

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT

SIDNEY L. SHERTER, individually and as trustee of the BEATRICE SHERTER 1989 FAMILY TRUST FBO SIDNEY L. SHERTER, SLS REALTY TRUST and ILSSEN NOMINEE TRUST, and GERTRUDE ILSSEN, STEVEN HOLDEN, JONATHAN SHERTER IRA, SHERTER FAMILY LIMITED PARTNERSHIP, EMS REALTY PARTNERSHIP, JOSEPH LESS and AMY L. SHERTER LESS,

individually and on behalf of all others similarly situated,

Plaintiffs,

v.

ROSS FIALKOW CAPITAL PARTNERS, LLP, JAY LAWRENCE FIALKOW & JEFFREY P. ROSS,

Defendants.

C.A. 10-1888-BLS1

AMENDED CLASS ACTION COMPLAINT

Plaintiffs Sidney L. Sherter, individually and as trustee of the Beatrice Sherter 1989 Family Trust FBO Sidney L. Sherter, SLS Realty Trust and Ilsen Nominee Trust, and Gertrude Ilsen, Steven Holden, Jonathan Sherter IRA, Sherter Family Limited Partnership, EMS Realty Partnership, Joseph Less and Amy L. Sherter Less ("Plaintiffs"), by and through their attorneys, individually and on behalf of all others similarly situated, file this Amended Class Action Complaint against Defendants Ross Fialkow Capital Partners, LLP, Jay Lawrence Fialkow and Jeffrey P. Ross ("Defendants"), and allege as follows:

Preliminary Statement

1. This is a class action arising from Defendants' offering of securities in violation of M.G.L. c. 110A, the Massachusetts Uniform Securities Act (the "Act"). Defendants, acting as broker-dealers and/or agents, offered securities to Plaintiffs and members of the proposed class (the "Class") in connection with a multi-million dollar Ponzi scheme perpetrated by Richard Elkinson of Framingham, Massachusetts. In doing so, Defendants were not registered as broker-dealers or agents as required by the Act. *See* M.G.L. c. 110A, §§ 201(a), 410(a)(1). Defendants also unlawfully offered securities which were not registered under the Act. *See* M.G.L. c. 110A, §§ 301, 410(a)(1). Furthermore, Defendants made untrue statements of material fact and/or omitted material facts in connection with their offerings of securities, facts which they knew or easily could have known had they performed any real due diligence on Elkinson and his business. *See* M.G.L. c. 110A, §§ 410(a)(2). In addition, Defendants materially aided Elkinson's illegal sales of securities based on his sale of unregistered securities and misrepresentations and omissions. Finally, Defendants also made negligent misrepresentations and/or omissions. As a direct result of Defendants' misconduct, Plaintiffs lost hundreds of thousands of dollars, and the other Class and Subclass members (defined below) lost millions of dollars. Defendants' conduct was unlawful, and Plaintiffs and the Class are entitled to recover from Defendants the consideration paid for the securities, together with interest, costs and reasonable attorneys' fees.

Parties

2. Plaintiff Sidney L. Sherter is an individual residing in Newton Center, Massachusetts, who also serves as the trustee of the following Massachusetts trusts:

- (a) the Beatrice Sherter 1989 Family Trust FBO Sidney L. Sherter;
- (b) SLS Realty Trust; and

(c) Ilsen Nominee Trust.

3. Plaintiff Gertrude Ilsen is an individual residing in London, England and a family friend of Plaintiff Sidney L. Sherter. Plaintiff Sidney L. Sherter has durable power of attorney for Ms. Ilsen.

4. Plaintiff Steven Holden is an individual residing in New York. Mr. Holden is Sidney L. Sherter's son-in-law.

5. Plaintiff Jonathan Sherter IRA is a Massachusetts trust. Jonathan Sherter is Plaintiff Sidney L. Sherter's son.

6. Plaintiff Sherter Family Limited Partnership is a Massachusetts limited partnership; Plaintiff Sidney L. Sherter is the general partner.

7. Plaintiff EMS Realty Partnership is a Massachusetts partnership; Plaintiff Sidney L. Sherter is the general partner.

8. Plaintiff Joseph Less is an individual residing in Newton, Massachusetts. Mr. Less is Plaintiff Sidney L. Sherter's son-in-law.

9. Plaintiff Amy L. Sherter Less is an individual residing in Newton, Massachusetts. Ms. Sherter Less is Plaintiff Sidney L. Sherter's daughter and Plaintiff Joseph Less's wife.

10. Defendant RossFialkow Capital Partners, LLP ("RossFialkow") is a limited liability partnership organized under the laws of the Commonwealth of Massachusetts with a principal place of business at 38 Glen Avenue, Newton, Massachusetts, engaged in the business of investment banking, brokerage and financial services. Defendant RossFialkow, however, was not registered as a broker-dealer, agent or in any other capacity in the securities business pursuant to M.G.L. c. 110A at any time relevant hereto.

11. Defendant Jay Lawrence Fialkow ("Fialkow") is an individual with a last known principal place of residence in Dedham, Massachusetts. Defendant Fialkow is one of the two

limited partners of Defendant RossFialkow. Defendant Fialkow was not registered as a broker-dealer, agent or in any other capacity in the securities business pursuant to M.G.L. c. 110A at any time relevant hereto.

12. Defendant Jeffrey P. Ross (“Ross”) is an individual with a last known principal place of residence in Chestnut Hill, Massachusetts. Defendant Ross is one of the two limited partners of Defendant RossFialkow. Defendant Ross was not registered as a broker-dealer, agent or in any other capacity in the securities business pursuant to M.G.L. c. 110A at any time relevant hereto.

Jurisdiction

13. The exercise of personal jurisdiction over Defendants is proper pursuant to M.G.L. c. 223A, § 3 because, *inter alia*, Plaintiffs’ claims arise out of Defendants’ transacting business in the Commonwealth of Massachusetts.

Factual Allegations

The Elkinson Ponzi Scheme

14. Defendants’ business relationship with Elkinson began when Richard Silverman (“Silverman”) of Waban, Massachusetts, in a role that Defendants would soon take over, solicited Defendant Ross to invest with Elkinson. After a few initial investments, Defendant Ross informed Defendant Fialkow of the investment opportunity as well. Thereafter, Defendants Ross and Fialkow made a series of investments with Elkinson.

15. Elkinson’s story, which Defendants would later repeat to subsequent investors, including directly to Plaintiffs Sidney L. Sherter and Joseph Less and, through those Plaintiffs, indirectly to the rest of the Plaintiffs, was that Elkinson would use investor funds to finance the business of his company, Northeast Sales. Elkinson claimed that Northeast Sales’ business was the brokering of contracts for the manufacture of uniforms for large purchasers such as state

governments. According to Elkinson, a Japanese family, consisting of two sons and a father, bid for and obtained contracts, under the name of Northeast Sales, to manufacture uniforms for state governments. The Japanese uniform manufacturer then supposedly produced the uniforms to fulfill the contracts. Northeast Sales purportedly financed the state government contracts and was to receive the proceeds of all contracts directly.

16. Northeast Sales supposedly entered into contracts directly with the purchasers of the uniforms, whereupon Northeast Sales was supposed to pay 50% of the total contract amount as a down payment/deposit to the Japanese manufacturer, in order to initiate the manufacturing process. Upon completion and delivery of the uniforms, Northeast Sales was supposed to receive payment from the purchasing entity. Elkinson would supposedly forward a portion of the funds to the Japanese manufacturer and retain the balance.

17. Elkinson averred that banks were unwilling to lend funds based upon unexecuted contracts, so he needed investor funds to pay the 50% down payment for the contracts. The vehicles for Elkinson's borrowing were securities in the form of promissory notes, in varying amounts, with terms that generally required repayment within a term of 330 to 360 days. By their terms, the notes paid interest that ranged from 9% to 13% for the stated term. Upon the maturity of the note, investors were given an option to take a return of their principal and interest, to take interest only and "roll over" the principal or to "roll over" the principal and interest into a new note.

18. Investments made with Elkinson were effectuated by checks payable directly to Elkinson. Investors' funds would be pooled with each other.

19. Elkinson would execute and, through individuals such as Defendants, provide the promissory notes in exchange for funds received from investors. The promissory notes were not

secured. Investors in notes issued by Elkinson, however, considered the notes to be investments, and not loans, and expected to receive the interest the notes were supposed to generate.

20. Most investors rolled over their principal and accrued interest into new promissory notes. Because, as set forth in detail below, individuals such as Defendants kept successfully soliciting new investors, Elkinson was able to pay off the few investors who wanted their principal and/or interest by diverting funds obtained from other investors. As became clear in 2009, Elkinson and Northeast Sales were not engaged in any actual business, however, and Elkinson simply absconded with investors' money for his own personal use.

21. Northeast Sales' purported place of business was Elkinson's residence, located at 2 Ford Lane in Framingham, Massachusetts. Neither Elkinson nor Northeast Sales was registered as a broker-dealer, agent or in any other capacity in the securities business pursuant to M.G.L. c. 110A in the Commonwealth of Massachusetts at any time relevant hereto.

Defendants' Offering of Securities in Violation of the Act

22. In or about 2003 or 2004, Silverman and Elkinson approached Defendants and advised that Silverman was retiring. Elkinson and Silverman then asked Defendants to take over Silverman's role as "finders" of additional investors to provide funds to Elkinson as part of his illusory business.

23. Between 2005 and 2009, Defendants referred numerous investors, including Plaintiffs, to Elkinson and offered securities in the form of promissory notes from Elkinson to those investors. Such securities were not registered under section 301 of the Act, nor are they exempted under section 402 of the Act, nor do they constitute federal covered securities.

24. In addition to introducing Elkinson to new investors, Defendants discussed with existing investors at the time their promissory notes were due whether they wished to receive a disbursement of principal and/or interest or "roll over" their promissory note and/or invest

additional funds. On information and belief, Defendants solicited existing investors to roll over their promissory notes and/or invest additional funds.

Defendants Solicit Investors in the Elkinson Ponzi Scheme, Including Plaintiffs

25. As part of the effort to solicit new investors, Defendant Fialkow drafted a letter to potential investors entitled “AN ALTERNATIVE INVESTMENT TO CONSIDER.” The letter, in which Defendants Ross and Fialkow’s names appeared on the bottom, and which included the telephone number for the office of Defendant RossFialkow, provided as follows:

AN ALTERNATIVE INVESTMENT TO CONSIDER

RossFialkow Capital Partners has been engaged by a local uniform distributor to provide assistance in marketing and strategic planning. Our client does business with various U.S. states, as well as the U.S. Olympics. Orders are received for uniforms for state police, public works departments, and various Olympic event uniforms. All of the uniforms are manufactured in the Pacific Rim.

Our client originally financed its business with its own capital. As the business grew, additional financing was necessary to fund growth. Banks will not finance purchase orders, hence the need for private investors. The formula of the business is as follows:

- Orders received are forwarded to client’s associate in Japan together with a deposit for 50% of the contract amount.
- Upon completion and shipment of the order to the states or to the Olympics, the full contract price is sent directly to our client.

Investment Opportunity:

Funds are borrowed for the deposit with an interest rate of 11 – 13%. Upon receipt of the contract price from the customer, client would forward 50% to its Pacific associate, less the interest due the investors. At that point, investors would have 3 options:

1. Receive principal and interest,
2. Interest only, “roll-over” principal,
3. “Roll over” the entire amount to the next contract.

Contracts are for periods ranging from 6 to 11 months. Our client has been using this formula successfully for 17 years and has never defaulted in any payment due to investors.

Should you have an interest in this alternative investment, we would be pleased to introduce you to our client. Please contact us directly at 617-630-0020.

JEFFREY ROSS

JAY FIALKOW

Defendant Fialkow sent a similar letter to Plaintiff Sidney L. Sherter in or about 2007, a copy of which is attached hereto as Exhibit A.

26. Similarly, in a January 2006 letter soliciting a local certified public accountancy firm, Defendants stated as follows:

RossFialkow Capital Partners LLP has been retained as an advisor to a local company which provides uniforms and associated products for various state agencies (police, fire, DPW, etc.) in nineteen states. All orders are pursuant to an open bidding process. Our client has been engaged in this specialized business for fifteen years.

Originally our client financed the purchase order by himself, but as the business grew, and more financing was required, our client approached friends and family. These investors were paid interest ranging from 9% to 13% per contract. Most of these contracts ran for a period of six to ten months depending on the product. Garment producers required 50% of the value of the contract paid in advance. Since banks will not lend on purchase orders the need for private investors came to pass.

We have been investors for several years and plan to continue to invest with our client. Many of the investors have been with the company for 12 years and more. Our client has always met his financial obligations to his investors as to due date and in the full amount. At present there is in excess of \$20 million invested by private parties, all individuals. The investors have the options of receiving payment in full – principal and interest, payment of interest only or rolling over both principal and interest into the next contract. There [sic] approximately eight contracts per year.

From time to time there arises a need for additional financing, if you and/or your clients have any interest in this opportunity, please call either of us and we will arrange for you to meet our client.

Sincerely,

Jeffrey P. Ross

Jay L. Fialkow

(Emphasis added).

27. In an e-mail in the files of Defendants uncovered by the Massachusetts Securities Division in response to a subpoena, Elkinson described his business as a “fund” and stated as follows:

I want new blood so to speak as the business will continue to grow.
I have entered into an agreement with Ross-Fialkow Capital
Partners to manage this fund.

28. Consistent with and/or in addition to the foregoing written solicitations, Defendant Fialkow orally solicited Plaintiffs Sidney L. Sherter and Joseph Less directly and, by virtue of these direct solicitations, indirectly solicited the other Plaintiffs, on whose behalf Plaintiffs Sidney L. Sherter and Joseph Less were either acting and/or with whom they were closely associated. Plaintiffs Sidney L. Sherter and Joseph Less had each known Defendant Fialkow for years and trusted him.

29. Defendant Fialkow orally solicited Plaintiff Sidney L. Sherter to invest with Elkinson during a series of conversations at the Spring Valley Country Club in Sharon, Massachusetts in or about 2007. In essence, Defendant Fialkow orally represented to Plaintiff Sidney L. Sherter what he represented in writing in the letter described above regarding “AN ALTERNATIVE INVESTMENT TO CONSIDER.” Specifically, Defendant Fialkow orally told Plaintiff Sidney L. Sherter that Defendant Fialkow’s client, Elkinson, had sold his business 15-20 years prior, but that one of the individuals with whom Elkinson used to do business in Japan had a business in the United States to contract for uniforms for law enforcement, as well as embroidered materials and hats for the Olympics and Pan American games. The Japanese individual’s uniform business had been operating for a number of years and grown. As a result,

the Japanese individual needed a salesperson based in the United States in order to do business in the United States. According to Defendant Fialkow, Elkinson was the sales representative for four to six states in the United States. Because this was not the type of business for which he could get bank financing, Elkinson offered promissory notes to private investors.

30. During these conversations, Defendant Fialkow emphasized that he and his partner Defendant Ross had each invested millions of dollars with Elkinson, that Defendants had done all necessary and appropriate due diligence on Elkinson and his business and that investing with Elkinson was a terrific deal. Defendant Fialkow even went so far as to say that he had “vetted” Elkinson. Defendant Fialkow further represented to Plaintiff Sidney L. Sherter that a mutual acquaintance of theirs, Scott Adler, who worked as an accountant with the Burlington, Massachusetts firm of Adler Blanchard & Freeman LLP, had also “vetted” Elkinson, and that Elkinson had “checked out 100%.”

31. Following Defendant Fialkow’s conversations with Plaintiff Sidney L. Sherter, Defendant Fialkow put Plaintiff Sidney L. Sherter in touch with Elkinson. Elkinson met Plaintiff Sidney L. Sherter at “Johnny’s” restaurant in Newton at which time Elkinson described his purported history and reiterated what Defendant Fialkow had already said orally and in writing about the investment opportunity. Plaintiff Sidney L. Sherter also met Elkinson on another occasion at a party held by Defendant Fialkow at the Spring Valley Country Club.

32. Defendant Fialkow similarly solicited Plaintiff Joseph Less to invest with Elkinson. In or about mid-2008, Plaintiff Less was doing AV work for Defendant Fialkow at Defendant Fialkow’s home. Defendant Fialkow advised Plaintiff Less at that time of the opportunity to invest with Elkinson and mentioned that Defendant Fialkow and Plaintiff Less’s father-in-law, Plaintiff Sidney L. Sherter, had already invested. Defendant Fialkow represented that he had done due diligence on Elkinson and that it was a no-brainer for Plaintiff Less to

invest with Elkinson. That same day, Plaintiff Less met Elkinson for the first time, with Defendant Fialkow, at Defendant Fialkow's office in Newton. Approximately one week later, Plaintiff Less met Elkinson at the Marriott in Newton, at which time Elkinson provided Plaintiff Less with the details of the investment opportunity.

33. During his conversations with Plaintiff Less, Defendant Fialkow represented that his son, the successful businessman David Fialkow, had also invested with Elkinson. On information and belief, David Fialkow never invested with Elkinson.

34. In communicating with Fialkow and Elkinson, Plaintiffs Sidney L. Sherter and Joseph Less were acting individually, for any plaintiff trusts and partnerships they controlled and as agents for the other individual plaintiffs. On information and belief, Defendant Fialkow knew that Plaintiff Sidney L. Sherter in particular was acting on behalf of the other Plaintiffs, including Gertrude Ilsen. Defendant Fialkow also asked Plaintiff Sidney L. Sherter if he knew of others who might be interested in the opportunity to invest with Elkinson, in an effort to bring in as many as possible to invest with Elkinson.

As a Result of Defendant Fialkow's Solicitation, Plaintiffs Invest with Elkinson

35. As a direct result of Defendant Fialkow's solicitation of Plaintiffs, Plaintiffs invested with Elkinson. Indeed, in the absence of Defendant Fialkow's solicitation efforts, particularly his representation that he "vetted" Elkinson, Plaintiffs never would have invested with Elkinson.

36. After the meetings with Defendant Fialkow and Elkinson, Plaintiff Sidney L. Sherter decided he and the other Plaintiffs on whose behalf he was acting, and/or with whom he was closely associated and with whom he discussed his conversations with Defendant Fialkow and Elkinson, would invest with Elkinson. Plaintiff Less decided to invest with Elkinson following his own conversations with Defendant Fialkow and Elkinson.

37. Plaintiff Sidney L. Sherter, as trustee of Beatrice Sherter 1989 Family Trust FBO

Sidney L. Sherter invested the following amounts on or about the following dates with Elkinson:

PLAINTIFF	INVESTMENT AMOUNT	PURCHASE DATE
Plaintiff Sidney L. Sherter, as trustee of Beatrice Sherter 1989 Family Trust FBO Sidney L. Sherter	\$50,000	11/24/2007
Plaintiff Sidney L. Sherter, as trustee of Beatrice Sherter 1989 Family Trust FBO Sidney L. Sherter	\$25,000	9/25/2008
Plaintiff Sidney L. Sherter, as trustee of Beatrice Sherter 1989 Family Trust FBO Sidney L. Sherter	\$50,000 (rolled over principal from 11/24/2007 investment)	12/1/2008
Plaintiff Sidney L. Sherter, as trustee of Beatrice Sherter 1989 Family Trust FBO Sidney L. Sherter	\$30,000	4/5/2009
Plaintiff Sidney L. Sherter, as trustee of Beatrice Sherter 1989 Family Trust FBO Sidney L. Sherter	\$10,000	6/5/2009
TOTAL PRINCIPAL INVESTED	\$115,000	

38. Plaintiff Sidney L. Sherter, as trustee of Beatrice Sherter 1989 Family Trust FBO

Sidney L. Sherter, purchased each of the foregoing securities, in the form of Elkinson promissory notes, as a direct result of Defendant Fialkow's offer to sell such securities to Plaintiff Sidney L. Sherter. Plaintiff Sidney L. Sherter purchased such securities on behalf of Beatrice Sherter 1989 Family Trust FBO Sidney L. Sherter by signing and mailing checks to Richard Elkinson in the

foregoing amounts (with the exception of the December 1, 2008 purchase, for which Plaintiff Sidney L. Sherter used funds rolled over from the November 24, 2007 investment).

39. Plaintiff Sidney L. Sherter, as trustee of SLS Realty Trust, invested the following amounts on or about the following dates with Elkinson:

PLAINTIFF	INVESTMENT AMOUNT	PURCHASE DATE
Plaintiff Sidney L. Sherter, as trustee of SLS Realty Trust	\$50,000	11/24/2007
Plaintiff Sidney L. Sherter, as trustee of SLS Realty Trust	\$50,000 (rolled over principal from 11/24/2007 investment)	12/1/2008
Plaintiff Sidney L. Sherter, as trustee of SLS Realty Trust	\$10,000	6/5/2009
TOTAL PRINCIPAL INVESTED	\$60,000	

40. Plaintiff Sidney L. Sherter, as trustee of SLS Realty Trust, purchased each of the foregoing securities, in the form of Elkinson promissory notes, as a direct result of Defendant Fialkow's offer to sell such securities to Plaintiff Sidney L. Sherter. Plaintiff Sidney L. Sherter purchased such securities on behalf of SLS Realty Trust by signing and mailing checks to Richard Elkinson in the foregoing amounts (with the exception of the December 1, 2008 purchase, for which Plaintiff Sidney L. Sherter used funds rolled over from the November 24, 2007 investment).

41. Plaintiff Sidney L. Sherter, as general partner of Plaintiff Sherter Family Limited Partnership, invested the following amounts on or about the following dates with Elkinson:

PLAINTIFF	INVESTMENT AMOUNT	PURCHASE DATE
Plaintiff Sidney L. Sherter, as general partner of Plaintiff Sherter Family Limited	\$50,000	11/24/2007

Partnership		
Plaintiff Sidney L. Sherter, as general partner of Plaintiff Sherter Family Limited Partnership	\$50,000 (rolled over principal from 11/24/2007 investment)	12/1/2008
Plaintiff Sidney L. Sherter, as general partner of Plaintiff Sherter Family Limited Partnership	\$20,000	4/5/2009
TOTAL PRINCIPAL INVESTED	\$70,000	

42. Plaintiff Sidney L. Sherter, as general partner of Plaintiff Sherter Family Limited Partnership, purchased each of the foregoing securities, in the form of Elkinson promissory notes, as a direct result of Defendant Fialkow's offer to sell such securities to Plaintiff Sidney L. Sherter. Plaintiff Sidney L. Sherter purchased such securities on behalf of Plaintiff Sherter Family Limited Partnership by signing and mailing checks to Richard Elkinson in the foregoing amounts (with the exception of the December 1, 2008 purchase, for which Plaintiff Sidney L. Sherter used funds rolled over from the November 24, 2007 investment).

43. Plaintiff Amy Sherter Less, after communicating with her father Plaintiff Sidney L. Sherter (and later her husband Plaintiff Joseph Less) regarding the communications with Defendant Fialkow and Elkinson described above, invested the following amounts on or about the following dates with Elkinson:

PLAINTIFF	INVESTMENT AMOUNT	PURCHASE DATE
Plaintiff Amy Sherter Less	\$50,000	11/24/2007
Plaintiff Amy Sherter Less	\$25,000	9/25/2008
Plaintiff Amy Sherter Less	\$50,000 (rolled over principal from 11/24/2007 investment)	12/1/2008

Plaintiff Amy Sherter Less	\$50,000	4/5/2009
Plaintiff Amy Sherter Less	\$20,000	6/5/2009
TOTAL PRINCIPAL INVESTED	\$145,000	

44. Plaintiff Amy Sherter Less purchased each of the foregoing securities, in the form of Elkinson promissory notes, as a direct result of Defendant Fialkow's offers to sell such securities to Plaintiff Sidney L. Sherter, her father, and Plaintiff Joseph Less, her husband which offers Plaintiffs Sidney L. Sherter and Joseph Less communicated to Plaintiff Amy Sherter Less. Plaintiff Amy Sherter Less purchased such securities by her or her husband signing and mailing checks to Richard Elkinson in the foregoing amounts (with the exception of the December 1, 2008 purchase, for which Plaintiff Amy Sherter Less used funds rolled over from the November 24, 2007 investment).

45. Plaintiff Steven Holden, after communicating with his father-in-law Plaintiff Sidney L. Sherter regarding Plaintiff Sidney L. Sherter's communications with Defendant Fialkow and Elkinson, invested the following amounts on or about the following dates with Elkinson:

PLAINTIFF	INVESTMENT AMOUNT	PURCHASE DATE
Plaintiff Steven Holden	\$25,000	11/24/2007
Plaintiff Steven Holden	\$25,000 (rolled over principal from 11/24/2007 investment)	12/1/2008
TOTAL PRINCIPAL INVESTED	\$25,000	

46. Plaintiff Holden purchased each of the foregoing securities, in the form of Elkinson promissory notes, as a direct result of Defendant Fialkow's offer to sell such securities

to Plaintiff Sidney L. Sherter, which offer Plaintiff Sidney L. Sherter communicated to Plaintiff Holden, his son-in-law. Plaintiff Holden purchased such securities by signing and mailing checks to Richard Elkinson in the foregoing amounts (with the exception of the December 1, 2008 purchase, for which Plaintiff Holden used funds rolled over from the November 24, 2007 investment).

47. Plaintiff Sidney L. Sherter, as trustee of Ilsen Nominee Trust, invested the following amounts on or about the following dates with Elkinson:

PLAINTIFF	INVESTMENT AMOUNT	PURCHASE DATE
Plaintiff Sidney L. Sherter, as trustee of Ilsen Nominee Trust	\$50,000	1/5/2008
Plaintiff Sidney L. Sherter, as trustee of Ilsen Nominee Trust	\$30,000	9/25/2008
Plaintiff Sidney L. Sherter, as trustee of Ilsen Nominee Trust	\$50,000 (rolled over principal from 1/5/2008 investment)	1/5/2009
Plaintiff Sidney L. Sherter, as trustee of Ilsen Nominee Trust	\$30,000	4/5/2009
TOTAL PRINCIPAL INVESTED	\$110,000	

48. Plaintiff Sidney L. Sherter, as trustee of Ilsen Nominee Trust, purchased each of the foregoing securities, in the form of Elkinson promissory notes, as a direct result of Defendant Fialkow's offer to sell such securities to Plaintiff Sidney L. Sherter. Plaintiff Sidney L. Sherter purchased such securities on behalf of Ilsen Nominee Trust by signing and mailing checks to Richard Elkinson in the foregoing amounts (with the exception of the January 5, 2009 purchase, for which Plaintiff Sidney L. Sherter used funds rolled over from the January 5, 2008 investment).

49. Plaintiff Joseph Less, following his own communications with Defendant Fialkow and Elkinson, invested the following amounts on or about the following dates with Elkinson:

PLAINTIFF	INVESTMENT AMOUNT	PURCHASE DATE
Plaintiff Joseph Less	\$25,000	6/15/2008
Plaintiff Joseph Less	\$45,000	4/5/2009
Plaintiff Joseph Less	\$25,000 (rolled over principal from 6/15/2008 investment)	5/28/2009
TOTAL PRINCIPAL INVESTED	\$70,000	

50. Plaintiff Joseph Less purchased each of the foregoing securities, in the form of Elkinson promissory notes, as a direct result of Defendant Fialkow's offer to sell such securities to Plaintiff Joseph Less. Plaintiff Joseph Less purchased such securities by signing and mailing checks to Richard Elkinson in the foregoing amounts (with the exception of the May 28, 2009 purchase, for which Plaintiff Joseph Less used funds rolled over from the June 15, 2008 investment).

51. Plaintiff Jonathan Sherter IRA, following communications between Plaintiff Sidney L. Sherter and his son Jonathan Sherter regarding Plaintiff Sidney L. Sherter's communications with Defendant Fialkow and Elkinson, invested the following amount on or about the following date with Elkinson:

PLAINTIFF	INVESTMENT AMOUNT	PURCHASE DATE
Plaintiff Jonathan Sherter IRA	\$10,000	4/5/2009
TOTAL PRINCIPAL INVESTED	\$10,000	

52. Plaintiff Jonathan Sherter IRA purchased the foregoing securities, in the form of Elkinson promissory notes, as a direct result of Defendant Fialkow's offer to sell such securities to Plaintiff Sidney L. Sherter, which offer Plaintiff Sidney L. Sherter communicated to his son Jonathan Sherter, owner of Plaintiff Jonathan Sherter IRA. Plaintiff Jonathan Sherter IRA purchased such securities through its broker mailing a check to Richard Elkinson in the foregoing amount.

53. Plaintiff Sidney L. Sherter, as agent of Plaintiff Gertrude Ilsen, acting pursuant to durable power of attorney, invested the following amount on Plaintiff Gertrude Ilsen's behalf on or about the following date with Elkinson:

PLAINTIFF	INVESTMENT AMOUNT	PURCHASE DATE
Plaintiff Sidney L. Sherter, on behalf of Plaintiff Gertrude Ilsen	\$50,000	6/5/2009
TOTAL PRINCIPAL INVESTED	\$50,000	

54. Plaintiff Sidney L. Sherter, as agent of Gertrude Ilsen, purchased the foregoing securities on her behalf, in the form of Elkinson promissory notes, as a direct result of Defendant Fialkow's offer to sell such securities to Plaintiff Sidney L. Sherter. Plaintiff Sidney L. Sherter purchased such securities on behalf of Gertrude Ilsen by signing and mailing a check to Richard Elkinson in the foregoing amount.

55. Plaintiff Sidney L. Sherter, as general partner of Plaintiff EMS Realty Partnership, invested the following amount on or about the following date with Elkinson:

PLAINTIFF	INVESTMENT AMOUNT	PURCHASE DATE
Plaintiff Sidney L. Sherter, as general partner of Plaintiff	\$15,000	6/5/2009

EMS Realty Partnership		
TOTAL PRINCIPAL INVESTED	\$15,000	

56. Plaintiff Sidney L. Sherter, as general partner of Plaintiff EMS Realty Partnership, purchased the foregoing securities, in the form of Elkinson promissory notes, as a direct result of Defendant Fialkow's offer to sell such securities to Plaintiff Sidney L. Sherter. Plaintiff Sidney L. Sherter purchased such securities on behalf of Plaintiff EMS Realty Partnership by mailing a check to Richard Elkinson in the foregoing amount.

57. Plaintiff Sidney L. Sherter, on his own behalf, invested the following amount on or about the following date with Elkinson:

PLAINTIFF	INVESTMENT AMOUNT	PURCHASE DATE
Plaintiff Sidney L. Sherter	\$10,000	6/5/2009
TOTAL PRINCIPAL INVESTED	\$10,000	

58. Plaintiff Sidney L. Sherter purchased the foregoing securities, in the form of Elkinson promissory notes, as a direct result of Defendant Fialkow's offer to sell such securities to Plaintiff Sidney L. Sherter. Plaintiff Sidney L. Sherter purchased such securities by signing and mailing a check to Richard Elkinson in the foregoing amount.

59. Collectively, Plaintiffs were known to Elkinson and, on information and belief, to Defendants as the "Sherter Group." In total, the Sherter Group invested principal with Elkinson amounting to \$680,000.

Elkinson Compensates Defendants For Soliciting Investors, Including Plaintiffs

60. According to interrogatory responses that Defendants provided to the Massachusetts Securities Division, Elkinson agreed with Defendant RossFialkow to pay it a fee of 2% of any investment that he received from any investors located by Defendants. On information and belief, Defendants were entitled to and received fees from Elkinson for Plaintiffs' investments with Elkinson. In the same interrogatory responses, Defendants admit that Elkinson also contracted with Defendant RossFialkow to pay it an additional fee of 1.5% of any principal amounts rolled over by any investors originally located by Silverman. In total, according to Defendants' interrogatory responses, Defendant RossFialkow earned commission fees of at least \$319,000 in connection with the foregoing activities in connection with their offerings of these securities. On information and belief, those commissions included fees Defendants earned as a result of Plaintiffs' investments with Elkinson. On further information and belief, at the time Defendant Fialkow solicited Plaintiffs, he was motivated not only to serve Defendants' own financial interests – through commissions that Defendants would receive as a result of Plaintiffs' investments – but also the financial interests of Defendants' client, Elkinson.

61. On January 23, 2006, Elkinson sent a memo to Defendant RossFialkow listing ten “investors” who Defendants apparently brought to Elkinson and the amounts of each of their investments, which totaled \$300,000. Immediately below the total of \$300,000, the memo indicated as follows:

2% 6,000 CK ENCLOSED # 521 JAN 23, 2006

The memo also included a “notes” section, which provided in pertinent part as follows:

R Silverman does not share in this for your accts....

After Dec 31, 2005 RossFialko and R Silverman share 1% each on all R. Silverman accounts.

All Ross Fialkow accts will be at 2% for new accts or existing accounts.

62. In another undated, unaddressed memorandum in the files of Defendants uncovered by the Massachusetts Securities Division, which appears to be from Elkinson to Defendants, Elkinson appears to put pressure on Defendants to bring in more investors in light of "lost accts as of March 2006":

Any more raised by R/F [Ross Fialkow] will eat into R.S. [Richard Silverman] accts for another 1.5% to R/F/

So far we have not accomplished this. I have to keep going to my big people to pick more money. I don't want to do this as it puts too many eggs in the basket....

Ross/Fialkow would have made 7,250.00 and been responsible for 250,000.00 in losses/ Ross Fialkow does not have the customer base to handle this.

63. A May 30, 2006 memorandum in the files of Defendants, which is unaddressed but appears to be from Elkinson to Defendants, lists 29 "accounts to be saved for ross/fialko for the balance of 2006" and the amounts of each such "account," which totaled \$2,588,897.00. The memo also contains handwritten notes which appear to reflect the various listed investors' intentions as to whether they will continue to invest with Elkinson. In addition, the memo contains language in which Elkinson appears to continue to put pressure on Defendants to "save" these accounts for Elkinson:

I think we can save a good part of these. However a lot of drop outs could result in deficit for R/F/

Back to my premise if Ross/Fialko adds 2.5 million of new accts then whatever we salvage earns 1.5% to R/F/ without any deficit to R/F. No matter who drops out and there will be some there will be no loss associated with the 1.5% R/F earnings in 2007.

I am taking away Richard Silverman ½% as he cannot administrate the above and will not. So R/F/ will go to 1 ½% on the saved above accts Jan 1 2007. My estimate 2 million saved ?????

64. A July 27, 2006 memorandum in the files of Defendants uncovered by the Massachusetts Securities Division, which is unaddressed but appears to be from Elkinson to Defendants, and is entitled "New accounts and additions to Ross/Fialkow Group," lists eight accounts with investments totaling \$445,000, with a listed maturity value totaling \$501,600,00, representing an average rate of return of 11.25%.

65. An August 25, 2007 memorandum in the files of Defendants, which is unaddressed but appears to be from Elkinson to Defendants, and is entitled "Ross/Fialkow Override Contract #355," appears to list fees due to Defendants in connection with 23 listed accounts, including both "R. Silverman Accts" and "Ross Fialkow" accounts. The total "invested" for the 23 accounts is \$788,020.92, and the total fee is \$12,855.00. The last line of the memo thus provides as follows:

CHECK ENCLOSED #2169	TOTAL	12,855.00
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66. In light of the extensive business relationships described above between Defendants and Elkinson d/b/a Northeast Sales, as of December 2009, Defendant RossFialkow's web site listed "AKA Northeast Sales" as one of the firm's clients.

Defendants Ignore Numerous Red Flags That Elkinson Was Operating A Ponzi Scheme

67. In a variety of ways, and contrary to their express representations to Plaintiffs, Defendants failed to perform the appropriate due diligence regarding Elkinson or his business Northeast Sales and ignored a number of red flags that Elkinson was operating a Ponzi scheme.

68. Even though Elkinson purported to run a business that required almost \$30 million to finance uniform contracts from his home, with no employees or officers other than Elkinson, Defendants failed to do any appropriate due diligence on Elkinson or his business. Indeed, other than visiting his house on one occasion, Defendants never conducted any independent investigation of Elkinson or his purported business, such as by doing a simple

corporate records search regarding Northeast Sales, or asking to review any of its corporate filings. Had Defendants bothered to do a corporate records search on the Massachusetts Corporation Division's web site, they would have discovered that Elkinson never submitted incorporation papers for his company, Northeast Sales.

69. Defendants never attempted to perform due diligence on, contact or make any inquiries of any of the entities with which Elkinson purported to do business, including the supposed Japanese manufacturer of uniforms or any of the purported purchasers of the uniforms such as state governments.

70. Although Elkinson on one occasion showed Defendants some purported contracts between his business and various state governments, including Connecticut and Georgia, Defendants never called the telephone numbers listed on those purported contracts. When an agent from the Federal Bureau of Investigation later called the numbers found on those purported contracts, the agent encountered "disconnected" messages. On information and belief, had Defendants tried to call those numbers, they too would have encountered "disconnected" messages. And had Defendants actually been able to reach any of the state governments with which Elkinson purported to do business, they would have discovered that no state government had ever had any contract with Elkinson or his business. Similarly, had Defendants contacted the Japanese manufacturer of uniforms, Peerless Uniform Manufacturing Company, Defendants would have discovered that that manufacturer also never had any business relationship with Elkinson or Northeast Sales.

71. Defendants never received tax documentation from Elkinson in connection with any income received as compensation for the referral investors or as interest on outstanding promissory notes as required by law. Even though Defendant Fialkow found this "odd," he and the other Defendants continued to refer investors to Elkinson's scheme.

72. Defendants also ignored and/or failed to uncover the fact that Elkinson had declared bankruptcy in 1992, and that related court filings reflected that he had virtually no assets.

73. Defendants also ignored indicia from Elkinson himself that he was operating a Ponzi scheme. For example, Elkinson called Defendants daily to inquire about new investments and paid them a substantial fee for lining up new investments. He also provided contradictory and implausible explanations about the putative source of new funds to be used to pay off investors, particularly in 2009 when the scheme began to unravel.

The Elkinson Ponzi Scheme Unravels

74. In 2009, holders of the purported promissory notes issued by Elkinson began to contact Defendants to complain that they had not received interest due on the notes.

75. In October 2009, Elkinson communicated with the victims, including Plaintiffs, asking them to submit a claim form to his “advisors,” Defendant RossFialkow, which would act as a disbursing agent. Specifically, Elkinson transmitted a letter dated October 7, 2009, including to Plaintiffs, which provided as follows:

Dear Friends and Colleagues,

I have just returned from Seattle where I attended the negotiations between our Japanese manufacturer and an investor group. I am pleased to report that a final agreement has been reached providing for an investment of \$30 million to our manufacturer. The closing is scheduled to take place on or before November 30, 2009.

The good news is that all notes, irrespective of their due dates, will be paid in full directly after the closing. Moreover, all overdue notes will receive an additional interest of 1% per month for each month the note is overdue.

The bad news is that I am not certain that we will be unable [sic] to have any further involvement with the manufacturer. I will know for sure at the closing.

For those of you whose interest and/or principal are overdue, I am sorry. The fact that the states have their financial problems has created this problem. It is the first and only time in the more than the 18 years that we were ever late in making a payment. I sincerely thank you for your patience and understanding.

So that we can effect an orderly transition I have asked our advisors, Ross Fialkow Capital Partners LLP, to act as disbursing agent. To that end, please fill out the enclosed form and forward it to them no later than October 30, 2009.

I would like to take this opportunity to express to each of you my heartfelt thanks and appreciation for the very meaningful relationship we have had. I especially appreciate your continued trust and confidence in me during this difficult time.

Sincerely, your friend,

Dick Elkinson

76. In response, Plaintiffs provided information and documentation, including “claim forms” to Defendants in or about October 2009, evidencing the outstanding Elkinson promissory notes in the possession of Plaintiffs or the Sherter Group.

77. Defendant Ross Fialkow received and maintained the information sent by the victims in response to the foregoing letter, including the information sent by Plaintiffs.

78. On or about November 30, 2009, Defendants sent a letter to “Elkinson Note Holders” stating that “[w]e have been advised that all notes due you from Richard Elkinson will be paid to you on **December 10, 2009**. Checks will be sent to you directly by him personally.” (Emphasis in original). No such payments or checks were forthcoming.

79. On information and belief, by the fall of 2009, Defendants had strong suspicions regarding the legitimacy of Elkinson’s purported business, yet Defendants did not advise Plaintiffs of any such suspicions at the time.

80. Also in late 2009, Elkinson told one or more of the Defendants that approximately 132 different investors held promissory notes.

81. On or about December 24, 2009, the United States Attorney for the District of Massachusetts office brought a criminal complaint against Elkinson in the United States District Court for the District of Massachusetts. *United States of America v. Elkinson*, Case No. M.J. # 09-909-HBB (D.Mass.). On January 5, 2010, Elkinson was arrested in Mississippi on charges of defrauding approximately 130 investors out of a total of approximately \$29 million through his Ponzi scheme. On February 17, 2010, a federal grand jury sitting in the District of Massachusetts returned an eighteen-count indictment charging Elkinson with mail fraud. Elkinson is presently in the custody of the U.S. Marshals Service.

82. In addition, on or about January 6, 2010, the Massachusetts Securities Division brought an administrative complaint against Defendants. *In re: RossFialkow Capital Partners, LLP, Jay Lawrence Fialkow & Jeffrey P. Ross*. (Mass. Sec. Div.). The administrative complaint alleges, *inter alia*, that Defendants acted as unregistered broker-dealers or unregistered agents, as well as unregistered investment advisers or unregistered investment adviser representatives, in violation of the Act.

83. In their Answer to the foregoing administrative complaint, Defendants admitted that, at all relevant times, they were not registered as a broker-dealer, agent, investment adviser, investment adviser representative or in any other capacity in the securities business pursuant to M.G.L. c. 110A.

84. Furthermore, on or about January 7, 2010, the Securities and Exchange Commission brought a civil complaint against Elkinson in the United States District Court for the District of Massachusetts. *Securities and Exchange Commission v. Richard Elkinson*, Case No. 1:10-cv-10015-JLT (D.Mass.).

Class Action Allegations

85. Plaintiffs bring this action on their own behalf and as a class action pursuant to Massachusetts Rule of Civil Procedure 23 on behalf of a class (the “Class”) consisting of:

All persons who purchased promissory notes from Richard Elkinson.

Included within the Class is the following subclass (the “Subclass”)

All persons who purchased promissory notes from Richard Elkinson that were offered by Defendants.

Excluded from the Class and Subclass are Defendants, as well as any affiliated companies or immediate family members of Defendants; and Elkinson and any affiliated company or immediate family members of Elkinson.

86. This action is properly maintainable as a class action under Massachusetts Rule of Civil Procedure 23.

87. The Class and Subclass are so numerous that joinder of all members is impracticable. While the exact number of Class and Subclass members are unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, there are numerous members of the proposed Class and Subclass.

88. There are questions of law and fact which are common to the Class and Subclass and which predominate over questions affecting any individual Class member. The common questions include, inter alia, the following:

(a) whether Defendants have violated sections 410(a)(1) and 201(a) of the Act;

(b) whether Defendants acted as agents and/or broker-dealers under sections 401(b) and (c) of the Act;

(c) whether Defendants offered securities to Plaintiffs and Subclass members, by means of untrue statements of material fact and/or omissions of material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading in violation of section 410(a)(2) of the Act;

(d) whether Defendants knew, or in the exercise of reasonable care could have known, of the foregoing untrue statements of material fact and/or omissions of material fact pursuant to section 410(a)(2) of the Act;

(e) whether Defendants, acting as broker-dealers or agents, violated section 410(b) of the Act by materially aiding Elkinson's sale of securities to Plaintiffs and Class members in violation of sections 301 and 410(a)(2) of the Act; and

(f) whether Defendants made negligent misrepresentations and/or omissions.

89. Plaintiffs' claims are typical of the claims of the other members of the Class and Subclass, and Plaintiffs do not have any interests adverse to the Class or Subclass.

90. Plaintiffs are adequate representatives of the Class and Subclass, have retained competent counsel experienced in litigation of this nature and will fairly and adequately protect the interests of the Class and Subclass.

91. The prosecution of separate actions by individual members of the Class or Subclass would create a risk of inconsistent or varying adjudications with respect to individual members of the Class or Subclass which would establish incompatible standards of conduct for the party opposing the Class or Subclass.

92. Plaintiffs anticipate that there will be no difficulty in the management of this litigation. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

93. Defendants have acted on grounds generally applicable to the Class and Subclass with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class and Subclass as a whole.

COUNT I

(Violation of Sections 410(a)(1) and 201(a) of the Massachusetts Uniform Securities Act)
(On behalf of Subclass)

94. Plaintiffs repeat and reallege each allegation set forth herein.

95. Section 410(a)(1) of the Act, governing “Civil Liabilities,” provides, in relevant part, as follows:

Any person who... offers or sells a security in violation of section 201(a)... is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at six percent per year from the date of payment, costs, and reasonable attorneys’ fees, less the amount of any income received on the security, upon the tender of the security....

96. Section 201(a) of the Act provides as follows:

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

97. Section 401(b) of the Act provides, in relevant part, as follows:

“Agent” means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities.

98. Section 401(c) of the Act provides, in relevant part, as follows:

“Broker-dealer” means any person engaged in the business of effecting transactions in securities for the account of others or for his own account.

99. Section 401(k) of the Act provides, in relevant part, that “[s]ecurity” means any note,” which includes the Elkinson promissory notes at issue here. That the notes are securities is further reflected, *inter alia*, by the following. The parties here sought to achieve investment

goals — Elkinson sought to raise money for his purported business and Plaintiffs and the Subclass, as investors, sought a higher than market interest rate. In addition, the parties involved, including Plaintiffs and the Subclass, and as reflected in Defendants' own documents cited above describing the opportunity at issue as an "investment" and the participants "investors," Defendants and Elkinson, reasonably viewed the instruments as investments. Furthermore, there are no other regulatory or risk-reducing features associated with the instruments. The promissory notes were not isolated promises to pay in connection with an individual bank or consumer transaction, but were instead broadly distributed to numerous persons over a period of almost twenty years, and were marketed and acquired as investment opportunities.

100. Based on the conduct described herein, Defendants violated sections 410(a)(1) and 201(a) of the Act. In particular, Defendants, acting as broker-dealers and/or agents, offered securities to Plaintiffs and Subclass members in the commonwealth, even though Defendants were not registered as broker-dealers or agents under the Act.

101. Plaintiffs purchased such securities.

102. As a proximate result of Defendants' foregoing misconduct, Plaintiffs and the Subclass have lost millions of dollars.

103. Accordingly, pursuant to the Act, Plaintiffs and Subclass members are entitled to recover from Defendants the consideration paid for the securities, together with interest at six percent per year from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the securities.

COUNT II

(Violation of Sections 410(a)(1) and 301 of the Massachusetts Uniform Securities Act)
(On behalf of Subclass)

104. Plaintiffs repeat and reallege each allegation set forth herein.

105. Section 410(a)(1) of the Act provides, in relevant part, as follows:

Any person who... offers or sells a security in violation of section... 301... is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at six percent per year from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security....

106. Section 301 of the Act provides as follows:

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

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

107. As set forth above, the Elkinson promissory notes constitute securities.

108. At all relevant times, no registration statements were in effect for any of the Elkinson promissory notes.

109. Based on the conduct described herein, Defendants violated sections 410(a)(1) and 301 of the Act. In particular, Defendants offered securities for sale in the commonwealth that were not registered under section 301 of the Act, are not exempted under section 402 and are not federal covered securities. The securities at issue were not federal covered securities because, among other reasons, they were not listed on a national securities exchange such as the New York Stock Exchange.

110. Plaintiffs purchased such securities.

111. As a proximate result of Defendants' foregoing misconduct, Plaintiffs and the Subclass have lost millions of dollars.

112. Accordingly, pursuant to the Act, Plaintiffs and Subclass members are entitled to recover from Defendants the consideration paid for the securities, together with interest at six

percent per year from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the securities.

COUNT III

(Violation of Section 410(a)(2) of the Massachusetts Uniform Securities Act)
(On behalf of Subclass)

113. Plaintiffs repeat and reallege each allegation set forth herein.

114. Section 410(a)(2) of the Act provides, in relevant part, as follows:

Any person who... offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, the buyer not knowing of the untruth or omission, and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission, is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at six percent per year from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security....

115. Based on the conduct described herein, Defendants violated sections 410(a)(2) of the Act. In particular, Defendants offered securities to Plaintiffs and Subclass members in the commonwealth, by means of untrue statements of material fact and/or omissions of material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

116. Plaintiffs purchased such securities.

117. As described above, in soliciting investors with Elkinson in Massachusetts, Defendants made untrue statements of material fact that they had "vetted" Elkinson and done all necessary and appropriate due diligence on him and failed to disclose numerous material facts indicating that Elkinson was running a Ponzi scheme and was not engaged in any legitimate

business. Defendants also failed to disclose that they were acting as unregistered broker-dealers and/or agents and that the securities they were offering for sale were unregistered.

118. Defendants had a duty to disclose such information, including as broker-dealer and/or agent.

119. Plaintiffs and the Subclass did not know of Defendants' untrue statements of material fact and/or omissions of material fact.

120. Defendants knew, or in the exercise of reasonable care could have known, of the omissions of material fact.

121. As a proximate result of Defendants' untrue statements of material fact and/or omissions of material fact, Plaintiffs and the Subclass have lost millions of dollars.

122. Accordingly, pursuant to the Act, Plaintiffs and Class members are entitled to recover from Defendants the consideration paid for the securities, together with interest at six percent per year from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the securities.

COUNT IV

(Violation of Sections 410(b) and 301 of the Massachusetts Uniform Securities Act)
(On behalf of Class)

123. Plaintiffs repeat and reallege each allegation set forth herein.

124. Section 410(b) of the Act, also governing "Civil Liabilities," provides, in relevant part, as follows:

Every person who directly or indirectly controls a seller liable under subsection (a), every partner, officer, or director of such a seller, every person occupying a similar status or performing similar functions, every employee of such a seller who materially aids in the sale, and *every broker-dealer or agent who materially aids in the sale are also liable jointly and severally with and to the same extent as the seller, unless the non-seller who is so liable sustains the burden of proof that he did not know, and in exercise of reasonable care could not have known, of the existence of the*

facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable. (Emphasis added).

125. Based on the conduct described herein, Elkinson and/or Northeast Sales violated section 301 of the Act. In particular, Elkinson and/or Northeast Sales sold securities to Plaintiffs and the Class in the commonwealth that were not registered under section 301 of the Act, are not exempted under section 402 and are not federal covered securities.

126. Also based on the conduct described herein, Defendants, acting as broker-dealers or agents, violated section 410(b) of the Act by materially aiding Elkinson and/or Northeast Sales' sale of securities to Plaintiffs and Class members in violation of section 301 of the Act and are jointly and severally liable with and to the same extent as Elkinson and/or Northeast Sales. Defendants made Elkinson's illegal sales of securities to Plaintiffs and other Subclass members possible in a variety of ways, including but not limited to locating Plaintiffs and other Subclass members for Elkinson, introducing them to Elkinson and soliciting them (both orally and in writing) to invest with Elkinson initially and, on information and belief, to "roll over" prior investments with Elkinson and/or invest additional funds. Similarly, Defendants' activities made Elkinson's illegal sales to all Class members possible in that Defendants, taking over for Silverman, brought "new blood" into Elkinson's Ponzi scheme, enabling Elkinson to continue perpetrating his Ponzi scheme. Defendants also made Elkinson's illegal sales of securities and Ponzi scheme possible by adding credibility to Elkinson's scheme, interfacing between Elkinson and investors, entering into an agreement with Elkinson to assist Elkinson's wife in paying investors their principal and interest on the promissory notes in the event of Elkinson's death and otherwise "managing" Elkinson's purported "fund" and performing other necessary client services for Elkinson.

127. Defendants knew, or in the exercise of reasonable care could have known, of the existence of the facts by reason of which Elkinson and/or Northeast Sales are liable.

128. Accordingly, pursuant to the Act, Plaintiffs and Class members are entitled to recover from Defendants the consideration paid for the securities, together with interest at six percent per year from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the securities.

COUNT V

(Violation of Sections 410(b) and 410(a)(2) of the Massachusetts Uniform Securities Act)
(On behalf of Class)

129. Plaintiffs repeat and reallege each allegation set forth herein.

130. As previously noted, Section 410(b) of the Act provides, in relevant part, as follows:

Every person who directly or indirectly controls a seller liable under subsection (a), every partner, officer, or director of such a seller, every person occupying a similar status or performing similar functions, every employee of such a seller who materially aids in the sale, and *every broker-dealer or agent who materially aids in the sale are also liable jointly and severally with and to the same extent as the seller, unless the non-seller who is so liable sustains the burden of proof that he did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.* There is contribution as in cases of contract among the several persons so liable. (Emphasis added).

131. Based on the conduct described herein, Elkinson and/or Northeast Sales violated section 410(a)(2) of the Act. In particular, Elkinson and/or Northeast Sales sold securities to Plaintiffs and the Class by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, and knew, or in the exercise of reasonable care could have known, of the untruth or omission.

132. Also based on the conduct described herein, Defendants, acting as broker-dealers or agents, violated section 410(b) of the Act by materially aiding Elkinson and/or Northeast Sales' sale of securities to Plaintiffs and Class members in violation of section 410(a)(2) of the Act and are jointly and severally liable with and to the same extent as Elkinson and/or Northeast Sales. Defendants made Elkinson's illegal sales of securities to Plaintiffs and other Subclass members possible in a variety of ways, including but not limited to locating Plaintiffs and other Subclass members for Elkinson, introducing them to Elkinson and soliciting them (both orally and in writing) to invest with Elkinson initially and, on information and belief, to "roll over" prior investments with Elkinson and/or invest additional funds. Similarly, Defendants' activities made Elkinson's illegal sales to all Class members possible in that Defendants, taking over for Silverman, brought "new blood" into Elkinson's Ponzi scheme, enabling Elkinson to continue perpetrating his Ponzi scheme. Defendants also made Elkinson's illegal sales of securities and Ponzi scheme possible by adding credibility to Elkinson's scheme, interfacing between Elkinson and investors, entering into an agreement with Elkinson to assist Elkinson's wife in paying investors their principal and interest on the promissory notes in the event of Elkinson's death and otherwise "managing" Elkinson's purported "fund" and performing other necessary client services for Elkinson.

133. Defendants knew, or in the exercise of reasonable care could have known, of the existence of the facts by reason of which Elkinson and/or Northeast Sales are liable.

134. Accordingly, pursuant to the Act, Plaintiffs and Class members are entitled to recover from Defendants the consideration paid for the securities, together with interest at six percent per year from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the securities.

COUNT VI

(Negligent Misrepresentation and/or Omission)
(On behalf of Subclass)

135. Plaintiffs repeat and reallege each allegation set forth herein.

136. As described above, in soliciting investors with Elkinson in Massachusetts, Defendants made untrue statements of material fact, including without limitation that they had “vetted” Elkinson and done all necessary and appropriate due diligence on him and failed to disclose numerous material facts indicating that Elkinson was running a Ponzi scheme and was not engaged in any legitimate business. Defendants also failed to disclose that they were acting as unregistered broker-dealers and/or agents and that the securities they were offering for sale were unregistered.

137. Defendants had a duty to disclose such information, including as broker-dealer and/or agent.

138. Defendants knew or should have known that such representations were false and that they had omitted to disclose such material facts to Plaintiffs and other Subclass members.

139. Defendants intended that Plaintiffs and other Subclass members, as potential investors, would rely on such statements and omissions.

140. Plaintiffs and other Subclass members justifiably relied to their detriment on the false statements and/or omissions issued and disseminated by Defendants.

141. Had Plaintiffs and other Subclass members known of the foregoing material misstatements and omissions, they would not have purchased the securities at issue.

142. Defendants failed to exercise reasonable care or competence in offering to Plaintiffs and other Subclass members the securities that they purchased from Elkinson.

143. As a direct and proximate result of the foregoing, Plaintiffs and other Subclass members have sustained damages for which Defendants are liable, in an amount to be determined at trial.

Prayer for Relief

WHEREFORE, Plaintiffs, on behalf of themselves and the other Class members, including the Subclass members, request that the Court enter judgment against Defendants as follows:

A. Declaring that this is a properly maintainable class action under Massachusetts Rule of Civil Procedure 23 and declaring Plaintiffs to be proper Class representatives;

B. Awarding Plaintiffs and Class members, including the Subclass members, the full recovery of the consideration paid for the securities at issue, together with interest at six percent per year from the date of payment, less the amount of any income received on the securities;

C. Awarding Plaintiffs and other Subclass members compensatory damages as a result of Defendants' negligent misrepresentations and/or omissions in amounts to be proven at trial;

D. Awarding Plaintiffs the costs and disbursements of this action, including reasonable attorneys' and experts' fees; and

E. Granting such other and further relief as this Court may deem just and proper.

Jury Trial Demand

Plaintiffs hereby demand trial by jury on all issues so triable.

DATED: August 6, 2010

By their attorneys,

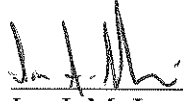


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Attorneys for Plaintiffs

Certificate of Service

I, Ian J. McLoughlin, hereby certify that a true copy of the above was served upon the attorney of record for Defendants by hand delivery on August 6, 2010:

A handwritten signature in black ink, appearing to read 'Ian J. McLoughlin', is written over a horizontal line.

Ian J. McLoughlin (BBO# 647203)