

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

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IN THE MATTER OF:)	
)	ADMINISTRATIVE COMPLAINT
DANIEL PATRICK SCALLEY,)	
BOSTON FACTORS INC. &)	
SMALL BUSINESS CAPITAL)	
CORPORATION)	Docket No. E-2006-0062
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I. PRELIMINARY STATEMENT

The Enforcement Section of the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth (the “Enforcement Section” and the “Division,” respectively) files this complaint (the “Complaint”) in order to commence an adjudicatory proceeding against the above named Respondents for violations of M.G.L. c. 110A, the Massachusetts Uniform Securities Act (the “Act”), and 950 CMR 10.00 *et seq.*, (the “Regulations”). The Complaint is focused on Daniel Patrick Scalley, Boston Factors, Inc. and Small Business Capital Corporation and their collective activities as unregistered broker-dealers, or unregistered agents of broker-dealers or issuers of securities, and issuers of unregistered and non-exempt securities in the Commonwealth of Massachusetts in violation of the Act and Regulations.

The Enforcement Section seeks an Order: 1) requiring Respondents Daniel Patrick Scalley, Boston Factors, Inc. and Small Business Capital Corporation to permanently cease and desist from further conduct in violation of the Act and Regulations in the Commonwealth; 2) requiring Respondents Daniel Patrick Scalley, Boston Factors, Inc. and Small Business Capital Corporation to provide an accounting of all proceeds which

they received as a result of the alleged wrongdoing, and to offer rescission to and fairly compensate investors for those losses attributable to the alleged wrongdoing; 3) requiring Respondents Daniel Patrick Scalley, Boston Factors, Inc. and Small Business Capital Corporation to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing; 4) imposing an administrative fine on Respondents Daniel Patrick Scalley, Boston Factors, Inc. and Small Business Capital Corporation in such amount and upon such terms and conditions as the Director or Presiding Officer may determine; and 5) taking any such further actions which may be in the public interest and necessary and appropriate for the protection of Massachusetts investors.

II. SUMMARY

For a time period encompassing nearly the past fifteen years, Respondent Daniel Patrick Scalley (“Scalley”) has engaged in a deliberate and ongoing scheme of defrauding Massachusetts residents through the issuance of dozens of unregistered promissory notes. The notes ranged in value from as little as \$2,500.00 to several hundred thousand dollars and purported to pay interest rates between 6.25% and 8%. Scalley boasted of having millions in personal real estate holdings which would guarantee the safety of the investors’ funds. In reliance on those representations and promises, Massachusetts residents invested hundreds of thousands, and likely millions, of dollars with Scalley and his two primary business entities which he solely controlled, Respondents Boston Factors, Inc. (“BFI”) and Small Business Capital Corporation (“SBCC”).

Scalley touted his prowess in the factoring¹ business through BFI and SBCC to potential investors to induce them to invest. Scalley testified before the Enforcement Section that investors' funds would be placed in bank accounts of either BFI or SBCC and be used to pay operating expenses of BFI or SBCC, including overhead and Scalley's own payroll. Contrary to his representations to investors, Scalley testified before the Enforcement Section that investors' funds were never secured by any liens on any property or assets of any of the Respondents.

Kristen S. Till ("Till"), a resident of Boxford, Massachusetts, is currently owed \$150,896.41 by Scalley or his entities, according to Scalley's own records provided to the Division. This amount includes an unregistered promissory note issued to her by BFI in the amount of \$61,007.36. Because of this promissory note and other transactions with Scalley, following foreclosure, Till is currently facing eviction from her Boxford, Massachusetts home.

Norma D. Doherty is ("Doherty"), age 70, is an elderly widow and a former resident of Burlington, Massachusetts now residing at a nursing home in Lexington, Massachusetts. Scalley referred to Doherty as a friend and a neighbor of his for almost thirty (30) years. Following the death of Doherty's husband in 2000, Scalley began soliciting Doherty to invest funds with him. Scalley admitted in testimony before the Enforcement Section that BFI received funds via checks from Doherty between approximately 2002 and 2006. In a series of three (3) unregistered promissory notes dated November 7, 2008, totaling \$248,652.95, and signed by Scalley and Doherty's

¹ According to Barron's Dictionary of Finance and Investment Terms, "factoring" is defined as "a type of financial service whereby a firm sells or transfers title to its accounts receivable to a factoring company, which then acts as principal, not as agent. The receivables are sold without recourse meaning that the factor cannot turn to the seller in the event accounts prove uncollectible."

daughter as power-of-attorney, Scalley attempted to memorialize his obligations to Doherty. Scalley admitted never making payment to Doherty on the November 7, 2008 promissory notes. On October 23, 2009, attorney Mark E. Burke, on behalf of Doherty, filed a civil complaint (Docket No. MICV2009-04133) against Scalley in Superior Court for Middlesex County.

Marina M. Yapoujian (“Yapoujian”), a resident of Medford, Massachusetts, received at least twenty seven (27) different unregistered promissory notes issued by either BFI or SBCC from Scalley. On April 9, 1999, Yapoujian filed a civil complaint (Docket No. MICV1999-01874A) against Scalley, BFI and SBCC in Superior Court for Middlesex County seeking payment on the outstanding balances of the promissory notes.

Arman Chitchian (“Chitchian”), a resident of Newton Centre, Massachusetts transferred at least \$329,293.55 between 1996 and 1998 to SBCC and BFI and received seventeen (17) unregistered promissory notes in return. On April 6, 1999, Chitchian filed a civil complaint (Docket No. MICV1999-01820E) against Scalley, BFI and SBCC in Superior Court for Middlesex County seeking payment on the outstanding balances of the promissory notes. In more recent information obtained by the Enforcement Section Scalley may currently owe Chitchian as much as \$800,000.00.

On March 6, 2000, SBCC filed for Chapter 7 bankruptcy protection. Only July 31, 2002, Scalley filed a list of creditors holding the 12 largest unsecured claims of SBCC which identified Chitchian as the largest creditor of SBCC with a disputed claim in the amount of \$520,554.61 and Yapoujian as the second largest creditor of SBCC with a disputed claim in the amount of \$476,024.39. The combined claims of Chitchian and

Yapoujian in the SBCC bankruptcy totaled \$996,579.00 and represented in excess of 92.3% of the total unsecured claims of SBCC.

Beyond the investors identified in this Complaint, Scalley has been, or is currently, a party in numerous civil litigations filed primarily in Middlesex Superior Court. The allegations in those matters are similar in nature and scope to the allegations presented in this Complaint relative to Till, Doherty, Yapoujian and Chitchian. Scalley, BFI and SBCC have never registered in Massachusetts as a broker-dealers, an agent of a broker-dealer or an issuer, an investment advisers or an investment adviser representative, or in any other capacity in the securities business in the Commonwealth. Scalley, BFI and SBCC also have never filed an application for the registration of, or notice of exemption from registration for, securities to be offered in Massachusetts

III. JURISDICTION AND AUTHORITY

1. The Massachusetts Securities Division is a division of the Office of the Secretary of the Commonwealth with jurisdiction over matters relating to securities, as provided for by the Act. The Act authorizes the Division to regulate: 1) the offers, sales, and purchases of securities; 2) those persons engaged in the business of effecting transactions in securities for the account of others or for their own account; and 3) those persons transacting business as investment advisers within the Commonwealth.
2. The Division brings this action pursuant to the enforcement authority conferred upon it by § 407A of the Act and M.G.L. c. 30A, wherein the Division has the authority to conduct an adjudicatory proceeding to enforce the provisions of the Act and all Regulations and rules promulgated thereunder.

3. This proceeding is brought in accordance with §§ 201, 301 and 407A of the Act and its Regulations. Specifically, the acts and practices constituting violations occurred within the Commonwealth of Massachusetts.
4. The Division specifically reserves the right to amend this Complaint and/or bring additional administrative complaints to reflect information developed during the current and ongoing investigation.

IV. RELEVANT TIME PERIOD

5. Except as otherwise expressly stated, the conduct described herein occurred during the approximate time period of December 29, 1994 to date (the “Relevant Time Period”).

V. RESPONDENTS

6. Daniel Patrick Scalley (“Scalley”), age 54, is an individual with a last known principal place of residence at 3 Oxford Place, Woburn, Massachusetts 01801-5715. Between November 1, 1976 and the present, Scalley has held a license as a real estate broker (license no. 94555) with the Massachusetts Board of Registration of Real Estate Brokers and Salespersons. According to documents filed with the Corporations Division of the Office of the Secretary of the Commonwealth, Scalley is listed as a current or former officer or director of numerous business entities. Scalley was not registered in Massachusetts as a broker-dealer, an agent of a broker-dealer or an issuer, an investment adviser or an investment adviser representative, or in any other capacity in the securities business in the Commonwealth during the Relevant Time Period.

7. Boston Factors, Inc. (“BFI”) is a domestic for-profit corporation organized under the laws of the Commonwealth of Massachusetts on September 19, 1997. According to documents filed with the Corporations Division of the Office of the Secretary of the Commonwealth, BFI maintains a principal place of business at 3 Oxford Place, Woburn, Massachusetts 01801. According to documents filed with the Corporations Division of the Office of the Secretary of the Commonwealth, Scalley serves as the president, treasurer, secretary and sole director of BFI. BFI was not registered in Massachusetts as a broker-dealer, an investment adviser, or in any other capacity in the securities business in the Commonwealth during the Relevant Time Period. BFI has never filed an application for the registration of, or notice of exemption from registration for, securities to be offered in Massachusetts.

8. Small Business Capital Corporation (“SBCC”) is a domestic for-profit corporation organized under the laws of the Commonwealth of Massachusetts on December 29, 1994. According to documents filed with the Corporations Division of the Office of the Secretary of the Commonwealth, SBCC maintains a principal place of business at 3 Oxford Place, Woburn, Massachusetts 01801. According to documents filed with the Corporations Division of the Office of the Secretary of the Commonwealth, Scalley serves as the president, treasurer, secretary and sole director of SBCC. SBCC was not registered in Massachusetts as a broker-dealer, an investment adviser, or in any other capacity in the securities business in the Commonwealth during the Relevant Time Period. SBCC has never filed an application for the registration of, or notice of exemption from registration for, securities to be offered in Massachusetts.

VI. ALLEGATIONS OF FACT

9. Scalley was not registered in Massachusetts as an agent of a broker-dealer or an issuer, an investment adviser representative, or in any other capacity in the securities business in the Commonwealth during the Relevant Time Period.
10. BFI was not registered in Massachusetts as a broker-dealer, an investment adviser, or in any other capacity in the securities business in the Commonwealth during the Relevant Time Period.
11. BFI has never filed an application for the registration of, or notice of exemption from registration for, securities to be offered in Massachusetts.
12. SBCC was not registered in Massachusetts as a broker-dealer, an investment adviser, or in any other capacity in the securities business in the Commonwealth during the Relevant Time Period.
13. SBCC has never filed an application for the registration of, or notice of exemption from registration for, securities to be offered in Massachusetts.

Kristen S. Till

14. Kristen S. Till (“Till”) is a resident of Boxford, Massachusetts.
15. Scalley admitted in testimony before the Enforcement Section that he was first introduced to Till through a telephone conversation at some point between 1997 and 1999.
16. Scalley admitted in testimony before the Enforcement Section that on several occasions between approximately February 27, 2002 and March 27, 2004, he had loaned money to Till through BFI.

17. A statement dated September 24, 2004 and produced by Scalley to the Enforcement Section in response to a subpoena issued upon him identified the total outstanding balance of funds owed by Till to Scalley/BFI as \$150,896.41.
18. At some point in late September of 2004, Till completed a refinancing on her Boxford residence and received check number number 6272, dated September 24, 2004, in the amount of \$211,903.77 from an IOLTA account of attorney John J. Todisco, Jr. *A true and accurate copy of the \$211,903.77 check is attached hereto as Exhibit 1.*
19. Till endorsed check number 6272 as payable “to the order of Boston Factors, Inc.” *See Exhibit 1.*
20. Scalley executed a promissory note dated September 24, 2004 in favor of Till in the principal amount of \$61,007.36, with that sum being the difference between the amount of check number number 6272 and the amount Till allegedly owed to Scalley pursuant to Scalley’s September 24, 2004 statement. *A true and accurate copy of the September 24, 2004 promissory note is attached hereto as Exhibit 2.*
21. The express terms of the September 24, 2004 promissory note provided for an annual interest rate of eight percent (8%) with payment to be made in full upon a seventy two (72) hour notice. *See Exhibit 2.*
22. The express terms of the September 24, 2004 promissory note recited that the note was “not a Consumer Loan”. *See Exhibit 2.*
23. The September 24, 2004 promissory contained the notation “The undersigned agrees to personally and unconditionally guarantee the repayment of this Corporate Promissory Note” directly above Scalley’s signature. *See Exhibit 2.*

24. Scalley identified his signature on the September 24, 2004 promissory note in testimony before the Enforcement Section.
25. Upon information and belief, September 24, 2004 promissory note was not secured in any manner by any lien or formal encumbrance of any property or assets.
26. Scalley admitted in testimony before the Enforcement Section that check number 6272 was deposited into a checking account at Citizens Bank in the name of BFI and controlled by Scalley.
27. Scalley admitted in testimony before the Enforcement Section that he could not recall whether BFI had a specific need for Till's \$61,007.36, and furthermore could not recall even what the funds were ultimately used for.
28. Upon information and belief, Till has made repeated demands for the return of all or portions of the \$61,007.36 provided to Scalley/BFI in connection with the September 24, 2004 promissory note.
29. Upon information and belief, between September 24, 2004 to date, Till has received either none, or at most an insignificant amount, of her \$61,007.36 back from Scalley/BFI.
30. Scalley and BFI had never filed an application for the registration of, or notice of exemption from registration for, the September 24, 2004 promissory note to be offered and/or sold in Massachusetts
31. Directly due to the September 24, 2004 promissory note and other transactions with Scalley, following foreclosure, Till is currently facing eviction from her Boxford, Massachusetts home.

Norma D. Doherty

32. Norma D. Doherty is (“Doherty”), age 70, is an elderly widow and a former resident of Burlington, Massachusetts.
33. Upon information and belief, Doherty currently resides at nursing home in Lexington, Massachusetts.
34. In testimony before the Enforcement Section, Scalley identified Doherty as a friend and a neighbor of his for almost thirty (30) years.
35. Upon information and belief, following the death of Doherty’s husband in 2000, Scalley began soliciting Doherty to invest funds with him.
36. Scalley admitted in testimony before the Enforcement Section that BFI began receiving funds from Ms. Doherty at approximately the same time her husband passed away.
37. Scalley admitted in testimony before the Enforcement Section that BFI received funds via checks from Doherty between approximately 2002 and 2006.
38. Scalley admitted in testimony before the Enforcement Section that Doherty provided funds to BFI because “she was looking to earn a little more interest if she could”.
39. Scalley admitted in testimony before the Enforcement Section that the checks received from Doherty would be deposited into Boston Factors’ checking account(s) at either Citizens Bank or Sovereign Bank and the funds would be used for working capital and ordinary expenses of BFI including “funding factorables”, overhead expenses and payroll.
40. Scalley admitted in testimony before the Enforcement Section that he drafted a document dated November 7, 2008 and titled “PROMISSORY NOTE” on BFI

letterhead in which BFI promised to pay Doherty \$31,834.60 on or before March 15, 2009. *A true and accurate copy of the \$31,834.60 promissory note is attached hereto as Exhibit 3.*

41. Doherty's daughter Theresa Flanagan of Burlington, Massachusetts signed the promissory note as attorney-in-fact for Doherty's benefit pursuant to a general durable power of attorney Doherty executed January 18, 2001.
42. The terms of the \$31,834.60 promissory note provided for principal payments in the amount of \$10,000.00 to be made on December 15, 2008, January 15, 2009, and February 15, 2009, with any remaining principal balance due on March 15, 2009. *See Exhibit 3.*
43. The terms of the \$31,834.60 promissory note provided for interest to accrue at "at the rate of eight (08) percent per annum." *See Exhibit 3.*
44. The express terms of the \$31,834.60 promissory note recited that the note was "not a Consumer Loan". *See Exhibit 3.*
45. Scalley identified his signature on the second page of the \$31,834.60 promissory note in testimony before the Enforcement Section. *See Exhibit 3.*
46. Scalley admitted in testimony before the Enforcement Section that the \$31,834.60 promissory note was not secured by either a mortgage on any real property, a lien on any small business or any of its assets, or by an assignment of BFI accounts receivable.
47. Scalley admitted in testimony before the Enforcement Section that BFI never made the scheduled payments recited in the \$31,834.60 promissory note to Doherty.

48. Scalley admitted in testimony before the Enforcement Section that he drafted a document dated November 7, 2008 and titled "PROMISSORY NOTE" on BFI letterhead in which BFI promised to pay Doherty \$150,114.74 on or before June 30, 2009. *A true and accurate copy of the \$150,114.74 promissory note is attached hereto as Exhibit 4.*
49. The terms of the \$150,114.74 promissory note provided for a principal payment in the amount of \$50,000.00 to be made on April 30, 2009, with any remaining principal balance due on June 30, 2009. *See Exhibit 4.*
50. The terms of the \$150,114.74 promissory note provided for interest to accrue at "at the rate of eight (08) percent per annum." *See Exhibit 4.*
51. The express terms of the \$150,114.74 promissory note recited that the note was "not a Consumer Loan". *See Exhibit 4.*
52. Scalley identified his signature on the second page of the \$150,114.74 promissory note in testimony before the Enforcement Section. *See Exhibit 4.*
53. Scalley admitted in testimony before the Enforcement Section that the \$150,114.74 promissory note was not secured by either a mortgage on any real property, a lien on any small business or any of its assets, or by an assignment of BFI accounts receivable.
54. Scalley admitted in testimony before the Enforcement Section that BFI never made the scheduled payments recited in the \$150,114.74 promissory note to Doherty.
55. Scalley identified his signature on the second page of a document dated November 7, 2008 and titled "PROMISSORY NOTE" on BFI letterhead in which BFI promised to

pay Doherty \$66,703.61 on or before January 7, 2010. *A true and accurate copy of the \$66,703.61 promissory note is attached hereto as Exhibit 5.*

56. The terms of the \$66,703.61 promissory note provided for the payment of the principal along with accrued interest in the amount of \$6,225.67 no later than January 7, 2010. *See Exhibit 5.*

57. The terms of the \$66,703.61 promissory note provided for interest to accrue at “at the rate of eight (08) percent per annum.” *See Exhibit 5.*

58. The express terms of the \$66,703.61 promissory note recited that the note was “not a Consumer Loan”. *See Exhibit 5.*

59. Scalley admitted in testimony before the Enforcement Section that the \$66,703.61 promissory note was not secured by either a mortgage on any real property, a lien on any small business or any of its assets, or by an assignment of BFI accounts receivable.

60. Scalley admitted in testimony before the Enforcement Section that BFI never made the scheduled payments recited in the \$150,114.74 promissory note to Doherty.

61. Scalley admitted in testimony before the Enforcement Section that the \$150,114.74 promissory note represented an amount originally provided by Doherty to BFI and that the \$66,703.61 promissory note represented the accrued and payable interest on the \$150,114.74 principal obligation.

62. In a letter dated July 5, 2009 and addressed to Mark E. Burke, an attorney representing Doherty, Scalley admitted that BFI agreed to pay eight percent (8%) interest on the funds provided by Doherty to BFI.

63. Scalley admitted in testimony before the Enforcement Section that he never furnished Doherty with an IRS Form 1099 INT in connection with any interest payments he may have made on funds he or BFI received from Doherty prior to the execution of the promissory notes.
64. Scalley and BFI had never filed an application for the registration of, or notice of exemption from registration for, the November 7, 2008 promissory notes to be offered and/or sold in Massachusetts.
65. In a letter dated July 6, 2009, attorney Mark E. Burke, on behalf of Doherty, made a demand letter pursuant to G.L. c. 93A to Scalley, demanding payment of Doherty's losses which were estimated at \$250,000.00. *A true and accurate copy of the July 6, 2009 demand letter is attached hereto as Exhibit 6.*
66. On October 23, 2009, attorney Mark E. Burke, on behalf of Doherty, filed a civil complaint² against Scalley in Superior Court for Middlesex County.
67. In Scalley's answer to Doherty's civil complaint, dated November 14, 2009 and filed on behalf of Scalley and BFI by attorney Steven A. Grant, Scalley admitted never providing proper statements relative to the investment of Doherty's property and assets.
68. Scalley admitted in testimony before the Enforcement Section that as of the end of July 2010, BFI did not have sufficient funds to repay the funds Doherty had provided to BFI.

Marina M. Yapoujian

69. Marina M. Yapoujian ("Yapoujian") is a resident of Medford, Massachusetts.

² See Norma D. Doherty v. Daniel P. Scalley and Boston Factors, Inc. (Civil Action No. MICV2099-04133).

70. Scalley admitted in testimony before the Enforcement Section that he first met Yapoujian through a friend.
71. Scalley admitted in testimony before the Enforcement Section that Yapoujian had provided funds to SBCC on multiple occasions.
72. Between October 8, 1997 and January 29, 1998, Scalley as President of BFI executed seven (7) separate promissory notes with Yapoujian upon the representations that the funds would be used for purchasing accounts receivable at a discount.
73. The Enforcement Section received a copy of at least one (1) promissory note issued to Yapoujian by BFI in the amount of \$10,000.00 bearing Scalley's signature. *A true and accurate copy of the \$10,000.00 BFI promissory note is attached hereto as Exhibit 7.*
74. Between November 20, 1996 and October 6, 1998, Scalley as President of SBCC executed twenty (20) separate promissory notes with Yapoujian upon the representations that the funds would be used for purchasing accounts receivable at a discount.
75. Scalley admitted in testimony before the Enforcement Section that the transactions in which Yapoujian provided funds to SBCC were memorialized by promissory notes.
76. The Enforcement Section received copies of at least seventeen (17) promissory notes issued to Yapoujian by SBCC in values ranging between \$2,500.00 and \$20,000.00 totaling at least \$117,500.00 and bearing Scalley's signature. *True and accurate copies of the 17 promissory notes are attached hereto collectively as Exhibit 8.*

77. Scalley admitted in testimony before the Enforcement Section that Yapoujian would charge Scalley or SBCC a “discount fee” in lieu of the more conventional interest, on funds Yapoujian provided to SBCC.
78. Scalley admitted in testimony before the Enforcement Section that funds received from Yapoujian would be deposited into a SBCC operating account.
79. Scalley verbally represented to Yapoujian that BFI and SBCC had perfected security interests in all of the corporations from which BFI and SBCC purchased receivables.
80. Scalley verbally represented to Yapoujian that he was personally guaranteeing the repayment of the promissory notes and that all the notes were secured by real estate in which Scalley held interests.
81. Scalley admitted in testimony before the Enforcement Section that funds SBCC received from Yapoujian were not secured by any by a mortgage on any real property.
82. Scalley, BFI and SBCC had never filed an application for the registration of, or notice of exemption from registration for, the Yapoujian promissory notes to be offered and/or sold in Massachusetts.
83. In February of 1998, BFI and SBCC ceased making payments on the promissory notes held by Yapoujian.
84. On April 9, 1999, Yapoujian filed a civil complaint³ against Scalley, BFI and SBCC in Superior Court for Middlesex County seeking payment on the outstanding balances of the promissory notes.

³ See Marina Yapoujian, Individually and d/b/a Bay State Business Services v. Boston Factors, Inc., Small Business Capital Corp., and Daniel P Scalley, Individually and as President of Boston Factors, Inc., Small Business Capital Corp. (Civil Action No. MICV1999-01874A).

85. On March 6, 2000 SBCC filed a voluntary petition under Chapter 7 of the United States' Bankruptcy Code in United States' Bankruptcy Court in Boston (the "SBCC Bankruptcy Petition"). *See Bankruptcy Petition 00-11534.*
86. On July 31, 2002, Scalley, under pains and penalties of perjury and on behalf of SBCC as its president, filed a list of creditors holding the 20 largest unsecured claims of SBCC which identified Yapoujian as the second largest creditor of SBCC with a disputed claim in the amount of \$476,024.39. *A true and accurate copy of the list of creditors holding the 20 largest unsecured claims of SBCC is attached hereto as Exhibit 9.*

Arman Chitchian

87. Arman Chitchian ("Chitchian") is a resident of Newton Centre, Massachusetts.
88. Chitchian was introduced to Scalley through Yapoujian in 1996.
89. Between 1996 and 1998 Chitchian transferred \$329,293.55 to SBCC and BFI and received seventeen (17) promissory notes in return.
90. Chitchian possessed checks totaling in excess of \$325,000.00 written between 1996 and 1997 to Scalley, SBCC or BFI.
91. By 2005 Chitchian had received only \$14,000.00 (or 4.25%) of his funds back from Scalley, SBCC or BFI.
92. Scalley would return Chitchian's funds plus a "discount fee" in the approximate amount of 6.25% per month.
93. Scalley personally guaranteed all the monies given to him with what Scalley identified as his vast real estate holdings.

94. Scalley admitted in testimony before the Enforcement Section that funds SBCC received from Chitchian were not secured by a mortgage on any real property.
95. Scalley would not pay Chitchian upon due dates unless Chitchian had recently supplied new monies to Scalley.
96. On April 6, 1999, Chitchian filed a civil complaint⁴ against Scalley, BFI and SBCC in Superior Court for Middlesex County seeking payment on the outstanding balances of the promissory notes.
97. On February 14, 2003, Chitchian executed a settlement agreement in civil proceeding MICV1999-01820E which Scalley subsequently allegedly breached by failing to deliver \$232,000.00 to Chitchian.
98. Only July 31, 2002, Scalley, under pains and penalties of perjury and on behalf of SBCC as its president, filed a list of creditors holding the 20 largest unsecured claims of SBCC which identified Chitchian as the largest creditor of SBCC with a disputed claim in the amount of \$520,554.61. *See Exhibit 9.*
99. Scalley, BFI and SBCC had never filed an application for the registration of, or notice of exemption from registration for, the Chitchian promissory notes to be offered and/or sold in Massachusetts.
100. As of July 4, 2010, Scalley may owe Chitchian as much as \$800,000.00.

VII. VIOLATIONS OF LAW

A. COUNT I – VIOLATION OF M.G.L. c. 110A § 201(a)

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

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

⁴ See Chitchian, Indiv. & dba v Boston Factors, Inc. et al (Civil Action Docket No. MICV1999-01820E).

102. Section 401(c) of the Act provides, in pertinent part:

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

103. The Enforcement Section herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 100 above.

104. The conduct of Respondents Daniel Patrick Scalley, Boston Factors, Inc. and Small Business Capital Corporation as described above, constitutes a violation of M.G.L. c. 110A, § 201(a).

B. COUNT II – VIOLATION OF M.G.L. c. 110A § 201(a)

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

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

106. Section 401(b) of the Act provides, in pertinent part:

“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.

107. The Enforcement Section herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 100 above.

108. The conduct of Respondent Daniel Patrick Scalley, as described above, constitutes a violation of M.G.L. c. 110A, § 201(a).

C. COUNT III – VIOLATION OF M.G.L. c. 110A § 201(b)

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

It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered.

110. Section 401(c) of the Act provides, in pertinent part:

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

111. Section 401(f) of the Act provides, in pertinent part:

“Issuer” means any person who issues or proposes to issue any security...

112. Section 401(b) of the Act provides, in pertinent part

“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.

113. The Enforcement Section herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 100 above.

114. The conduct of Respondents Boston Factors, Inc. and Small Business Capital Corporation, as described above, constitutes a violation of M.G.L. c. 110A, § 201(b).

D. COUNT IV – VIOLATION OF M.G.L. c. 110A § 301

115. Section 301 of the Act provides:

It is unlawful for any person to offer or sell any security in the commonwealth unless: (1) the security is registered under this chapter; (2) the security or transaction is exempted under section 402; or (3) the security is a federal covered security.

116. The Enforcement Section herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 100 above.

117. The conduct of Respondents Daniel Patrick Scalley, Boston Factors, Inc. and Small Business Capital Corporation, as described above, constitutes a violation of M.G.L. c. 110A, § 301.

VIII. STATUTORY BASIS FOR RELIEF

118. Section 407A of the Act entitled “Violations; Cease and Desist Orders; Costs” provides in pertinent part:

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

IX. PUBLIC INTEREST

For any and all of the reasons set forth above, it is in the public interest and will protect Massachusetts investors to enter an Order: 1) requiring Respondents Daniel Patrick Scalley, Boston Factors, Inc. and Small Business Capital Corporation to permanently cease and desist from further conduct in violation of the Act and Regulations in the Commonwealth; 2) requiring Respondents Daniel Patrick Scalley, Boston Factors, Inc. and Small Business Capital Corporation to provide an accounting of all proceeds which they received as a result of the alleged wrongdoing, and to offer rescission to and fairly compensate investors for those losses attributable to the alleged wrongdoing; 3) requiring Respondents Daniel Patrick Scalley, Boston Factors, Inc. and Small Business Capital Corporation to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing; 4) imposing an administrative fine on Respondents Daniel Patrick Scalley, Boston Factors, Inc. and Small Business Capital Corporation in such amount and upon such terms and conditions as the Director or Presiding Officer may determine; and 5) taking any such further actions which may be in the public interest and necessary and appropriate for the protection of Massachusetts investors.

X. RELIEF REQUESTED

Wherefore, the Enforcement Section of the Division requests that the Director or Hearing Officer take the following actions:

- A. Find that all the sanctions and remedies as detailed herein are in the public interest and necessary for the protection of Massachusetts investors;
- B. Find as fact the allegations set forth in paragraphs 1 through 118 inclusive, of the Complaint;
- C. Order Respondents Daniel Patrick Scalley, Boston Factors, Inc. and Small Business Capital Corporation to permanently cease and desist from further conduct in violation of the Act and Regulations in the Commonwealth;
- D. Order Respondents Daniel Patrick Scalley, Boston Factors, Inc. and Small Business Capital Corporation to provide an accounting of all proceeds which they received as a result of the alleged wrongdoing, and to offer rescission to and fairly compensate investors for those losses attributable to the alleged wrongdoing;
- E. Order Respondents Daniel Patrick Scalley, Boston Factors, Inc. and Small Business Capital Corporation to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing;
- F. Impose an administrative fine on Respondents Daniel Patrick Scalley, Boston Factors, Inc. and Small Business Capital Corporation in such amount and upon such terms and conditions as the Director or Presiding Officer may determine; and
- G. Take any such further actions which may be in the public interest and necessary and appropriate for the protection of Massachusetts investors.

**MASSACHUSETTS SECURITIES DIVISION
ENFORCEMENT SECTION**

By and through its attorneys,



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Dated: November 4, 2010