

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

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<b>UNITED STATES SECURITIES</b>		:	
<b>AND EXCHANGE COMMISSION,</b>		:	
		:	<b>CASE NO.</b>
<b>Plaintiff,</b>		:	
		:	
<b>v.</b>		:	
		:	
<b>ANDREW J. FRANZ,</b>		:	
		:	
<b>Defendant.</b>		:	<b>JURY DEMANDED</b>
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**COMPLAINT**

Plaintiff, the United States Securities and Exchange Commission (“SEC”), alleges as follows:

**NATURE OF THE ACTION**

1. This matter centers on a fraudulent scheme from 2007 to the present in which Andrew J. Franz (“Franz”), misappropriated at least approximately \$865,969 from clients of Ruby Corporation (“Ruby”), a registered investment adviser with which he was associated, including \$779,418 from family members and \$86,551 from other clients. Franz also misappropriated over \$172,000 from Ruby itself by stealing legitimate client fees payable to Ruby. During this same time period, Franz returned approximately \$684,000 to Ruby disguised as client fees to conceal the firm’s dwindling client base and revenues. Franz thus kept a net of at least approximately \$354,000 in funds stolen from these sources. Franz was ultimately terminated from Ruby in May 2011.

2. The SEC recently learned that, despite no longer having access to Ruby’s client files or systems, Franz was able to successfully obtain a fraudulent distribution from a Ruby

client account. Franz obtained this distribution check through two phone conversations during which he falsely identified himself to be the broker of record and then the chairman of the client corporation. Fortunately, when Franz attempted to deposit the fraudulently obtained check, Franz's bank stopped the transaction.

3. Through the activities alleged in this complaint, Defendant Franz has, and unless enjoined, will continue to, directly and indirectly, engage in transactions, acts, practices or courses of business which are violations of Section 10(b) [15 U.S.C. § 78j(b)] of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5(a) and (c) [17 C.F.R. § 240.10b-5(a) and (c)] thereunder, and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (the "Advisers Act") [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

4. The SEC brings this action pursuant to Sections 21(d) and (e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)] and Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)]

### **JURISDICTION**

5. This Court has jurisdiction pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] and Section 214 of the Advisers Act [15 U.S.C. § 80b-14], and 28 U.S.C. § 1331.

6. The acts, practices and courses of business constituting the violations alleged herein occurred within the jurisdiction of the United States District Court for the Northern District of Ohio and elsewhere.

7. Defendant Franz is an inhabitant of, and transacts business in, the Northern District of Ohio.

8. Defendant Franz, directly or indirectly, has made, and is making, use of the mails or the means or instrumentalities of interstate commerce in connection with the transactions, acts, practices and courses of business alleged herein.

**DEFENDANT**

9. Andrew J. Franz, age 40, is a resident of Aurora, Ohio. Franz was a paid employee and associated person of Ruby from approximately 2002 until 2007. During this time he performed various administrative responsibilities for the firm. He was also employed as a registered representative with various broker-dealers such as Fortune Financial Services and H. Beck Inc. After 2007, Franz ceased being a paid employee of Ruby although he continued to be an associated person and continued to help with the operations of the firm. Although he no longer received a salary from Ruby after 2007, Franz continued to receive commissions as a registered representative.

**OTHER RELEVANT PARTIES**

10. Ruby Corporation (“Ruby”) is an Ohio corporation with its principal place of business in Beachwood, Ohio. Ruby is registered with the Commission as an investment adviser. Since 2007, Ruby has had one or two part-time employees on its staff in addition to its owner George Franz. As of December 2, 2011, it reported having approximately 99 client relationships with roughly \$21 million in assets under management.

11. George Bernard Franz III (“George Franz”), age 69, is a resident of Moreland Hills, Ohio and is Andrew’s father. He is the sole owner of Ruby and its sole manager and provider of investment advice.

**FACTS**

**FRANZ MISAPPROPRIATED AT LEAST \$172,000 FROM RUBY**

12. Andrew Franz began misappropriating advisory fees from Ruby as early as 2007, when Franz intercepted and deposited into his personal bank account approximately \$13,000 of fee checks payable to Ruby Corp. Between 2007 and 2009, Franz intercepted and deposited into his own account numerous fee checks that had been mailed to Ruby, diverting at least \$172,000 in legitimate client fees payable to Ruby.

**FRANZ STOLE AT LEAST \$779,000 FROM ADVISORY ACCOUNTS OF HIS FATHER AND HIS MOTHER'S TRUST**

13. In 2007 and 2008, Franz stole a total of over \$508,000 from his mother's trust account, and in 2009, Franz stole over \$271,000 from his father's advisory account. Both accounts were Ruby clients. At the time of these thefts, Franz was the broker of record for a money market mutual fund account owned by his father.

14. Knowing that his father spent his winters in Florida, Franz contacted the mutual fund company for these accounts, instructing it to issue checks to his father, drawn on the mutual fund account and sent to his father's residence in Ohio. Franz then went to his father's home, obtained possession of the checks, forged his father's signature on the checks, and deposited the checks into a personal bank account. Franz converted a portion of the funds for his own use, and remitted the rest to Ruby, apparently to mask an exodus of clients from Ruby and a resulting drop in advisory fee revenues. All of this was done without his father's knowledge or consent.

**FRANZ DEPOSITED SOME OF THE STOLEN FUNDS INTO RUBY'S ACCOUNTS, DISGUISED AS CLIENT FEES**

15. After George Franz discovered his son's thefts during the 2007 to 2009 time period, he engaged Ruby's accountant to perform an accounting of amounts stolen from Ruby

during the two year period from August 2007 through September 2009. The accountant determined that, as described above, Franz had stolen \$508,000 from his mother's trust account and over \$271,000 from his father's advisory account. The accountant also determined that during this time period, Franz had stolen \$172,000 in legitimate client fees payable to Ruby, and that Franz had deposited approximately \$684,000 of the stolen funds into Ruby accounts, disguised as client fees. Franz testified that he deposited these funds into the Ruby accounts to conceal the firm's dwindling client base and revenues.

**FRANZ STOLE AT LEAST \$49,000 FROM RUBY CLIENTS,  
BY CHARGING BOGUS ADVISORY FEES**

16. At least as early as 2010, Franz began stealing directly from other Ruby clients. He perpetrated these thefts by issuing to mutual funds and/or annuity companies requests for advisory fees that were not in fact owed by the clients. Typically, he accomplished this by sending in a second, fraudulent, fee request for the same quarter, and then either intercepting the checks when they arrived at Ruby or directing the financial institutions remitting the payments to send the checks directly to his personal residence, in order to avoid detection at Ruby. These second fee requests were not recorded on the books of Ruby.

17. Franz stole at least the following amounts from Ruby clients via bogus advisory fees:

<b>Approx. Date of Thefts</b>	<b>Number of Clients Involved</b>	<b>Securities Custodian</b>	<b>Amount Stolen</b>
Q1 2010 to Q1 2011	1	Integrity Life	\$15,483
November 2010	6	AIG Sun America	\$9,554
February 2011	15	Integrity Life	\$10,723
March 2011	5	Lincoln Financial Group	\$13,552
		<b>TOTAL:</b>	\$49,312

18. With respect to the client in the first line in the above chart, Franz caused this one client to be charged quarterly fees 12 times in 4 quarters. Franz intercepted the fee checks and

deposited them into his personal account, and then remitted to Ruby a reduced amount reflecting the legitimate fees recorded on the books of Ruby so as to avoid detection.

**FRANZ MISAPPROPRIATED AT LEAST \$37,000 IN RUBY CLIENT TRUST ASSETS**

19. Franz also misappropriated funds from a Ruby client trust over which his father had been appointed trustee. In early 2009, Franz liquidated this client trust, which totaled approximately \$93,730, held in various accounts in the name of the trust at AIG SunAmerica.

20. Franz did not have signatory authority over these accounts, so he forged his father's signature to obtain the redemption checks from these accounts. He then intercepted the checks when they were received at Ruby, forged his father's name on the endorsement line, and deposited the checks into his personal bank account.

21. Franz testified that that he then placed the funds into a safe in his home, purportedly at the instruction of one of the beneficiaries. Franz claims to have continued to make the annual distribution to the trust beneficiaries.

22. Franz prepared quarterly "Performance Reports" for the trust. These statements listed the initial balance as \$56,491, not the actual \$93,730. Franz simply kept the remaining \$37,239, permanently depriving the trust beneficiaries of these funds.

23. Combining these figures to the other known amounts taken after September 2009, and accounting for the stolen funds that Franz returned to Ruby, Franz misappropriated a net amount of at least \$354,000 from Ruby and its clients.

**FRANZ RECENTLY ATTEMPTED TO MISAPPROPRIATE  
FURTHER RUBY CLIENT FUNDS**

24. On March 5, 2012, the SEC learned that in November 2011, Franz attempted to misappropriate over \$21,000 from a Ruby client. Franz was arrested by the Strongsville, Ohio police department for attempting to cash a check payable to a Ruby client.

25. Franz had called the securities custodian for a Ruby client in November 2011, falsely claiming to be an employee of the current broker of record for that client account, and affected a change of address for the account to Franz's home address. The next day, Franz called the securities custodian, falsely claiming to be the chairman of the client corporation, and requested a distribution of approximately \$29,000. The securities custodian then disbursed a check to Franz's home payable to the client. Franz attempted to deposit this check into his personal bank account using a forged endorsement but his bank refused to honor the check and contacted the local police department.

26. Franz was arrested on February 10, 2012, in connection with this attempted deposit.

27. Unless emergency action is taken and Franz is restricted by this Court, Franz may continue to attempt to misappropriate additional Ruby client funds and may dissipate or conceal any Ruby client funds he has already misappropriated.

**COUNT I**

**Violations of Section 10(b) of the Exchange Act, and Exchange Act Rule 10b-5(a) and (c)**

28. Paragraphs 1 through 27 are re-alleged and incorporated by reference as though fully set forth herein.

29. As more fully described in paragraphs 1 through 27 above, Defendant Franz, in connection with the purchase and sale of securities, by the use of the means and instrumentalities

of interstate commerce and by the use of the mails, directly and indirectly: used and employed devices, schemes and artifices to defraud; made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices and courses of business which operated or would have operated as a fraud and deceit upon purchasers and sellers and prospective purchasers and sellers of securities.

30. Defendant Franz knew, or was reckless in not knowing, the facts and circumstances described in paragraphs 1 through 27 above.

31. By reason of the foregoing, Defendant Franz violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a) and (c)].

## **COUNT II**

### **Violations of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940**

32. Paragraphs 1 through 27 are re-alleged and incorporated by reference as though fully set forth herein.

33. At all times relevant to this Complaint, and as more fully described in paragraphs 1 through 31 above, Defendant Franz acted as an investment adviser.

34. As more fully described in paragraphs 1 through 27 above, at all times alleged in this Complaint, Defendant Franz, while acting as an investment adviser, by use of the mails, and the means and instrumentalities of interstate commerce, directly or indirectly, knowingly, willfully or recklessly: (i) employed devices, schemes or artifices to defraud his clients or prospective clients; and (ii) engaged in transactions, practices and courses of business which have operated as a fraud or deceit upon his clients or prospective clients.

35. By reason of the foregoing, Defendant Franz aided and abetted violations of Sections 206(1) and 206(2) of the Advisers Act. [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

**RELIEF REQUESTED**

**Wherefore**, the SEC respectfully requests that this Court:

**I.**

Find that Defendant Franz committed the violations charged and alleged herein.

**II.**

Grant Orders of Preliminary and Permanent Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Defendant Franz, his officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of the Order, by personal service or otherwise, and each of them from, directly or indirectly, engaging in the transactions, acts, practices or courses of business described above, or in conduct of similar purport and object, in violation of Section 10(b) [15 U.S.C. § 78j] of the Exchange Act and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder, and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

**III.**

Issue an Order requiring Defendant Franz to disgorge the ill-gotten gains that he received as a result of his wrongful conduct, including prejudgment interest.

**IV.**

With regard to Defendant Franz's violative acts, practices and courses of business set forth herein, issue an Order imposing upon Defendant Franz appropriate civil penalties pursuant

to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 209(e) of the Advisers Act [15 U.S.C. §§ 80b-9(e)].

**V.**

Retain jurisdiction of this action in accordance with the principals of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

**VI.**

Grant appropriate emergency relief to prevent further misappropriation, dissipation, or secretion of client assets.

**VII.**

Grant an Order for any other relief this Court deems appropriate.

Respectfully submitted,

s/ Natalie G. Garner

Natalie G. Garner, IL Bar. No. 6278052

Robin Andrews, IL Bar No. 6285644

Charles J. Kerstetter, PA Bar No. 67088

Attorneys for Plaintiff

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EXCHANGE COMMISSION

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Dated: March 15, 2012

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

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<b>UNITED STATES SECURITIES</b>		:	
<b>AND EXCHANGE COMMISSION,</b>		:	
		:	<b>CASE NO.</b>
<b>Plaintiff,</b>		:	
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**COMPLAINT**

Plaintiff, the United States Securities and Exchange Commission (“SEC”), alleges as follows:

**NATURE OF THE ACTION**

1. This matter centers on a fraudulent scheme from 2007 to the present in which Andrew J. Franz (“Franz”), misappropriated at least approximately \$865,969 from clients of Ruby Corporation (“Ruby”), a registered investment adviser with which he was associated, including \$779,418 from family members and \$86,551 from other clients. Franz also misappropriated over \$172,000 from Ruby itself by stealing legitimate client fees payable to Ruby. During this same time period, Franz returned approximately \$684,000 to Ruby disguised as client fees to conceal the firm’s dwindling client base and revenues. Franz thus kept a net of at least approximately \$354,000 in funds stolen from these sources. Franz was ultimately terminated from Ruby in May 2011.

2. The SEC recently learned that, despite no longer having access to Ruby’s client files or systems, Franz was able to successfully obtain a fraudulent distribution from a Ruby

client account. Franz obtained this distribution check through two phone conversations during which he falsely identified himself to be the broker of record and then the chairman of the client corporation. Fortunately, when Franz attempted to deposit the fraudulently obtained check, Franz's bank stopped the transaction.

3. Through the activities alleged in this complaint, Defendant Franz has, and unless enjoined, will continue to, directly and indirectly, engage in transactions, acts, practices or courses of business which are violations of Section 10(b) [15 U.S.C. § 78j(b)] of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5(a) and (c) [17 C.F.R. § 240.10b-5(a) and (c)] thereunder, and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (the "Advisers Act") [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

4. The SEC brings this action pursuant to Sections 21(d) and (e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)] and Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)]

### **JURISDICTION**

5. This Court has jurisdiction pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] and Section 214 of the Advisers Act [15 U.S.C. § 80b-14], and 28 U.S.C. § 1331.

6. The acts, practices and courses of business constituting the violations alleged herein occurred within the jurisdiction of the United States District Court for the Northern District of Ohio and elsewhere.

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**DEFENDANT**

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deposited them into his personal account, and then remitted to Ruby a reduced amount reflecting the legitimate fees recorded on the books of Ruby so as to avoid detection.

**FRANZ MISAPPROPRIATED AT LEAST \$37,000 IN RUBY CLIENT TRUST ASSETS**

19. Franz also misappropriated funds from a Ruby client trust over which his father had been appointed trustee. In early 2009, Franz liquidated this client trust, which totaled approximately \$93,730, held in various accounts in the name of the trust at AIG SunAmerica.

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21. Franz testified that that he then placed the funds into a safe in his home, purportedly at the instruction of one of the beneficiaries. Franz claims to have continued to make the annual distribution to the trust beneficiaries.

22. Franz prepared quarterly "Performance Reports" for the trust. These statements listed the initial balance as \$56,491, not the actual \$93,730. Franz simply kept the remaining \$37,239, permanently depriving the trust beneficiaries of these funds.

23. Combining these figures to the other known amounts taken after September 2009, and accounting for the stolen funds that Franz returned to Ruby, Franz misappropriated a net amount of at least \$354,000 from Ruby and its clients.

**FRANZ RECENTLY ATTEMPTED TO MISAPPROPRIATE  
FURTHER RUBY CLIENT FUNDS**

24. On March 5, 2012, the SEC learned that in November 2011, Franz attempted to misappropriate over \$21,000 from a Ruby client. Franz was arrested by the Strongsville, Ohio police department for attempting to cash a check payable to a Ruby client.

25. Franz had called the securities custodian for a Ruby client in November 2011, falsely claiming to be an employee of the current broker of record for that client account, and affected a change of address for the account to Franz's home address. The next day, Franz called the securities custodian, falsely claiming to be the chairman of the client corporation, and requested a distribution of approximately \$29,000. The securities custodian then disbursed a check to Franz's home payable to the client. Franz attempted to deposit this check into his personal bank account using a forged endorsement but his bank refused to honor the check and contacted the local police department.

26. Franz was arrested on February 10, 2012, in connection with this attempted deposit.

27. Unless emergency action is taken and Franz is restricted by this Court, Franz may continue to attempt to misappropriate additional Ruby client funds and may dissipate or conceal any Ruby client funds he has already misappropriated.

**COUNT I**

**Violations of Section 10(b) of the Exchange Act, and Exchange Act Rule 10b-5(a) and (c)**

28. Paragraphs 1 through 27 are re-alleged and incorporated by reference as though fully set forth herein.

29. As more fully described in paragraphs 1 through 27 above, Defendant Franz, in connection with the purchase and sale of securities, by the use of the means and instrumentalities

of interstate commerce and by the use of the mails, directly and indirectly: used and employed devices, schemes and artifices to defraud; made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices and courses of business which operated or would have operated as a fraud and deceit upon purchasers and sellers and prospective purchasers and sellers of securities.

30. Defendant Franz knew, or was reckless in not knowing, the facts and circumstances described in paragraphs 1 through 27 above.

31. By reason of the foregoing, Defendant Franz violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a) and (c)].

## **COUNT II**

### **Violations of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940**

32. Paragraphs 1 through 27 are re-alleged and incorporated by reference as though fully set forth herein.

33. At all times relevant to this Complaint, and as more fully described in paragraphs 1 through 31 above, Defendant Franz acted as an investment adviser.

34. As more fully described in paragraphs 1 through 27 above, at all times alleged in this Complaint, Defendant Franz, while acting as an investment adviser, by use of the mails, and the means and instrumentalities of interstate commerce, directly or indirectly, knowingly, willfully or recklessly: (i) employed devices, schemes or artifices to defraud his clients or prospective clients; and (ii) engaged in transactions, practices and courses of business which have operated as a fraud or deceit upon his clients or prospective clients.

35. By reason of the foregoing, Defendant Franz aided and abetted violations of Sections 206(1) and 206(2) of the Advisers Act. [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

**RELIEF REQUESTED**

**Wherefore**, the SEC respectfully requests that this Court:

**I.**

Find that Defendant Franz committed the violations charged and alleged herein.

**II.**

Grant Orders of Preliminary and Permanent Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Defendant Franz, his officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of the Order, by personal service or otherwise, and each of them from, directly or indirectly, engaging in the transactions, acts, practices or courses of business described above, or in conduct of similar purport and object, in violation of Section 10(b) [15 U.S.C. § 78j] of the Exchange Act and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder, and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

**III.**

Issue an Order requiring Defendant Franz to disgorge the ill-gotten gains that he received as a result of his wrongful conduct, including prejudgment interest.

**IV.**

With regard to Defendant Franz's violative acts, practices and courses of business set forth herein, issue an Order imposing upon Defendant Franz appropriate civil penalties pursuant

to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 209(e) of the Advisers Act [15 U.S.C. §§ 80b-9(e)].

**V.**

Retain jurisdiction of this action in accordance with the principals of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

**VI.**

Grant appropriate emergency relief to prevent further misappropriation, dissipation, or secretion of client assets.

**VII.**

Grant an Order for any other relief this Court deems appropriate.

Respectfully submitted,

s/ Natalie G. Garner

Natalie G. Garner, IL Bar. No. 6278052

Robin Andrews, IL Bar No. 6285644

Charles J. Kerstetter, PA Bar No. 67088

Attorneys for Plaintiff

U.S. SECURITIES AND

EXCHANGE COMMISSION

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Dated: March 15, 2012

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

UNITED STATES SECURITIES  
AND EXCHANGE COMMISSION,

Plaintiff,

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2. The SEC recently learned that, despite no longer having access to Ruby’s client files or systems, Franz was able to successfully obtain a fraudulent distribution from a Ruby

client account. Franz obtained this distribution check through two phone conversations during which he falsely identified himself to be the broker of record and then the chairman of the client corporation. Fortunately, when Franz attempted to deposit the fraudulently obtained check, Franz's bank stopped the transaction.

3. Through the activities alleged in this complaint, Defendant Franz has, and unless enjoined, will continue to, directly and indirectly, engage in transactions, acts, practices or courses of business which are violations of Section 10(b) [15 U.S.C. § 78j(b)] of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5(a) and (c) [17 C.F.R. § 240.10b-5(a) and (c)] thereunder, and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (the "Advisers Act") [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

4. The SEC brings this action pursuant to Sections 21(d) and (e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)] and Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)]

### **JURISDICTION**

5. This Court has jurisdiction pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] and Section 214 of the Advisers Act [15 U.S.C. § 80b-14], and 28 U.S.C. § 1331.

6. The acts, practices and courses of business constituting the violations alleged herein occurred within the jurisdiction of the United States District Court for the Northern District of Ohio and elsewhere.

7. Defendant Franz is an inhabitant of, and transacts business in, the Northern District of Ohio.

8. Defendant Franz, directly or indirectly, has made, and is making, use of the mails or the means or instrumentalities of interstate commerce in connection with the transactions, acts, practices and courses of business alleged herein.

**DEFENDANT**

9. Andrew J. Franz, age 40, is a resident of Aurora, Ohio. Franz was a paid employee and associated person of Ruby from approximately 2002 until 2007. During this time he performed various administrative responsibilities for the firm. He was also employed as a registered representative with various broker-dealers such as Fortune Financial Services and H. Beck Inc. After 2007, Franz ceased being a paid employee of Ruby although he continued to be an associated person and continued to help with the operations of the firm. Although he no longer received a salary from Ruby after 2007, Franz continued to receive commissions as a registered representative.

**OTHER RELEVANT PARTIES**

10. Ruby Corporation (“Ruby”) is an Ohio corporation with its principal place of business in Beachwood, Ohio. Ruby is registered with the Commission as an investment adviser. Since 2007, Ruby has had one or two part-time employees on its staff in addition to its owner George Franz. As of December 2, 2011, it reported having approximately 99 client relationships with roughly \$21 million in assets under management.

11. George Bernard Franz III (“George Franz”), age 69, is a resident of Moreland Hills, Ohio and is Andrew’s father. He is the sole owner of Ruby and its sole manager and provider of investment advice.

**FACTS**

**FRANZ MISAPPROPRIATED AT LEAST \$172,000 FROM RUBY**

12. Andrew Franz began misappropriating advisory fees from Ruby as early as 2007, when Franz intercepted and deposited into his personal bank account approximately \$13,000 of fee checks payable to Ruby Corp. Between 2007 and 2009, Franz intercepted and deposited into his own account numerous fee checks that had been mailed to Ruby, diverting at least \$172,000 in legitimate client fees payable to Ruby.

**FRANZ STOLE AT LEAST \$779,000 FROM ADVISORY ACCOUNTS OF HIS FATHER AND HIS MOTHER'S TRUST**

13. In 2007 and 2008, Franz stole a total of over \$508,000 from his mother's trust account, and in 2009, Franz stole over \$271,000 from his father's advisory account. Both accounts were Ruby clients. At the time of these thefts, Franz was the broker of record for a money market mutual fund account owned by his father.

14. Knowing that his father spent his winters in Florida, Franz contacted the mutual fund company for these accounts, instructing it to issue checks to his father, drawn on the mutual fund account and sent to his father's residence in Ohio. Franz then went to his father's home, obtained possession of the checks, forged his father's signature on the checks, and deposited the checks into a personal bank account. Franz converted a portion of the funds for his own use, and remitted the rest to Ruby, apparently to mask an exodus of clients from Ruby and a resulting drop in advisory fee revenues. All of this was done without his father's knowledge or consent.

**FRANZ DEPOSITED SOME OF THE STOLEN FUNDS INTO RUBY'S ACCOUNTS, DISGUISED AS CLIENT FEES**

15. After George Franz discovered his son's thefts during the 2007 to 2009 time period, he engaged Ruby's accountant to perform an accounting of amounts stolen from Ruby

during the two year period from August 2007 through September 2009. The accountant determined that, as described above, Franz had stolen \$508,000 from his mother's trust account and over \$271,000 from his father's advisory account. The accountant also determined that during this time period, Franz had stolen \$172,000 in legitimate client fees payable to Ruby, and that Franz had deposited approximately \$684,000 of the stolen funds into Ruby accounts, disguised as client fees. Franz testified that he deposited these funds into the Ruby accounts to conceal the firm's dwindling client base and revenues.

**FRANZ STOLE AT LEAST \$49,000 FROM RUBY CLIENTS,  
BY CHARGING BOGUS ADVISORY FEES**

16. At least as early as 2010, Franz began stealing directly from other Ruby clients. He perpetrated these thefts by issuing to mutual funds and/or annuity companies requests for advisory fees that were not in fact owed by the clients. Typically, he accomplished this by sending in a second, fraudulent, fee request for the same quarter, and then either intercepting the checks when they arrived at Ruby or directing the financial institutions remitting the payments to send the checks directly to his personal residence, in order to avoid detection at Ruby. These second fee requests were not recorded on the books of Ruby.

17. Franz stole at least the following amounts from Ruby clients via bogus advisory fees:

<b>Approx. Date of Thefts</b>	<b>Number of Clients Involved</b>	<b>Securities Custodian</b>	<b>Amount Stolen</b>
Q1 2010 to Q1 2011	1	Integrity Life	\$15,483
November 2010	6	AIG Sun America	\$9,554
February 2011	15	Integrity Life	\$10,723
March 2011	5	Lincoln Financial Group	\$13,552
		<b>TOTAL:</b>	\$49,312

18. With respect to the client in the first line in the above chart, Franz caused this one client to be charged quarterly fees 12 times in 4 quarters. Franz intercepted the fee checks and

deposited them into his personal account, and then remitted to Ruby a reduced amount reflecting the legitimate fees recorded on the books of Ruby so as to avoid detection.

**FRANZ MISAPPROPRIATED AT LEAST \$37,000 IN RUBY CLIENT TRUST ASSETS**

19. Franz also misappropriated funds from a Ruby client trust over which his father had been appointed trustee. In early 2009, Franz liquidated this client trust, which totaled approximately \$93,730, held in various accounts in the name of the trust at AIG SunAmerica.

20. Franz did not have signatory authority over these accounts, so he forged his father's signature to obtain the redemption checks from these accounts. He then intercepted the checks when they were received at Ruby, forged his father's name on the endorsement line, and deposited the checks into his personal bank account.

21. Franz testified that that he then placed the funds into a safe in his home, purportedly at the instruction of one of the beneficiaries. Franz claims to have continued to make the annual distribution to the trust beneficiaries.

22. Franz prepared quarterly "Performance Reports" for the trust. These statements listed the initial balance as \$56,491, not the actual \$93,730. Franz simply kept the remaining \$37,239, permanently depriving the trust beneficiaries of these funds.

23. Combining these figures to the other known amounts taken after September 2009, and accounting for the stolen funds that Franz returned to Ruby, Franz misappropriated a net amount of at least \$354,000 from Ruby and its clients.

**FRANZ RECENTLY ATTEMPTED TO MISAPPROPRIATE  
FURTHER RUBY CLIENT FUNDS**

24. On March 5, 2012, the SEC learned that in November 2011, Franz attempted to misappropriate over \$21,000 from a Ruby client. Franz was arrested by the Strongsville, Ohio police department for attempting to cash a check payable to a Ruby client.

25. Franz had called the securities custodian for a Ruby client in November 2011, falsely claiming to be an employee of the current broker of record for that client account, and affected a change of address for the account to Franz's home address. The next day, Franz called the securities custodian, falsely claiming to be the chairman of the client corporation, and requested a distribution of approximately \$29,000. The securities custodian then disbursed a check to Franz's home payable to the client. Franz attempted to deposit this check into his personal bank account using a forged endorsement but his bank refused to honor the check and contacted the local police department.

26. Franz was arrested on February 10, 2012, in connection with this attempted deposit.

27. Unless emergency action is taken and Franz is restricted by this Court, Franz may continue to attempt to misappropriate additional Ruby client funds and may dissipate or conceal any Ruby client funds he has already misappropriated.

**COUNT I**

**Violations of Section 10(b) of the Exchange Act, and Exchange Act Rule 10b-5(a) and (c)**

28. Paragraphs 1 through 27 are re-alleged and incorporated by reference as though fully set forth herein.

29. As more fully described in paragraphs 1 through 27 above, Defendant Franz, in connection with the purchase and sale of securities, by the use of the means and instrumentalities

of interstate commerce and by the use of the mails, directly and indirectly: used and employed devices, schemes and artifices to defraud; made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices and courses of business which operated or would have operated as a fraud and deceit upon purchasers and sellers and prospective purchasers and sellers of securities.

30. Defendant Franz knew, or was reckless in not knowing, the facts and circumstances described in paragraphs 1 through 27 above.

31. By reason of the foregoing, Defendant Franz violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a) and (c)].

## **COUNT II**

### **Violations of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940**

32. Paragraphs 1 through 27 are re-alleged and incorporated by reference as though fully set forth herein.

33. At all times relevant to this Complaint, and as more fully described in paragraphs 1 through 31 above, Defendant Franz acted as an investment adviser.

34. As more fully described in paragraphs 1 through 27 above, at all times alleged in this Complaint, Defendant Franz, while acting as an investment adviser, by use of the mails, and the means and instrumentalities of interstate commerce, directly or indirectly, knowingly, willfully or recklessly: (i) employed devices, schemes or artifices to defraud his clients or prospective clients; and (ii) engaged in transactions, practices and courses of business which have operated as a fraud or deceit upon his clients or prospective clients.

35. By reason of the foregoing, Defendant Franz aided and abetted violations of Sections 206(1) and 206(2) of the Advisers Act. [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

**RELIEF REQUESTED**

**Wherefore**, the SEC respectfully requests that this Court:

**I.**

Find that Defendant Franz committed the violations charged and alleged herein.

**II.**

Grant Orders of Preliminary and Permanent Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Defendant Franz, his officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of the Order, by personal service or otherwise, and each of them from, directly or indirectly, engaging in the transactions, acts, practices or courses of business described above, or in conduct of similar purport and object, in violation of Section 10(b) [15 U.S.C. § 78j] of the Exchange Act and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder, and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

**III.**

Issue an Order requiring Defendant Franz to disgorge the ill-gotten gains that he received as a result of his wrongful conduct, including prejudgment interest.

**IV.**

With regard to Defendant Franz's violative acts, practices and courses of business set forth herein, issue an Order imposing upon Defendant Franz appropriate civil penalties pursuant

to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 209(e) of the Advisers Act [15 U.S.C. §§ 80b-9(e)].

**V.**

Retain jurisdiction of this action in accordance with the principals of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

**VI.**

Grant appropriate emergency relief to prevent further misappropriation, dissipation, or secretion of client assets.

**VII.**

Grant an Order for any other relief this Court deems appropriate.

Respectfully submitted,

s/ Natalie G. Garner

Natalie G. Garner, IL Bar. No. 6278052

Robin Andrews, IL Bar No. 6285644

Charles J. Kerstetter, PA Bar No. 67088

Attorneys for Plaintiff

U.S. SECURITIES AND

EXCHANGE COMMISSION

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Dated: March 15, 2012

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

UNITED STATES SECURITIES  
AND EXCHANGE COMMISSION,

Plaintiff,

v.

ANDREW J. FRANZ,

Defendant.

CASE NO.

JURY DEMANDED

COMPLAINT

Plaintiff, the United States Securities and Exchange Commission (“SEC”), alleges as follows:

NATURE OF THE ACTION

1. This matter centers on a fraudulent scheme from 2007 to the present in which Andrew J. Franz (“Franz”), misappropriated at least approximately \$865,969 from clients of Ruby Corporation (“Ruby”), a registered investment adviser with which he was associated, including \$779,418 from family members and \$86,551 from other clients. Franz also misappropriated over \$172,000 from Ruby itself by stealing legitimate client fees payable to Ruby. During this same time period, Franz returned approximately \$684,000 to Ruby disguised as client fees to conceal the firm’s dwindling client base and revenues. Franz thus kept a net of at least approximately \$354,000 in funds stolen from these sources. Franz was ultimately terminated from Ruby in May 2011.

2. The SEC recently learned that, despite no longer having access to Ruby’s client files or systems, Franz was able to successfully obtain a fraudulent distribution from a Ruby

client account. Franz obtained this distribution check through two phone conversations during which he falsely identified himself to be the broker of record and then the chairman of the client corporation. Fortunately, when Franz attempted to deposit the fraudulently obtained check, Franz's bank stopped the transaction.

3. Through the activities alleged in this complaint, Defendant Franz has, and unless enjoined, will continue to, directly and indirectly, engage in transactions, acts, practices or courses of business which are violations of Section 10(b) [15 U.S.C. § 78j(b)] of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5(a) and (c) [17 C.F.R. § 240.10b-5(a) and (c)] thereunder, and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (the "Advisers Act") [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

4. The SEC brings this action pursuant to Sections 21(d) and (e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)] and Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)]

### **JURISDICTION**

5. This Court has jurisdiction pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] and Section 214 of the Advisers Act [15 U.S.C. § 80b-14], and 28 U.S.C. § 1331.

6. The acts, practices and courses of business constituting the violations alleged herein occurred within the jurisdiction of the United States District Court for the Northern District of Ohio and elsewhere.

7. Defendant Franz is an inhabitant of, and transacts business in, the Northern District of Ohio.

8. Defendant Franz, directly or indirectly, has made, and is making, use of the mails or the means or instrumentalities of interstate commerce in connection with the transactions, acts, practices and courses of business alleged herein.

**DEFENDANT**

9. Andrew J. Franz, age 40, is a resident of Aurora, Ohio. Franz was a paid employee and associated person of Ruby from approximately 2002 until 2007. During this time he performed various administrative responsibilities for the firm. He was also employed as a registered representative with various broker-dealers such as Fortune Financial Services and H. Beck Inc. After 2007, Franz ceased being a paid employee of Ruby although he continued to be an associated person and continued to help with the operations of the firm. Although he no longer received a salary from Ruby after 2007, Franz continued to receive commissions as a registered representative.

**OTHER RELEVANT PARTIES**

10. Ruby Corporation (“Ruby”) is an Ohio corporation with its principal place of business in Beachwood, Ohio. Ruby is registered with the Commission as an investment adviser. Since 2007, Ruby has had one or two part-time employees on its staff in addition to its owner George Franz. As of December 2, 2011, it reported having approximately 99 client relationships with roughly \$21 million in assets under management.

11. George Bernard Franz III (“George Franz”), age 69, is a resident of Moreland Hills, Ohio and is Andrew’s father. He is the sole owner of Ruby and its sole manager and provider of investment advice.

**FACTS**

**FRANZ MISAPPROPRIATED AT LEAST \$172,000 FROM RUBY**

12. Andrew Franz began misappropriating advisory fees from Ruby as early as 2007, when Franz intercepted and deposited into his personal bank account approximately \$13,000 of fee checks payable to Ruby Corp. Between 2007 and 2009, Franz intercepted and deposited into his own account numerous fee checks that had been mailed to Ruby, diverting at least \$172,000 in legitimate client fees payable to Ruby.

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13. In 2007 and 2008, Franz stole a total of over \$508,000 from his mother's trust account, and in 2009, Franz stole over \$271,000 from his father's advisory account. Both accounts were Ruby clients. At the time of these thefts, Franz was the broker of record for a money market mutual fund account owned by his father.

14. Knowing that his father spent his winters in Florida, Franz contacted the mutual fund company for these accounts, instructing it to issue checks to his father, drawn on the mutual fund account and sent to his father's residence in Ohio. Franz then went to his father's home, obtained possession of the checks, forged his father's signature on the checks, and deposited the checks into a personal bank account. Franz converted a portion of the funds for his own use, and remitted the rest to Ruby, apparently to mask an exodus of clients from Ruby and a resulting drop in advisory fee revenues. All of this was done without his father's knowledge or consent.

**FRANZ DEPOSITED SOME OF THE STOLEN FUNDS INTO RUBY'S ACCOUNTS, DISGUISED AS CLIENT FEES**

15. After George Franz discovered his son's thefts during the 2007 to 2009 time period, he engaged Ruby's accountant to perform an accounting of amounts stolen from Ruby

during the two year period from August 2007 through September 2009. The accountant determined that, as described above, Franz had stolen \$508,000 from his mother's trust account and over \$271,000 from his father's advisory account. The accountant also determined that during this time period, Franz had stolen \$172,000 in legitimate client fees payable to Ruby, and that Franz had deposited approximately \$684,000 of the stolen funds into Ruby accounts, disguised as client fees. Franz testified that he deposited these funds into the Ruby accounts to conceal the firm's dwindling client base and revenues.

**FRANZ STOLE AT LEAST \$49,000 FROM RUBY CLIENTS,  
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16. At least as early as 2010, Franz began stealing directly from other Ruby clients. He perpetrated these thefts by issuing to mutual funds and/or annuity companies requests for advisory fees that were not in fact owed by the clients. Typically, he accomplished this by sending in a second, fraudulent, fee request for the same quarter, and then either intercepting the checks when they arrived at Ruby or directing the financial institutions remitting the payments to send the checks directly to his personal residence, in order to avoid detection at Ruby. These second fee requests were not recorded on the books of Ruby.

17. Franz stole at least the following amounts from Ruby clients via bogus advisory fees:

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March 2011	5	Lincoln Financial Group	\$13,552
		<b>TOTAL:</b>	\$49,312

18. With respect to the client in the first line in the above chart, Franz caused this one client to be charged quarterly fees 12 times in 4 quarters. Franz intercepted the fee checks and

deposited them into his personal account, and then remitted to Ruby a reduced amount reflecting the legitimate fees recorded on the books of Ruby so as to avoid detection.

**FRANZ MISAPPROPRIATED AT LEAST \$37,000 IN RUBY CLIENT TRUST ASSETS**

19. Franz also misappropriated funds from a Ruby client trust over which his father had been appointed trustee. In early 2009, Franz liquidated this client trust, which totaled approximately \$93,730, held in various accounts in the name of the trust at AIG SunAmerica.

20. Franz did not have signatory authority over these accounts, so he forged his father's signature to obtain the redemption checks from these accounts. He then intercepted the checks when they were received at Ruby, forged his father's name on the endorsement line, and deposited the checks into his personal bank account.

21. Franz testified that that he then placed the funds into a safe in his home, purportedly at the instruction of one of the beneficiaries. Franz claims to have continued to make the annual distribution to the trust beneficiaries.

22. Franz prepared quarterly "Performance Reports" for the trust. These statements listed the initial balance as \$56,491, not the actual \$93,730. Franz simply kept the remaining \$37,239, permanently depriving the trust beneficiaries of these funds.

23. Combining these figures to the other known amounts taken after September 2009, and accounting for the stolen funds that Franz returned to Ruby, Franz misappropriated a net amount of at least \$354,000 from Ruby and its clients.

**FRANZ RECENTLY ATTEMPTED TO MISAPPROPRIATE  
FURTHER RUBY CLIENT FUNDS**

24. On March 5, 2012, the SEC learned that in November 2011, Franz attempted to misappropriate over \$21,000 from a Ruby client. Franz was arrested by the Strongsville, Ohio police department for attempting to cash a check payable to a Ruby client.

25. Franz had called the securities custodian for a Ruby client in November 2011, falsely claiming to be an employee of the current broker of record for that client account, and affected a change of address for the account to Franz's home address. The next day, Franz called the securities custodian, falsely claiming to be the chairman of the client corporation, and requested a distribution of approximately \$29,000. The securities custodian then disbursed a check to Franz's home payable to the client. Franz attempted to deposit this check into his personal bank account using a forged endorsement but his bank refused to honor the check and contacted the local police department.

26. Franz was arrested on February 10, 2012, in connection with this attempted deposit.

27. Unless emergency action is taken and Franz is restricted by this Court, Franz may continue to attempt to misappropriate additional Ruby client funds and may dissipate or conceal any Ruby client funds he has already misappropriated.

**COUNT I**

**Violations of Section 10(b) of the Exchange Act, and Exchange Act Rule 10b-5(a) and (c)**

28. Paragraphs 1 through 27 are re-alleged and incorporated by reference as though fully set forth herein.

29. As more fully described in paragraphs 1 through 27 above, Defendant Franz, in connection with the purchase and sale of securities, by the use of the means and instrumentalities

of interstate commerce and by the use of the mails, directly and indirectly: used and employed devices, schemes and artifices to defraud; made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices and courses of business which operated or would have operated as a fraud and deceit upon purchasers and sellers and prospective purchasers and sellers of securities.

30. Defendant Franz knew, or was reckless in not knowing, the facts and circumstances described in paragraphs 1 through 27 above.

31. By reason of the foregoing, Defendant Franz violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a) and (c)].

## **COUNT II**

### **Violations of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940**

32. Paragraphs 1 through 27 are re-alleged and incorporated by reference as though fully set forth herein.

33. At all times relevant to this Complaint, and as more fully described in paragraphs 1 through 31 above, Defendant Franz acted as an investment adviser.

34. As more fully described in paragraphs 1 through 27 above, at all times alleged in this Complaint, Defendant Franz, while acting as an investment adviser, by use of the mails, and the means and instrumentalities of interstate commerce, directly or indirectly, knowingly, willfully or recklessly: (i) employed devices, schemes or artifices to defraud his clients or prospective clients; and (ii) engaged in transactions, practices and courses of business which have operated as a fraud or deceit upon his clients or prospective clients.

35. By reason of the foregoing, Defendant Franz aided and abetted violations of Sections 206(1) and 206(2) of the Advisers Act. [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

**RELIEF REQUESTED**

**Wherefore**, the SEC respectfully requests that this Court:

**I.**

Find that Defendant Franz committed the violations charged and alleged herein.

**II.**

Grant Orders of Preliminary and Permanent Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Defendant Franz, his officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of the Order, by personal service or otherwise, and each of them from, directly or indirectly, engaging in the transactions, acts, practices or courses of business described above, or in conduct of similar purport and object, in violation of Section 10(b) [15 U.S.C. § 78j] of the Exchange Act and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder, and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

**III.**

Issue an Order requiring Defendant Franz to disgorge the ill-gotten gains that he received as a result of his wrongful conduct, including prejudgment interest.

**IV.**

With regard to Defendant Franz's violative acts, practices and courses of business set forth herein, issue an Order imposing upon Defendant Franz appropriate civil penalties pursuant

to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 209(e) of the Advisers Act [15 U.S.C. §§ 80b-9(e)].

**V.**

Retain jurisdiction of this action in accordance with the principals of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

**VI.**

Grant appropriate emergency relief to prevent further misappropriation, dissipation, or secretion of client assets.

**VII.**

Grant an Order for any other relief this Court deems appropriate.

Respectfully submitted,

s/ Natalie G. Garner

Natalie G. Garner, IL Bar. No. 6278052

Robin Andrews, IL Bar No. 6285644

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EXCHANGE COMMISSION

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Dated: March 15, 2012

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

<hr/>		:	
<b>UNITED STATES SECURITIES</b>		:	
<b>AND EXCHANGE COMMISSION,</b>		:	
		:	<b>CASE NO.</b>
<b>Plaintiff,</b>		:	
		:	
<b>v.</b>		:	
		:	
<b>ANDREW J. FRANZ,</b>		:	
		:	
<b>Defendant.</b>		:	<b>JURY DEMANDED</b>
<hr/>		:	

**COMPLAINT**

Plaintiff, the United States Securities and Exchange Commission (“SEC”), alleges as follows:

**NATURE OF THE ACTION**

1. This matter centers on a fraudulent scheme from 2007 to the present in which Andrew J. Franz (“Franz”), misappropriated at least approximately \$865,969 from clients of Ruby Corporation (“Ruby”), a registered investment adviser with which he was associated, including \$779,418 from family members and \$86,551 from other clients. Franz also misappropriated over \$172,000 from Ruby itself by stealing legitimate client fees payable to Ruby. During this same time period, Franz returned approximately \$684,000 to Ruby disguised as client fees to conceal the firm’s dwindling client base and revenues. Franz thus kept a net of at least approximately \$354,000 in funds stolen from these sources. Franz was ultimately terminated from Ruby in May 2011.

2. The SEC recently learned that, despite no longer having access to Ruby’s client files or systems, Franz was able to successfully obtain a fraudulent distribution from a Ruby

client account. Franz obtained this distribution check through two phone conversations during which he falsely identified himself to be the broker of record and then the chairman of the client corporation. Fortunately, when Franz attempted to deposit the fraudulently obtained check, Franz's bank stopped the transaction.

3. Through the activities alleged in this complaint, Defendant Franz has, and unless enjoined, will continue to, directly and indirectly, engage in transactions, acts, practices or courses of business which are violations of Section 10(b) [15 U.S.C. § 78j(b)] of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5(a) and (c) [17 C.F.R. § 240.10b-5(a) and (c)] thereunder, and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (the "Advisers Act") [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

4. The SEC brings this action pursuant to Sections 21(d) and (e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)] and Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)]

### **JURISDICTION**

5. This Court has jurisdiction pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] and Section 214 of the Advisers Act [15 U.S.C. § 80b-14], and 28 U.S.C. § 1331.

6. The acts, practices and courses of business constituting the violations alleged herein occurred within the jurisdiction of the United States District Court for the Northern District of Ohio and elsewhere.

7. Defendant Franz is an inhabitant of, and transacts business in, the Northern District of Ohio.

8. Defendant Franz, directly or indirectly, has made, and is making, use of the mails or the means or instrumentalities of interstate commerce in connection with the transactions, acts, practices and courses of business alleged herein.

**DEFENDANT**

9. Andrew J. Franz, age 40, is a resident of Aurora, Ohio. Franz was a paid employee and associated person of Ruby from approximately 2002 until 2007. During this time he performed various administrative responsibilities for the firm. He was also employed as a registered representative with various broker-dealers such as Fortune Financial Services and H. Beck Inc. After 2007, Franz ceased being a paid employee of Ruby although he continued to be an associated person and continued to help with the operations of the firm. Although he no longer received a salary from Ruby after 2007, Franz continued to receive commissions as a registered representative.

**OTHER RELEVANT PARTIES**

10. Ruby Corporation (“Ruby”) is an Ohio corporation with its principal place of business in Beachwood, Ohio. Ruby is registered with the Commission as an investment adviser. Since 2007, Ruby has had one or two part-time employees on its staff in addition to its owner George Franz. As of December 2, 2011, it reported having approximately 99 client relationships with roughly \$21 million in assets under management.

11. George Bernard Franz III (“George Franz”), age 69, is a resident of Moreland Hills, Ohio and is Andrew’s father. He is the sole owner of Ruby and its sole manager and provider of investment advice.

**FACTS**

**FRANZ MISAPPROPRIATED AT LEAST \$172,000 FROM RUBY**

12. Andrew Franz began misappropriating advisory fees from Ruby as early as 2007, when Franz intercepted and deposited into his personal bank account approximately \$13,000 of fee checks payable to Ruby Corp. Between 2007 and 2009, Franz intercepted and deposited into his own account numerous fee checks that had been mailed to Ruby, diverting at least \$172,000 in legitimate client fees payable to Ruby.

**FRANZ STOLE AT LEAST \$779,000 FROM ADVISORY ACCOUNTS OF HIS FATHER AND HIS MOTHER'S TRUST**

13. In 2007 and 2008, Franz stole a total of over \$508,000 from his mother's trust account, and in 2009, Franz stole over \$271,000 from his father's advisory account. Both accounts were Ruby clients. At the time of these thefts, Franz was the broker of record for a money market mutual fund account owned by his father.

14. Knowing that his father spent his winters in Florida, Franz contacted the mutual fund company for these accounts, instructing it to issue checks to his father, drawn on the mutual fund account and sent to his father's residence in Ohio. Franz then went to his father's home, obtained possession of the checks, forged his father's signature on the checks, and deposited the checks into a personal bank account. Franz converted a portion of the funds for his own use, and remitted the rest to Ruby, apparently to mask an exodus of clients from Ruby and a resulting drop in advisory fee revenues. All of this was done without his father's knowledge or consent.

**FRANZ DEPOSITED SOME OF THE STOLEN FUNDS INTO RUBY'S ACCOUNTS, DISGUISED AS CLIENT FEES**

15. After George Franz discovered his son's thefts during the 2007 to 2009 time period, he engaged Ruby's accountant to perform an accounting of amounts stolen from Ruby

during the two year period from August 2007 through September 2009. The accountant determined that, as described above, Franz had stolen \$508,000 from his mother's trust account and over \$271,000 from his father's advisory account. The accountant also determined that during this time period, Franz had stolen \$172,000 in legitimate client fees payable to Ruby, and that Franz had deposited approximately \$684,000 of the stolen funds into Ruby accounts, disguised as client fees. Franz testified that he deposited these funds into the Ruby accounts to conceal the firm's dwindling client base and revenues.

**FRANZ STOLE AT LEAST \$49,000 FROM RUBY CLIENTS,  
BY CHARGING BOGUS ADVISORY FEES**

16. At least as early as 2010, Franz began stealing directly from other Ruby clients. He perpetrated these thefts by issuing to mutual funds and/or annuity companies requests for advisory fees that were not in fact owed by the clients. Typically, he accomplished this by sending in a second, fraudulent, fee request for the same quarter, and then either intercepting the checks when they arrived at Ruby or directing the financial institutions remitting the payments to send the checks directly to his personal residence, in order to avoid detection at Ruby. These second fee requests were not recorded on the books of Ruby.

17. Franz stole at least the following amounts from Ruby clients via bogus advisory fees:

<b>Approx. Date of Thefts</b>	<b>Number of Clients Involved</b>	<b>Securities Custodian</b>	<b>Amount Stolen</b>
Q1 2010 to Q1 2011	1	Integrity Life	\$15,483
November 2010	6	AIG Sun America	\$9,554
February 2011	15	Integrity Life	\$10,723
March 2011	5	Lincoln Financial Group	\$13,552
		<b>TOTAL:</b>	\$49,312

18. With respect to the client in the first line in the above chart, Franz caused this one client to be charged quarterly fees 12 times in 4 quarters. Franz intercepted the fee checks and

deposited them into his personal account, and then remitted to Ruby a reduced amount reflecting the legitimate fees recorded on the books of Ruby so as to avoid detection.

**FRANZ MISAPPROPRIATED AT LEAST \$37,000 IN RUBY CLIENT TRUST ASSETS**

19. Franz also misappropriated funds from a Ruby client trust over which his father had been appointed trustee. In early 2009, Franz liquidated this client trust, which totaled approximately \$93,730, held in various accounts in the name of the trust at AIG SunAmerica.

20. Franz did not have signatory authority over these accounts, so he forged his father's signature to obtain the redemption checks from these accounts. He then intercepted the checks when they were received at Ruby, forged his father's name on the endorsement line, and deposited the checks into his personal bank account.

21. Franz testified that that he then placed the funds into a safe in his home, purportedly at the instruction of one of the beneficiaries. Franz claims to have continued to make the annual distribution to the trust beneficiaries.

22. Franz prepared quarterly "Performance Reports" for the trust. These statements listed the initial balance as \$56,491, not the actual \$93,730. Franz simply kept the remaining \$37,239, permanently depriving the trust beneficiaries of these funds.

23. Combining these figures to the other known amounts taken after September 2009, and accounting for the stolen funds that Franz returned to Ruby, Franz misappropriated a net amount of at least \$354,000 from Ruby and its clients.

**FRANZ RECENTLY ATTEMPTED TO MISAPPROPRIATE  
FURTHER RUBY CLIENT FUNDS**

24. On March 5, 2012, the SEC learned that in November 2011, Franz attempted to misappropriate over \$21,000 from a Ruby client. Franz was arrested by the Strongsville, Ohio police department for attempting to cash a check payable to a Ruby client.

25. Franz had called the securities custodian for a Ruby client in November 2011, falsely claiming to be an employee of the current broker of record for that client account, and affected a change of address for the account to Franz's home address. The next day, Franz called the securities custodian, falsely claiming to be the chairman of the client corporation, and requested a distribution of approximately \$29,000. The securities custodian then disbursed a check to Franz's home payable to the client. Franz attempted to deposit this check into his personal bank account using a forged endorsement but his bank refused to honor the check and contacted the local police department.

26. Franz was arrested on February 10, 2012, in connection with this attempted deposit.

27. Unless emergency action is taken and Franz is restricted by this Court, Franz may continue to attempt to misappropriate additional Ruby client funds and may dissipate or conceal any Ruby client funds he has already misappropriated.

**COUNT I**

**Violations of Section 10(b) of the Exchange Act, and Exchange Act Rule 10b-5(a) and (c)**

28. Paragraphs 1 through 27 are re-alleged and incorporated by reference as though fully set forth herein.

29. As more fully described in paragraphs 1 through 27 above, Defendant Franz, in connection with the purchase and sale of securities, by the use of the means and instrumentalities

of interstate commerce and by the use of the mails, directly and indirectly: used and employed devices, schemes and artifices to defraud; made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices and courses of business which operated or would have operated as a fraud and deceit upon purchasers and sellers and prospective purchasers and sellers of securities.

30. Defendant Franz knew, or was reckless in not knowing, the facts and circumstances described in paragraphs 1 through 27 above.

31. By reason of the foregoing, Defendant Franz violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a) and (c)].

## **COUNT II**

### **Violations of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940**

32. Paragraphs 1 through 27 are re-alleged and incorporated by reference as though fully set forth herein.

33. At all times relevant to this Complaint, and as more fully described in paragraphs 1 through 31 above, Defendant Franz acted as an investment adviser.

34. As more fully described in paragraphs 1 through 27 above, at all times alleged in this Complaint, Defendant Franz, while acting as an investment adviser, by use of the mails, and the means and instrumentalities of interstate commerce, directly or indirectly, knowingly, willfully or recklessly: (i) employed devices, schemes or artifices to defraud his clients or prospective clients; and (ii) engaged in transactions, practices and courses of business which have operated as a fraud or deceit upon his clients or prospective clients.

35. By reason of the foregoing, Defendant Franz aided and abetted violations of Sections 206(1) and 206(2) of the Advisers Act. [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

**RELIEF REQUESTED**

**Wherefore**, the SEC respectfully requests that this Court:

**I.**

Find that Defendant Franz committed the violations charged and alleged herein.

**II.**

Grant Orders of Preliminary and Permanent Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Defendant Franz, his officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of the Order, by personal service or otherwise, and each of them from, directly or indirectly, engaging in the transactions, acts, practices or courses of business described above, or in conduct of similar purport and object, in violation of Section 10(b) [15 U.S.C. § 78j] of the Exchange Act and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder, and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

**III.**

Issue an Order requiring Defendant Franz to disgorge the ill-gotten gains that he received as a result of his wrongful conduct, including prejudgment interest.

**IV.**

With regard to Defendant Franz's violative acts, practices and courses of business set forth herein, issue an Order imposing upon Defendant Franz appropriate civil penalties pursuant

to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 209(e) of the Advisers Act [15 U.S.C. §§ 80b-9(e)].

**V.**

Retain jurisdiction of this action in accordance with the principals of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

**VI.**

Grant appropriate emergency relief to prevent further misappropriation, dissipation, or secretion of client assets.

**VII.**

Grant an Order for any other relief this Court deems appropriate.

Respectfully submitted,

s/ Natalie G. Garner

Natalie G. Garner, IL Bar. No. 6278052

Robin Andrews, IL Bar No. 6285644

Charles J. Kerstetter, PA Bar No. 67088

Attorneys for Plaintiff

U.S. SECURITIES AND

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Dated: March 15, 2012



client account. Franz obtained this distribution check through two phone conversations during which he falsely identified himself to be the broker of record and then the chairman of the client corporation. Fortunately, when Franz attempted to deposit the fraudulently obtained check, Franz's bank stopped the transaction.

3. Through the activities alleged in this complaint, Defendant Franz has, and unless enjoined, will continue to, directly and indirectly, engage in transactions, acts, practices or courses of business which are violations of Section 10(b) [15 U.S.C. § 78j(b)] of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5(a) and (c) [17 C.F.R. § 240.10b-5(a) and (c)] thereunder, and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (the "Advisers Act") [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

4. The SEC brings this action pursuant to Sections 21(d) and (e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)] and Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)]

### **JURISDICTION**

5. This Court has jurisdiction pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] and Section 214 of the Advisers Act [15 U.S.C. § 80b-14], and 28 U.S.C. § 1331.

6. The acts, practices and courses of business constituting the violations alleged herein occurred within the jurisdiction of the United States District Court for the Northern District of Ohio and elsewhere.

7. Defendant Franz is an inhabitant of, and transacts business in, the Northern District of Ohio.

8. Defendant Franz, directly or indirectly, has made, and is making, use of the mails or the means or instrumentalities of interstate commerce in connection with the transactions, acts, practices and courses of business alleged herein.

**DEFENDANT**

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**COUNT I**

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28. Paragraphs 1 through 27 are re-alleged and incorporated by reference as though fully set forth herein.

29. As more fully described in paragraphs 1 through 27 above, Defendant Franz, in connection with the purchase and sale of securities, by the use of the means and instrumentalities

of interstate commerce and by the use of the mails, directly and indirectly: used and employed devices, schemes and artifices to defraud; made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices and courses of business which operated or would have operated as a fraud and deceit upon purchasers and sellers and prospective purchasers and sellers of securities.

30. Defendant Franz knew, or was reckless in not knowing, the facts and circumstances described in paragraphs 1 through 27 above.

31. By reason of the foregoing, Defendant Franz violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a) and (c)].

## **COUNT II**

### **Violations of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940**

32. Paragraphs 1 through 27 are re-alleged and incorporated by reference as though fully set forth herein.

33. At all times relevant to this Complaint, and as more fully described in paragraphs 1 through 31 above, Defendant Franz acted as an investment adviser.

34. As more fully described in paragraphs 1 through 27 above, at all times alleged in this Complaint, Defendant Franz, while acting as an investment adviser, by use of the mails, and the means and instrumentalities of interstate commerce, directly or indirectly, knowingly, willfully or recklessly: (i) employed devices, schemes or artifices to defraud his clients or prospective clients; and (ii) engaged in transactions, practices and courses of business which have operated as a fraud or deceit upon his clients or prospective clients.

35. By reason of the foregoing, Defendant Franz aided and abetted violations of Sections 206(1) and 206(2) of the Advisers Act. [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

**RELIEF REQUESTED**

**Wherefore**, the SEC respectfully requests that this Court:

**I.**

Find that Defendant Franz committed the violations charged and alleged herein.

**II.**

Grant Orders of Preliminary and Permanent Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Defendant Franz, his officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of the Order, by personal service or otherwise, and each of them from, directly or indirectly, engaging in the transactions, acts, practices or courses of business described above, or in conduct of similar purport and object, in violation of Section 10(b) [15 U.S.C. § 78j] of the Exchange Act and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder, and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

**III.**

Issue an Order requiring Defendant Franz to disgorge the ill-gotten gains that he received as a result of his wrongful conduct, including prejudgment interest.

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**V.**

Retain jurisdiction of this action in accordance with the principals of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

**VI.**

Grant appropriate emergency relief to prevent further misappropriation, dissipation, or secretion of client assets.

**VII.**

Grant an Order for any other relief this Court deems appropriate.

Respectfully submitted,

s/ Natalie G. Garner

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Dated: March 15, 2012