

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

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IN THE MATTER OF: )

POSITRONIC FARMS, INC. and )  
DAVID A. CAPUTO, )

RESPONDENTS. )

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Docket No. E-2018-0094

**ADMINISTRATIVE COMPLAINT**

**I. PRELIMINARY STATEMENT**

The Enforcement Section of the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth (the “Enforcement Section” and the “Division,” respectively) files this Administrative Complaint (the “Complaint”) to commence an adjudicatory proceeding against Positronic Farms, Inc., a Massachusetts corporation, and David A. Caputo (collectively, “Respondents”) for violations of MASS. GEN. LAWS ch. 110A, the Massachusetts Uniform Securities Act (the “Act”), and the regulations promulgated thereunder at 950 MASS. CODE REGS. 10.00 – 14.413 (the “Regulations”). The Enforcement Section alleges that Respondents have engaged in acts and practices in violation of Sections 101, 201, and 301 of the Act.

The Enforcement Section seeks an order: 1) finding as fact the allegations set forth below; 2) finding that all the sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors; 3) requiring Respondents to permanently cease and desist from further conduct in violation of the Act; 4) censuring

Respondents; 5) requiring Respondents to provide a verified accounting of all proceeds which were received as a result of the alleged wrongdoing; 6) requiring Respondents to make offers of rescission to all investors who purchased securities sold in violation of the Act; 7) requiring Respondents to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing; 8) permanently prohibiting Respondents from offering or selling securities to any Massachusetts resident; 9) permanently prohibiting Respondents from acting as a manager, director, officer, partner, and/or control person of any entity incorporated or otherwise organized in Massachusetts offering or selling securities; 10) permanently prohibiting Respondents from offering or selling securities from or within the Commonwealth; 11) imposing an administrative fine on Respondents in such amount and upon such terms and conditions as the Director or Presiding Officer may determine; and 12) taking any such further action which may be necessary or appropriate in the public interest for the protection of Massachusetts investors.

## II. SUMMARY

In 2016, Massachusetts enacted legislation that legalized the sale of recreational cannabis, allowing cannabis retailers, manufacturers, testing laboratories, and cultivators to lawfully profit from the sale of cannabis-related products. The Cannabis Control Commission (“CCC”), established in December 2017, oversees and regulates the Commonwealth’s recreational cannabis industry, including the application process for and issuance of licenses. Since commencing operations, a number of cannabis-related businesses have applied for recreational cannabis licenses with the CCC, with some seeking out prospective investors and offering securities to fund their business ventures.

On January 23, 2017, David A. Caputo (“Caputo”) founded Positronic Farms, Inc. (“Positronic Farms”), located in Holyoke, Massachusetts. Positronic Farms intended to engage in the cultivation of recreational cannabis and purports to lease part of its commercial facility to other cannabis businesses. Positronic Farms is in the process of applying and obtaining a license to operate a cultivation facility but currently cannot sell cannabis legally.

From its inception, Positronic Farms conducted unlawful securities offerings that were required to be registered in Massachusetts and engaged in conduct in violation of the strict anti-fraud provisions of the Act. Between January 23, 2017 and August 10, 2018, Positronic Farms raised \$1.3 million through the offer and sale of unregistered securities to investors. Caputo and Positronic Farms offered and sold securities to approximately 40 investors through private placement offerings. These investors reside throughout the United States, including Massachusetts, Illinois, New Jersey, New York, Michigan, Tennessee, Utah, Vermont, and Virginia. Caputo and Positronic Farms accepted funds from just about any investor willing to contribute monies and failed to verify whether investors had the financial means or knowledge to invest in the cannabis industry. Specifically, many Positronic Farms investors are unaccredited and have limited investment experience. Caputo and Positronic Farms completely failed to take any reasonable steps to determine whether the investors were accredited.

Caputo and Positronic Farms solicited and advertised their unregistered securities to the general public through a variety of media, including newspaper advertisements, online press releases, e-mail messages, and online video presentations. One such solicitation method included Caputo and Positronic Farms issuing a press release

published on an online news portal available to the general public, which contained direct access to Positronic Farms' prospectus, private placement memoranda, projected finances, and other offering documents. Another method included Caputo himself e-mailing copies of offering documents to over 200 prospective investors, whom he met at conferences. Another included Caputo and Positronic Farms creating and distributing an online video presentation where Caputo describes Positronic Farms' business and the cannabis cultivation process. Since April 1, 2019, the video presentation has been viewed more than 535 times. For those prospective investors whom Caputo and Positronic Farms did not capture through its general solicitation efforts, Caputo and Positronic Farms hired individuals to assist in the direct solicitation and sale of shares of Positronic Farms. On at least four occasions, Positronic Farms paid individuals sales commissions for soliciting prospective investors to purchase shares in the company. In total, Caputo and Positronic Farms have solicited over 735 prospective investors.

In addition to offering unregistered securities, Positronic Farms ignored the representations contained in its own offering documents. The Positronic Farms offering documents represented that the company would not utilize funds obtained from investors prior to the company raising a minimum amount of \$250,000. Instead, Caputo and Positronic Farms freely used these funds prior to reaching the minimum fund requirement. Moreover, Positronic Farms informed investors that funds received from investors would be deposited in an escrow account; however, Caputo and Positronic Farms co-mingled these funds with the company's business operation expenses. Positronic Farms also failed to inform investors that their funds would be transferred to a separate business entity to be used as initial working capital for that entity's operations.

The Enforcement Section brings this action against Respondents Positronic Farms and Caputo to prevent further violations of securities laws in Massachusetts.

### **III. JURISDICTION AND AUTHORITY**

1. As provided for by the Act, the Division has jurisdiction over matters relating to securities pursuant to chapter 110A of Massachusetts General Laws.
2. The Enforcement Section brings this action pursuant to the authority conferred upon the Division by Section 407A of the Act, wherein the Division has the authority to conduct an adjudicatory proceeding to enforce the provisions of the Act.
3. This proceeding is brought in accordance with Sections 101, 201, 301, and 407A of the Act.
4. The Enforcement Section reserves the right to amend this Complaint and/or bring additional administrative complaints to reflect information developed during the current and ongoing investigation.

### **IV. RELEVANT TIME PERIOD**

5. Except as otherwise expressly stated, the conduct described herein occurred during the approximate time period of January 13, 2017 to the present (the “Relevant Time Period”).

### **V. RESPONDENTS**

6. Positronic Farms, Inc. (“Positronic Farms”) is a Massachusetts corporation with a principal place of business located at 5 Appleton Street, Holyoke, Massachusetts 01040. Positronic Farms is a cannabis cultivation facility in the business of cultivating recreational marijuana. According to the Corporations Division of the Office of the

Secretary of the Commonwealth, Positronic Farms filed its Articles of Incorporation on January 13, 2017.

7. David A. Caputo (“Caputo”) is a natural person with a last known address in Holyoke, Massachusetts. Caputo was the President of Positronic Farms from January 13, 2017 to September 2018. Caputo has never been registered in any capacity in the securities industry.

## **VI. STATEMENT OF FACTS**

### **A. Caputo and Positronic Farms**

8. On January 13, 2017, Caputo organized Positronic Farms as a Massachusetts for-profit corporation.

9. Positronic Farms appointed six individuals to serve as board members, including Caputo, who served as President of Positronic Farms.

10. Caputo was the sole control person of Positronic Farms from the time of incorporation until September 2018.

11. Caputo created Positronic Farms for the purpose of cultivating recreational marijuana at a facility located in Holyoke, Massachusetts. Positronic Farms’ website describes Positronic Farms as “a startup company working to create a state of the art wholesale recreational marijuana cultivation facility in Holyoke, MA.”

### **B. Caputo Made Material Misrepresentations to Investors and Misused Investor Funds**

12. Pursuant to Positronic Farms’ private placement memorandum dated January 23, 2017 (“PPM”), Positronic Farms stipulated to investors and potential investors alike that it was to maintain an escrow account for the proceeds raised during its offerings until the minimum offering amount had been reached.

13. Positronic Farms' PPM reads, in relevant part:

Proceeds received prior to raising the Minimum Offering Amount will be held in an escrow account with the Company's Bank. Upon raising the Minimum Offering Amount, these proceeds will be released for use by the Company and, thereafter, 100% of the proceeds raised in the Offering, up to the Maximum Offering Amount of \$800,000.00, will be immediately available for use by the Company without impound or escrow.

14. Caputo and Positronic Farms failed to preserve the funds obtained from investors in an escrow account as set forth by the terms of its PPM.

15. Instead, Caputo and Positronic Farms transferred portions of investor funds into a separate business entity, also in the business of cultivating recreational marijuana (the "Separate Entity").

16. While Positronic Farms' prospectus dated December 27, 2016, disclosed that the Separate Entity would be in receipt of funds in the form of cash from "sales of products" generated by Positronic Farms, it did not disclose that certain funds obtained from investors would be transferred to the Separate Entity as initial working capital.

17. Caputo and Positronic Farms failed to disclose accurately or adequately the extent of Positronic Farms' dealings with the Separate Entity as it pertained to funds obtained from investors.

**C. Positronic Farms Offered and Sold Private Placement Offerings to Investors in Massachusetts**

18. Positronic Farms' prospectus, dated December 27, 2016, outlines the objectives of the company, stating in part:

1) Research and develop high-grade marijuana strains that will be attractive to the market [...] 6) Develop and manage the rental property for subtenants, and recruit and manage said subtenant occupancies [...] and 9) Until we get a

license we will be engaged in a home-based research and production process where we will seek to have marketable strains developed and ready to start producing massive numbers of clones the day we start licensed operations. This will be set up in [Caputo's] home and the homes of several volunteers that he recruits. This should also produce significant quantities of sample product that we can use for marketing and promotion.

19. From January 23, 2017 to August 10, 2018, Positronic Farms primarily raised capital through the offer and sale of unregistered securities in the form of private placement offerings.
20. Positronic Farms purported to rely on Rule 506 of Regulation D in connection with its private placement offerings.
21. Positronic Farms has never filed any documentation to perfect an offering under Rule 506.
22. From January 23, 2017 to August 10, 2018, Positronic Farms offered and sold securities to Massachusetts investors as well as investors in Illinois, New Jersey, New York, Michigan, Tennessee, Utah, Vermont, and Virginia (collectively, the "Positronic Farms Investors").
23. Caputo and Positronic Farms sold Positronic Farms' unregistered securities to approximately 40 investors; more than 25 of whom are residents of Massachusetts.
24. Positronic Farms' PPM offers to sell up to 80 shares of common stock at \$10,000 per share (the "First Round Offering").
25. According to the PPM, Positronic Farms was required to raise a minimum of \$250,000 on an "all or none" basis by the termination date before using investor funds. Upon raising the minimum of \$250,000, Positronic Farms would then be able to begin using the funds.



26. According to the PPM, the First Round Offering was scheduled to terminate on February 23, 2017 (“Termination Date”); however, Positronic Farms was allowed to extend the Termination Date for up to an additional 30 day period in order to raise the minimum fund of \$250,000.

27. Caputo and Positronic Farms unilaterally used these funds prior to reaching the minimum fundraising requirement specified in the PPM.

28. On October 30, 2017, a second private placement offering commenced with shares of common stock priced at \$25,000 per share (the “Second Round Offering”).

29. In total, Positronic Farms raised approximately \$1.3 million from the Positronic Farms Investors in its First Round Offering and Second Round Offering.

30. Positronic Farms’ PPMs for the First Round Offering and the Second Round Offering communicated to prospective investors and Positronic Farms Investors alike that Positronic Farms was relying on an exemption from registration under Rule 506 of Regulation D and exemptions under applicable Massachusetts securities laws.

31. Positronic Farms has never filed an application for the registration of, or notice of exemption for, securities to be offered in Massachusetts.

**D. Caputo and Positronic Farms Sold Unregistered, Non-Exempt Securities in Massachusetts**

32. Positronic Farms’ unregistered securities do not qualify for an exemption from registration in Massachusetts.

*a. Positronic Farms and Caputo generally solicited and advertised their unregistered securities to the public.*

33. Caputo and Positronic Farms offered Positronic Farms’ unregistered securities to the public at large.

34. Caputo and Positronic Farms solicited Positronic Farms' unregistered securities to the general public through multiple means, including but not limited to, newspapers, online press releases, e-mail messages, and online video presentations.

35. On January 6, 2017, Caputo and Positronic Farms' issued a press release published on InvestorsHub NewsWire<sup>1</sup> entitled, "Ground Floor Opportunity in Massachusetts Recreational Cannabis Industry" (the "Positronic Farms Press Release"), which stated in part:

This private placement period ends December 30th and demand is expected to be high for the shares. If you are interested please contact us right away so we can lock in your shares while they are still available. The bylaws and prospectus are included by reference in the PPM.

For more information or to participate in this offering please contact [Caputo], President, Positronic Farms, Inc[.]

36. Within the Positronic Farms Press Release, Caputo included direct access to Positronic Farms' webpage, prospectus, PPM, projected finances, and other company documents for the general public to view.

37. On April 27, 2017, Caputo and Positronic Farms published an advertisement on the Valley Advocate,<sup>2</sup> a free local newspaper which serves the New England region (the "Positronic Farms Ad"). The Positronic Farms Ad contained Caputo's contact information along with the web address to Positronic Farms' webpage.

38. In or around December 2017, Caputo attended multiple conferences in Massachusetts and Nevada whereby he solicited prospective investors.

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<sup>1</sup> InvestorsHub NewsWire is a newswire portal, created for broadcasting news through various channels worldwide. The channels target millions of people globally giving companies platforms to deliver their news.

<sup>2</sup> The Valley Advocate is an alternative source for news, arts and entertainment in the Pioneer Valley, including the Five College Area, greater Springfield, Massachusetts, and southern Vermont. It has been in circulation for over 40 years.

39. Caputo subsequently e-mailed a copy of Positronic Farms' prospectus and other investment information regarding Positronic Farms to over 200 prospective investors, whom he met at these conferences.

40. On February 18, 2019, Masslive.com<sup>3</sup> published a video on its YouTube channel entitled, "Positronic Farms in Holyoke lays out timeline for marijuana growing" (the "Positronic Farms Video Presentation") where Caputo can be seen describing the business of Positronic Farms and the cultivation process.

41. As of April 1, 2019, the Positronic Farms Video Presentation has been viewed approximately 535 times.

*b. Positronic Farms and Caputo paid commissions in connection with the solicitation of unregistered securities.*

42. Caputo and Positronic Farms paid individuals to solicit prospective investors to invest in Positronic Farms.

43. On at least four occasions, various individuals received sales commissions for the direct solicitation and sale of Positronic Farms shares.

44. Collectively, Caputo and Positronic Farms paid these individuals, who have never been registered in any capacity in the securities industry, approximately \$14,000 in commissions for soliciting investors.

45. On March 9, 2018, Positronic Farms paid one individual \$1,000 in commissions for the solicitation and sale of Positronic Farms shares.

46. On March 14, 2018, Positronic Farms paid another individual \$8,000 in commissions for the solicitation and sale of Positronic Farms shares.

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<sup>3</sup> MassLive.com is the online news, sports, entertainment and information source for all of Massachusetts -- from the Berkshires to Worcester and Boston, to Cape Cod and everywhere in between.

47. On March 26, 2018, Positronic Farms paid another individual \$4,000 in commissions for the solicitation and sale of Positronic Farms shares.

48. On June 26, 2018, Positronic Farms paid another individual \$1,000 in commission for the solicitation and sale of Positronic Farms shares.

*c. Positronic Farms and Caputo offered and sold unregistered securities to unaccredited investors.*

49. Positronic Farms' PPM states that only accredited investors are eligible to invest in the company.

50. Caputo and Positronic Farms sold Positronic Farms' unregistered securities to unaccredited investors.

51. Caputo and Positronic Farms took no measures to verify whether any investor was accredited and failed to determine the accreditation status of the Positronic Farms Investors.

52. Caputo and Positronic Farms did not require Positronic Farms Investors to submit any financial documents such as Forms W-2, 1099, 1065 or 1040 to show proof of accreditation. Similarly, Positronic Farms did not require Positronic Farms Investors to provide bank statements or brokerage statements to show their net worth or annual income.

53. Some Positronic Farms Investors had limited investment experience and had never invested in private placement offerings prior to Positronic Farms.

54. Caputo and Positronic Farms accepted funds from any investor willing to contribute monies to Positronic Farms.

55. Caputo and Positronic Farms did not require written representations or statements from Positronic Farms Investors as required by its own PPMs.

56. Under Positronic Farms' PPMs, Positronic Farms Investors were required to represent in writing, among other things, that an individual investor:

is capable of evaluating the merits and risks of an investment in the [s]hares [...] is aware that the [s]hares have not been registered under the Securities Act or any state securities laws [...] and such investor meets the suitability requirements[.]

57. In addition, Positronic Farms' PPMs required all Positronic Farms Investors to execute an affidavit stating in part that the "funds utilized in the purchase of shares are not required to maintain any minimum standard of living of the prospectant purchaser."

58. Caputo and Positronic Farms failed to request or require any form of written representation from Positronic Farms Investors.

*d. Positronic Farms failed to maintain an adequate escrow account for the proceeds of its offerings.*

59. On January 26, 2017, Caputo and Positronic Farms established business checking and savings accounts for Positronic Farms at a financial institution in Massachusetts.

60. Caputo and Positronic Farms deposited all proceeds received from the Positronic Farms Investors into the business checking account.

61. Similarly, Caputo and Positronic Farms made withdrawals out of the same business checking account to pay for all types of expenses.

62. Caputo and Positronic Farms failed to maintain an adequate escrow account for the proceeds raised from Positronic Farms Investors in connection with its unregistered securities offerings.

63. Caputo and Positronic Farms co-mingled proceeds obtained from Positronic Farms Investors and utilized these funds without meeting the minimum requirements set forth in the offering documents provided to investors.

## **VII. VIOLATIONS OF LAW**

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

64. Section 101 of the Act states that:

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

[ ]

- (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.

MASS. GEN. LAWS ch. 110A, § 101.

65. The Enforcement Section herein re-alleges and re-states the allegations of fact set forth in Section VI above.

66. The conduct of Respondents, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 101.

### **Count II – Violations of MASS. GEN. LAWS ch. 110A, § 201(b)**

67. Section 201(b) of the Act provides, in pertinent part:

(b) It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered. The registration of an agent is not effective during any period when he is not associated with a particular broker-dealer registered under this chapter or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make him an agent, the agent as well as the broker-dealer or issuer shall promptly notify the secretary.

MASS. GEN. LAWS ch. 110A, § 201(b).

68. The Enforcement Section herein re-alleges and re-states the allegations of fact set forth in Section VI above.

69. The conduct of Respondent Positronic Farms, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 201(b).

### Count III – Violations of MASS. GEN. LAWS ch. 110A, § 301

70. Section 301 of the Act provides:

It is unlawful for any person to offer or sell any security in the commonwealth unless:--

- (1) the security is registered under this chapter;
- (2) the security or transaction is exempted under section 402; or
- (3) the security is a federal covered security.

MASS. GEN. LAWS ch. 110A, § 301.

71. Section 401(k) of the Act provides:

“Security” means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a “security,” or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. “Security” does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period.

MASS. GEN. LAWS ch. 110A, § 401(k).

72. The Enforcement Section herein re-alleges and re-states the allegations of fact set forth in Section VI above.

73. The conduct of Respondents, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 301.

### **VIII. STATUTORY BASIS FOR RELIEF**

74. Section 407A of the Act provides, in pertinent part:

- (a) If the secretary determines, after notice and opportunity for hearing, that any person has engaged in or is about to

engage in any act or practice constituting a violation of any provision of this chapter or any rule or order issued thereunder, he may order such person to cease and desist from such unlawful act or practice and may take such affirmative action, including the imposition of an administrative fine, the issuance of an order for an accounting, disgorgement or rescission or any other such relief as in his judgment may be necessary to carry out the purposes of [the Act].

MASS. GEN. LAWS ch. 110A, § 407A.

**IX. PUBLIC INTEREST**

For any and all of the reasons set forth above, it is in the public interest and will protect Massachusetts investors for the Director to enter an order finding that such “action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this chapter [MASS. GEN. LAWS ch. 110A].”

**X. RELIEF REQUESTED**

The Enforcement Section of the Division requests that an order be entered:

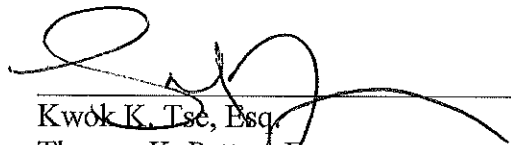
- A. Finding as fact all allegations set forth in Section VI of the Complaint;
- B. Finding that all the sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors;
- C. Requiring Respondents to permanently cease and desist from further conduct in violation of the Act;
- D. Censuring Respondents;
- E. Requiring Respondents to provide a verified accounting of all proceeds which were received as a result of the alleged wrongdoing;



- F. Requiring Respondents to make offers of rescission to all investors who purchased securities sold in violation of the Act;
- G. Requiring Respondents to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing;
- H. Permanently prohibiting Respondents from offering or selling securities to any Massachusetts resident;
- I. Permanently prohibiting Respondents from acting as a manager, director, officer, partner, and/or control person of any entity incorporated or otherwise organized in Massachusetts offering or selling securities;
- J. Permanently prohibiting Respondents from offering or selling securities from or within the Commonwealth;
- K. Imposing an administrative fine on Respondents in an amount and upon such terms and conditions as the Director or Presiding Officer may determine; and
- L. Taking any such further action which may be in the public interest and necessary and appropriate for the protection of Massachusetts investors.

**MASSACHUSETTS SECURITIES DIVISION  
ENFORCEMENT SECTION**

By and through its attorneys,



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