCHWARTZ,)

RESPONDENTS.)

ADMINISTRATIVE COMPLAINT

DOCKET NO. E-2013-0085

SEC. REGISTRATION

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SECRETARY OF THE COMMONWEALTH

I. PRELIMINARY STATEMENT

The Enforcement Section of the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth (hereinafter the "Enforcement Section" and the "Division," respectively) files this administrative complaint (hereinafter the "Complaint") in order to commence an adjudicatory proceeding against the above-named Respondents, E.S. Schwartz & Company, Inc., Eileen Siegel Schwartz, and Lawrence Paul Schwartz (hereinafter collectively the "Respondents"), for violations of MASS. GEN. LAWS ch. 110A, the Massachusetts Uniform Securities Act (hereinafter the "Act") and 950 MASS. CODE REGS. 10.00 *et seq.*, (hereinafter the "Regulations"). The Complaint alleges that Respondents engaged in fraudulent activities, engaged in dishonest and unethical business practices, are insolvent, and made false filings with the Division as an investment adviser and as investment adviser representatives in the Commonwealth of Massachusetts in violation of the Act and Regulations.

The Enforcement Section seeks an Order: 1) requiring Respondents to permanently cease and desist from further conduct in violation of the Act and Regulations in the Commonwealth; 2) permanently revoking all of Respondents' respective registrations with the Division; 3) permanently barring Respondents from future registration of any type with the Division; 4)

censuring Respondents; 5) ordering Respondents to provide an accounting of all funds received from and owed to investors; 6) ordering rescission by Respondents to any investors from whom they have received funds or fees; 7) imposing an administrative fine on Respondents for each violation of the Act; and 8) taking any such further actions which may be necessary or appropriate in the public interest for the protection of Massachusetts investors.

II. SUMMARY

This action against E.S. Schwartz & Co. (“ESSC”), an investment adviser located in Auburndale, Massachusetts, its principal Eileen Schwartz and her husband and ESSC investment adviser representative Lawrence Schwartz, stems from five investments in real estate ventures that Eileen and Lawrence Schwartz created and sold to investors. Since 2005, Eileen and Lawrence Schwartz have launched five private real estate ventures, all of which have lost significant sums of money for their investors. The Schwartzes used their ESSC client base as an important source of funding for these ventures. All told, nineteen ESSC investment advisory clients have lost approximately \$2 million. Total losses to all investors—including at least twenty-five investors who were not clients of ESSC—are approximately \$5.4 million.

In selling investments in these ventures, the Schwartzes failed to disclose key information to investors. Three of the ventures invested in condominiums in Miami, Florida. These three ventures collectively raised \$695,000.00 from ESSC advisory clients. Yet, the Schwartzes did not disclose to these clients that they had no prior experience investing in the Miami real estate market. Additionally, two of these three ventures purchased pre-construction contracts on the condominiums, a type of transaction action in which the Schwartzes had no prior experience.

After launching these three Miami real estate ventures, the Schwartzes created two more real estate ventures. Both of these ventures proposed to buy, manage and eventually sell

apartment complexes containing over one hundred rental units. In total, these two ventures raised approximately \$3.2 million from investors—including \$600,000.00 from ESSC clients. Offering documents for both of these ventures claimed that the Schwartzes had experience in making real estate transactions. While this general claim was technically true, the documents did not inform investors that the Schwartzes' prior real estate experience only dealt with buying and renting single family and multi-family homes. According to the Schwartzes, their confidence in managing such a venture came from taking real estate management courses throughout the latter half of the 2000s. Based on information available to the Division, both of these ventures have been total losses for their investors.

In addition to the Schwartzes failing to disclose key information to investors in these ventures, these investments were laden with conflicts of interest *vis-à-vis* the Schwartzes and their ESSC clients. For example, the compensation arrangements for the three Miami ventures allowed the Schwartzes to reap almost \$70,000 in guaranteed front-end fees just for organizing the ventures. On top of the guaranteed fees, had the Miami ventures been profitable, the Schwartzes would have claimed nearly 60% of the profits despite not contributing any money to the ventures. In essence, the Schwartzes created and sold investments that demanded that their clients take 100% of the risk, but only share in 40% of the profits. The latter two ventures regarding the apartment complexes contained similar features that differed only in degree.

These five real estate ventures were also unsuitable for most of the ESSC clients that invested in them. According to information from ESSC, most of the clients that invested in these real estate ventures had moderate investment objectives and medium levels of risk tolerance. Yet, investments in all five of these ventures were high risk—especially in light of the Schwartzes' lack of experience. The various ventures warned prospective investors that these

investments were illiquid, designed for sophisticated investors and carried substantial risk. Nevertheless, Schwartzes sold these investments to their advisory clients. In at least two cases, the Schwartzes were aware that their clients were funding their investments with home equity loans.

In addition to the direct investments that the Schwartzes sold to investors, the Schwartzes also solicited loans from their clients to finance their real estate ventures. Through a company owned by the Schwartzes called Newton Centre Properties, Inc., (“NCP”), since 2008, the Schwartzes have borrowed approximately \$1.5 million from individuals—about \$1 million of which has come from their ESSC clients. NCP has used these loans for various purposes, including providing additional capital to the Schwartzes’ real estate ventures. But tax and financial records also show that the Schwartzes used NCP to secure loans from investors; funds from these loans were then lent by NCP to ESSC and the Schwartzes themselves. Undisclosed to NCP’s lenders is that ESSC itself has been unprofitable and insolvent since 2003. ESSC and the Schwartzes have also taken loans directly from clients. Based on information reviewed by the Enforcement Section—aside from an unexpected windfall to the Schwartzes—it is unclear how they will be able to pay these loans back.

Finally, two investors have personally sued the Schwartzes because of these real estate ventures. This information is required to be disclosed in ESSC’s annual filings with regulators, and in disclosure documents to ESSC clients. ESSC has repeatedly failed to do so.

In light of the foregoing, the Enforcement Section brings this action against Respondents, ESSC, and Eileen and Lawrence Schwartz.

III. JURISDICTION AND AUTHORITY

1. As provided for by the Act, the Division is a division of the Office of the Secretary of the Commonwealth with jurisdiction over matters relating to securities. The Act authorizes the Division to regulate: 1) the offer, sale, and purchases of securities; 2) those persons engaged in the business of effecting transactions in securities for the account of others or for their own account; and 3) those persons transacting business as investment advisers within the Commonwealth.
2. The Division brings this action pursuant to the enforcement authority conferred upon it by Section 407A of the Act and MASS. GEN. LAWS ch. 30A, wherein the Division has the authority to conduct an adjudicatory proceeding to enforce the provisions of the Act and all Regulations and rules promulgated thereunder.
3. This proceeding is brought in accordance with Sections 101, 102, 204, 404 and 407A of the Act. Specifically, the acts and practices constituting violations occurred within the Commonwealth of Massachusetts.
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 during the approximate time period of January 1, 2003 to present (the "Relevant Time Period").

V. RESPONDENTS

6. E.S. Schwartz & Company, Inc. (“ESSC”) is a corporation organized under the laws of the Commonwealth of Massachusetts with a principal place of business at 450 Lexington St., Suite 204, Auburndale, MA 02466. ESSC is currently assigned Financial Industry Regulatory Authority (“FINRA”) Central Registration Depository (“CRD”) number 124275. Since 1994, ESSC has been registered with the Commonwealth of Massachusetts as an investment adviser.
7. Eileen Siegel Schwartz (“Eileen Schwartz”) is an individual currently assigned FINRA CRD number 829444. Eileen Schwartz has owned and operated ESSC since 1986. She has been registered with the Commonwealth of Massachusetts as an investment adviser representative since 1994.
8. Lawrence Paul Schwartz (“Lawrence Schwartz”) is an individual currently assigned FINRA CRD number 833279. He is the husband of Eileen Schwartz. Since 1998, he has been registered with the Commonwealth of Massachusetts as an investment adviser representative of ESSC. Lawrence Schwartz has also held various other positions at ESSC such as Chief Operating Officer.

VI. RELATED PARTIES

9. Newton Centre Properties, Inc. (“NCP”) is a corporation organized on June 5, 1998 under the laws of Massachusetts. According to the Massachusetts Secretary of the Commonwealth Corporations Division, it has an identification number of 043423979. Eileen Schwartz is the resident agent, president, secretary and director. Lawrence Schwartz is the treasurer. NCP’s address is 450 Lexington St., Suite 204, Auburndale, MA 02466. It is an affiliate of ESSC.

10. Biscayne Real Estate I, Limited Partnership (“Biscayne I”) is a limited partnership organized on October 14, 2005 under the laws of Massachusetts. According to the Massachusetts Secretary of the Commonwealth Corporations Division, it has an identification number of 000907593. Lawrence Schwartz is the resident agent and general partner of Biscayne I. Biscayne I’s address is 450 Lexington St., Suite 204, Auburndale, MA 02466. According to Biscayne I’s Certificate of Limited Partnership, filed with the Secretary of the Commonwealth of Massachusetts on October 14, 2005, the stated purpose of Biscayne I is to acquire an interest in real estate in Miami, Florida.
11. Biscayne Real Estate II, Limited Partnership (“Biscayne II”) is a limited partnership organized on June 2, 2006 under the laws of Massachusetts. According to the Massachusetts Secretary of the Commonwealth Corporations Division, it has an identification number of 000925796. Eileen Schwartz is the resident agent and general partner of Biscayne II. Biscayne II’s address is 450 Lexington St., Suite 204, Auburndale, MA 02466. According to Biscayne II’s Certificate of Limited Partnership, filed with the Secretary of the Commonwealth of Massachusetts on June 2, 2006, the stated purpose of Biscayne II is to acquire an interest in real estate located in Miami, Florida.
12. Biscayne Real Estate III, Limited Partnership (“Biscayne III”)¹ was a limited partnership organized on December 21, 2005 under the laws of Massachusetts. Biscayne III was involuntarily dissolved on June 30, 2013. According to the Massachusetts Secretary of the Commonwealth Corporations Division, it had an identification number of 000963422. Eileen Schwartz was the resident agent of Biscayne III. Biscayne III’s general partner was NCP. Biscayne III’s address was 450 Lexington St., Suite 204, Auburndale, MA 02466.

¹ In 2007, Biscayne III was reorganized as a limited liability company named Biscayne Real Estate III, LLC. After this reorganization, Biscayne III’s business was carried out under this new entity. For all intents and purposes, this reorganization had no effect on the original purpose and business of the Biscayne III.

According to Biscayne III's Certificate of Limited Partnership, filed with the Secretary of the Commonwealth of Massachusetts on June 2, 2006, the stated purpose of Biscayne III was to acquire an interest in a condominium unit in Miami, Florida.

13. Southeast Apartment Investors ("Southeast"), is a limited partnership organized on June 1, 2007 under the laws of Massachusetts. According to the Massachusetts Secretary of the Commonwealth Corporations Division, Southeast has an identification number of 000952901. Eileen Schwartz is the resident agent of Southeast. The general partner of Southeast is NCP. Southeast's principal place of business is 450 Lexington St., Suite 204, Auburndale, MA 02466. The stated purpose of the partnership is to purchase, manage and eventually sell an apartment complex in Decatur, Georgia.
14. Arlington Apartment Investors ("Arlington"), is a limited liability company formed under the laws of Texas in or around November 23, 2009. The managing member of Arlington is NCP Arlington, LLC, a company controlled by Eileen and Lawrence Schwartz. Arlington's principal place of business is 450 Lexington St., Suite 204, Auburndale, MA 02466. The stated purpose of Arlington is to purchase, manage and eventually sell an apartment complex in Arlington, Texas.

VII. ALLEGATIONS OF FACT

15. Since 1994, ESSC has been registered with the Commonwealth of Massachusetts as an investment adviser.
16. Since 1994, Eileen Schwartz has been registered with the Commonwealth of Massachusetts as an investment adviser representative of ESSC.
17. At all times, Eileen Schwartz has been the owner, president, and chief executive officer of ESSC.

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18. Lawrence Schwartz has been registered with the Commonwealth of Massachusetts as an investment adviser representative of ESSC since 1998. According to Lawrence Schwartz, in the early 2000s, he was ESSC's Chief Operating Officer, but he no longer holds this position. However, ESSC's most recent Form ADV Part 2B refers to Lawrence Schwartz as ESSC's Chief Operating Officer and states that he supervises Eileen Schwartz.
 19. ESSC offers its clients two types of investment advisory services: portfolio management services, typically provided for on a discretionary basis; and financial planning and consulting to clients. Many clients have contracts with ESSC for both services.
 20. As of July 2014, ESSC had approximately \$8.5 million in assets under management across approximately eighty client accounts.
 21. According to filings that ESSC made with the CRD, it has five employees. These employees include three investment adviser representatives, a bookkeeper and an attorney who is general counsel to ESSC.

The Biscayne Real Estate Ventures

22. During 2005 and 2006, Eileen and Lawrence Schwartz created three private real estate investment vehicles.
23. These three ventures were named Biscayne I, Biscayne II, and Biscayne III (collectively, the "Biscayne Entities"). All of the Biscayne Entities were organized in Massachusetts as limited partnerships.
24. Eileen and Lawrence Schwartz created the Biscayne Entities to make investments in condominiums in Miami, Florida.
25. Investments made in the Biscayne Entities were speculative in nature.

26. Two of the Biscayne Entities, Biscayne I and Biscayne II, purchased pre-construction contracts—one contract per entity—for specific condominiums that were yet to be built. These pre-construction contracts gave Biscayne I and Biscayne II each the right to buy a designated condominium unit upon the respective unit’s completion. According to Biscayne I and Biscayne II’s respective subscription agreements, both intended to sell their pre-construction contracts prior to the completion of the units, thereby exiting the investment and returning the proceeds and profits to their respective limited partners.
27. The third entity, Biscayne III, was formed with the stated purpose of purchasing an already built condominium unit. According to Biscayne III’s subscription agreement, after purchasing the unit, it planned to lease the condominium for a period of one to three years and then sell the condominium. During the leasing period, Biscayne III intended to generate income for its limited partners. Upon the sale of the condominium, Biscayne III planned to distribute the proceeds and profits from the sale to its limited partners.
28. Eileen and Lawrence Schwartz marketed investments in the Biscayne Entities as limited partnership “interests” to investment advisory clients of ESSC (“ESSC Clients”).²
29. Limited partnership interests in the Biscayne Entities are securities.
- Structure and Capital Formation of the Biscayne Entities**
30. The Biscayne Entities were financed and capitalized through monetary contributions from limited partners.
31. The money that each Biscayne entity raised was used to make down payments on condominiums at a condominium complex in Miami, Florida.

² For purposes of this Complaint, the term “ESSC Clients” refers to individuals to whom ESSC provided portfolio management services and those to whom ESSC provided financial planning and consulting services.

32. The limited partners for the Biscayne Entities were divided into two classes: Class A limited partners and Class B limited partners.
33. The Class A limited partners were the limited partners that contributed money to the partnership. Each of the Biscayne Entities' subscription agreements referred to the Class A limited partners as investors.
34. The Class B limited partners paid \$1.00 each for their Class B limited partnership interests in each Biscayne entity.
35. Upon information and belief, the Class B limited partners essentially had the same rights and privileges as the Class A limited partners.
36. Biscayne I had four Class A limited partners that contributed a total of \$375,000.00 to the partnership.
37. All four Class A limited partners bought their limited partnership interests upon the recommendation and solicitation from Eileen and Lawrence Schwartz.
38. All four of Biscayne I's Class A limited partners were ESSC Clients at the time of their investment.
39. Biscayne I also had two Class B limited partners that contributed \$1.00 each to the partnership. These two Class B limited partners were Eileen and Lawrence Schwartz.
40. Biscayne II had three Class A limited partners that contributed a total of \$200,000.00 to the partnership.
41. All three Class A limited partners bought their limited partnership interests upon the recommendation and solicitation from Eileen and Lawrence Schwartz.
42. All three of Biscayne II's Class A limited partners were ESSC Clients at the time of their investment.

43. Biscayne II also had two Class B limited partners that contributed \$1.00 each to the partnership. These two Class B limited partners were Eileen and Lawrence Schwartz.
44. Biscayne III had one Class A limited partner that contributed a total of \$120,000.00 to the venture.
45. The Class A limited partner bought her limited partnership interest upon the recommendation and solicitation from Eileen and Lawrence Schwartz.
46. Biscayne III's Class A limited partner was an ESSC Client at the time of her investment.
47. Biscayne III also had two Class B limited partners that contributed \$1.00 each to the partnership. These two Class B limited partners were Eileen and Lawrence Schwartz.
48. Through the efforts of Eileen and Lawrence Schwartz, the three Biscayne Entities collectively raised approximately \$695,000.00 from seven ESSC Clients.³

Management of the Biscayne Entities

49. According to the terms of the limited partnership agreements, the Biscayne Entities' Class A limited partners were strictly passive investors that had no role in the management or operations of the Biscayne Entities.
50. According to the terms of the Biscayne Entities' respective limited partnership agreements, the general partner for each Biscayne entity was responsible for carrying out the management and operations of the entity.
51. According to Biscayne I's limited partnership and subscription agreements, Lawrence Schwartz was Biscayne I's general partner.
52. According to Biscayne II's limited partnership and subscription agreements, Eileen Schwartz was Biscayne II's general partner.

³ One ESSC Client invested in both Biscayne I and Biscayne II.

53. Despite the designation of Eileen and Lawrence Schwartz as general partners for distinct entities, they managed these projects jointly, with both carrying out general partner duties for both Biscayne I and Biscayne II.

54. The general partner for Biscayne III was NCP, a company owned and operated by Lawrence Schwartz and Eileen Schwartz.

Compensation to the Biscayne Entities' Organizers and Distribution of Profits to Partners

55. The Biscayne Entities were structured such that Eileen and Lawrence Schwartz could profit in three different ways from each entity.

56. First, according to the subscription agreements and partnership agreements for each Biscayne entity, each Biscayne entity paid the general partner 10% of the money contributed by Class A partners as an "organizational fee" for organizing the partnership, and for identifying and purchasing the partnership's real estate. These organizational fees were front-end fees paid at the outset of the partnership.

57. Biscayne I paid its general partner, Lawrence Schwartz, an organizational fee of \$37,500.00.

58. Likewise, Biscayne II paid its general partner, Eileen Schwartz, an organizational fee of \$20,000.00.

59. Biscayne III paid its general partner, NCP, an organizational fee of \$12,000.00.

60. Second, according to the subscription agreements and partnership agreements for each Biscayne entity, the general partner of each of the Biscayne Entities was entitled to 15% of any profit made upon the liquidation of the property sold by that general partner's respective partnership.

61. Third, according to the subscription agreements and partnership agreements for each Biscayne entity, the general partner and the Class B limited partners shared 50% of the

remaining profits made on the sale of the particular Biscayne entity's sale of partnership property. The Class A limited partners shared, on a pro rata basis, the remaining 50% of the profits amongst themselves.

62. Thus, by virtue of being the general partner or the spouse of the general partner for the Biscayne Entities and being Class B limited partners in all three of the entities, Eileen and Lawrence Schwartz created real estate investments in which they were entitled to approximately 57% percent of any profit, even though they only contributed \$2.00 to each of the ventures.

Respondents Breached Their Fiduciary Duties to Their Clients to Whom They Sold Investments in the Biscayne Entities

63. Eileen and Lawrence Schwartz breached their fiduciary duty to the ESSC Clients to whom they sold Class A limited partnership units in the Biscayne Entities.

64. Through the three Biscayne Entities, Eileen and Lawrence Schwartz created and sold investments to their ESSC Clients in which their clients undertook 100% of the risk but could only receive approximately 40% of any profits the venture earned. Meanwhile, if the ventures were unsuccessful, Eileen and Lawrence Schwartz lost nothing.

65. Additionally, with each venture, the general partners—who were either Eileen Schwartz, Lawrence Schwartz, or both—collected a fee at the front end of each venture that was based on the amount of money that the Class A limited partners invested. As stated above, these fees ranged from \$12,000.00 to \$37,500.00 depending on the venture. Thus, even if the ventures were unprofitable, Eileen and Lawrence Schwartz still received substantial payments from each Biscayne venture.

66. In total, Eileen and Lawrence Schwartz collected \$69,500.00 in “organizational fees” from the Biscayne Entities.

67. Finally, by creating the Class B limited partnership interests, Eileen and Lawrence Schwartz engaged in self-dealing that put their interests before the interests of their ESSC Clients.
68. For example, in Biscayne I, according to the terms of both its limited partnership agreement and the subscription agreement, Eileen Schwartz had no role in the partnership. Yet, for a contribution of \$1.00, she was allowed to participate in the partnership as a Class B limited partner, giving her the right to approximately 22% of any profit made by the partnership. Similarly, Lawrence Schwartz was allowed to participate as a Class B limited partner in Biscayne II in the same manner as Eileen Schwartz did in Biscayne I.
69. In sum, the structure of the Biscayne Entities put Eileen and Lawrence Schwartz's interests in direct conflict with the interests of ESSC Clients participating as Class A limited partners.

Respondents Failed to Inform Biscayne Investors of Material Facts Pertaining to Their Investments in the Biscayne Entities .

70. Eileen and Lawrence Schwartz did not disclose certain material facts to Biscayne investors prior to selling them Class A limited partnership interests in the Biscayne Entities.
71. Eileen and Lawrence Schwartz did not disclose to the Biscayne investors that they had never invested in real estate in or around Miami, Florida.
72. Regarding Biscayne I and Biscayne II, Eileen and Lawrence Schwartz did not disclose to Class A limited partners that they had no experience in purchasing or selling pre-construction contracts.
73. In addition to the subscription agreements for the Biscayne Entities, Eileen and Lawrence Schwartz created documents outlining the investor returns for the Biscayne Entities in certain hypothetical profit scenarios.
74. Eileen and Lawrence Schwartz provided these documents outlining hypothetical returns to investors in the Biscayne Entities.

75. These documents did not provide hypothetical losses that investors might suffer if the property declined in value.
76. Additionally, Eileen Schwartz knew that Biscayne III's Class A limited partner ("Biscayne III Investor") intended to fund her investment with money from a home equity loan.
77. Undisclosed to Biscayne III Investor in the hypothetical profit scenario documents was that the total profitability of the investment would be reduced by the interest payments the Biscayne III Investor was required to pay on the home equity loan that funded her investment.

Investments in the Biscayne Entities Were Not Suitable for ESSC Clients

78. All ESSC Clients that invested in the Biscayne Entities did so upon the solicitation and advice of either Eileen or Lawrence Schwartz.
79. Limited partnership interests in the Biscayne Entities were not suitable for most of the ESSC Clients that invested in these ventures.
80. Each of the Biscayne Entities' subscription agreements warned investors that the investment was "designed for sophisticated persons who are able to understand and bear such a risk."
81. Upon information and belief, none of the investors that invested in the Biscayne Entities sufficiently understood the risks involved in the type of investments the ventures were making.
82. At the time of their respective investments in the Biscayne Entities, each investor was an investment advisory client of ESSC. As such, they relied on the investment advice of Eileen and Lawrence Schwartz in deciding whether or not to invest in the Biscayne Entities.

83. Upon information and belief, most of the Class A limited partners in Biscayne I and Biscayne II did not have the means, experience, or knowledge to invest in a pre-construction condominium contract.
84. Additionally, Biscayne III Investor was not adequately informed that she might have to assume outright ownership and care for the apartment that the venture was purchasing.
85. According to Eileen Schwartz, she recommended that Biscayne III Investor invest in Biscayne III because this client wanted to invest in real estate but was overwhelmed by the task of finding, purchasing and renting out a property in the Boston area.
86. To fund the Biscayne III investment, Eileen Schwartz advised Biscayne III Investor to fund her investment with a home equity loan, which the investor did. In essence, at the advice of Eileen Schwartz, Biscayne III Investor made her investment on a fully leveraged basis.
87. All three of the Biscayne Entities' subscription agreements warned investors that the investments were illiquid and that they would not be able to access their capital during the term of the investment.
88. Despite this warning, Eileen and Lawrence Schwartz recommended and sold investments in the Biscayne Entities that constituted an unsuitably large portion of each client's total investable assets.
89. At the recommendation of Eileen and Lawrence Schwartz, ESSC Clients invested between 3% and 10% of their total investible assets into the Biscayne Entities.

Performance of the Biscayne Entities

90. All three of the Biscayne Entities failed.
91. According to Eileen Schwartz, Biscayne I and Biscayne II lost at least 70% of the money that the Class A limited partners invested.

92. According to Eileen Schwartz, she does not know if the Biscayne III Investor received a return on her investment in Biscayne III.

93. When asked by the Division if Biscayne III Investor received a return on her initial investment, Eileen Schwartz testified, “[w]ell, they wound up with a condo, so whatever they did with it is whatever they did with it.”

Southeast Apartment Investors

94. In June 2007, Eileen and Lawrence Schwartz created a limited partnership called Southeast.

95. According to Southeast’s limited partnership agreement, the purpose of the venture was to “acquire, manage, finance, refinance, hold and eventually dispose of” a specified apartment complex in Decatur, Georgia. The apartment complex that Southeast purchased had over 100 units.

96. Eileen and Lawrence Schwartz raised approximately \$1.2 million from fifteen investors to capitalize the partnership.

97. Like the Biscayne Entities, investors that contributed money to the partnership in exchange for Class A limited partnership interests were classified as Class A limited partners.

98. According to Southeast’s private placement memorandum, Eileen and Lawrence Schwartz, as Class B limited partners, contributed \$1.00 each to Southeast.

99. NCP was Southeast’s general partner. As stated above, NCP is wholly owned and operated by Eileen and Lawrence Schwartz.

100. Southeast’s Class A limited partnership interests are securities.

Southeast Failed to Inform Investors of Material Facts Pertaining to Their Investments

101. Eileen and Lawrence Schwartz sold Class A limited partnership interests to fifteen investors.

102. Southeast's private placement memorandum contained material misstatements and omissions.
103. In Southeast's private placement memorandum section titled "Risk Factors," section 1 stated that Southeast has no operating history but that "the General Partner has substantial experience in making real estate transactions."
104. This statement was materially misleading on at least three grounds.
105. First, NCP's principals, Eileen and Lawrence Schwartz, did not have any prior experience in purchasing or selling apartment complexes containing over 100 units.
106. Second, Eileen and Lawrence Schwartz did not have any experience in managing an apartment complex with over 100 units.
107. Third, Eileen and Lawrence Schwartz did not have any experience analogous to buying, managing and selling an apartment complex of over 100 units.
108. Prior to Southeast, Eileen and Lawrence Schwartz's real estate experience involved buying and selling condominiums and homes that contained between one and three rental units.
109. According to testimony from both Eileen and Lawrence Schwartz, their only knowledge about how to buy, sell and manage an apartment complex of such size came from taking courses and attending seminars on real estate management in the mid-2000s.

Investments in Southeast Were Not Suitable For ESSC Clients

110. Eileen and Lawrence Schwartz recommended and sold Southeast Class A limited partnership interests to ESSC Clients.
111. Seven of the Class A limited partners were ESSC Clients.
112. These seven ESSC Clients collectively invested \$550,000.00 in Southeast.

113. According to Southeast's private placement memorandum, investments in Southeast were "highly speculative" and illiquid.
114. At the time these ESSC Clients made their respective investments in Southeast, these investments in Southeast ranged between 5% and almost 25% of their total investible net worth.
115. Committing such a large percentage of a client's portfolio to an illiquid investment was unsuitable.
116. Additionally, the risk profile and investment objectives for five of these seven ESSC Clients indicated that these clients were interested in investments with moderate growth objectives that took on moderate levels of risk.
117. An investment in Southeast was not suitable for investors with investment objectives of moderate growth and moderate risk tolerance.

ESSC Breached Its Fiduciary Duty to Its Clients Who Invested in Southeast

118. Like the Biscayne Entities, Southeast was also structured in such a way that the Class A limited partners contributed all of the money to the venture, but shared its profits with the Class B limited partners—who contributed no money.
119. According to Southeast's limited partnership agreement, if the apartment complex was sold for a profit at the end of its expected holding period, profits on the sale would be divided between the Class A limited partners, the Class B limited partners, and the general partner. The Class A limited partners shared, on a pro rata basis, 60% of the total profits, and the general partner and Class B limited partners shared the other 40%.

120. By its structure, if Southeast was unsuccessful, Eileen and Lawrence Schwartz lost nothing. Meanwhile, Eileen and Lawrence Schwartz asked their clients to undertake 100% of the risk and only be rewarded with 60% of any potential profits.
121. Additionally, according to Southeast's limited partnership agreement, the venture paid the general partner, NCP, a front-end fee of approximately 3.5% of the closing price of the property that Southeast intended to buy. This fee was characterized in the limited partnership agreement as an "expense reimbursement."
122. Upon information and belief, NCP was paid an "expense reimbursement" of at least \$100,000.00.
123. The structure of this investment put Eileen and Lawrence Schwartz's interests in direct conflict with the interests of ESSC Clients that invested in Southeast.

Southeast Borrowed Money From Its Limited Partners

124. Shortly after Southeast received investments from its investors and began operations, it experienced cash difficulties.
125. Through the efforts of Eileen and Lawrence Schwartz, between January 2009 and July 2013, Southeast raised additional funds from its Class A limited partners by selling promissory notes to those investors willing to provide money to Southeast.
126. The promissory notes sold by Southeast were securities.
127. Between January 2009 and July 2013, Southeast raised over \$230,000.00 from eight of its Class A limited partners through the sale of promissory notes.

Southeast's Promissory Notes Were Unsuitable Investments for ESSC Clients

128. Five of the Class A limited partners that bought promissory notes from Southeast were ESSC Clients.

129. Through the sale of these promissory notes, five ESSC Clients provided Southeast with approximately \$170,000.00.
130. Upon information and belief, Southeast needed these funds to keep the bank from foreclosing on its property in Georgia.
131. Two months before the bank foreclosed on Southeast's property, one Class A limited partner—who was also an ESSC Client—loaned Southeast \$100,000.00.
132. As stated above, Southeast's private placement memorandum stated that an investment in Southeast was "highly speculative."
133. Due to Southeast's cash management difficulties, as well as being in peril of foreclosure at the time these promissory notes were solicited, the initial high risk nature of the venture was augmented to an even higher degree.
134. The Southeast promissory notes that Eileen and Lawrence Schwartz sold to ESSC Clients were unsuitable investments for those ESSC Clients.

Performance of Southeast

135. According to Eileen Schwartz, in September 2013, Southeast's apartment complex was foreclosed upon.
136. According to Lawrence Schwartz, Southeast is expected to be a complete financial loss to all of its Class A limited partners.
137. According to information received from ESSC, Southeast has not made any significant payments to holders of its promissory notes.

Arlington Apartment Investors

138. In November 2009, Eileen and Lawrence Schwartz created a company called Arlington.

139. According to Arlington's private placement memorandum, the purpose of the company was to purchase, manage and resell a specified apartment complex in Arlington, Texas. The apartment complex that Arlington purchased had 176 units.
140. Eileen and Lawrence Schwartz raised approximately \$1.6 million from nineteen investors to capitalize Arlington.
141. Investors that contributed money to the venture received interests called "Class A units" and were classified as Class A members.
142. According to Arlington's private placement memorandum and company agreement, Eileen and Lawrence Schwartz, and one other individual, contributed \$1,000.00 collectively to Arlington.⁴ In return for this contribution, Eileen and Lawrence Schwartz received Class B units and were classified as Class B members.
143. A company⁵ wholly owned and operated by Eileen and Lawrence Schwartz was Arlington's general partner.
144. Arlington's Class A units were securities.

Arlington Failed to Inform Investors of Material Facts Pertaining to Their Investments

145. Eileen and Lawrence Schwartz sold Class A units in Arlington to twenty-two investors.
146. Arlington's private placement memorandum contained material misstatements and omissions.

⁴ According to Arlington's subscription agreement, Eileen and Lawrence Schwartz collectively contributed \$800.00 to Arlington in exchange for Class B units. A Third Class B member contributed \$200.00.

⁵ The company referred to here is named NCP Arlington, LLC. According to Arlington's subscription agreement, Newton Centre Properties, Inc. (referred to as NCP throughout this Complaint) is the managing member of NCP Arlington, LLC. Newton Centre Properties, Inc. is owned by Eileen and Lawrence Schwartz.

147. Arlington's private placement memorandum stated in a section titled "Prior Performance of the Company, the Managing Member and Affiliates" that "Members of the Managing Member have experience investing in real estate"
148. This statement is materially misleading on at least two grounds.
149. First, the only prior experience that NCP's principals, Eileen and Lawrence Schwartz, had in the size and type of real estate venture like Arlington was their experience in Southeast.
150. At the time Eileen and Lawrence Schwartz solicited investments in Arlington, there was no history supporting Eileen and Lawrence Schwartz's ability to manage such a project.
151. Arlington's company agreement was dated November 23, 2009. By this date, Southeast had already borrowed approximately \$94,000.00 in unanticipated loans from its investors.
152. Second, aside from Southeast, Eileen and Lawrence Schwartz's real estate experience prior to creating Arlington only involved buying and selling condominiums and homes that contained between one and three rental units.
153. Aside from Southeast, Eileen and Lawrence Schwartz's only knowledge about how to buy, sell and manage an apartment complex of such size came from taking courses and attending seminars on real estate management in the mid-2000s.

ESSC Breached Its Fiduciary Duty to Its Client Who Invested in Arlington

154. Eileen and Lawrence Schwartz sold a \$50,000.00 investment in Class A units to an ESSC Client ("Arlington Investor 1").

155. Like the Biscayne Entities, Arlington was also structured in such a way that the Class A members contributed all of the money to the venture, but shared any profits with the Class B members who collectively contributed only \$1,000.00.
156. According to Arlington's company agreement, if the apartment complex was sold for a profit at the end of its expected holding period, profits on the sale would be divided between the Class A members and the Class B members and the general partner. The Class A members shared, on a pro rata basis, 50% of the profits, and the general partner and Class B members shared the other 50%.
157. By the terms of its structure, if Arlington was unsuccessful, Eileen and Lawrence Schwartz lost nothing. Meanwhile, they asked Arlington Investor 1 to undertake 100% of the risk and only be rewarded with about 50% of any potential profits.
158. Additionally, the venture paid the managing member a front-end fee of approximately \$237,500.00. This fee is characterized in Arlington's company agreement as an "acquisition expense."
159. The structure of this investment put Eileen and Lawrence Schwartz's interests in direct conflict with the interests of Arlington Investor 1.

ESSC's Sale of Arlington Class A Units to Arlington Investor 1 Was Unsuitable

160. The sale of Class A units to Arlington Investor 1 was unsuitable.
161. Arlington Investor 1 invested \$50,000.00 in Arlington's Class A units.
162. According to information provided by ESSC to the Division, at the time Arlington Investor 1 invested in Arlington, she only had \$100,000.00 in investible assets.

Performance of the Arlington Venture

163. According to Lawrence Schwartz, in November 2012, the bank foreclosed on Arlington's apartment complex. Thus, Arlington no longer owns the apartment complex or any other real property.
164. According to Lawrence Schwartz, whether Class A members will receive any money back on their investment depends upon the outcome of a lawsuit that Arlington has pending against an insurance company.
165. Upon information and belief, to date, no Class A members have received any money from Arlington.
166. Additionally, through the efforts of Eileen and Lawrence Schwartz, between February 2011 and August 2013, Arlington raised approximately \$270,000.00 from nine individuals through the issuance of promissory notes.
167. Upon information and belief, Arlington initially needed these funds to keep the bank from foreclosing on the property, and to fund a lawsuit against an insurance company.
168. According to information received from ESSC, Arlington has not made any significant payments to holders of its promissory notes.

NCP's Promissory Notes

169. NCP is a company owned and operated by Eileen and Lawrence Schwartz.
170. According to Lawrence Schwartz, NCP was often the entity that made the down payments on the real estate projects in which Eileen and Lawrence Schwartz were involved.
171. Between May 2008 and August 2012, NCP borrowed over \$1.5 million from thirteen individuals and private entities.

172. The loans between NCP and these thirteen individuals were memorialized by promissory notes between NCP and the lenders.
173. Seven ESSC Clients loaned money to NCP. These loans were made through the sale of promissory notes by NCP to its lenders.
174. These seven ESSC Clients provided nearly \$1 million to NCP during this time period.
175. The promissory notes issued by NCP were securities.
176. NCP solicited these promissory notes to finance real estate ventures in which Eileen and Lawrence Schwartz were involved.
177. Upon information and belief, NCP and its principals, Eileen and Lawrence Schwartz, resorted to financing NCP's activities with loans from private parties because banks were not willing to lend such sums to NCP or Eileen and Lawrence Schwartz.
178. Additionally, promissory notes, bank statements, and NCP's federal tax returns indicate that ESSC and Eileen Schwartz borrowed freely from NCP.
179. NCP's federal tax returns for 2012 indicate that, as of its filing, NCP's shareholders, *i.e.* Eileen and Lawrence Schwartz, had \$984,924.00 in outstanding loans owed to NCP.
180. Upon information and belief, individuals providing money to NCP under the promissory notes were not told that their money would be lent by NCP to ESSC and Eileen Schwartz.
181. Upon information and belief, purchasers of NCP's promissory notes were not told that NCP would only be able to pay them back if the speculative real estate investments that

NCP was making were successful and if ESSC and Eileen Schwartz could repay the money that they had borrowed from NCP.

182. At the time NCP was borrowing money from investors and lending large sums to ESSC, investors were not told that ESSC's business had lost money in almost every year since 2003.

183. Upon information and belief, few of NCP's lenders have been paid back in full.

184. Most investors have not received any payments on interest or principal from NCP as its obligations under these promissory notes have come due.

185. To maintain financing and avoid default on maturing promissory notes, Eileen and Lawrence Schwartz convinced most investors to roll their promissory notes into superseding promissory notes either between the investor and NCP or with ESSC or Eileen and Lawrence Schwartz themselves.

Sales of NCP Promissory Notes to ESSC Clients Were Not Suitable

186. NCP, through its principals Eileen and Lawrence Schwartz, sold NCP promissory notes to ESSC clients.

187. As stated above, at least seven ESSC Clients provided nearly \$1 million to NCP.

188. NCP's promissory notes were high risk investments.

189. Most—if not all—of these clients were not interested in assuming the amount of risk that these notes contained.

190. One client provided approximately \$200,000.00 to NCP over the course of several promissory notes.

191. This client was in his seventies when he purchased these promissory notes.

192. These promissory notes with NCP constituted approximately 20% of the client's total investible assets.

193. This client funded his purchases of these promissory notes with a home equity loan.

194. Eileen and Lawrence Schwartz knew that this client used funds from a home equity loan to fund his purchase of promissory notes from NCP.

195. Additionally, at the time the client made these loans, Eileen and Lawrence Schwartz also knew that he had also invested \$50,000.00 in Southeast, another illiquid and highly speculative investment.

ESSC, Eileen Schwartz and Lawrence Schwartz Breached Their Fiduciary Duty to ESSC Clients That Bought NCP Promissory Notes

196. Eileen and Lawrence Schwartz breached their fiduciary duty to their ESSC Clients to whom they sold NCP promissory notes.

197. NCP's promissory notes offered interest rates that varied between 8% and 12%.

198. Upon information and belief, these interest rates were much lower than the rate that a professional lender would have offered NCP in an arm's length transaction.

199. Additionally, Eileen and Lawrence Schwartz offered interest rates of 8-10% to ESSC Clients that loaned money to NCP, but paid many of its non-client lenders an interest rate of 12%.

Respondents Have Taken Loans From ESSC Clients

200. Respondents, ESSC, Eileen Schwartz, and Lawrence Schwartz, have taken loans from at least twelve ESSC Clients.

201. These ESSC Clients have made loans either directly to Respondents or to entities controlled by Respondents.

202. Bank records show that in June 2005, one ESSC Client loaned \$95,000.00 to an entity that Eileen Schwartz controlled. The same day the loan was made, bank records also show that ESSC borrowed \$95,000.00 from that entity.
203. Additionally, as stated above, NCP received nearly \$1 million from the sale of promissory notes to at least seven ESSC Clients.
204. NCP is wholly owned and controlled by Eileen and Lawrence Schwartz.
205. Additionally, as stated above, Eileen Schwartz and ESSC borrowed money from NCP.
206. As stated above, Southeast raised approximately \$170,000.00 through the sale of promissory notes to five ESSC Clients.
207. Southeast was controlled and managed solely by Eileen and Lawrence Schwartz.
208. In or around October 2013, an ESSC Client directly loaned \$70,000.00 to Eileen and Lawrence Schwartz.

ESSC Has Been Insolvent Since 2003

209. Since 2003, ESSC has been insolvent. During this time, ESSC's liabilities have exceeded its assets, resulting in significant and persistent negative shareholder equity.
210. For example, in 2003, ESSC's financial filings with the Division state that ESSC had total equity of -\$47,431.
211. In 2008, ESSC's financial filings with the Division state that ESSC had total equity of -\$443,346.
212. In 2010, ESSC's financial filings with the Division state that ESSC had total equity of -\$748,582.

213. In 2012, ESSC's financial filings with the Division state that ESSC had total equity of -\$723,774.
214. According to testimony from Eileen Schwartz, ESSC's business did not make a profit in 2009, 2010, 2011 and 2012.
215. Furthermore, upon information and belief, ESSC's business did not make a profit in most years between 2003 and 2009.
216. Upon information and belief, ESSC is insolvent and its only liquidity stems from borrowings from individual lenders, including its own clients.
217. Additionally, in 2011, the condominium association where ESSC's office is located sued Respondents for not having paid in excess of \$10,000.00 in common expenses owed to the condominium association.

ESSC's False Filings With the Division

218. ESSC has made false filings with the Division.
219. In November 2010, Biscayne III Investor sued Eileen and Lawrence Schwartz.
220. The basis of this lawsuit relates to Biscayne III Investor's investment in Biscayne III.
221. In August 2012, an investor in Biscayne I and Biscayne II filed a lawsuit against Respondents related to his investments in Biscayne I and Biscayne II.
222. Upon information and belief, both of these lawsuits were active as of the date of ESSC's most recent annual amendment to its Form ADV. According to the CRD, this amendment occurred on or around July 29, 2014.
223. Between August 2, 2011 and July 29, 2014, ESSC filed four annual amendments to its Form ADV, each of which contained false information on Form ADV, Part 1B, Item F.

224. Item F of Form ADV Part 1B asks the following:

Are you, any advisory affiliate, or any management person currently subject to, or have you, any advisory affiliate, or any management person been found liable in, a civil, self-regulatory organization, or administrative proceeding involving any of the following:

- (1) an investment or investment-related business or activity?
- (2) fraud, false statement, or omission?
- (3) theft, embezzlement, or other wrongful taking of property?
- (4) bribery, forgery, counterfeiting, or extortion?
- (5) dishonest, unfair, or unethical practices?

225. In each of its four submissions, ESSC responded “no” to each of these questions.

226. Lawrence Schwartz prepared and filed these four Form ADV amendments for ESSC.

227. Additionally, ESSC did not disclose the existence of these two lawsuits in its most recent filings of its annual amendment to its Form ADV Part 2. According to the CRD, these filings occurred on or around August 16, 2012 and July 29, 2014. Form ADV Part 2 is a document that investment advisers are required to offer to their investment advisory clients on an annual basis.

VIII. VIOLATIONS OF LAW

Count I – Violations of MASS. GEN. LAWS ch. 110A, § 101

228. 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 material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were 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.

229. The Enforcement Section herein re-alleges and restates the allegations of fact set forth in paragraphs 1 through 227 above.

230. The conduct of Respondents ESSC, Eileen Schwartz, and Lawrence Schwartz, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 101.

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

231. 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 issuance of analyses 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 any person.

232. The Enforcement Section herein re-alleges and restates the allegations of fact set forth in paragraphs 1 through 227 above.

233. The conduct of Respondents ESSC, Eileen Schwartz, and Lawrence Schwartz, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 102.

Count III – Violation of MASS. GEN. LAWS ch. 110A, § 204

234. Section 204(a)(2)(G) 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

235. 950 MASS. CODE REGS. 12.205(9)(c)(1) provides:

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

- (1) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security

without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's overall portfolio, investment objectives, financial situation and needs, investment experience and any other information known or acquired by the adviser after reasonable examination of the client's records as may be provided to the adviser.

236. The Enforcement Section herein re-alleges and restates the allegations of fact set forth in paragraphs 1 through 227 above.

237. The conduct of Respondents ESSC, Eileen Schwartz, and Lawrence Schwartz, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 204.

Count IV – Violation of MASS. GEN. LAWS ch. 110A, § 204

238. Section 204(a)(2)(G) 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

239. 950 MASS. CODE REGS. 12.205(9)(c)(6) provides:

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

...
(6) Borrowing money or securities from a client unless the adviser is a broker-dealer or the client is a broker-dealer, an affiliate of the adviser, a family member or a financial institution engaged in the business of loaning funds or securities.

240. The Enforcement Section herein re-alleges and restates the allegations of fact set forth in paragraphs 1 through 227 above.

241. The conduct of Respondents ESSC, Eileen Schwartz, and Lawrence Schwartz as described above constitutes violations of MASS. GEN. LAWS ch. 110A, § 204.

Count V – Violation of MASS. GEN. LAWS ch. 110A, § 204

242. Section 204(a)(2)(H) 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:-- (H) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature

243. The Enforcement Section herein re-alleges and restates the allegations of fact set forth in paragraphs 1 through 227 above.

244. The conduct of Respondent ESSC, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 204.

Count VI – Violation of MASS. GEN. LAWS ch. 110A, § 404

245. Section 404 of the Act provides:

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

246. The Enforcement Section herein re-alleges and restates the allegations of fact set forth in paragraphs 1 through 227 above.

247. The conduct of Respondents ESSC, Eileen Schwartz, and Lawrence Schwartz, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 404.

IX. STATUTORY BASIS FOR RELIEF

248. 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 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].

249. The Enforcement Section herein re-alleges and restates the allegations of fact set forth in paragraphs 1 through 227 above.

X. PUBLIC INTEREST

For any and all of the reasons set forth above, the following relief is necessary and appropriate in the public interest and for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Massachusetts Uniform Securities Act.

XI. RELIEF REQUESTED

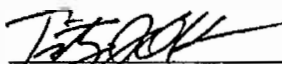
Wherefore, the Enforcement Section of the Division requests that the Director or Presiding Officer take the following actions:

- A. Find that all the sanctions and remedies as detailed herein are necessary and appropriate in the public interest and for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Massachusetts Uniform Securities Act;
- B. Find as fact the allegations set forth in paragraphs 1 through 227 inclusive, of the Complaint;
- C. Require Respondents to permanently cease and desist from further conduct in violation of the Act and Regulations in the Commonwealth;
- D. Permanently revoke all of each Respondents' respective registrations with the Division;
- E. Permanently bar Respondents from future registration of any type with the Division;
- F. Censure Respondents;

- G. Order Respondents to provide and accounting of all funds and/or fees received from or owed to investors;
- H. Order rescission by Respondents to any investors from whom they have received funds or fees;
- I. Impose an administrative fine on Respondents; and,
- J. Take any such further actions that 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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Dated: October 8, 2014