

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

IN THE MATTER OF:

JOHN MICHAEL BABIARZ

ADMINISTRATIVE COMPLAINT

Docket No. 2013-0079

I. PRELIMINARY STATEMENT

The Registration, Inspections, Compliance and Examinations Section of the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth (hereinafter the "RICE Section" and the "Division," respectively) files this administrative complaint (hereinafter the "Complaint") in order to commence an adjudicatory proceeding against the above-named Respondent, John Michael Babiarz, for violations of MASS. GEN. LAWS c. 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 John Michael Babiarz (hereinafter the "Respondent") willfully engaged in unregistered and fraudulent activities in the Commonwealth of Massachusetts in violation of the Act and Regulations.

The RICE Section seeks an Order: 1) requiring Respondent to permanently cease and desist from further conduct in violation of the Act and Regulations in the Commonwealth; 2) requiring Respondent to provide an accounting of all proceeds which were received as a result of the alleged wrongdoing, and to offer rescission to and fairly compensate investors for those losses attributable to the alleged wrongdoing; 3) requiring Respondent to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing; 4) permanently barring the association or registration of the Respondent with any broker-dealer, issuer of securities, or

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investment adviser in the Commonwealth; 5) imposing an administrative fine on Respondent in such amount and upon such terms and conditions as the Director or Presiding Officer may determine; and 6) taking any such further actions which may be necessary or appropriate in the public interest for the protection of Massachusetts investors.

II. SUMMARY

On August 29, 2013, the Division received a call from a Massachusetts senior alleging that John Michael Babiarz had improperly withdrawn assets from her Fidelity Brokerage Services, LLC accounts. The Division immediately opened an investigation into Babiarz, and after learning that Bishop, Rosen & Co., Inc. had terminated Babiarz in September 2011 based on his violations of Financial Industry Regulatory Authority rules, members of the Division's Registration, Inspections, Compliance and Examinations Section traveled to Fidelity Brokerage Services, LLC's Boston offices and the victim's Boston residence to secure documents and other information. As the investigation progressed, the Division discovered that Babiarz, while unregistered in the Commonwealth, had deceived his senior clients by informing them that he had become a broker-dealer agent of Fidelity Brokerage Services, LLC and convinced them to transfer their funds to Fidelity Brokerage Services, LLC for his management. Through this process, Babiarz was able to gain direct access to the accounts of at least four elderly Massachusetts investors, and he has since transferred at least \$486,790.41 of their assets to his personal and his family's brokerage and bank accounts without the consent of his clients. These transfers allowed Babiarz to utilize the stolen funds for his and his family's own benefit, both via significant amounts of cash withdrawals and expenditures at various restaurants and stores in the Commonwealth. Accordingly, the Registration, Inspections, Compliance and Examinations Section of the Division files this Complaint seeking injunctive relief; an accounting of all

and an offer of rescission for losses; disgorgement of all remuneration received; to permanently bar Babiarz from registering in the securities industry in the Commonwealth; an administrative fine; and any other actions in the public interest or appropriate for the protection of Massachusetts investors.

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 § 407A of the Act and MASS. GEN. LAWS c. 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 §§ 101, 102, 201(a), 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. RESPONDENT

5. John Michael Babiarz (hereinafter "Babiarz") is an individual with a last known principal place of residence at 67 Pulaski Street, Peabody, Massachusetts 01960. Babiarz is currently assigned Central Registration Depository (hereinafter "CRD") number 3047247. Between October 29, 2004 and June 3, 2009, Babiarz was employed by Jesup & Lemont Securities Corp. (CRD number 39056 and hereinafter "J&L"), and was registered with the Division as a broker-dealer agent of J&L in the Commonwealth of Massachusetts between November 3, 2004 and June 4, 2009. Between June 3, 2009 and July 15, 2009, Babiarz was employed by Capitol Securities Management, Inc. (CRD number 14169 and hereinafter "CSM") in an unregistered capacity in the Commonwealth of Massachusetts. Between October 29, 2009 and September 1, 2011, Babiarz was employed by Bishop, Rosen & Co., Inc. (CRD number 1248 and hereinafter "BR&C"), and was registered with the Division as a broker-dealer agent of BR&C in the Commonwealth of Massachusetts between April 26, 2010 and September 7, 2011. Babiarz was terminated by BR&C on September 1, 2011 as a result of customer allegations that he misrepresented features of a certificate of deposit in violation of Financial Industry Regulatory Authority (hereinafter "FINRA") Rules 2010 and 2020. Since September 7, 2011, Babiarz has not been registered with the Division as a broker-dealer; an agent of a broker-dealer or an issuer; an investment adviser; an investment adviser representative; or in any other capacity in the securities business in the Commonwealth of Massachusetts.

V. ALLEGATIONS OF FACT

6. Since September 7, 2011, Babiarz has not been registered with the Division as a broker-dealer; an agent of a broker-dealer or an issuer; an investment adviser; an investment adviser

representative; or in any other capacity in the in the securities business in the Commonwealth of Massachusetts.

7. On February 10, 2006, Babiarz entered into a Letter of Acceptance, Waiver and Consent with the National Association of Securities Dealers (hereinafter "NASD") pertaining to allegations that he had violated NASD Rules 2110 and 2310 by making unsuitable securities recommendations to clients while he was employed with J&L. As a result of these actions, Babiarz received a 20-day NASD suspension and a \$5,000.00 fine.
8. On January 9, 2013, FINRA issued a default decision in which it determined that Babiarz had violated FINRA Rule 2010 and NASD Rules 2110, 2510(b) and 3110 by settling or attempting to settle customer complaints without the knowledge or approval of his employer, J&L. Other violations included his default on a promissory note payable to a customer; his causing orders for trades in numerous customer accounts to be coded as unsolicited when in fact they were solicited; and his exercise of discretion in customer accounts without their written authorization. As a result of these findings, Babiarz received a 90-day FINRA suspension and a \$20,000.00 fine.

Investor 1

9. Investor 1 is a seventy-two-year-old (72) individual with a place of residence in Boston, Massachusetts.
10. A mutual acquaintance introduced Babiarz to Investor 1 between 2005 and 2007, and Investor 1 believed that she had remained a financial advisory client of Babiarz's up until the present date.

11. After BR&C terminated Babiarz on September 1, 2011, Babiarz informed Investor 1 that he had become a broker-dealer agent of Fidelity Brokerage Services, LLC (hereinafter "Fidelity").
12. In fact, in a June 26, 2012 e-mail, Babiarz informed Investor 1 that he was affiliated with "PMG Management Group, NFS/Fidelity Investments" and was located at "One International Place, 100 Oliver Street, Suite 1400, Boston, MA 02110." Upon information and belief, that address is currently occupied by Servcorp, an entity which rents out corporate office space.
13. Investor 1 opened a total of five (5) Fidelity investment accounts: a Fidelity IRA account, initially applied for and approved by Fidelity on June 15, 2012 and initially funded on or about August 29, 2012 (hereinafter "Account 1"); a Fidelity individual account, initially applied for and approved by Fidelity on August 23, 2012 (hereinafter "Account 2"); two other accounts which were initially applied for and approved by Fidelity on June 15, 2012 but which ultimately had no transactional activity (a Fidelity Cash Management account and a Fidelity individual account); and a Fidelity Trust account (hereinafter "Account 3"), initially funded on or about September 17, 2012.
14. Of those five (5) accounts, Investor 1's account applications for Account 1, Account 2 and the two other non-trust accounts contained Investor 1's name, social security number, birthdate, mailing address and employment information, but displayed Babiarz's contact information (phone number and e-mail address).
15. At all points between August 29, 2012 and the present date, Account 1 has had securities holdings.
16. At all points between September 21, 2012 and the present date, Account 3 has had securities holdings.

17. Babiarz opened an E*TRADE Financial (hereinafter "E*TRADE") individual account in the name of John Michael Babiarz (67 Pulaski St., Peabody, MA 01960) on July 21, 2011 (hereinafter the "Babiarz E*TRADE Account"). Babiarz requested a margin account, applied for options trading, indicated that he had an "excellent" level of investment experience and knowledge, and stated that his investment objective was "speculation." He also indicated that no one other than the account holder had trading authorization over the account.
18. In 2012, a total of \$54,000.00 was withdrawn from Investor 1's accounts and wired directly to the Babiarz E*TRADE Account.
19. As of August 31, 2012, the Babiarz E*TRADE Account contained a balance of \$2,863.25.
20. On September 14, 2012, Babiarz withdrew \$9,500.00 from Account 1 and wired it to the Babiarz E*TRADE Account. The \$9,500.00 was credited to the Babiarz E*TRADE Account on September 18, 2012.
21. On September 19, 2012, funds were withdrawn from the Babiarz E*TRADE Account and spent at Market Basket in Danvers, Massachusetts; Community Health in Woburn, Massachusetts; Dunkin Donuts in Danvers, Massachusetts and Downtown Pizza in Peabody, Massachusetts, among other places. A cash withdrawal from the Babiarz E*TRADE Account was also made at Eastern Bank in Peabody, Massachusetts on the same date.
22. On September 18, 2012, Babiarz withdrew \$9,500.00 from Account 1 and wired it to the Babiarz E*TRADE Account. The \$9,500.00 was credited to the Babiarz E*TRADE Account on September 20, 2012.
23. On September 21, 2012, funds were withdrawn from the Babiarz E*TRADE Account and spent at Target in Danvers, Massachusetts; CVS in Danvers, Massachusetts; Dunkin Donuts

in Danvers, Massachusetts and Onion Town Grill in Danvers, Massachusetts, among other places. Withdrawals from the Babiarz E*TRADE Account were also made at two (2) separate locations in Massachusetts on the same date.

24. On September 24, 2012, Babiarz withdrew \$9,500.00 from Account 1 and wired it to the Babiarz E*TRADE Account. The \$9,500.00 was credited to the Babiarz E*TRADE Account on September 26, 2012.

25. On September 27, 2012, funds were withdrawn from the Babiarz E*TRADE Account and spent at Market Basket in Danvers, Massachusetts; Ocean State Job Lot in Danvers, Massachusetts; and Dunkin Donuts in Danvers, Massachusetts. Cash withdrawals from the Babiarz E*TRADE Account were also made at two (2) separate locations in Massachusetts on the same date.

26. On September 27, 2012, Babiarz withdrew \$3,500.00 from Account 1 and wired it to the Babiarz E*TRADE Account. The \$3,500.00 was credited to the Babiarz E*TRADE Account on October 1, 2012.

27. On October 2, 2012, funds were withdrawn from the Babiarz E*TRADE Account and spent at Wal-Mart in Danvers, Massachusetts; Sunoco in Peabody, Massachusetts; Target in Danvers, Massachusetts and Dunkin Donuts in Danvers, Massachusetts, among other places. Cash withdrawals from the Babiarz E*TRADE Account were also made at three (3) separate locations in Massachusetts on the same date.

28. On October 26, 2012, Babiarz withdrew \$9,500.00 from Account 1 and wired it to the Babiarz E*TRADE Account. The \$9,500.00 was credited to the Babiarz E*TRADE Account on October 31, 2012.

29. On October 31, 2012, funds were withdrawn from the Babiarz E*TRADE Account and spent at Dunkin Donuts in Danvers, Massachusetts; Wal-Mart in Danvers, Massachusetts; and Market Basket in Danvers, Massachusetts. Cash withdrawals from the Babiarz E*TRADE Account were also made from People's United Bank in Peabody, Massachusetts and Bank of America in Beverly, Massachusetts on the same date.
30. On November 9, 2012, Babiarz transferred \$5,000.00 from Account 3 to Account 2.
31. On November 14, 2012, Babiarz withdrew \$5,000.00 from Account 2 and wired it to the Babiarz E*TRADE Account. The \$5,000.00 was credited to the Babiarz E*TRADE Account on November 15, 2012.
32. On November 16, 2012, funds were withdrawn from the Babiarz E*TRADE Account and spent at T.J. Maxx in Saugus, Massachusetts and Target in Danvers, Massachusetts, among other places. Cash withdrawals from the Babiarz E*TRADE Account were also made from Eastern Bank in Peabody, Massachusetts on the same date.
33. On November 27, 2012, Babiarz transferred \$5,000.00 from Account 3 to Account 2.
34. On November 28, 2012, Babiarz withdrew \$7,500.00 from Account 2 and wired it to the Babiarz E*TRADE Account. The \$7,500.00 was credited to the Babiarz E*TRADE Account on November 29, 2012.
35. On November 30, 2012, funds were withdrawn from the Babiarz E*TRADE Account and spent at Wal-Mart in Danvers, Massachusetts and Lowe's in Danvers, Massachusetts, among other places. Cash withdrawals from the Babiarz E*TRADE Account were also made from Eastern Bank in Peabody, Massachusetts and Marblehead Bank in Beverly, Massachusetts on the same date.

36. Other than the accrual of \$0.01 in interest payments, no other transactions have occurred throughout the history of Account 2.
37. Furthermore, in 2013, a total of \$124,740.41 has been withdrawn from Account 1 and wired directly to a Bank of America account jointly owned by John Michael Babiarz's father and John Michael Babiarz (hereinafter the "Babiarz BoA Account"), also incurring a federal tax withholding of at least \$4,950.00 of Investor 1's funds as a result of these transfers.
38. More specifically, on April 2, 2013, Babiarz withdrew \$15,000.00 from Account 1 and wired it to the Babiarz BoA Account.
39. On April 18, 2013, Babiarz withdrew \$4,500.00 from Account 1 and wired it to the Babiarz BoA Account, also incurring a federal tax withholding of \$500.00 of Investor 1's funds as a result of the transaction.
40. On May 6, 2013, Babiarz withdrew \$9,000.00 from Account 1 and wired it to the Babiarz BoA Account, also incurring a federal tax withholding of \$1,000.00 of Investor 1's funds as a result of the transaction.
41. On May 22, 2013, Babiarz withdrew \$12,000.00 from Account 1 and wired it to the Babiarz BoA Account.
42. On June 12, 2013, Babiarz withdrew \$10,800.00 from Account 1 and wired it to the Babiarz BoA Account, also incurring a federal tax withholding of \$2,700.00 of Investor 1's funds as a result of the transaction.
43. On June 28, 2013, Babiarz withdrew \$4,500.00 from Account 1 and wired it to the Babiarz BoA Account, also incurring a federal tax withholding of \$500.00 of Investor 1's funds as a result of the transaction.

44. On July 10, 2013, in an e-mail exchange with Babiarz, Investor 1 alerted Babiarz to her knowledge of his removal of funds from her Fidelity accounts, stating: "...I have copies of my [] deposits with me. They say [t]here [has been] \$85,500 [taken out] of [Account 1] this year. I have seen checks made from [Account 3]. Please call and email me..."
45. On July 15, 2013, Babiarz withdrew \$2,250.00 from Account 1 and wired it to the Babiarz BoA Account, also incurring a federal tax withholding of \$250.00 of Investor 1's funds as a result of the transaction.
46. On July 31, 2013, Babiarz withdrew \$43,200.00 from Account 1 and wired it to the Babiarz BoA Account. The \$43,200.00 was credited to the Babiarz BoA Account on August 1, 2013, and \$43,000.00 was withdrawn from the Babiarz BoA Account on August 5, 2013.
47. On August 8, 2013, Babiarz withdrew \$23,000.00 from Account 1 and wired it to the Babiarz BoA Account. The \$23,000.00 was credited to the Babiarz BoA Account on August 9, 2013, and \$23,010.00 was withdrawn from the Babiarz BoA Account on August 12, 2013.
48. On August 22, 2013, Babiarz withdrew \$490.41 from Account 1 and wired it to the Babiarz BoA Account. The \$490.41 was credited to the Babiarz BoA Account on August 23, 2013, and \$400.00 in cash was withdrawn from the Babiarz BoA Account on August 23, 2013.
49. Upon information and belief, Investor 1 did not authorize the execution of any of the preceding transactions within Account 1, Account 2 or Account 3.
50. Accordingly, as a result of his fraudulent transfers from Account 1, Account 2 and Account 3, Babiarz has caused Investor 1 to suffer at least \$183,690.41 in losses.

Investor 2

51. Investor 2 is a seventy-five-year-old (75) individual who resides in Peabody, Massachusetts.

52. Investor 2 opened two (2) Fidelity investment accounts: a Fidelity individual account, initially applied for on November 28, 2011 and approved by Fidelity on November 29, 2011 (hereinafter "Account 4"); and a Fidelity Roth IRA account, initially funded through a transfer from BR&C on April 27, 2012 and approved by Fidelity on April 30, 2012.
53. Investor 2's account application for Account 4 contains Investor 2's name, social security number, birthdate, mailing address and employment information, but displays Babiarz's e-mail address in the contact information.
54. At all points between May 3, 2012 and the present date, Account 4 has had securities holdings.
55. On July 31, 2012, Babiarz withdrew \$8,500.00 from Account 4 and wired it to the Babiarz E*TRADE Account. The \$8,500.00 was credited to the Babiarz E*TRADE Account on August 2, 2012.
56. On August 3, 2012, funds were withdrawn from the Babiarz E*TRADE Account and spent at Dick's Clothing in Danvers, Massachusetts and Canobie Lake Park in Salem, New Hampshire. Cash withdrawals from the Babiarz E*TRADE Account were also made at Eastern Bank in Peabody, Massachusetts on the same date.
57. On August 14, 2012, Babiarz withdrew \$3,500.00 from Account 4 and wired it to the Babiarz E*TRADE Account. The \$3,500.00 was credited to the Babiarz E*TRADE Account on August 16, 2012.
58. On August 14, 2012, Babiarz wrote a \$2,000.00 check from the Babiarz E*TRADE Account made payable to his bankruptcy attorney with a memo line that read "Bankruptcy" and contained a 2012 docket number. The check cleared from the Babiarz E*TRADE Account on August 16, 2012.

59. On August 17, 2012, Babiarz wrote a \$1,000.00 check from the Babiarz E*TRADE Account made payable to the City of Peabody with a memo line that read "Taxes City of Peabody." The check cleared from the Babiarz E*TRADE Account on August 21, 2012.
60. On August 17, 2012, funds were withdrawn from the Babiarz E*TRADE Account and spent at Sunoco in Peabody, Massachusetts; ExxonMobil in Saugus, Massachusetts; Onion Town Grill in Danvers, Massachusetts; and Dunkin Donuts in Danvers, Massachusetts.
61. On August 20, 2012, Babiarz withdrew \$2,300.00 from Account 4 and wired it to the Babiarz E*TRADE Account. The \$2,300.00 was credited to the Babiarz E*TRADE Account on August 22, 2012.
62. On August 23, 2012, funds were withdrawn from the Babiarz E*TRADE Account and spent at Market Basket in Danvers, Massachusetts; Shell Service Station in Danvers, Massachusetts; Dunkin Donuts in Danvers, Massachusetts and Army Barracks in Saugus, Massachusetts, among other places. Cash withdrawals from the Babiarz E*TRADE Account were also made at two (2) separate locations in Massachusetts on the same date.
63. On August 30, 2012, Babiarz wrote a \$1,000.00 check from the Babiarz E*TRADE Account made payable to Carmalites with a memo line that read "Tuition." The check was deposited by Sisters of Our Lady of Mt. Carmel and cleared from the Babiarz E*TRADE Account on September 7, 2012.
64. On August 31, 2012, Babiarz withdrew \$1,500.00 from Account 4 and wired it to the Babiarz E*TRADE Account. The \$1,500.00 was credited to the Babiarz E*TRADE Account on September 5, 2012.
65. On September 6, 2012, funds were withdrawn from the Babiarz E*TRADE Account and spent at Market Basket in Danvers, Massachusetts; Gamestop in Peabody, Massachusetts;

Dunkin Donuts in Danvers, Massachusetts and at Wilson Square Citgo in Peabody, Massachusetts, among other places. A cash withdrawal from the Babiarz E*TRADE Account was also made at Salem Five Cents Savings Bank in Danvers, Massachusetts on September 7, 2012.

66. On September 11, 2012, Babiarz withdrew \$750.00 from Account 4 and wired it to the Babiarz E*TRADE Account. The \$750.00 was credited to the Babiarz E*TRADE Account on September 12, 2012.
67. On September 13, 2012, funds were withdrawn from the Babiarz E*TRADE Account and spent at Market Basket in Danvers, Massachusetts; ExxonMobil in Beverly, Massachusetts, and Dunkin Donuts in Salem, Massachusetts, among other places. A cash withdrawal from the Babiarz E*TRADE Account was also made at Eastern Bank in Peabody, Massachusetts on the same date.
68. On May 15, 2013, Babiarz withdrew \$1,000.00 from Account 4 and wired it to the Babiarz BoA Account.
69. On May 17, 2013, Babiarz withdrew \$4,000.00 from Account 4 and wired it to the Babiarz BoA Account.
70. On July 8, 2013, Babiarz withdrew \$1,000.00 from Account 4 and wired it to the Babiarz BoA Account.
71. On August 28, 2013, Babiarz withdrew \$1,500.00 from Account 4 and wired it to the Babiarz BoA Account.
72. Upon information and belief, Investor 2 did not authorize the execution of any of the preceding transactions within Account 4.

73. Accordingly, as a result of his fraudulent transfers from Account 4, Babiarz has caused Investor 2 to suffer at least \$25,050.00 in losses.

Investor 3

74. Investor 3 is an eighty-one-year-old (81) individual who resides in Swampscott, Massachusetts.

75. Investor 3 opened three (3) Fidelity investment accounts: a Fidelity individual account, initially applied for on August 26, 2012 and approved by Fidelity on August 27, 2012 (hereinafter "Account 5"); a Fidelity IRA account, initially applied for on August 26, 2012 and approved by Fidelity on August 27, 2012; and a second Fidelity IRA account, initially applied for on August 27, 2012 and approved by Fidelity on August 28, 2012.

76. All three (3) of Investor 3's account applications contained Investor 3's name, social security number, birthdate, mailing address and employment information, but displayed Babiarz's contact information (phone number and e-mail address).

77. At all points between August 30, 2012 and the present date, Account 5 has had securities holdings.

78. On September 12, 2012, Babiarz withdrew \$9,500.00 from Account 5 and wired it to the Babiarz E*TRADE Account. The \$9,500.00 was credited to the Babiarz E*TRADE Account on September 14, 2012.

79. On September 17, 2012, funds were withdrawn from the Babiarz E*TRADE Account and spent at Market Basket in Danvers, Massachusetts; Target in Danvers, Massachusetts; Dunkin Donuts in Danvers, Massachusetts and at Dollar Tree in Danvers, Massachusetts, among other places. Cash withdrawals from the Babiarz E*TRADE Account were also made at three (3) separate locations in Massachusetts on the same date.

80. On September 17, 2012, Babiarz withdrew \$3,500.00 from Account 5 and wired it to the Babiarz E*TRADE Account. The \$3,500.00 was credited to the Babiarz E*TRADE Account on September 19, 2012.
81. On September 20, 2012, funds were withdrawn from the Babiarz E*TRADE Account and spent at Shell Service Station in Reading, Massachusetts; Dunkin Donuts in Danvers, Massachusetts; and at Sunoco in Peabody, Massachusetts. Cash withdrawals from the Babiarz E*TRADE Account were also made at three (3) separate locations in Massachusetts on the same date.
82. On November 28, 2012, Babiarz withdrew \$3,500.00 from Account 5 and wired it to the Babiarz E*TRADE Account. The \$3,500.00 was credited to the Babiarz E*TRADE Account on November 30, 2012.
83. On December 3, 2012, funds were withdrawn from the Babiarz E*TRADE Account and spent at Dunkin Donuts in Danvers, Massachusetts; Dick's Clothing in Danvers, Massachusetts; Wal-Mart in Danvers, Massachusetts; and at Target in Danvers, Massachusetts, among other places. Cash withdrawals from the Babiarz E*TRADE Account were also made at at least three (3) separate locations in Massachusetts on the same date.
84. On December 20, 2012, Babiarz withdrew \$7,500.00 from Account 5 and wired it to an Eastern Bank account jointly owned by John Michael Babiarz's father and mother (hereinafter the "Babiarz Eastern Bank Account"), incurring a \$15.00 wire fee to Investor 3 in doing so.
85. On March 14, 2013, Babiarz withdrew \$7,500.00 from Account 5 and wired it to the Babiarz Eastern Bank Account.

86. On April 18, 2013, Babiarz withdrew \$5,000.00 from Account 5 and wired it to the Babiarz Eastern Bank Account.
87. On July 15, 2013, Babiarz withdrew \$2,000.00 from Account 5 and wired it to the Babiarz Eastern Bank Account.
88. On July 31, 2013, Babiarz withdrew \$6,000.00 from Account 5 and wired it to the Babiarz Eastern Bank Account.
89. On August 1, 2013, Babiarz withdrew \$15,000.00 from Account 5 and wired it to the Babiarz Eastern Bank Account.
90. On August 23, 2013, Babiarz withdrew \$2,500.00 from Account 5 and wired it to the Babiarz Eastern Bank Account.
91. Upon information and belief, Babiarz also improperly caused Investor 3 to surrender Bank of America annuity contracts in the aggregate amount of at least \$110,000.00.
92. Upon information and belief, Investor 3 did not authorize the execution of any of the preceding transactions within Account 5.
93. Accordingly, as a result of his fraudulent transfers from Account 5, Babiarz has caused Investor 3 to suffer at least \$172,015.00 in losses.

Investor 4

94. Investor 4 is an eighty-three-year-old (83) individual who resides in Danvers, Massachusetts.
95. Investor 4 opened two (2) Fidelity investment accounts: a Fidelity individual account, initially applied for on November 3, 2011 and approved by Fidelity on November 4, 2011 (hereinafter "Account 6"), and a Fidelity IRA account, initially applied for on September 18, 2012 and approved by Fidelity on the same date.

96. Investor 4's account application for the Fidelity IRA account contains Investor 4's name, social security number, birthdate, mailing address and employment information, but displays Babiarz's e-mail address in the contact information.
97. At all points between July 10, 2012 and July 16, 2013, Account 6 had held securities holdings.
98. On September 28, 2012, Babiarz withdrew \$9,500.00 from Account 6 and wired it to the Babiarz E*TRADE Account. The \$9,500.00 was credited to the Babiarz E*TRADE Account on October 2, 2012.
99. On October 3, 2012, funds were withdrawn from the Babiarz E*TRADE Account and spent at Community Health in Woburn, Massachusetts; Dunkin Donuts in Danvers, Massachusetts; and at McDonald's in Danvers, Massachusetts, among other places. Cash withdrawals from the Babiarz E*TRADE Account were also made at three (3) separate locations in Massachusetts on the same date.
100. On October 1, 2012, Babiarz withdrew \$9,500.00 from Account 6 and wired it to the Babiarz E*TRADE Account. The \$9,500.00 was credited to the Babiarz E*TRADE Account on October 3, 2012.
101. On October 4, 2012, funds were withdrawn from the Babiarz E*TRADE Account and spent at Macy's in Peabody, Massachusetts; GameStop in Danvers, Massachusetts; at Finish Line in Peabody, Massachusetts; and at Victoria's Secret in Peabody, Massachusetts, among other places.
102. On October 4, 2012, Babiarz withdrew \$9,500.00 from Account 6 and wired it to the Babiarz E*TRADE Account. The \$9,500.00 was credited to the Babiarz E*TRADE Account on October 8, 2012.

103. On October 9, 2012, funds were withdrawn from the Babiarz E*TRADE Account and spent at Wal-Mart in Danvers, Massachusetts; Dunkin Donuts in Danvers, Massachusetts; at Treadwell's Ice Cream in Peabody, Massachusetts; and at The North Face Store in Peabody, Massachusetts, among other places.
104. On October 11, 2012, Babiarz withdrew \$3,500.00 from Account 6 and wired it to the Babiarz E*TRADE Account. The \$3,500.00 was credited to the Babiarz E*TRADE Account on October 15, 2012.
105. On October 16, 2012, funds were withdrawn from the Babiarz E*TRADE Account and spent at Hess in Saugus, Massachusetts; Shell Service Station in Burlington, Massachusetts; at Treadwell's Ice Cream in Peabody, Massachusetts, among other places. Cash withdrawals from the Babiarz E*TRADE Account were also made at two (2) Eastern Bank locations in Peabody, Massachusetts on the same date.
106. On October 25, 2012, Babiarz withdrew \$9,500.00 from Account 6 and wired it to the Babiarz E*TRADE Account. The \$9,500.00 was credited to the Babiarz E*TRADE Account on October 29, 2012.
107. On October 30, 2012, funds were withdrawn from the Babiarz E*TRADE Account and spent at Dunkin Donuts in Danvers, Massachusetts. A cash withdrawal from the Babiarz E*TRADE Account was also made at Eastern Bank in Peabody, Massachusetts on the same date.
108. On October 26, 2012, Babiarz withdrew \$9,500.00 from Account 6 and wired it to the Babiarz E*TRADE Account. The \$9,500.00 was credited to the Babiarz E*TRADE Account on October 30, 2012.

109. On October 31, 2012, funds were withdrawn from the Babiarz E*TRADE Account and spent at Dunkin Donuts in Danvers, Massachusetts; Wal-Mart in Danvers, Massachusetts; and Market Basket in Danvers, Massachusetts. Cash withdrawals from the Babiarz E*TRADE Account were also made from People's United Bank in Peabody, Massachusetts and Bank of America in Beverly, Massachusetts on the same date.
110. On March 15, 2013, Babiarz withdrew \$10,000.00 from Account 6 and wired it to the Babiarz Eastern Bank Account.
111. On March 18, 2013, Babiarz withdrew \$10,000.00 from Account 6 and wired it to the Babiarz Eastern Bank Account.
112. On April 29, 2013, Babiarz withdrew \$10,000.00 from Account 6 and wired it to the Babiarz Eastern Bank Account.
113. On May 1, 2013, Babiarz withdrew \$10,000.00 from Account 6 and wired it to the Babiarz Eastern Bank Account.
114. On June 4, 2013, Babiarz withdrew \$12,000.00 from Account 6 and wired it to the Babiarz BoA Account. Furthermore, on June 18, 2013, \$12,000.00 was wired from the Babiarz BoA Account to Babiarz's father's Fidelity individual account.
115. On June 12, 2013, Babiarz withdrew \$8,000.00 from Account 6 and wired it to the Babiarz BoA Account.
116. Upon information and belief, Investor 4 did not authorize the execution of any of the preceding transactions within Account 6.
117. Accordingly, as a result of his fraudulent transfers from Account 6, Babiarz has caused Investor 4 to suffer at least \$111,000.00 in losses.

118. As a result of his fraudulent transfers from the Fidelity accounts of Investor 1, Investor 2, Investor 3 and Investor 4, Babiarz has caused these four individuals to suffer total losses of at least \$491,755.41.
119. Upon information and belief, Babiarz has executed similar fraudulent transfers in the accounts of investors not identified or detailed in this Complaint.
120. The Division issued Babiarz a September 5, 2013 subpoena requiring his appearance before the Division to provide testimony on September 12, 2013, but Babiarz failed to appear before the Division on the required date.

VI. VIOLATIONS OF LAW

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

121. Section 101 of the Act provides:

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

- (1) to employ any device, scheme, or artifice to defraud,
- (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, or
- (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

122. The RICE Section herein re-alleges and restates the allegations of fact set forth in paragraphs 1 through 120 above.
123. The conduct of Babiarz as described above constitutes multiple violations of MASS. GEN. LAWS c. 110A, § 101.

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

124. Section 102 of the Act provides:

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

- (1) to employ any device, scheme, or artifice to defraud the other person, or
- (2) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.

125. The RICE Section herein re-alleges and restates the allegations of fact set forth in paragraphs 1 through 120 above.

126. The conduct of Babiarz as described above constitutes multiple violations of MASS. GEN. LAWS c. 110A, § 102.

Count III – Violations of MASS. GEN. LAWS c. 110A § 201(a)

127. Section 201(a) of the Act provides:

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

128. The RICE Section herein re-alleges and restates the allegations of fact set forth in paragraphs 1 through 120 above.

129. The conduct of Babiarz as described above constitutes multiple violations of MASS. GEN. LAWS c. 110A, § 201(a).

VII. STATUTORY BASIS FOR RELIEF

130. 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 relief as in his judgment may be necessary to carry out the purposes of [the Act].

131. The RICE Section herein re-alleges and restates the allegations of fact set forth in paragraphs 1 through 120 above.
132. Babiarz, directly and indirectly, engaged in the acts, practices, and courses of business set forth in the Complaint above, and it is the RICE Section's belief that Babiarz will continue to engage in acts and practices similar in subject and purpose which constitute violations of Sections 101, 102 and 201(a) of the Act if not ordered to cease and desist.

VIII. PUBLIC INTEREST

For any and all of the reasons set forth above, it is necessary or appropriate in the public interest for the protection of Massachusetts investors to provide the relief requested in Section IX below.

IX. RELIEF REQUESTED

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

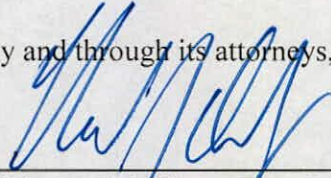
- A. Find that all the sanctions and remedies as detailed herein are necessary or appropriate in the public interest for the protection of Massachusetts investors;
- B. Find as fact the allegations set forth in paragraphs 1 through 120, inclusive, of the Complaint;
- C. Order Respondent John Michael Babiarz to permanently cease and desist from further conduct in violation of the Act and Regulations in the Commonwealth;
- D. Order Respondent John Michael Babiarz to provide an accounting of all proceeds which were received as a result of the alleged wrongdoing, and to offer rescission to

and fairly compensate investors for those losses attributable to the alleged wrongdoing;

- E. Order Respondent John Michael Babiarz to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing;
- F. Permanently bar the association or registration of Respondent John Michael Babiarz with any broker-dealer, issuer of securities, or investment adviser in the Commonwealth;
- G. Impose an administrative fine on Respondent John Michael Babiarz in such amount and upon such terms and conditions as the Director or Presiding Officer may determine; and
- H. Take any such further actions which may be in the public interest and necessary and appropriate for the protection of Massachusetts investors.

**MASSACHUSETTS SECURITIES DIVISION
REGISTRATION, INSPECTIONS,
COMPLIANCE & EXAMINATIONS (RICE)
SECTION**

By and through its attorneys,



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Dated: September 16, 2013