

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 70533 / September 26, 2013

INVESTMENT ADVISERS ACT OF 1940

Release No. 3682 / September 26, 2013

INVESTMENT COMPANY ACT OF 1940

Release No. 30736 / September 26, 2013

ADMINISTRATIVE PROCEEDING

File No. 3-15526

In the Matter of

GEORGE B. FRANZ III

and

RUBY CORPORATION,

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 203(e), (f), AND
(k) OF THE INVESTMENT ADVISERS ACT
OF 1940, SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, AND SECTION
9(b) OF THE INVESTMENT COMPANY ACT
OF 1940**

I.

The Securities and Exchange Commission (“Commission” or “SEC”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e), (f), and (k) of the Investment Advisers Act of 1940 (“Advisers Act”), Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against George B. Franz III and Ruby Corporation (collectively, “Respondents”).

II.

After an investigation, the Division of Enforcement alleges that:

1. From 2007 until 2011, Andrew J. Franz misappropriated over \$490,000 from about 50 accounts of clients of Respondent Ruby Corporation, a registered investment adviser owned and managed by his father, Respondent George Franz. George Franz ignored signs of his son's malfeasance and failed to take action to stop further thefts, thereby failing to protect Ruby clients. Moreover, George Franz not only declined to promptly tell Ruby's clients that Andrew Franz had stolen from them, but actively concealed from clients that they had been victimized. Ruby clients were therefore deprived the opportunity to decide whether, in light of Andrew Franz's thefts that Ruby had failed to prevent, they were comfortable remaining as clients of Ruby. George Franz impeded both the SEC's examination and investigation of Ruby, providing the SEC staff with misinformation and fabricated documents in an effort to mislead the staff as to his poor supervision of Andrew Franz and his failure to disclose thefts to Ruby clients. This misconduct violated, among other things, the antifraud provisions of the Advisers Act.

A. RESPONDENTS

2. George B. Franz III. George Franz founded Ruby Corporation, a registered investment adviser located in Beachwood, Ohio, in 2000 and is its sole owner and principal. George Franz had supervisory responsibility over Andrew Franz from at least 2006 through 2011. George Franz, age 70, is a resident of Moreland Hills, Ohio and Marco Island, Florida. George Franz received his Series 6 license in 1982 and was associated with various brokerage firms from 1991 until September 2006, when he ceased to be associated with any brokerage firm.

3. Ruby Corporation. Ruby Corporation ("Ruby") is an Ohio corporation with its principal place of business in Beachwood, Ohio. Ruby is registered with the Commission as an investment adviser. Since 2007, Ruby has had two or three part-time employees on its staff in addition to its owner George Franz. As of December 2012, Ruby had 99 clients with assets under management of \$21 million. Ruby's clients are typically middle-age and retirement-age individuals in the Cleveland, Youngstown, and Dayton, Ohio areas. Ruby's client accounts are discretionary and are invested exclusively in mutual funds and variable annuities.

B. OTHER RELEVANT INDIVIDUAL

3. Andrew J. Franz. Andrew Franz, age 40, is a resident of Aurora, Ohio. Andrew Franz received his Series 6 license in 2002 and was a registered representative with various broker-dealers until March 2011. Andrew Franz was a paid employee of Ruby from 2002 until 2007, after which he ceased receiving a salary but continued to manage Ruby's operations, specifically the billing of management fees on client accounts. At all times until his termination from Ruby in 2011, Andrew Franz maintained an office at Ruby.

4. In March 2012, the SEC filed an emergency action against Andrew Franz in U.S. District Court, alleging among other things, that he had misappropriated funds from Ruby clients by issuing fraudulent management fee requests, and obtained an emergency asset freeze and a permanent injunction. *SEC v. Andrew J. Franz*, 5:12-cv-00642 (N.D. Ohio). After an evidentiary hearing, in June 2012 the court made findings of fact, held that Andrew Franz had violated the antifraud provisions of the Exchange Act and the Advisers Act, and entered a permanent injunction against further violations of those provisions. On March 15, 2013, the Commission permanently barred Andrew Franz from the securities industry by declaring as final an initial decision by ALJ Cameron Elliot dated January 18, 2013.

5. On July 23, 2013, Andrew Franz pled guilty to charges of wire fraud, tax fraud, and violations of Section 10(b) of the Exchange Act and Sections 206(1) and (2) of the Advisers Act. *U.S. v. Andrew J. Franz*, 1:13-cr-00331 (N.D. Ohio). Andrew Franz is scheduled to be sentenced in October 2013.

C. FACTS

Andrew Franz misappropriated over \$490,000 from Ruby clients.

6. From 2007 through early 2011, Andrew Franz misappropriated over \$490,000 from approximately 50 Ruby client accounts via fraudulent management fee and redemption requests. The majority of these fraudulently withdrawn funds were initially deposited into Andrew Franz's bank accounts; a smaller portion of the stolen funds was initially deposited into Ruby's bank accounts.

7. Ruby clients' funds were primarily invested in variable annuities or mutual funds. Most Ruby clients signed limited powers of attorney permitting Ruby to request management fees directly from their securities accounts. Andrew Franz and Ruby's office manager were responsible for calculating and requesting Ruby's management fees directly from the securities custodians, which was performed

quarterly. These fees were calculated based on the ending balance of the client's account as of the last day of the previous quarter. Most Ruby clients were charged .5% of the quarterly ending balance once per quarter.

8. Andrew Franz's role in the fee request process allowed him to easily misappropriate client funds. In some instances, Andrew Franz provided false client account balances to the Ruby office manager who calculated fees. Sometimes, after the office manager calculated the appropriate management fees and prepared the fee request, Andrew Franz changed the amounts before submitting the request to the annuity or mutual fund company. In other instances, after the office manager prepared and submitted the legitimate management fee request, Andrew Franz submitted additional fraudulent management fee requests days or weeks later.

9. In some instances, Andrew Franz submitted fee requests that instructed that checks be mailed to his home address instead of Ruby's office address. In addition, Andrew Franz was able to easily intercept management fee checks mailed to Ruby because he was the primary person who opened mail at Ruby and because many checks were addressed "Attn: Andrew Franz."

10. Starting in approximately 2006, George Franz had Andrew Franz begin to take over Ruby's operations. George Franz intended to transfer the business to Andrew Franz, since George Franz expected to retire in the next few years.

11. From 2006 through 2011, George Franz spent approximately four months a year in Florida, where he had a residence. During those months, Andrew Franz was present at Ruby's offices and managed Ruby's daily operations. Even when George Franz was in Ohio, he often worked from home, and let Andrew Franz continue to manage Ruby's daily operations.

12. From at least 2006 through 2011, George Franz had sole supervisory responsibility over Andrew Franz as an associated person of Ruby.

From at least January 2007 through early 2011, George Franz became aware of numerous signs of, and instances of, fraud by Andrew Franz.

13. Andrew Franz's repeated misappropriation of client assets was made possible by George Franz's failure to supervise him or take any action to stop him. From January 2007 through early 2011, George Franz became aware of numerous indications of fraud by Andrew Franz.

14. By January 2007, George Franz was aware that in 2006, Andrew Franz had stolen approximately \$12,500 in management fee checks due to Ruby. In response, George Franz instructed Ruby's tax preparer to issue an IRS form 1099 from the company to Andrew Franz for these stolen funds. George Franz did not disclose this information to Ruby clients or take steps to prevent additional fraud by Andrew Franz.

15. In approximately April 2009, George Franz learned that Andrew Franz had stolen hundreds of thousands of dollars from the Marie Franz Trust, a family trust for which George Franz served as trustee. The trust assets had been invested in mutual funds. George Franz learned that Andrew Franz had caused the mutual fund company to issue checks to Ruby's address or to George Franz's home. Andrew Franz then obtained the checks from Ruby's mail or his father's mailbox.

16. In approximately August 2009, George Franz learned that Andrew Franz had also stolen numerous other management fee checks issued to Ruby. George Franz also learned that Andrew Franz had diverted a large portion of the stolen funds from management fee checks and the trust into Ruby's bank accounts disguised as revenue, in order to conceal Ruby's dwindling income from his father. George Franz never disclosed this information to Ruby clients.

17. In approximately August 2009, George Franz instructed Ruby's accountant and tax preparer to conduct a review of Andrew Franz's personal bank account to determine how much Andrew Franz had stolen and what he did with the stolen funds. George Franz asked for this review because the stolen funds deposited into Ruby's accounts, disguised as legitimate revenue, caused Ruby and George Franz to overreport income and thus to overpay income tax.

18. In or before December 2009, George Franz learned that Andrew Franz had stolen a total of about \$800,000 from the Marie Franz Trust from approximately August 2007 through April 2009, depositing these funds into his personal bank account.

19. In or before December 2009, George Franz also learned that from approximately November 2007 through June 2009, Andrew Franz had diverted a total of approximately \$170,000 in management fee checks issued from securities custodians to Ruby, depositing them into his personal bank account. George Franz did not disclose this information to Ruby clients.

20. In or before December 2009, Ruby's accountant told George Franz that someone should analyze whether the diverted checks withdrawn from client accounts were properly requested (and thus constituted thefts from Ruby) or fraudulently requested (and thus constituted thefts from Ruby clients). George Franz assured the

accountant that he would personally perform this analysis. Some of these checks had been fraudulently requested.

21. In or before December 2009, George Franz learned that from August 2007 through July 2009, Andrew Franz had written checks from his personal bank account to Ruby totaling approximately \$684,000, primarily from the stolen funds. These personal checks were reported as income in Ruby's accounting records, based on misrepresentations by Andrew Franz to Ruby personnel or Ruby's outside accountant.

22. In or before December 2009, George Franz also learned of various other suspicious transactions in Andrew Franz's personal bank account, including a check written to a mutual fund company for "overpayment of fees," various checks to Andrew Franz's company, Wingate, Inc., and checks written directly to Ruby clients.

23. In approximately December 2009, George Franz told Ruby's accountant that he was taking steps to ensure that Andrew Franz did not continue his misconduct. In particular, George Franz told the accountant that Andrew Franz was no longer permitted to touch incoming mail at Ruby and that he was no longer permitted to be involved in any deposits into Ruby's bank accounts. Despite these representations, Andrew Franz continued handling incoming mail at Ruby and making deposits into Ruby's bank accounts without consequence. George Franz did not disclose this information to Ruby clients.

24. Meanwhile, starting in approximately July 2009, George Franz became aware of numerous suspicious problems involving management fee checks withdrawn from Ruby client accounts. George Franz did not disclose this information to Ruby clients.

25. For example, in approximately July or August 2009, George Franz learned that Ruby was receiving management fee checks in the mail, drawn on client accounts, that Ruby had never requested. George Franz learned that some Ruby clients appeared to have been billed twice for management fees for the same quarter, when Ruby had only asked for fees once.

26. In approximately October 2009, George Franz learned that on several occasions, there were management fee checks that had not yet been received by Ruby but had somehow already been cashed according to the mutual fund company. George Franz also learned that Andrew Franz had falsely claimed that the mutual fund company had told him the checks had not yet been cashed. George Franz did not disclose this information to Ruby clients.

27. On numerous occasions in 2010, George Franz learned of other irregularities regarding the management fee billing process and checks drawn on Ruby client accounts.

28. For example, in August 2010, George Franz learned that a total of \$4,732.97 in unauthorized management fee checks had been recently withdrawn from four Ruby client accounts. George Franz also learned that these fee checks had subsequently gone missing. In September 2010, George Franz learned that three of these unauthorized checks had been deposited into Andrew Franz's bank accounts.

29. In October 2010, George Franz wrote checks from Ruby's checking account to these four clients' accounts to reimburse the clients for the \$4,732.97 in total unauthorized fees. On the same day, Andrew Franz wrote a check to Ruby for \$4,732.97. George Franz was aware of this check. Had George Franz not reimbursed these Ruby client accounts, these clients would have been more likely to discover that funds had been stolen. George Franz did not disclose this information to Ruby clients.

30. In January 2011, SEC examination staff conducted an examination of Ruby's offices and operations regarding Andrew Franz's May 2010 forgery of four client signatures on fee requests for the clients' accounts (for fees legitimately owed to Ruby). During this examination, Andrew Franz was present in Ruby's offices and George Franz was at his home in Florida. As part of this examination, George Franz participated in SEC interviews via telephone.

31. During the January 2011 examination, SEC examination staff asked George Franz if he was aware of any potential violations of the securities laws other than Andrew Franz's forgery of the four client signatures in May 2010. George Franz lied, claiming that he was not aware of any other potential violations. In reality, George Franz was aware of numerous other indications of fraud by Andrew Franz, including but not limited to those instances noted in paragraphs 14 through 29 above.

32. From approximately January 2011 through May 2011, George Franz became aware of numerous additional instances of management fee checks withdrawn from Ruby client accounts going missing, and numerous additional instances of Andrew Franz lying about missing management fee checks. George Franz did not disclose this information to Ruby clients.

33. From approximately January 2011 through March 2011, the Financial Industry Regulatory Authority ("FINRA") made attempts to schedule an "On the Record Interview" ("OTR") of Andrew Franz in connection with irregularities FINRA had discovered as part of their oversight of Andrew Franz's associated broker-dealer.

FINRA scheduled an OTR for Andrew Franz for March 4, 2011, but he did not appear. As a result, Andrew Franz's broker-dealer promptly terminated him. After George Franz learned this, he failed to disclose it to clients or remove Andrew Franz as the listed broker on Ruby's client accounts until many months later.

34. Andrew Franz finally appeared for a FINRA OTR on April 7, 2011 and admitted to numerous instances of fraud and theft from Ruby clients. On May 2, 2011, Andrew Franz signed an Acceptance, Waiver, and Consent ("AWC") with FINRA, in which he acknowledged some of his misconduct and consented to being barred from association with any FINRA broker-dealer. This AWC was accepted by FINRA on May 24, 2011.

35. On April 29, 2011, George Franz informed Andrew Franz that he was terminated from Ruby as of May 31, 2011, after which he would not be allowed entry into Ruby's offices. Andrew Franz continued to come in to the office and conduct Ruby business until approximately July 2011, without consequence.

36. Between April 29, 2011 and May 31, 2011, Andrew Franz misappropriated another \$15,000 from two Ruby clients. In June and July 2011, Andrew Franz misappropriated another nearly \$60,000 from one Ruby client.

Respondents took no steps to prevent further thefts by Andrew Franz.

37. At all relevant times, George Franz was the Chief Compliance Officer of Ruby. However, George Franz and Ruby failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act.

38. George Franz and Ruby failed to adopt written policies and procedures reasonably designed to prevent violations, even after learning that Andrew Franz had, among other things, stolen Ruby client funds. During the time that Andrew Franz worked at Ruby, the firm had no procedures reasonably designed to prevent violations of the Advisers Act in connection with the withdrawal of advisory client funds. Moreover, there were no compliance reviews of associated persons of Ruby or of Ruby's compliance procedures until January 2012.

39. Respondents owed a fiduciary duty to all Ruby clients to act in their best interest. Despite George Franz's knowledge of Andrew Franz's thefts, including but not limited to the instances described above, he did not disclose these issues to Ruby clients or take any meaningful steps to protect client assets from further thefts until at least approximately May 2011.

40. Until at least approximately May 2011, Respondents did not: (A) remove Andrew Franz and deny him access to Ruby's offices; (B) remove Andrew Franz's access to client accounts; (C) remove Andrew Franz as broker of record on client accounts; (D) inform securities custodians for client accounts to not accept instruction from Andrew Franz on behalf of client accounts; or (E) adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act specific to Andrew Franz's means of committing fraud.

41. After Andrew Franz was terminated from his broker dealer and barred from association with any FINRA broker-dealer, George Franz – to ensure that Ruby was paid its management fees – caused Andrew Franz's signature stamp to be used on management fee requests to securities custodians.

**George Franz failed to inform Ruby clients that
Andrew Franz had stolen from their accounts.**

42. On numerous occasions, George Franz became aware that Andrew Franz had caused fraudulent withdrawals out of numerous client accounts and misappropriated the stolen funds. Rather than disclose to clients that Andrew Franz had stolen from their securities accounts, George Franz instead concealed the thefts by secretly replenishing the victim clients' accounts. For example, from October 2010 through April 2012, George Franz wrote 7 checks totaling approximately \$28,000 into the accounts of 22 different Ruby clients.

**George Franz lied to Ruby clients about Andrew Franz's thefts
and Ruby's repayments of those stolen funds.**

43. From approximately May 2011 through approximately July 2013, George Franz affirmatively misrepresented to numerous Ruby clients that Andrew Franz had not taken any funds from Ruby clients. He knew that was false.

44. George Franz told certain victims that the withdrawals from their accounts were due to mistake, but he knew they had been taken intentionally by Andrew Franz. For example, Andrew Franz issued quarterly management fee requests eleven times during 2010 for the account of one Ruby client ("Client A"), diverting \$13,552 in fraudulent fee payments into his personal bank account. George Franz learned in March 2011 that these funds were taken fraudulently.

45. In approximately late March 2011, George Franz falsely told Client A that Andrew Franz had mistakenly caused the \$13,552 to be withdrawn from her account, and that the client's account was being reimbursed. George Franz knew that Andrew

Franz had intentionally caused the withdrawals. On March 30, 2011, George Franz mailed a check for \$13,552 from Ruby's bank account to the securities custodian for Client A's account, instructing that the funds be deposited into the client's account. That same day, Andrew Franz obtained a cashier's check from his bank payable to George Franz for \$13,552, reimbursing him for the funds repaid to Client A's account.

46. From at least 2007 through at least July 2013, George Franz also made numerous other material misrepresentations and omissions to Ruby clients regarding, among other things, Andrew Franz's fraud, George Franz's knowledge of that fraud, and the actions George Franz took after learning of that fraud.

During the SEC's August 2011 examination, George Franz lied to SEC examination staff about what he knew and when he knew it.

47. During the first week of August 2011, SEC examination staff conducted an examination of Ruby in connection with the misconduct uncovered by FINRA and its action against Andrew Franz, including Andrew Franz's thefts from Client A and other Ruby clients in 2010 and early 2011. During this examination, the SEC interviewed George Franz.

48. George Franz told SEC examination staff that he first learned of any potential misconduct by Andrew Franz (other than thefts from the Marie Franz Trust and the four forged client signatures in May 2010) in early 2011. George Franz also told SEC examination staff that once he learned of this misconduct, he immediately fired Andrew Franz from Ruby. These were lies.

49. During the August 2011 examination, the SEC examination staff interviewed George Franz regarding instances of fraud by Andrew Franz that were known to the SEC staff at the time. The SEC examination staff asked George Franz if he was aware of any other potential violations of the securities laws. George Franz said he was not. This was not true; he was aware of numerous other indications of fraud by Andrew Franz, including but not limited to the instances noted in paragraphs 14 through 46 above.

After the SEC's August 2011 examination and during the early stages of the SEC's subsequent investigation, George Franz destroyed evidence of Andrew Franz's thefts by shredding numerous Ruby Corporation records.

50. In mid-August 2011, George Franz and his attorney met with SEC enforcement and examination staff to discuss the SEC's investigation, which at that time had only involved instances of fraud by Andrew Franz in 2010 and 2011. During this

meeting, the SEC staff told George Franz that he had a fiduciary responsibility to Ruby clients and an obligation to investigate Andrew Franz's thefts to determine the full extent of his fraud. The SEC staff told George Franz that – at a minimum – he should investigate the prior five years of transactions, such as via a forensic accounting, to identify any additional thefts by Andrew Franz. The SEC staff also told George Franz that the SEC would continue to investigate Andrew Franz's fraud, including potential fraud prior to 2010.

51. At all relevant times, Ruby was obligated under Section 204(a) of the Investment Advisers Act of 1940 and Rule 204-2 thereunder to maintain and preserve all books and records relating to Ruby's operations, including revenue, for a total of five years after the end of the year to which the record relates. As of November 2011, Ruby was obligated to maintain and preserve all such books and records for the time frame January 1, 2006 through November 2011.

52. In November 2011, George Franz knowingly caused numerous Ruby documents to be shredded. Such records contained important evidence of Andrew Franz's thefts before 2010.

53. George Franz was aware that Ruby's records for the time period prior to 2010 contained evidence of additional fraud by Andrew Franz, as well as evidence of George Franz's knowledge of Andrew Franz's fraud prior to 2010. On various occasions in 2008 and 2009, Ruby's former office manager informed George Franz of these instances of potential fraud by Andrew Franz as she became aware of them, and showed George Franz documents reflecting such fraud.

George Franz commissioned a sham "audit" that he used to mislead numerous Ruby clients.

54. From September 2011 through August 2012, Respondents engaged an accounting firm to perform an agreed-upon procedures engagement regarding management fees charged by Ruby ("engagement"), supposedly in an effort to identify all instances of misappropriation by Andrew Franz. This engagement was commissioned in response to the SEC's discussions with George Franz in mid-August 2011, as described in paragraph 50 above.

55. This engagement was not an audit, as explicitly stated in the final report. Rather, this engagement simply consisted of specified procedures, and included no attestation by the accounting firm as to whether Ruby clients were defrauded or overbilled.

56. George Franz knew that these procedures were unlikely to uncover the types of transactions by which Andrew Franz typically misappropriated funds from Ruby clients. For example, the engagement only covered the time period of January 1, 2010 through June 30, 2011. Moreover, George Franz substantially misled the accounting firm and withheld information material to their analysis to avoid detection of the extent of Andrew Franz's thefts. For example, George Franz provided the accounting firm with a fraudulently altered check and lied to the accounting firm about the check's purpose. As a result, the vast majority of Andrew Franz's fraud was not identified in the engagement. George Franz thus knew that the engagement was a sham.

57. Despite knowledge of the above facts and the sham nature of the exercise, George Franz told numerous Ruby clients that "an audit" had been performed of all Ruby client accounts. George Franz misled numerous Ruby clients, causing them to believe that if they had not been identified as a victim of in the "audit," they could rest assured that they had not been stolen from. George Franz even falsely told clients who he knew were victims of Andrew's fraud that they had not been victims.

**During the Division's investigation, Respondents
provided fabricated documents to the Division.**

58. During a September 11, 2012 investigative testimony, George Franz testified that he had, either verbally or in writing, informed all known victims of Andrew Franz's fraud that they had been victimized.

59. In November 2012, in response to SEC subpoenas, Respondents produced to the SEC letters from George Franz to four Ruby clients who had funds stolen by Andrew Franz and whose accounts were later reimbursed by Ruby. These four letters stated that Andrew Franz had stolen the clients' funds and that the amounts were being repaid by Ruby. Three of these letters referenced specific conversations between George Franz and the client regarding Andrew Franz's misconduct.

60. None of these four clients ever received these letters, and the conversations referenced in three of the letters never took place.

61. In addition to these four letters, Respondents produced to the SEC a letter to another client ("Client B") that the client never received. In an April 14, 2011 letter, Client B complained to George Franz that in March 2010 her account had been transferred out of an existing variable annuity without her consent, causing an approximately \$6,000 early surrender charge to the account. In her complaint letter, Client B told George Franz that throughout 2010, Andrew Franz had repeatedly lied to

her about the surrender charge, falsely claiming it was a mistake that would be repaid.

62. In her complaint letter to George Franz, Client B threatened to report the matter to FINRA and the SEC if George Franz did not reimburse her for the surrender charge. In a response letter on April 29, 2011, George Franz claimed that in March 2010 he had previously informed Client B of the surrender charge, that he had thereafter sent Client B a letter disclosing the charge, and that the client had agreed to the account transfer despite being aware of the surrender charge. These were lies.

63. In reality, Andrew Franz had forged Client B's signature on the account transfer form. Client B never received the March 2010 disclosure letter, nor did she participate in any March 2010 meeting. George Franz simply fabricated a story in which Client B – with full knowledge of the surrender charge – had consented to the account transfer. He then fabricated a letter to support that story. George Franz took these steps to protect Andrew Franz and Ruby from a potential FINRA or SEC investigation as a result of Client B's complaint.

64. Client B's April 14, 2011 complaint letter, George Franz's April 29, 2011 response letter, and the fabricated March 2010 letter were produced to the SEC pursuant to subpoena as part of Client B's client file maintained at Ruby.

65. These five fabricated letters were not the only times that George Franz "papered the file" with fabricated letters to clients in order to defend against claims that he lied or withheld material facts. In 2004 and 2005, George Franz told three potential clients that Ruby only received a fee if the clients' securities account managed by Ruby gained in value, and that Ruby's fee would be a percentage of that gain. This was false; Ruby was paid 2% of the clients' portfolio value each year regardless of whether the account gained or lost value. A year later, after the clients complained about these undisclosed fees, George Franz claimed that he previously disclosed these fees, and specifically cited two letters he supposedly wrote to the clients. The clients never received these letters.

George Franz lied under oath during the investigation.

66. During investigative testimony before the SEC enforcement staff, George Franz lied under oath on numerous occasions.

67. For example, during investigative testimony on September 11, 2012, George Franz testified that he had disclosed to all known victims of Andrew Franz's fraud the fact that they had been victims of misappropriation from their accounts. This testimony was false.

68. Further, during investigative testimony on March 6, 2013, George Franz testified that he had mailed the letters referenced in paragraphs 59 through 63 above, and that he had made the disclosures to clients referenced in those letters. This testimony was false.

Respondents filed a false SEC Form ADV Part II.

69. On or around April 16, 2012, Ruby filed a Form ADV Part II (dated November 30, 2011), disclosing that Andrew Franz was a former associated person of Ruby, but was removed from the firm because he had consented to a FINRA bar based on allegations of misappropriation, and stating, in Item 9:

[Andrew] Franz: (1) misappropriated funds belonging to Ruby Corporation and its clients in violation of NASD Conduct Rule 2110 and (2) forged an investor's signature and misappropriated his funds in violation of FINRA Rule 2010. This conduct was unknown to George B. Franz III and Ruby Corporation.

70. This Form ADV Part II was filed with the Commission and provided to Ruby clients.

71. The claim that "this conduct was unknown to George B. Franz III and Ruby Corporation" was false at the time this Form ADV Part II was filed. At the time this form was filed, George Franz knew that this claim was false.

D. VIOLATIONS

1. As a result of the conduct described above, Andrew Franz violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with any purchase or sale of security.

2. As a result of the conduct described above, Andrew Franz violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser.

3. As a result of the conduct described above, George Franz and Ruby Corporation failed reasonably to supervise Andrew Franz.

4. As a result of the conduct described above, Ruby Corporation willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

5. As a result of the conduct described above, George Franz and Ruby Corporation willfully violated Sections 206(1) and (2) of the Advisers Act.

6. As a result of the conduct described above, George Franz willfully aided and abetted and caused Andrew Franz's and Ruby Corporation's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Sections 206(1) and 206(2) of the Advisers Act.

7. As a result of the conduct described above, Ruby Corporation willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which among other things require that investment advisers registered with the Commission adopt and implement policies and procedures reasonably designed to prevent violations of the Advisers Act.

8. As a result of the conduct described above, George Franz willfully aided and abetted and caused Ruby Corporation's violation of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

9. As a result of the conduct described above, Ruby Corporation willfully violated Section 204(a) of the Advisers Act and Rule 204-2 thereunder, which require that investment advisers registered with the Commission maintain and preserve certain books and records.

10. As a result of the conduct described above, George Franz willfully aided and abetted and caused Ruby Corporation's violation of Section 204(a) of the Advisers Act and Rule 204-2 thereunder.

11. As a result of the conduct described above, Ruby Corporation willfully violated Section 207 of the Advisers Act, which makes it "unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein."

12. As a result of the conduct described above, George Franz willfully violated, and aided and abetted and caused Ruby Corporation's violation of, Section 207 of the Advisers Act.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents George Franz and Ruby Corporation an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondents George Franz and Ruby Corporation pursuant to Sections 203(e) and (f) of the Advisers Act including, but not limited to, disgorgement and civil penalties pursuant to Section 203 of the Advisers Act;

C. What, if any, remedial action is appropriate in the public interest against Respondents George Franz and Ruby Corporation pursuant to Section 9(b) of the Investment Company Act including, but not limited to, disgorgement and civil penalties pursuant to Section 9 of the Investment Company Act; and

D. Whether, pursuant to Section 21C of the Exchange Act and Section 203(k) of the Advisers Act, Respondents George Franz and Ruby Corporation should be ordered to cease and desist from committing or causing violations of and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Sections 206(1) and 206(2) of the Advisers Act, Section 204(a) of the Advisers Act and Rule 204-2 thereunder, Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, and Section 207 of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents George Franz and Ruby Corporation shall each file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If any Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against that Respondent upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice, 17 C.F.R. § 201.360.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy

Secretary