

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)	
SECURITIES AND EXCHANGE	)	
COMMISSION,	)	
	)	
Plaintiff,	)	Civil Action No.
	)	
v.	)	
	)	
ANDREY C. HICKS, and	)	JURY TRIAL DEMANDED
LOCUST OFFSHORE MANAGEMENT, LLC,	)	
	)	
Defendants,	)	
	)	
and	)	
	)	
LOCUST OFFSHORE FUND, LTD.,	)	
	)	
Relief Defendant.	)	
_____	)	

**COMPLAINT**

Plaintiff Securities and Exchange Commission (the “Commission”) alleges the following against defendants Andrey C. Hicks (“Hicks”) and Locust Offshore Management, LLC (“LOM”) (collectively, “Defendants”) and relief defendant Locust Offshore Fund, Ltd. (“Locust Fund”):

**SUMMARY**

1. This case involves a fraudulent scheme employed, and false and misleading statements made and used, by Andrey Hicks and Locust Offshore Management, LLC in connection with the offer and sale of shares in a purported British Virgin Islands (BVI)-incorporated pooled investment fund, Locust Offshore Fund, Ltd. Hicks and LOM schemed to defraud investors through the creation of a false and deceptive appearance of a legitimate, existing BVI-incorporated pooled investment fund. Hicks and LOM created the false and

deceptive appearance of a BVI-incorporated pooled investment fund by opening business checking and savings accounts, creating and maintaining a website for LOM and Locust Fund, creating an offering memorandum for the fictional fund, and creating business cards, stationery, and email signature blocks describing Hicks as the principal of LOM and the Managing Partner and Director of Locust Fund. Once Hicks and LOM created the deceptive scheme, they employed it through the solicitation of investors. During these solicitations, Hicks and LOM made oral and written misrepresentations about Hicks, LOM and the purported fund that enticed at least one investor, Investor A, to purchase shares of Locust Fund for a total purchase price of \$100,000. In addition, on information and belief, Hicks and LOM have obtained approximately \$1.6 million from approximately nine other investors through the offer and sale of Locust Fund shares based upon the fraudulent scheme and misrepresentations substantially similar to those made to Investor A. Hicks' and LOM's misrepresentations relate to the existence of the purported BVI-incorporated Locust Fund, the size of assets raised and managed by Hicks and LOM through their fraudulent sales of Locust Fund shares, the existence of a purported professional auditor and prime brokerage and custody services engaged for Locust Fund, and the educational and professional background of Hicks. Not only does Locust Fund not exist as a BVI-incorporated company, but Hicks has transferred substantially all of the investors' funds to bank accounts in his personal name and, on information and belief, for his personal use.

2. By engaging in the conduct alleged herein, Defendants violated Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, and Section 206(4) of the Investment Advisers Act of 1940 ("Advisers Act") and Rule 206(4)-8 thereunder.

3. Based on these violations, the Commission seeks: (1) entry of a permanent injunction prohibiting Defendants from further violations of the relevant provisions of the federal securities laws; (2) disgorgement of Defendants' ill-gotten gains, plus pre-judgment interest; (3) disgorgement by the Relief Defendant of all unjust enrichment and/or ill-gotten gain received from Defendants, plus prejudgment interest; and (4) the imposition of a civil monetary penalty due to the egregious nature of Defendants' violations.

#### **JURISDICTION AND VENUE**

4. The Commission brings this action pursuant to the enforcement authority conferred upon it by Section 20(b) of the Securities Act [15 U.S.C. §77t(b)], Section 21(d) of the Exchange Act [15 U.S.C. §§78u(d)], and Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9]. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1331, Section 22(a) of the Securities Act [15 U.S.C. §77v(a)], Sections 21(d) and (e) and 27 of the Exchange Act [15 U.S.C. §§78u(e) and 78aa], and Section 214 of the Advisers Act [15 U.S.C. § 80b-14].

5. Venue is proper in this district pursuant to 28 U.S.C. §1391(b)(2), Section 22(a) of the Securities Act [15 U.S.C. §77v(a)], Section 27 of the Exchange Act [15 U.S.C. §78aa], and Section 214 of the Advisers Act [15 U.S.C. § 80b-14] because a substantial part of the acts constituting the alleged violations occurred in the District of Massachusetts and because Hicks lives in Massachusetts and the principal place of business of LOM is in Massachusetts.

6. In connection with the conduct alleged in this Complaint, Defendants directly or indirectly made use of the means or instruments of transportation or communication in interstate commerce, the facilities of a national securities exchange, or the mails.

7. Defendants' conduct involved fraud, deceit, or deliberate or reckless disregard of regulatory requirements, and resulted in substantial loss, or significant risk of substantial loss, to other persons.

8. Unless enjoined, Defendants will continue to engage in the securities law violations alleged herein, or in similar conduct that would violate the federal securities laws.

#### **DEFENDANTS**

9. Andrey C. Hicks, age 27, is a resident of Boston, Massachusetts. Hicks is the principal, Partner, Managing Director, and Chief Executive Officer of LOM and the Managing Partner and sole Director of the purported Locust Fund.

10. LOM is a Delaware limited liability company with a primary place of business at 10 Concord Avenue, Cambridge, Massachusetts 02138. LOM purports to be the sole manager of Locust Fund. LOM is not registered with the Commission.

#### **RELIEF DEFENDANT**

11. Locust Fund purports to be a British Virgin Islands Business Company incorporated on January 7, 2011 and a Professional Fund within the meaning of the British Virgin Islands Securities and Investment Business Act, 2010. LOM is purported to be the sole Manager of the Fund. Hicks is purported to be the sole Director of the Fund. As created and represented by Hicks and LOM, Locust Fund purports to be a pooled investment vehicle that takes cash investments in exchange for the transfer of company shares. A subscription to the offering memorandum is an investment contract that purports to consist of an investment of money, in a common enterprise that involves the pooling of assets from multiple investors so that all share in the profits and risks of the enterprise, with the expectation of profits that will be derived solely from the efforts of Hicks, LOM and Locust Fund. Locust Fund is not registered

with the Commission. Locust Fund has never registered an offering of securities under the Securities Act or a class of securities under the Exchange Act.

### **FACTUAL ALLEGATIONS**

#### **A. Hicks and LOM Devise the Scheme To Defraud**

12. Starting sometime prior to and during the summer of 2011, Hicks and LOM engaged in the process of creating the false and deceptive appearance of managing a BVI-incorporated pooled investment fund. In June 2011, Hicks formed LOM, the fund's purported manager, as a Delaware limited liability company. Hicks and LOM then created a website and professional materials, including stationery, business cards, and email signature blocks, all of which created the false and deceptive appearance that Hicks and LOM managed a real, existing BVI-incorporated pooled investment fund called Locust Offshore Fund, Ltd.

13. Within the LOM website, Hicks and LOM published investment information about Locust Fund, including its current balance, total subscriptions, and year-to-date returns.

14. In June 2011, Hicks and LOM also opened business checking and savings accounts in the name of LOM at TD Bank in Brookline, Massachusetts for the purpose of receiving investor funds for Locust Fund.

15. During the same timeframe, Hicks and LOM created a Confidential Information Memorandum ("Offering Memorandum") for the offer and sale of shares in Locust Fund. Within this Offering Memorandum, Hicks and LOM made a number of materially false and misleading statements about (i) the existence of Locust Fund as a BVI-incorporated company, (ii) the existence of a purported professional auditor, prime broker, and custodian for Locust Fund, and (iii) the educational and professional background of Hicks.

16. The Offering Memorandum claims to offer shares of the Locust Offshore Fund, Ltd., a Business Company incorporated under the laws of the British Virgin Islands on January 7, 2011. This statement is materially false. According to a records search by the British Virgin Islands Financial Services Commission, there is no record of any Business Company named “Locust Offshore Fund” incorporated or registered in the British Virgin Islands.

17. The Offering Memorandum claims that Hicks is the sole Director and that LOM is the sole manager of the BVI-incorporated Locust Fund. These statements are materially false. As Locust Fund does not exist as a BVI-incorporated company, Hicks is not a Director and LOM is not a Manager of this purported entity.

18. The Offering Memorandum claims that Locust Fund’s auditor is the “Ernst and Young” office located in Road Town, Tortola, British Virgin Islands. This statement is materially false. According to the records of the Ernst & Young global network, it has no record of having any audit client named “Locust Offshore Fund” in any office, including, specifically, its global network office in Road Town, Tortola, BVI. In fact, the Ernst & Young office located in Tortola has some tax clients but does not perform audit work.

19. The Offering Memorandum claims that Locust Fund’s prime broker and custodian is Credit Suisse Group in Zurich, Switzerland. This statement is materially false. According to the Swiss Financial Market Supervisory Authority, Credit Suisse of Zurich, Switzerland has no record of any account holder named Locust Offshore Fund.

20. According to the Offering Memorandum, “[t]he fund relies exclusively on the Manager and, more specifically on Andrey Hicks, for the management of its investment portfolio. . . . The success of the Fund is therefore expected to be significantly dependent upon the expertise and efforts of the Manager and, more particularly, that of its principal executives.”

Under the section labeled “MANAGEMENT,” the Offering Memorandum explains that LOM serves as the Fund’s Manager and that Hicks is “[t]he principal of the Manager.”

21. Within the same MANAGEMENT section, the Offering Memorandum provides a “Biography” of Hicks. Within the Biography, the Offering Memorandum states that Hicks attended Harvard University for his undergraduate degree program with a graduation date of “(05’) [sic].” The Offering Memorandum further states that Hicks attended Harvard for his graduate degree program with a graduation date of “(07’) [sic].” These statements are materially false. Although Hicks enrolled in and attended Harvard’s undergraduate college for two semesters starting in the fall semester of 2001, the College required him to withdraw after the following spring semester 2001-2002 for failing to meet the minimum requirements at the end of his freshman year. Although Hicks successfully petitioned for re-enrollment and attended Harvard College for one more semester in the spring of 2003, Harvard College required Hicks to withdraw for a second and final time because of his second unsatisfactory record during the spring term 2002-2003. Hicks has never graduated or received a degree from Harvard University’s undergraduate or post-graduate programs. The University has no record of Hicks even attending courses after the spring 2003 term.

22. Within the Biography section of the Offering Memorandum, it further states that in the fall of 2009, Hicks “accepted a position at Barclays Capital.” The Offering Memorandum states that, “While at Barclays, Andrey began trading across several different asset classes, and expanded into futures, options market trading and foreign exchange (FX). In a little over 12 months’ time, Andrey grew his book nearly two-fold and expanded his group’s assets under management to roughly \$16b. In January 2011, Andrey left Barclays to form Locust Offshore.”

This entire description of work history at Barclays Capital is materially false. According to a search of records at Barclays Capital, the firm has no record of employing Hicks.

23. Finally, the Offering Memorandum also includes a “Share Application Form,” which instructs all subscribers to send “U.S. dollar denominated funds in the amount of the full purchase price for Shares” by wire transfer to the bank account for LOM held at TD Bank in Brookline, Massachusetts.

24. On LOM’s publicly available website, located at [www.locustoffshoremgmt.com](http://www.locustoffshoremgmt.com), Hicks and LOM have made and used, and continue to make and use, the following statement: “Locust Offshore Management, L.L.C. develops and executes sophisticated quantitative strategies across asset classes to produce absolute, risk-adjusted returns with high alpha. The firm’s quantitative strategies are based on mathematical models developed by the fund’s manager, Andrey C. Hicks, during his tenure at Harvard University and are executed by computer software.” Through the making and use of this statement, LOM and Hicks knowingly or recklessly have misled and are continuing to mislead investors by claiming that Hicks developed quantitative investment strategies based on mathematical models developed during his tenure at Harvard University, but omitting to state the following material facts, among others: that Hicks only attended Harvard University’s undergraduate college for three semesters; that during this brief tenure Harvard College twice required Hicks to withdraw for failing to perform academically—the second time being final; that Hicks has never graduated or received a degree from Harvard University’s undergraduate or post-graduate programs; and that Hicks took only one mathematics course during his time at Harvard College and earned a D minus.

**B. Employing the Fraudulent Scheme – Investor A**

25. Armed with the business accoutrements described above creating the false impression that Hicks and LOM manage a BVI-incorporated pooled investment fund, Hicks has successfully solicited at least one, and likely more, members of the public for investments in this fraudulent scheme.

26. In August 2011, Investor A, a real estate finance professional, met Hicks as they sat next to each other on an airplane. During the flight, Hicks told Investor A that he owned Locust Offshore Fund, Ltd., which Hicks described as a successful stock fund with approximately \$1.5 billion in assets. Hicks told Investor A that he was a graduate of Harvard University, that he held a Doctorate of Philosophy in Applied Mathematics from Harvard University, and that he had previously worked at Barclays Capital. Hicks told Investor A that he left Barclays to establish a high frequency trading fund based upon mathematical models Hicks had developed during his employment at Barclays. Hicks further claimed that his former employer, Barclays Capital, was a large investor in Locust Fund. Hicks described his trading strategy for Locust Fund and, through the web-browser on his mobile Blackberry device, showed Investor A the portion of the Locust Fund's website showcasing its high investment returns to date. Hicks and Investor A exchanged business cards.

27. On or about September 7, 2011, Investor A sent a follow up email communication to Hicks regarding, among other things, the Locust Fund. In response, on or about September 8, 2011, Hicks sent Investor A an email attaching a copy of the Offering Memorandum as described in paragraphs 11 and 15 through 23 above. Hicks' email also included a signature block describing himself as "Partner and Managing Director" of LOM and providing a URL link to

LOM's website. Hicks' email also provided a "Performance Login" for Investor A to access LOM's website and review Locust Fund's purported financial information.

28. Through the representations in the Offering Memorandum, Hicks and LOM, directly or indirectly, knowingly or recklessly made or used the untrue statements of material fact that (1) Locust Offshore Fund, Ltd. is a Business Company incorporated under the laws of the British Virgin Islands on January 7, 2011, (2) that Hicks was its sole Director, and (3) that LOM was its sole Manager. In fact, Locust Offshore Fund, Ltd. is not a company incorporated or registered in the British Virgin Islands and therefore does not have any Director or Manager.

29. Through the representations in the Offering Memorandum, Hicks and LOM, directly or indirectly, knowingly or recklessly made or used the untrue statements of material fact that Locust Fund (1) has engaged the Road Town BVI office of Ernst & Young as its auditor and (2) has engaged Credit Suisse Group of Zurich, Switzerland as its prime broker and custodian. In fact, Locust Fund is neither an audit client of Ernst & Young's Road Town office, nor a prime brokerage customer or custodial client of the Credit Suisse Group.

30. Through the representations in the Offering Memorandum, Hicks and LOM, directly or indirectly, knowingly or recklessly made or used the untrue statements of material fact that Hicks graduated from Harvard College in 2005 and one of Harvard University's post-graduate degree programs in 2007. In fact, Hicks has never graduated or received a degree from any Harvard University program.

31. Through the representations in the Offering Memorandum, Hicks and LOM, directly or indirectly, knowingly or recklessly made or used the untrue statements of material fact that Hicks was employed by Barclays Capital where he traded securities across several

different asset classes and, in a little over 12 months' time, doubled his group's assets under management to roughly \$16 billion. In fact, Hicks has never worked for Barclays Capital.

32. After receiving the Offering Memorandum from Hicks and LOM, Investor A visited the LOM website and logged in. Within the website, Investor A observed purported financial information for Locust Fund, including current balance, subscriptions, daily returns (by dollar and by percent) and daily cash flows for the purported Locust Fund. According to the data presented on the website, as of September 8, 2011 Locust Fund had a current balance of \$1,263,402,969, with total subscriptions of \$787,940,000. The daily performance data showed a beginning balance starting on January 10, 2011 and daily returns and cash flows for the 167 days between January 10 and September 7, 2011. According to this data, in these 167 days, Locust Fund generated an incredible year-to-date return of 78.59 percent. All of the financial data appeared on web-pages that described the data as "powered by Credit Suisse," creating the false and deceptive impression that the data came from Credit Suisse. This data was all materially false and deceptive. As explained above, Credit Suisse does not have any accounts in the name of Locust Offshore Fund. Moreover, as explained further below, the bank records for the LOM account dedicated to the receipt of Locust Fund subscriptions show deposits of only approximately \$1.7 million.

33. After reviewing the Offering Memorandum and the website, Investor A decided to invest \$100,000. On or about September 19, 2011, Investor A wired \$100,000 to the LOM bank account at TD Bank in Brookline, Massachusetts.

34. Within a day or two of the wire transfer, Hicks called Investor A on the telephone to confirm its receipt and told Investor A that he was "up and trading."

35. On or about September 23, 2001, Hicks and LOM sent Investor A an email attaching a "Subscription Confirmation," which "confirm[ed]" the subscription of 100 Class A shares of Locust Offshore Fund, Ltd. Hicks signed the Subscription Confirmation as "Chief Executive Officer" of LOM and "Managing Director & Director" of Locust Fund.

36. Within the Subscription Confirmation, Hicks and LOM knowingly or recklessly made or used the untrue statement of material fact that "[o]n September 20, 2011, said funds were transferred to the firm's custodial account and entered into live trading for credit on your behalf." In fact, Credit Suisse did not and does not hold a custodial, or any other account, in the name of Locust Fund. Moreover, the account records for LOM's bank account at TD Bank show that, on September 20, 2011, LOM transferred the \$100,000 to a personal checking account in the name of Hicks.

**C. LOM Received Additional Deposits Totaling Approximately \$1.6 Million From Other Likely Scheme Victims and Subsequently Deposited Those Funds In Hicks' Personal Bank Accounts**

37. LOM's savings and checking accounts at TD Bank show that since their opening on June 2, 2011 through October 11, 2011, LOM has received approximately ten deposits from nine persons and entities other than Investor A. These ten deposits total approximately \$1,666,900 and range in size from \$83,000 to \$500,000. These nine persons and entities appear to reside or to be located in Massachusetts, Minnesota, and Iowa.

38. On information and belief, Hicks and LOM have obtained these deposits through the sale of Locust Fund shares based upon (1) employment of the same scheme to defraud and (2) the making or use of misrepresentations substantially similar to those made to or used with Investor A.

39. LOM and Hicks have transferred substantially all of these deposits to checking and savings deposit accounts in the sole, personal name of Hicks.

**First Claim for Relief**  
**(Violation of Section 17(a) of Securities Act By Defendants)**

40. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 39 above as if set forth fully herein.

41. Defendants, directly or indirectly, acting intentionally, knowingly or recklessly, by use of the means or instruments of transportation or communication in interstate commerce or by the use of the mails, in the offer or sale of securities: (a) have employed or are employing devices, schemes, or artifices to defraud; (b) have obtained or are obtaining money or property by means of untrue statements of material fact or omissions to state a material fact necessary to make the statements not misleading; or (c) have engaged or are engaging in transactions, practices, or courses of business which operated as a fraud or deceit upon the purchasers of such securities.

42. By engaging in the conduct described above, Defendants have violated, and unless enjoined will continue to violate, Section 17(a) of the Securities Act [15 U.S.C. §77q(a)].

**Second Claim for Relief**  
**(Violation of Section 10(b) of Exchange Act and Rule 10b-5 By Defendants)**

43. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 39 above as if set forth fully herein.

44. Defendants, directly or indirectly, acting intentionally, knowingly or recklessly, in connection with the purchase or sale of securities, by use of the means or instrumentalities of interstate commerce or the facilities of a national securities exchange or the mail: (a) have employed or are employing devices, schemes, or artifices to defraud; (b) have made or are making untrue statements of material fact or have omitted or are omitting to state material fact(s) necessary to make the statements made not misleading; or (c) have engaged or are engaging in

acts, practices, or courses of business which operate as a fraud or deceit upon certain persons.

45. By engaging in the conduct described above, Defendants have violated, and unless enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

**Third Claim for Relief**  
**(Violation of Section 206(4) of Advisers Act and Rule 206(4)-8 By Defendants)**

46. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 39 above as if set forth fully herein.

47. Defendants, who are investment advisers to a pooled investment vehicle, directly or indirectly, acting intentionally, knowingly or recklessly, by use of the mails or any means or instrumentality of interstate commerce: (a) have made or are making untrue statements of material fact or have omitted or are omitting to state material fact(s) necessary to make the statements, in the light of the circumstances under which they were made, not misleading, to investors or prospective investors in the pooled investment vehicle; or (b) have engaged or are engaging in acts, practices, or courses of business that are fraudulent, deceptive, or manipulative with respect to investors or prospective investors in the pooled investment vehicle.

48. By engaging in the conduct described above, Defendants have violated, and unless enjoined will continue to violate, Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

**Fourth Claim for Relief**  
**(Other Equitable Relief, Including Unjust Enrichment and Constructive Trust, Against Relief Defendant)**

49. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 39 above as if set forth fully herein.

50. Section 21(d)(5) of the Exchange Act states: “In any action or proceeding brought or instituted by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may grant, any equitable relief that may be appropriate or necessary for the benefit of investors.”

51. On information and belief, the Relief Defendant has received and possesses ill-gotten investor funds derived from the unlawful acts or practices of the Defendants dictating that, in equity and good conscience, it should not be allowed to retain such funds.

52. Relief Defendant has no legitimate claim to this property.

53. As a result, the Relief Defendant is liable for unjust enrichment and should be required to return its ill-gotten gains, in an amount to be determined by the Court. The Court should also impose a constructive trust on the ill-gotten investor funds in the possession of the Relief Defendant.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Commission requests that this Court:

A. Enter a preliminary injunction, order freezing assets, and order for other equitable relief in the form submitted with the Commission’s *ex parte* motion for such relief, and, upon further motion, enter a comparable preliminary injunction, order freezing assets, and order for other equitable relief;

B. Enter a permanent injunction restraining Defendants and each of their agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service, from directly or indirectly engaging in the conduct described above, or in conduct of similar purport and effect, in violation of Section 17(a) of the

Securities Act [15 U.S.C. § 77q(a)]; Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; and Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8];

C. Require Defendants to disgorge their ill-gotten gains and losses avoided, plus pre-judgment interest, with said monies to be distributed in accordance with a plan of distribution to be ordered by the Court;

D. Require the Relief Defendant to disgorge all unjust enrichment and/or ill-gotten gain received from Defendants, plus pre-judgment interest, with said moneys to be distributed in accordance with a plan of distribution to be ordered by the Court;

E. Require Defendants to pay appropriate civil monetary penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)]; Section 21(d)(3) of the Securities Exchange Act [15 U.S.C. § 78u(d)(3)]; and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)];

F. Retain jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and

G. Grant such other and further relief as the Court deems just and proper.

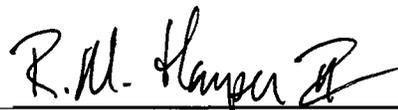
**JURY DEMAND**

The Commission hereby demands a trial by jury on all claims so triable.

Respectfully submitted,

SECURITIES AND EXCHANGE COMMISSION

By its attorneys,



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Richard M. Harper II (Mass. Bar No. 634782)

Kevin M. Kelcourse (Mass. Bar No. 643163)

Michele T. Perillo (Mass. Bar No. 629343)

Amy S. Gwiazda (Mass. Bar No. 663494)

33 Arch Street, 23rd Floor

Boston, Massachusetts 02110

Telephone: (617) 573-8979 (Harper direct)

Facsimile: (617) 573-4590

E-mail: HarperR@sec.gov

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