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 SECRETARY OF THE
 COMMONWEALTH
 SECURITIES DIVISION

Respondents.

I. PRELIMINARY STATEMENT

The Enforcement Section seeks an order requiring Respondents to permanently cease and desist from offering for sale and selling any security in Massachusetts; to permanently bar Respondents from conducting securities related business in Massachusetts; to make rescission offers to all residents of the Commonwealth who purchased Respondent sponsored tenants-in-common investments (“TICs”) sold in violation of the Act; impose an administrative fine on

Respondents in an amount and upon such terms and conditions as the Director or Hearing Officer may determine. Further, the Enforcement Section requests the Director or Hearing Officer to take any other necessary action which may be in the public interest and appropriate for the protection of Massachusetts investors.

II. SUMMARY

Beginning in approximately August of 2003, Carlton P. Cabot (“Cabot”) and Timothy J. Kroll (“Kroll”) owned and operated a real estate business known as Cabot Investment Properties, LLC (“CIP”). CIP offered income-producing securities known as tenants-in-common (“TIC”) investments. Respondents committed fraud in connection with the offer and sale of securities due to misappropriation of over \$9 million from investment proceeds through wire transfers, material misrepresentations and omissions to investors, and misleading disclosures regarding investors’ financial exposure.

The basic TIC investment offered by CIP consists of an investment in commercial real estate offered and sold in conjunction with other instruments. In this case, CIP purchased 18 separate malls, business centers, and other real estate properties across the nation and structured these properties as securities. Individuals, including Massachusetts residents, invested in CIP’s TICs by purchasing an interest in the TIC. A TIC allows individuals to roll over proceeds from a separate real estate sale to fund the TIC investment. TIC investors are typically allowed to defer paying taxes on capital gains from the sale of their separate real estate property under an IRS 1031 exchange. TIC interests are illiquid securities. Massachusetts residents invested over \$5 million in the 8 Cabot TICs that the Division investigated. Most of these investors are elderly individuals who were seeking income for retirement.

Respondents committed fraud in the offer and sale of securities by and through: 1) misappropriation of investment proceeds; 2) misrepresentations and omissions in the Respondents backgrounds and adverse consequences of securitizing the underlying TIC mortgages into commercial mortgage backed securities (“CMBSs”); and 3) misleading risk disclosures that downplayed the magnitude of investor liability.

Respondents siphoned investment proceeds from the 8 Cabot TIC investments. According to the PPMs, these investments were to produce rent for the ensuing twenty years on a monthly basis. Instead of going to investors, Cabot and Kroll commingled rents, reserves, and operating cash from the various TIC investments into several CIP holding accounts. From these CIP accounts, Cabot and Kroll wired millions of dollars to their personal bank accounts, as well as accounts for Cabot’s wife. Subsequently, these funds were spent for personal use to bankroll a lavish lifestyle in Manhattan. These wires were systematic and continuous, and conducted over several years and through thousands of wires.

Respondents made material misrepresentations and omissions relating to Respondents’ backgrounds. Respondents artfully fabricated an air of prominence by associating themselves with the established names of the New England Cabot family as well as with the bona fide real estate firm known as Cabot Properties. Cabot, whose mother had married into the Cabot family, used this connection to his advantage to give the pretense of prestige, fortune, and professionalism. His companies, however, had no connection to any Cabot family related enterprise. CIP’s broker-dealer conducted a due diligence report on the backgrounds of the Respondents. The due diligence report highlighted financial delinquencies, unverifiable references, nonexistent financial reports, and third parties who flatly denied knowing or working with CIP, Cabot, and Kroll. None of this negative information that was uncovered was disclosed in the PPMs.

Respondents also failed to disclose the fact that the mortgages underlying the TICs were to be securitized into a commercial mortgage backed security. Each CMBS was sold to a separate category of institutional investors as income-producing notes, funded by mortgage payments. The process of securitization magnified the TIC investors' liability by authorizing aggressive special servicers to institute foreclosure suits in an expedited manner.

Respondents also provided misleading risk disclosures that downplayed the magnitude of a TIC investor's liability. Respondents marketed the TIC investments as "non-recourse" and led investors to believe that their liability would be limited to the extent of their principal investment. In fact, far greater liability in the form of personal and joint and several liability were buried within the offering documents. Respondents then triggered this liability and caused investors to become indebted for actions taken by Respondents. Lastly, Respondents placed themselves as agents on behalf of the investors such that all notices to investors were forwarded to Respondents. As a result, investors were kept uninformed as to events of default on their TIC investments. All of these misleading risk disclosures operated to prevent investors from discovering and mitigating their harm. In sum, the Respondents have demonstrated a pursuit of self-enrichment at the cost of others' life savings and retirement income.

III. JURISDICTION

1. The Division is a department within the Office of the Secretary of the Commonwealth with jurisdiction over matters relating to securities. The Act authorizes the Division to regulate the offer and sale of securities and those individuals and entities offering and/or selling securities within the Commonwealth of Massachusetts.
2. The Division brings this action pursuant to the enforcement authority conferred upon by Section 407A of the Act and MASS. GEN. LAWS Ch. 30A, wherein the Division has the

authority to conduct adjudicatory proceedings to enforce the provisions of the Act and all Regulations promulgated thereunder.

3. This proceeding is brought in accordance with Sections 101 and 407A of the Act and its Regulations. 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 from August 2003 up to and including the present.

V. RESPONDENTS

6. Cabot Investment Properties, LLC (“CIP”) is the primary business entity and sponsor of TIC investments structured from commercial real estate properties. CIP was incorporated as a Massachusetts Limited Liability Company in 1998. CIP in turn owned subsidiaries or “Affiliates” for each commercial real estate. CIP held a business address at 100 Summer St., Boston, MA 02110.
7. Carlton Penavera Cabot (“Cabot”) is the founder, Chief Executive Officer, and President of Cabot Investment Properties, LLC. During the Relevant Time Period, Cabot held at least a 51% ownership interest of CIP and all subsidiaries or affiliated entities as described above.

8. Timothy John Kroll (“Kroll”) is the Chief Operating Officer of Cabot Investment Properties, LLC. During the Relevant Time Period, Kroll held a 49% ownership of CIP and all subsidiaries or affiliated entities as described above.

VI. ALLEGATIONS OF FACT

A. BACKGROUND

i. CIP’S BUSINESS OPERATIONS

9. In general, TIC investments produce returns to investors in the form of income generated by tenants of commercial real estate.
10. Cabot Investment Properties (“CIP”)’s business model focused primarily on TIC investments--from purchasing real estate, to issuing securities, to managing ongoing operations.
11. CIP was wholly owned and exclusively controlled by Cabot and Kroll throughout the Relevant Time Period.
12. In the issuance of securities, CIP acted as the “Sponsor.”
13. The Sponsor is both a holding level company for wholly owned CIP subsidiaries (“Affiliates”) and the overarching organizer of TIC investments.
14. CIP was Sponsor to at least eighteen (18) TIC investments.
15. CIP sponsored eighteen (18) TIC investments, which included approximately 513 TIC equity investors from across the nation who contributed over \$253,325,655. During the Relevant Time Period, CIP was organized in the Commonwealth of Massachusetts as a LLC with a business address of 10 Milk Street, Suite 1055, Boston, MA 02108.
16. CIP also had New York City addresses.

ii. CABOT TIC INVESTMENTS SOLD TO MASSACHUSETTS INVESTORS

17. During the Relevant Time Period, at least fourteen (14) Massachusetts residents invested over \$5,046,983.31 in eight (8) different TIC investments sponsored by CIP:

Massachusetts Cabot TIC Investments	Principal Invested
Addison	\$556,180.32
Ashtabula	\$151,000.00
Ashtabula	\$454,179.80
Creekside	\$500,000.00
East Town	\$121,070.09
East Town	\$121,070.09
East Town	\$150,000.00
East Town	\$345,268.75
Northpark/Southland	\$500,000.00
Oak Grove	\$280,000.00
Trafalgar	\$200,835.54
Trafalgar	\$204,711.88
Trafalgar	\$204,711.88
Trafalgar	\$321,000.00
Turfway	\$510,000.00
Turfway	\$200,000.00
Turfway	\$352,500.00
Turfway	\$374,454.96
Total Massachusetts Investments	\$5,046,983.31

18. The following is a list of each Cabot TIC investment sold to at least one Massachusetts investor (collectively the “8 Cabot TICs”):

- 1) Trafalgar-Avion (“Trafalgar”)
- 2) Addison Corporate Center (“Addison”)
- 3) Oak Grove Plaza (“Oak Grove”)
- 4) Turfway Ridge (“Turfway”)
- 5) East Town Center (“East Town”)
- 6) Creekside Mall (“Creekside”)
- 7) Ashtabula Mall (“Ashtabula”)

- 8) Northpark/Southland (“North Park Southland”)
19. Upon information and belief, other Cabot sponsored TIC investments operated in the same or a substantially similar manner as the 8 Cabot TICs.
- iii.* OFFERING DOCUMENTS
20. Offering documents for each of the 8 Cabot TICs includes: the Private Placement Memorandum (“PPM”), an Offering Summary, the Appraisal Report, the Property Condition Assessment, and the Environmental Assessment (collectively, “Offering Documents”).
21. The PPM is comprised of: a summary of the investment, a set of operative contracts, summaries (of the Appraisal Report, the Property Condition Assessment, the Environmental Assessment), and a legal opinion on tax consequences.
22. Each PPM is approximately 200-300 pages long.
23. The PPMs of the 8 Cabot TICs are authored by Respondents.
24. Respondents are the makers of the 8 Cabot TIC PPMs because Respondents prepared, reviewed, and signed all the operative contracts in the 8 Cabot TICs PPMs, including the Master Lease Agreement, the Tenants in Common Agreement, the Indemnity and Guaranty Agreement, and the Property Management Agreement.
25. An investor in any of the 8 Cabot TICs typically only had between three days to two weeks to review the Offering Documents, totaling between 500 to 800 pages.
26. Due to the volume of information to be reviewed in the short timeframe, no reasonable investor could have found the material information omitted or misrepresented by Respondents.

iv. THE 8 CABOT TICS CONSTITUTED SECURITIES OFFERINGS

- 27. The 8 Cabot TICs were offered and sold pursuant to Regulation D as private placements.
- 28. The 8 Cabot TICs' respective Form Ds were each signed by Kroll.
- 29. The 8 Cabot TICs constituted securities offerings under the Act as well as under the Securities Act of 1933.

v. CIP'S NON-COOPERATION WITH THE DIVISION'S INVESTIGATION

- 30. During its investigation, the Division served CIP and Cabot a subpoena for information and documents dated May 10, 2013 with a response due on May 24, 2013 ("May 10th Subpoena").
- 31. CIP and Cabot never complied with the Division's subpoena, despite the Division's repeated efforts to serve the May 10th Subpoena at a New York address affiliated with CIP and/or Kroll through certified mail, regular mail, and e-mail.
- 32. During its investigation, the Division also served Cabot a subpoena for on-the-record testimony dated April 25, 2013.
- 33. On May 17, 2013, Cabot attended the Division's on-the-record testimony without counsel.
- 34. The Division informed Cabot of his right to counsel as well as asserting his rights under the Fifth Amendment to the United States Constitution and Article 12 of the Massachusetts Declaration of Rights.
- 35. Cabot expressed on-the-record verbal consent to proceed after the Division informed him of his rights.
- 36. Mid-testimony, Cabot sought to stop the testimony and requested resuming the testimony after retaining legal counsel.
- 37. As a result, the Division suspended the May 17, 2013 on-the-record testimony.

38. On May 23, 2013, the Division issued another subpoena for testimony in order to resume Cabot's testimony, with counsel, scheduled for June 6, 2013.
39. Cabot failed to appear on June 6, 2013, as required by subpoena.
40. The Division then issued a third subpoena for testimony dated June 19, 2013 for testimony on July 12, 2013 and retained a process server to serve Cabot at his residence in New York City.
41. On June 21, 2013 the process service company attested in an affidavit that it delivered the subpoena to an individual who acknowledged receipt of service on behalf of CIP at Cabot's New York address.
42. Despite the Division's repeated efforts for Cabot to complete his testimony, Cabot failed to appear on July 12, 2013, as required by subpoena.
43. As a result of the multiple instances of refusal to comply with the Division's subpoenas for testimony as well as the subpoena for information and documents, Respondents are and have been in a state of contumacy as per Section 407 of the Act.

B. FRAUDULENT CONDUCT

44. Respondents committed fraud in the offer and sale of securities by and through: 1) misappropriation of investment proceeds; 2) misrepresentations and omissions in the Respondents backgrounds and adverse consequences of securitizing the underlying TIC mortgages into CMBSS; and 3) misleading risk disclosures that downplayed the magnitude of investor liability.

i. MISAPPROPRIATION OF TIC INVESTMENT PROCEEDS

Purported Investment Model

45. Fundamental to the investment model of the 8 Cabot TICs is its source of returns, which is generated by rental income from business tenants.
46. This income is to be distributed to TIC investors on a monthly basis over the ensuing twenty (20) years.
47. To create these investments, CIP first acquired commercial property through its Affiliate known as “Cabot Acquisitions LLC,” for which a separate entity was created in each investment.
48. These acquisitions were financed through equity from TIC investors and debt from mortgage banks such as Bank of America, CB Richard Ellis, and Jones LaSalle.
49. For structuring and closing the investments, CIP received various itemized compensation as enumerated in the investments’ PPMs.
50. Post-closing, CIP is responsible for leasing properties to commercial tenants as well as seeing to the daily management of the properties.
51. Compensation for CIP in post-closing is restricted to its enumerated roles as 1) the leasing agent and/or 2) the property manager.
52. The PPMs of the 8 Cabot TICs state:

Operations:

Rental Income--- The Master Lessee will retain the excess of the rental income received from the tenants received from the tenants after payment of all amounts owed to the Tenants in Common under the Master Lease and other capital and operating expenses associated with the maintenance and operation of the Property and the establishment or increase of loan or maintenance reserves. At closing, the Master Lessee will fund a cash reserve of \$250,000 (the “Master Lessee Reserve”), which will serve as a supplement to cash flow from the Property in satisfying the Master Lessee’s obligations under the Master Lease. If drawn upon, the Master Lessee will replenish the Master Lessee Reserve only to the extent it receives cash flow from the Property in excess of its obligations

under the Master Lease. Upon termination of the Master Lease, any remaining portion of the Master Lessee Reserve will be retained by the Master Lessee.

Property Management Fee--- The Sponsor or its affiliate may manage the Property in the future and would be entitled to receive property management fees at market rates.

53. For managing the properties, CIP either compensates a third-party manager or itself through its in-house Affiliate manager, “Cabot Property Services LLC”.
54. According to the PPM, the property manager is only permitted to advance funds for expenses relating to maintenance and improvements, distributions to investors, and repayment of lenders.
55. CIP’s role as the leasing agent (known under contract as Master Lessee) as per the disclosures in the PPM, is locked-in for the next twenty (20) years post-closing.
56. CIP as leasing agent is only permitted two sources of compensation: rental increases above current levels and the retention of remaining funds after twenty (20) years.
57. The leasing agent is only permitted to advance funds for expenses relating to maintenance and improvements, distributions to investors, and repayment of lenders.
58. CIP is not authorized to compensation beyond the terms set forth in the Offering Documents.
59. The source of CIP’s compensation is restricted to each investment’s rental proceeds and \$250,000 in reserves funded by investors and lenders.

Failure to Disclose Financial Access and Control

60. Undisclosed to investors, Cabot and Kroll personally retained access to and control of all of the 8 Cabot TICs’ bank accounts.

61. These accounts included “Rent Roll Accounts,” designated to collecting rent, as well as other accounts for paying expenses, shoring up tenant delinquencies, and/or building improvements.
62. Respondents maintained general operating bank accounts apart from each of the 8 Cabot TICs under the names of Cabot Investment Properties and Cabot Properties Services (“Holding Level Accounts”).
63. These bank accounts were maintained in at least three separate banking institutions: PNC Bank, JP Morgan Chase, and Citizens Bank.
64. Respondents’ access to these accounts included the ability of Cabot and Kroll to wire funds remotely as per wire agreements on file with these banks.
65. There was no oversight above and over Respondents because Cabot and Kroll were the highest level CIP officers and they did not institute any controls restricting themselves.
66. As such, Respondents had unopposed and largely undiscoverable decision making power in accessing all of these accounts.
67. Respondents’ access to the 8 Cabot TICs bank accounts was facilitated by Cabot’s control of third party property managers.
68. Cabot provided the following testimony in a prior deposition in a civil suit brought by TIC investors:

QUESTION: It makes sense that you trust the people that you enter into contracts with, but I’ll narrow that down, excuse me. If you are contracting with a party to manage and lease the property to generate the – to manage effectively the income stream of a property, isn’t it important to trust them?

CABOT: **You got it all wrong. The last thing in the world you want to do is trust your property manager with managing your income stream.** I mean that’s the—that is—that is—essentially, you committed suicide in the commercial real estate business. The management team is somebody who implements our direction. You know, **98 percent our responsibility is managing the property**

managers, oversight, giving them the strategic direction and then riding them. The last thing in the world my tenant in common investor owners would want is for me to cede, you know, control to the property manager who has basically completely different set of interests, to manage their cash flow.

QUESTION: So what do they [the third party property manager] have control over?

CABOT: **Nothing. They do what we tell them to do.** They can't sign leases in our behalf. They can't sign contracts in our behalf. Everything is basically overseen by us and that's – that is the protocol and that is the controls. If the tenant in common owner investors were – you know, hired [a third party property manager] to run any asset, that is a –that is a—that's a flawed structure. There needs to be control. **The owners advocate, which is Cabot LeaseCo., which basically manages the budget, oversees the thing,** questions why they're spending, you know, \$2,000 on daisies when it could be done for \$500 bucks? That's really what we—that's the—that's what they rely on us to do, is to manage these guys.

(Emphasis added.)

69. Respondents' actions in taking over third party property managers' roles violate the arrangements set forth in the PPMs.

70. The PPMs of the 8 Cabot TICS state:

The Master Lessee will pay the Property Manager a monthly property management fee, which is anticipated to equal up to 4% of the gross revenue from the Property.

...

Services covered by the monthly property management fee will likely include: Day-to-day management and operation of the Property, including operational management and tenant relations;

Income and expense budgeting...;

Collection of all rent or other payments due;

Maintenance of full and accurate books of account and other records reflecting the results of operations at the Property;

...

Providing monthly financial statements...; and

Evaluation, supervision and management of all service contracts in accordance with the approved annual budget.

71. According to the PPMs, where there is a third-party property manager in place, the property manager is to operate and oversee the finances of the TIC investment.
72. In contrast to the PPMs, Respondents wedged themselves into roles contractually appointed for the property manager and corrupted TIC finances and operations from the inside-out.
73. A property manager for one of the 8 Cabot TICs testified to the Division the following information:

WITNESS: Specifically what we found was that first there was a period of time during which **Mr. Cabot did not turn over access to the bank accounts to us so he was the only one who had access to the bank accounts; then after he turned access over to us he still had access**, which he had to have because he was still the formal lender-approved manager of the property, but what we found was that they would query the bank accounts frequently and **if there was money in the bank accounts they swept it out**

...

So shortly after we then took over the asset and property management we realized that **CIP was still taking money out of these accounts** where, first of all, the money wasn't supposed to go in those accounts, **it was supposed to go in the lock box accounts** and, second of all, **they shouldn't have been taking it and that was in violation very explicitly of our submanagement contracts.**

(Emphasis added.)

74. Respondents had a duty to disclose the material information in paragraphs 60 through 73 to investors and failed to do so.

Commingling

75. Respondents executed thousands of wires that commingled funds from the 8 Cabot TICs.
76. Respondents developed a pattern of transferring funds from different TIC investments into Holding Level Accounts, which Cabot and Kroll controlled.
77. Just at one banking institution alone, the following wire transfers in the respective account names demonstrate the extensive nature of Respondents' conduct:

- Over 4,120 wires (net into) Cabot Investment Properties Accounts
 - Over 1,190 wires (net into) Cabot Property Services Accounts
 - Over 320 wires (net out of) Addison Accounts
 - Over 220 wires (net out of) Turfway Accounts
 - Over 190 wires (net out of) Oak Grove Accounts
 - Over 170 wires (net out of) Trafalgar Accounts
 - Over 110 wires (net out of) Ashtabula Accounts
 - Over 110 wires (net out of) East Town Accounts
 - Over 50 wires (net out of) Creekside Accounts
 - At least 5 wires (net out of) North Park Southland Accounts
78. These wires sum up to millions of dollars of unauthorized commingling.
79. This pattern of commingling occurred throughout the Relevant Time Period and was continuous and systematic, in increments of up to several thousand dollars at a time.
80. These commingled funds belonged to lenders and investors.
81. As another example of commingling, Respondents raised additional funds from at least three ancillary securities offerings.
82. Respondents raised additional money by offering the securities known as “Series 2007 9% Debentures.”
83. Respondents raised additional money by offering the securities known as “Cabot/Potomac Realty Loan Fund 2008, L.P.”
84. Respondents raised additional money by offering the securities known as “Cabot Diversified REIT 1 Inc.”

85. Respondents also commingled proceeds from these ancillary securities by transferring monies from bank accounts named after these securities into Holding Level Accounts.
86. Upon information and belief, Respondents did not apply proceeds from these securities offerings for their purported purposes, but instead used the proceeds to shore up the failing 8 Cabot TICs.

Misappropriation

87. After transferring funds from the 8 Cabot TICs to Holding Level Accounts, Respondents wired themselves monies from the Holding Level Accounts.
88. These wired monies were not used for investment purposes as per the 8 Cabot TICs' PPMs.
89. Between 2007 and 2012, Cabot wired himself in excess of \$2,282,500 from Holding Level Accounts to personal bank accounts held under his name.
90. During this period, Cabot used these same personal bank accounts for personal expenditures.
91. Between 2007 and 2012, Cabot also wired his wife least \$143,800 from Holding Level Accounts to personal bank accounts held under her name.
92. During this period, Cabot's wife used these same personal bank accounts for personal expenditures.
93. Between 2006 and 2012, Kroll wired himself in excess of \$7,249,352 from Holding Level Accounts to personal bank accounts held under his name.
94. During this period, Kroll used these same personal bank accounts for personal expenditures.

95. A property manager and acquaintance of Kroll testified to the Division that Kroll

expressed grave fear that criminal authorities would arrest him for “borrowed” monies:

WITNESS: I started receiving calls from Tim Kroll late at night his time...he was expressing his concern to me that he would be seen as having done something wrong, **that he was going to be seen as having stolen money** and that he felt that --- I recall one conversation where he said that **he sits in his apartment at night watching the front door wondering if the knock is going to come from, you know, the FBI** or whether it's going to come from a process server and expressing his deep emotional distress about those kinds of circumstances; also expressing that he felt that Carlton had effectively set him up for this situation in that he, **Tim, was the one who was the signator on most of the documents** and that --- you know, **like bank transfers and bank accounts** and things of that nature, **and he felt that Carlton had effectively set him up to be the fall guy** should it turn out that they had done something wrong and **should that come to light**. And **I recall Tim very clearly saying that if he had done something, if they had done something, that they were going to face the consequences of that...that was going to be his responsibility** and accountability.

DIVISION: Did he indicate anything else to you about potential situations?

WITNESS: He indicated to me that they were in significant financial distress, that **they had to borrow a lot of money**, that they owed a lot of money beyond say borrowings to law firms and such that they owed money to, but that he was working on a land deal and if he could accomplish this land deal it would provide the money that he needed to pay back all the money that he had, in his term, **his words, “borrowed.”**

DIVISION: Could you describe additional concerns that you had at that point?

WITNESS: Sure. We started becoming concerned that it wasn't just a matter of the properties being underperforming, unable to perform; we became more and more concerned that when they said that they were borrowing money, that that was their term, but in fact, **our concern was that they were taking money that wasn't theirs to take...we became concerned that there appeared to be money that was flowing out of the properties that wasn't related to expenditures...that perhaps Cabot was using this money to live on, to do whatever they were doing...perhaps using property money from one property to pay another**. We saw these changes that didn't seem to be analogous to what you would normally expect to see at a property, even a property in distress.

DIVISION: So he's calling you coast-to-coast, it wasn't a small amount of money he was talking about in your opinion, was it, when he was talking to you?

WITNESS: No, **I believe that it was potentially a substantial amount of money**...if Tim was concerned that somebody might accuse him of having stolen or misappropriated money, my concern was that they hadn't actually borrowed money with consent from the

owners of the property and properly documented and such; my concern was that what they were characterizing as borrowings was, in fact, money they had taken.

DIVISION: Did you express that to Mr. Kroll?

WITNESS: I did.

DIVISION: And what was his response?

WITNESS: His response was that they ---and I believe this was Mr. Cabot's as well, was that they had the right ... to utilize the funds from the property...

DIVISION: Okay, let me follow up. **So Mr. Kroll told you that they had the right to do what they were doing even though he was concerned they were going to be perceived as doing something improper?**

WITNESS: Right.

DIVISION: And you addressed that with Mr. Cabot? And Mr. Cabot's response to that was?

WITNESS: If there was any wrongdoing it was Tim Kroll.

(Emphasis added).

96. For all of the Respondents' conduct as stated here in Section VI.B.i., Respondents committed fraud in connection with the offer and sale of securities by misappropriating investment proceeds from the 8 Cabot TICs and concealing the same.

ii. MATERIAL MISREPRESENTATIONS AND OMISSIONS

Respondents' Backgrounds

97. According to information provided by Massachusetts investors, Cabot held himself out to be a descendant of the famous Cabot family of New England.
98. In fact, Cabot acquired his last name subsequent to his mother's second marriage into the Cabot family.

99. Upon information and belief, Cabot exploited associations to his name by associating with the established real estate firm of Cabot Properties, going by a similar but different name, “Cabot Investment Properties, LLC.”
100. Upon information and belief, the bona fide firm Cabot Properties was and is not in any way affiliated with Respondents and CIP.
101. Cabot and CIP never affirmatively dispelled this confusion by distinguishing themselves apart from Cabot Properties.
102. Upon information and belief, Cabot and CIP relied on implicit associations with Cabot Properties and the prestigious Cabot New England family in marketing itself as a reputable and well-established real estate firm.
103. Respondents had a duty to disclose the material misrepresentations and omissions in paragraphs 97 through 102 to its investors and failed to do so.

Negative Information in Respondents’ Background Check

104. On March 9, 2004, a third party due diligence provider, Snyder Due Diligence Services LLC (“Snyder”), prepared a “Sponsor Review” of CIP, inclusive of its owners Cabot and Kroll.
105. The Sponsor Review was prepared for Orchard Securities, LLC, CIP’s managing broker-dealer.
106. The Sponsor Review gathered factual information relating to CIP, Cabot, and Kroll to determine their business worthiness as a TIC Sponsor.
107. Snyder began its report with this statement in its Executive Summary:

We were provided with materials that stated, at present, CIP maintains investment relationships with a diverse group of private equity investors, including five major family investment offices, with a combined \$1.2 billion in equity; three major pension and insurance-related institutional investors, with a

combined \$35.0 billion in assets under management; and five major U.S.-based private equity funds having \$15.0 billion under management and \$1.2 billion in accessible capital. **However, we were not provided with any detailed data to verify these statements.**

(Emphasis added.)

108. Snyder also stated the following throughout its report:

Page 4: Outdated Business References – Mr. Cabot provided several business references for us to contact as a part of our review. We called several of the references; generally, most references had not done business with him in a number of years, **or had never done business with him. We are unable to verify Mr. Cabot’s prior business relationships.**

Financial Statements Not Provided – **We requested, but did not receive, financial statements for CIP prior to the issuance for our report. Due to this constraint, we can offer no substantive analysis of CIP’s financial ability.**

Page 5: The principal of Cabot Investment Properties appears to be a knowledgeable real estate professional. **However, there are a substantial number of operational issues that raise some concern; these matters include: limited available prior performance information, lack of good standing with the Massachusetts Secretary of State, lack of financial statements, “Fair” credit standing and outdated business references.**

Page 16: Prior Performance – Cabot provided for our review a Track Record of properties acquired over the past fifteen years, which outlined properties by type, including multi-family, office, office/mixed use, industrial, and retail (the “Track Record”). The Track Record showed a total acquisition price of approximately \$1.2 billion and over 14.2 million square feet. Cabot also provided copies of eight “Case Studies,” brief narrative descriptions of eight properties and their respective results. While the Case Studies and Track Record were highly positive, **no detailed data was provided to validate any of the information provided in these documents and therefore we can offer no substantive analysis of CIP’s prior performance.**

Page 16-17: Background Checks and Questionnaires – We performed a background check on Carlton P. Cabot, a copy of which is available upon request... [W]e do note that **Mr. Cabot received a “Fair” credit rating, with five creditors reporting a combined five instances of 30 day delinquent payments and six instances of 60 day delinquent payments. Three revolving credit accounts reflected current less than satisfactory payment history...** Our pending litigation search of Timothy J. Kroll revealed litigation in which Mr. Kroll was party to a suit brought against him by American Express Travel Related Services, Co...As part of the search results we were given copies of the complaint

submitted by **American Express, which alleged that Mr. Kroll incurred and had not remitted charges of \$35,960.24, plus interest, from 11/15/01. We requested an explanation of the matter from Mr. Kroll and none was provided...** Mr. Cabot provided several business references for us to contact as a part of our review. We called several of the references; generally, most references had not done business with him in a number of years, or **had never done business with him.**

(Emphasis added.)

- 109. The Snyder Sponsor Review was never disclosed or made available in any of the 8 Cabot TICs' Offering Documents.
- 110. Snyder made Respondents aware of the Sponsor Review.
- 111. The 8 Cabot TICs' PPMs only included positive information in the section titled "MANAGEMENT" in its descriptions of Respondents.
- 112. Respondents, as makers of the PPM, were the parties most familiar with its own employment history.
- 113. The material omission of the negative information uncovered by the Snyder Sponsor Review hid red flags about the credibility and character of the Respondents to potential investors.
- 114. Respondents had a duty to disclose the material information in paragraphs 103 through 113 to investors and failed to do so.

Failure to Disclose Securitization

- 115. Each of the 8 Cabot TICs, already securities as TIC investments, was securitized again post-closing into a larger pool of commercial real estate by the mortgage lender to each of the 8 Cabot TICs.
- 116. These commercial mortgage pass-through certificates operated as bonds backed by mortgages, which were sold to an unrelated category of institutional bondholders.

117. The securitization process for a commercial mortgage backed security (“CMBS”) was governed under a separate set of contracts known as Pooling and Servicing Agreements (“PSA”).
118. The PSA, which was not disclosed to TIC investors, provides for a streamlined collections process in the event-of-default and/or foreclosure, efficiently enforced by an entity known as a “Special Servicer.”
119. The Special Servicer for each of the securitized 8 Cabot TICs acted aggressively to commence foreclosure actions in expedited processes only disclosed in the PSA.
120. Upon information and belief, investors in each of the 8 Cabot TICs were eventually contacted through mail by the Special Servicers, who informed investors that each of the 8 Cabot TIC properties was securitized into a CMBS.
121. None of the 8 Cabot TICs’ Offering Documents reference plans to securitize the TIC properties.
122. Consequently, TIC investors were never informed of the existence or even likelihood of securitization, the PSA, or the role of a Special Servicer.
123. The PSA was never produced to investors nor were they provided supplemental disclosures as a part of the Offering Documents.
124. The only reference to “securitization” in the Offering Documents is in the biography of Kroll, boasting that Kroll has years of experience in asset-backed securitizations.
125. While no disclosures regarding securitization were made to TIC investors, Cabot himself was aware of securitization plans from the outset of each TIC investment.
126. Cabot testified to the Division that he understood very well that each TIC investment was to be securitized long before a TIC investment closed:

CABOT: Well, what the lender would do regardless of the structure -- let me take that back. **In commercial real estate finance, when you go and you get a loan from a lender, generally these loans are securitized loans.** Do you want me to get into that at all or --

DIVISION: Do you mean -- by securitized do you mean into a mortgage-backed security?

CABOT: Yes.

DIVISION: So essentially they are going to pool whatever TIC deal investment into a larger securitized position?

CABOT: They're going to aggregate a basket of mortgages specific to various properties and **they're going to pool them for rating and ultimate securitization.**

... So the reason why I raised that is that the **loans that were ultimately to be securitized**, there was a very -- pretty well-defined, pretty comprehensive underwriting process that was associated prior to them making the loans; **because the loans were going to be securitized, all of the loans had to have**, you know ----

DIVISION: Certain requirements?

CABOT: tenant estoppel, lease abstraction, environmental, environmental insurance, appraisal, engineering, you know, title, survey, seismic, all of these things because ultimately they were going to be put into bonds and then the bond investors would do their due diligence and **everything had to be just right.**

DIVISION: Okay. So in choosing CBRE or Capital Access, was it part of their requirement from you that these -- in other words, it was part of their requirement that your property conform to their standards such that they would be securitized; is that correct?

CABOT: Yes. I think as a practical matter **if you were in the commercial real estate business during that time, you knew that unless you were told otherwise, it was understood that the loans would have been securitized.**

DIVISION: So you had a general understanding that these loans were going to be securitized?

CABOT: **Exactly. I think everybody did at the time.**

(Emphasis added).

127. Cabot demonstrated an understanding that the securitization was responsible for fundamentally shaping each TIC investment.
128. By Cabot's admission, he understood that "special servicers work for the bond investors" exclusively.
129. Special Servicers serve the investors of the CMBS by standing ready to liquidate the property, the same property that TIC investors rely on to generate investment distributions.
130. Therefore, CIP created a conflict of interest by pitting one set of investors-the TIC investors, against another represented by the Special Servicer.
131. Respondents possessed actual knowledge of the expected securitizations.
132. Therefore, Respondents knew or should have known of the conflicts and adverse consequences that would burden TIC investors.

Securitization Magnified Investor Harm

133. When the TIC investments went into default, Special Servicers under the CMBS securitization increased investor harm by instituting aggressive and expedited foreclosure suits against TIC investors.
134. As a result of Respondents' withholding of information relating to securitization, uninformed TIC investors were not prepared to bear the hardship in understanding and defending against these Special Servicer suits.
135. Respondents had a duty to disclose the material information in paragraphs 115 through 134 to investors and failed to do so.

136. For all of Respondents' material misrepresentations and omissions as stated here in Section VI.B.ii., Respondents engaged in fraud in connection with the offer and sale of securities to investors of the 8 Cabot TICs.

iii. MISLEADING RISK DISCLOSURES REGARDING INVESTORS' FINANCIAL EXPOSURE

Investments Marketed As "Non-Recourse"

137. Most or all Massachusetts investors were elderly, retired or semi-retired individuals looking for conservative and income-based investments.

138. The 8 Cabot TICs were marketed as "non-recourse" investments to these investors.

139. The PPMs of the 8 Cabot TICS state:

Cabot Acquisition anticipates that the Mortgage Loan will be nonrecourse, **meaning that the Lender may only seek recovery from the liquidation of the Property** for any amounts which remain due under the Mortgage Loan after a default.

(Emphasis added.)

140. Respondents led investors to believe "non-recourse" meant that investors' liability to the lender was limited to their principal investment.

141. Respondents created a Single Purpose Entity LLC for each individual investor (i.e. Cabot Creekside 1 etc., Cabot Creekside 2 LLC, etc. up to 35 LLCs for each TIC investment).

142. Respondents led investors to believe this LLC structure offered protection from liability.

143. The PPMs of the 8 Cabot TICS state:

Single Purpose Entity Operating Agreement

Each Investor will be required to adopt an operating agreement for the Single Purpose Entity formed for the purpose of holding the Interest on such Investor's behalf.

...

While the use of a Single Purpose Entity to hold the Interests **will generally limit the liability for these carve outs and springing liabilities** to the assets of the Single Purpose Entity *i.e.* the Interest itself, **if a purchaser fails to maintain**

formalities required for formation and operation of its bankruptcy remote Single Purpose Entity under state law with a distinct identity from that of its owners then the purchaser would have personal liability for the liability accruing as a result of the aforementioned non-recourse carve outs and springing liabilities.

...

The Mortgage Loan will be made to the Tenants in Common on a joint and several basis so that upon an uncured Event of Default on the Mortgage Loan the Lender may exercise its remedies against one more or all of the other Tenants in Common. **However because each purchaser will hold his or her Interest through a bankruptcy remote single purpose limited liability company the purchaser's liability under the Mortgage Loan will except as described under "Limited Recourse" below generally be limited to the value of the purchaser's Interest.**

(Emphasis added.)

144. In contrast to the above provision in the PPM, which states that "the use of a Single Purpose Entity to hold the Interests will generally limit the liability for these carve outs and springing liabilities," additional fine print in the PPM contradict the foregoing, placing investors at significant risk of loss.
145. The PPMs of the 8 Cabot TICS state:

However, it is anticipated that the Mortgage Loan will contain the following "carve-outs," among others, to the nonrecourse provisions allowing the Lender to proceed, under certain circumstances, against the assets of a Tenant in Common ...

It is also anticipated that the Mortgage Loan will provide for certain springing liabilities pursuant to which a Tenant in Common would incur liability for repayment of the full amount of the Mortgage Loan as a result of the following actions or inactions, among others, taken by such Tenant in Common, or its owners or affiliates...

The Lender will also likely require at least one individual that is a direct or indirect principal of a Tenant in Common purchaser of an Interest to execute a Guaranty Agreement (the "Guaranty Agreement") pursuant to which such individual will guaranty repayment of all losses incurred by the Lender as a result of any of the following circumstances, among others, occurring as a result of their own or their Single Purpose Entity's actions or inactions...

It is also anticipated that the Guaranty Agreement will provide for certain springing liabilities pursuant to which the individual guarantor would incur personal liability for repayment of the full amount of the Mortgage Loan as a result of

the following actions or inactions, among others, taken by such individual, its Special Purpose Entity or their affiliates.

(Emphasis added.)

146. While the 8 Cabot TICs were marketed to investors as “non-recourse,” other parts of the PPM buried fine print that made TIC investors liable for debt far beyond any TIC investor’s principal investment.

Investors Liable for Respondents’ Misconduct

147. Respondents exposed investors to personal as well as joint and several liability through the requirement that TIC investors execute an Indemnity and Guaranty Agreement.
148. The Indemnity and Guaranty Agreement states:

WHEREAS, as a condition to making the Loan to Borrower, **Lender has required that Indemnitor [TIC investor] indemnify Lender for**, from and against and guarantee payment to Lender of those items for which Cabot [Deal Name] [Investor #] LLC, a Delaware limited liability company (“*TIC, LLC*”) is **personally liable** and for which Lender has recourse against TIC, LLC under the terms of the Loan Documents;

...

Joint and Several Liability. Notwithstanding anything to the contrary contained herein, the representations, warranties, covenants and agreements made by Indemnitor herein, and the liability of **Indemnitor hereunder, is joint and several if Indemnitor is comprised of more than one person or entity.**

(Emphasis added.)

149. Personal and joint and several liability would attach to TIC investors who received investment distributions after an event of default that Respondents made to TIC investors.
150. The Indemnity and Guaranty Agreement states:

Indemnitor hereby assumes liability for...

Rents, issues, profits and revenues of all or any portion of the Property received or applicable to a period after the occurrence of an Event of Default under the Loan Documents, or any event which with notice or the passage of time, or both, would constitute an Event of Default, which are misappropriated by TIC, LLC and not either applied to the ordinary and necessary expenses of owning and operating the Property or paid to Lender.

(Emphasis added.)

151. By operation of the above provision, TIC investors would become personally and joint and severally liable if TIC investors received investment distributions from a TIC in default.
152. Within three years of structuring each of the 8 Cabot TICs, each of those failed and entered into an event of default.
153. Respondents caused or substantially contributed to these failures through their misappropriation of investment proceeds.
154. Upon information and belief, Respondents caused investors personally and joint and several liability by sending investment distributions to investors of the 8 Cabot TICs after each investment was already in default.
155. Upon information and belief, Respondents failed to inform TIC investors that they were receiving distributions after an event of default and failed to inform TIC investors of the severe legal consequences that would follow.
156. Respondents exposed investors to extensive personal as well as joint and several liability, meaning that a single TIC investor would bear the entire indebtedness associated with a TIC property.

Notices to Investors Forwarded to Respondents

157. Respondents withheld and delayed notices regarding events of default to TIC investors.
158. Respondents were able to achieve this delay by having placed themselves as agents to the TIC investors such that all notices were sent to Respondents first.
159. The Tenants-in-Common agreement executed as a part of the 8 Cabot TICs provides:

Authority to Act as Agent

By executing the Tenants in Common Agreement, **each Tenant in Common authorizes and directs the Master Lessee to act as agent for the Tenant in Common to (A) receive any notice or other communication from Lender... (B) receive service of process from Lender under the Loan...and (C) sign or execute documents and negotiate any changes to the Mortgage Loan documents on behalf of each Tenant in Common** with respect to any transaction relating to the Loan.

(Emphasis added.)

160. Respondents were required to appoint an unaffiliated individual for each TIC investor's Single Purpose Entity Delaware LLC.

161. The PPMs of the 8 Cabot TICS state:

Single Purpose Entity Operating Agreement

...

The Lender requires that each Single Purpose Entity have an independent manager whose vote is required for dissolving the entity filing bankruptcy and filing a partition action **Cabot Acquisition will provide an unaffiliated individual as the independent manager.**

(Emphasis added.)

162. In contrast to the above provision in the PPM, Respondents did not provide an unaffiliated independent manager to each TIC investor's Single Purpose Entity.

163. In contrast to the above provision in the PPM, Respondents placed themselves as Manager to each LLC with Cabot as the signatory.

164. As a result of Respondent's ability to receive notices and to act as manager to each TIC investor's LLC, Respondents caused all investors' addresses to be forwarded to Respondents' address(es).

165. Meanwhile, TIC investors only received what Respondents decided to send to them.

166. Respondents caused the lenders to communicate exclusively with themselves.

167. When investors' distributions dwindled or ceased, TIC investors who sought information from lenders were turned away and uninformed as to whether the investments were performing or in default.

Investors Required to Waive Defenses

168. Respondents required investors to enter into a TIC Indemnity and Guaranty Agreement wherein investors waived defenses to lack of notice and other procedural flaws.
169. The Indemnity and Guaranty Agreement states:

Waivers by Indemnitor. To the extent permitted by law, **Indemnitor hereby waives and agrees not to assert or take advantage of:**

...

Demand, presentment for payment, notice of nonpayment, protest, **notice of protest and all other notices of any kind, or the lack of any thereof, including, without limiting the generality of the foregoing, notice of the existence, creation or incurring of any new or additional indebtedness or obligation** or of any action or non-action on the part of the Borrower, Lender, any endorser or creditor of Borrower or of Indemnitor or on the part of any other person whomsoever under this or any other instrument in connection with any obligation or evidence of indebtedness held by Lender.

(Emphasis added.)

170. Respondents thereby caused notices of default to be withheld and delayed to investors and prevented investors from asserting a legal defense against Respondents.
171. Respondents had a duty to fully and accurately disclose an investor's risks in a manner that is not misleading or contradictory, as stated in paragraphs 137 through 170, and failed to do so.
172. Respondents' failure to adequately disclose the investors' risk of loss prevented investors of the 8 Cabot TICs from mitigating their losses by becoming aware of their poorly performing investments, discovering wrongdoing by Respondents, exiting their investment, and/or taking prompt legal action against the Respondents.

173. For all of Respondents' misleading risk disclosures as stated here in Section VI.B.iii., Respondents engaged in fraud in connection with the offer and sale of securities to investors of the 8 Cabot TICs.

VII. VIOLATIONS OF SECURITIES LAWS

VIOLATION OF § 101

174. 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 the 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.

175. The Division herein re-alleges and restates the allegations and facts set forth in Section VI above.

176. The conduct of Respondents, as described in Section VI, constitutes violations of M.G.L. c. 110A, § 101.

VIII. STATUTORY BASIS FOR RELIEF

177. Violations, Cease and Desist Orders and Costs

Section 407A(a) of the Act provides in pertinent part that:

(a) If the secretary determines, after notice and opportunity for a hearing, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order issued thereunder, he may order such person to cease and desist from such unlawful act or practice and may take affirmative action, including the imposition of an administrative fine, the issuance of an order for accounting,

disgorgement or rescission or any other relief as in his judgment may be necessary to carry out the purposes of [the Act].

178. The Division herein re-alleges and restates the allegations and facts set forth in Section VI above.

179. Respondents directly and indirectly engaged in the acts, practices, and courses of business as set forth in this Complaint above and it is the Division's belief that Respondent will continue to engage in acts and practices similar in subject and purpose which constitute violations if not ordered to cease and desist.

IX. PUBLIC INTEREST


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

X. RELIEF REQUESTED

WHEREFORE, the Enforcement Section of the Division requests that the Director or Hearing Officer take the following action:

- A. Require Respondents to permanently cease and desist from offering for sale and selling any security in Massachusetts;
- B. Permanently bar Respondents from conducting securities related business in Massachusetts;
- C. Require Respondents to make rescission offers to all residents of the Commonwealth who purchased Respondent sponsored tenants-in-common investments ("TICs") sold in violation of the Act for each, for any and all of the reasons set forth in the complaint;
- D. Impose an administrative fine on Respondents in an amount and upon such terms and conditions as the Director or Hearing Officer may determine; and
- E. Take any other necessary action which may be in the public interest and appropriate for the protection of Massachusetts investors.

**ENFORCEMENT SECTION
MASSACHUSETTS SECURITIES DIVISION**



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