

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72058 / April 30, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3826 / April 30, 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 31035 / April 30, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15526

In the Matter of

GEORGE B. FRANZ III

and

RUBY CORPORATION,

Respondents.

**ORDER MAKING FINDINGS AND
IMPOSING REMEDIAL SANCTIONS AND
A CEASE-AND-DESIST ORDER
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.

On September 26, 2013, the Securities and Exchange Commission (“Commission” or “SEC”) instituted public administrative and cease-and-desist proceedings 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.

II.

Respondents have submitted a joint Offer of Settlement (“Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and over the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order 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 (“Order”), as set forth below.¹

III.

On the basis of this Order and Respondents’ Offer, the Commission finds that:

SUMMARY

This matter arises out of the theft of advisory client funds and a cover-up by the perpetrator’s father and supervisor. From 2007 through 2011, Andrew Franz stole over \$490,000 from about 50 clients of Ruby Corporation (“Ruby”), an investment adviser registered with the Commission. Andrew Franz also stole another \$350,000 from Ruby itself and \$800,000 from a Franz family trust. Andrew Franz issued numerous bogus advisory fee requests for Ruby client accounts and then diverted the resulting excess fees to his personal bank accounts or to Ruby’s bank accounts to conceal the firm’s dwindling income. Andrew also made fraudulent redemption requests from client accounts and diverted those funds. George Franz, Andrew’s father and the sole owner and principal of Ruby, learned of numerous instances of misconduct and thefts by Andrew from 2007 through early 2011 but did nothing to stop him, even engaging in a cover-up in which he defrauded his clients and lied to the SEC during its investigation, including by providing false documents to the SEC.

RESPONDENTS

1. 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

¹ The findings herein are made pursuant to the Respondents’ Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

principal. George Franz had supervisory responsibility over Andrew Franz from at least 2006 through 2011. George Franz, age 71, 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.

2. 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 primarily in mutual funds and variable annuities.

OTHER RELEVANT INDIVIDUAL

3. Andrew J. Franz. Andrew Franz, age 42, is an inmate at the Federal Correctional Institution in Ashland, Kentucky, and is formerly 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 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). On October 23, 2013, Andrew Franz was sentenced to 57 months imprisonment and ordered to pay

\$357,069 in restitution and an additional \$245,352 (plus penalties and interest) to the IRS for his income tax violations.

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 several 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 that held the assets of the trust 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 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 did not disclose 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 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 make sure Andrew Franz did not repeat the conduct uncovered by the accountant. 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 Ruby client accounts that had not been requested by Ruby. 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 drawn on Ruby client accounts that had not yet been received by Ruby in the mail, even though the securities custodian reported that the checks had already been cashed. George Franz also learned that Andrew Franz had falsely claimed that the securities custodian 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 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 those instances noted 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 an OTR with FINRA on April 7, 2011, during which he 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. Between April 29, 2011 and May 31, 2011, Andrew Franz misappropriated another \$15,000 from Ruby clients. George Franz told other Ruby personnel about Andrew Franz's termination. Despite this, Andrew Franz continued to come in to the office and conduct Ruby business until approximately June or July 2011.

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

36. 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.

37. 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. Before August 2010, Ruby had no compliance procedures at all. Starting in August 2010, Ruby Corporation enacted compliance procedures relating to trading on nonpublic information. These were the only compliance procedures implemented by Ruby prior to Andrew Franz's termination. During the relevant time, Ruby 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.

38. Respondents owed a fiduciary duty to all Ruby clients to act in their best interest. Despite everything George Franz learned about 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 Andrew's admissions to FINRA in April 2011.

39. Until at least approximately April 2011, Respondents did not: (1) remove Andrew Franz and deny him access to Ruby's offices; (2) remove Andrew Franz's access to client accounts; (3) remove Andrew Franz as broker of record on client accounts; (4) inform securities custodians for client accounts to not accept instruction from Andrew Franz on behalf of client accounts; or (5) 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.

40. 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.**

41. 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. He never disclosed to these clients that their funds had been stolen or that they had been repaid.

George Franz lied to certain Ruby clients about Andrew Franz's thefts from their accounts and Ruby's repayments into their accounts.

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

43. George Franz told certain victims that the withdrawals from their accounts were due to mistake, when 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.

44. In approximately late March 2011, George Franz falsely told Client A that Andrew Franz had caused the \$13,552 to be withdrawn from her account by mistake, 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.

45. 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.

46. 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.

47. 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.

48. 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. During the August 2011 examination, the SEC examination staff asked George Franz if he was aware of any potential violations of the securities laws, other than those discussed during the examination. George Franz answered that 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 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, including Ruby Corporation records.

49. 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 ensure that there were not additional undiscovered 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.

50. At all relevant times, Ruby was obligated under Section 204(a) of the Advisers Act 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.

51. In November 2011, George Franz knowingly caused numerous Ruby documents to be destroyed. Among other records, George Franz caused to be destroyed records related to Ruby's quarterly management fee requests to mutual fund and annuity companies. These destroyed records related to transactions from at least January 1, 2006 through December 31, 2009. These destroyed records included numerous documents reflecting misconduct by Andrew Franz.

52. 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. Ruby's former office manager maintained additional copies of some of the evidence of Andrew Franz's potential fraud prior to 2010 that had also been located in Ruby's records prior to their destruction.

George Franz commissioned a sham accounting engagement that he used to mislead numerous Ruby clients.

53. 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 described in paragraph 49 above.

54. This engagement consisted of performing certain specified procedures, and included no attestation by the accounting firm as to whether Ruby clients were defrauded or overbilled. In addition, as George Franz was aware, the particular procedures constituting this engagement could not be expected to uncover the types of transactions by which Andrew Franz typically misappropriated funds from Ruby clients. Moreover, the engagement only involved the time period of January 1, 2010 through June 30, 2011. Finally, George Franz substantially misled the accounting firm and withheld information material to their analysis in order to influence the results of the analysis. 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.

55. 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 (including victims of Andrew Franz's fraud), causing them to believe that if they had not been identified as a victim of the audit, they could take comfort that they had not been a victim.

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

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

57. 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.

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

59. 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.

60. 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 he had previously informed Client B of the surrender charge in a March 2010 meeting, that he had previously sent Client B a letter disclosing the charge in March 2010, and that the client had agreed to the account transfer in that March 2010 meeting despite being aware of the surrender charge. These were lies.

61. 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, and 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.

62. 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.

63. These five fabricated letters were not the only times that George Franz "papered the file" with unsent 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. After the clients complained about these undisclosed fees a year later, 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.

64. During investigative testimony before the SEC enforcement staff, George Franz made numerous statements that were false.

65. 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.

66. Further, during investigative testimony on March 6, 2013, George Franz testified that he had mailed the letters referenced in paragraphs 57 through 61 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 2A.

67. On or around April 16, 2012, Ruby filed a Form ADV Part 2A (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.

68. This Form ADV Part 2A was filed with the Commission and provided to Ruby clients.

69. The claim that “this conduct was unknown to George B. Franz III and Ruby Corporation” was false at the time this Form ADV Part 2A was filed. At the time this form was filed, George Franz knew that this claim was false.

VIOLATIONS

70. 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.

71. 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.

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

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

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

75. 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.

76. 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.

77. 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.

78. 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.

79. 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.

80. 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."

81. 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.

UNDERTAKING

82. Respondent Ruby Corporation undertakes, within 14 calendar days of the entry of the Order, to withdraw its request dated December 14, 2012, for a hearing in response to the Commission's Notice of Intention to Cancel Registrations of Certain Investment Advisers Pursuant to Section 203(h) of the Investment Advisers Act of 1940, Release No. IA-3490 (Oct. 19, 2012).

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Joint Offer.

Accordingly, pursuant to Sections 203(e), (f), and (k) of the Advisers Act, Section 21C of the Exchange Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondents George Franz and Ruby Corporation shall cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 204, 206(1), 206(2), 206(4) and 207 of the Advisers Act and Rules 204-2 and 206(4)-7 promulgated thereunder.

B. Respondent George Franz be, and hereby is barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and is prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

Any reapplication for association by Respondent Franz will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against Respondent Franz, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

C. The registration of Respondent Ruby Corporation as an investment adviser be, and hereby is revoked.

D. Respondent Ruby Corporation shall comply with the undertaking set forth in Paragraph 82 of this Order.

E. Respondents George Franz and Ruby Corporation shall jointly and severally, within 14 calendar days of the entry of this Order, pay disgorgement of \$394,452² and prejudgment interest of \$30,548 (together "the Distribution Fund") and civil penalties of \$675,000, to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

(1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;³

² The amount of disgorgement ordered reflects prior payments by the Respondents to victims totaling \$92,938.

³ The minimum threshold for transmission of payment electronically is \$1,000,000. For amounts below this threshold, Respondents must make payments pursuant to option (2) or (3) above.

- (2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying George Franz and Ruby Corporation as Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Robert J. Burson, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, IL, 60604.

F. After receipt of Respondents' payment of disgorgement and prejudgment interest, the Commission shall within 90 days, make payments to Clients 1 through 43 as set forth in Exhibit 1 hereto. The amount of each of these payments represents the dollar amount of each client's net loss plus reasonable interest as calculated by the Commission staff. After the Commission makes these payments, any remaining funds consisting of Respondent's disgorgement, prejudgment interest, and penalties paid, shall remain on deposit with the Commission pending further approval by the Commission of (1) a plan to distribute some or all of the remaining funds pursuant to the Commission's Rules on Fair Funds and Disgorgement Plans or (2) the transfer of remaining funds to the U.S. Treasury. Commission staff will seek the appointment a tax administrator for the above payments to clients (as well as any additional payments that may be made in the event a plan of distribution is approved) as they constitute a qualified settlement fund ("QSF") under section 468B(g) of the Internal Revenue Code (IRC), 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. Taxes, if any, and related administrative expenses will be paid from the remaining funds. Regardless of whether any Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty

Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against a Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Lynn M. Powalski
Deputy Secretary